Rebutall Proof of Kevin Coleman

(Phase 2 Planning Ltd, on behalf of the Appellant)

1. My name is Kevin Coleman, I am a chartered Town Planner. Details of my experience and qualifications are set out in my main proof of evidence.

2. The primary purpose of this Rebutall proof is to provide my response to matters raised in the evidence submitted by the LPA, including, but not limited to, the new material provided by Mr Russell-Vick. I also comment on matters raised by SCC where this has implications for the planning evidence provided by myself and by Ms Evans.

3. This Rebutall Proof is structured to reflect the Inspector's Main Matters, which I deal with in turn below. I also provide a brief update on how matters now stand as regards Paragraph 11 of the NPPF, in the light of the acceptance by IBC that it cannot demonstrate a 5 Year Land Supply.

4. Finally, since both parties have now provided their views on the weight to be attached to the benefits/harm to the scheme, I have appended a summary table which sets out the respective views of the Appellant/LPAs/SCC on each item, with a brief commentary from myself, in the hope that this is helpful to the Inspector.

5. Before going on to the new matters raised by the proofs of evidence, there is, unfortunately, one 'old' matter that I need to comment on, which relates to the continued attempts by the LPAs to portray the Appellant as having acted unreasonably by not undertaking further pre-application discussions or submitting a revised application before going to Appeal. I appreciate, taking into account the Inspector's comments at the CMC, that this may be a topic of limited interest to the Inspector, as it relates to matters that occurred prior to the Appeal and are not relevant to the merits. I will therefore keep things brief, but I hope that by dealing with this matter now, it may reduce the amount of time that could otherwise be wasted at the hearing sessions themselves, through continued claim and counter claim.

6. Paragraphs 2.2 to 2.9 of my proof explain why no further pre-application occurred, and why a revised application was not submitted. In short, it was not the Appellant who curtailed pre-application discussion, it was the LPAs. It is all very well for the LPAs to point to correspondence where they were encouraging further pre-application, but since the LPAs had already made clear they did not have the resources to continue pre-application at that time, and since further pre-application was effectively conditional on the Appellant agreeing changes to the scheme that were not deliverable (or necessary, as the LPAs/SCC have effectively now, at last, conceded), there was no practical option of further pre-application.

7. Nor would further pre-application have solved matters. Ms Evans (who was not of course the case officer at the time) is quite wrong in my view in her speculation at paragraph 2.1 of her evidence that "… *had the pre-application engagement been undertaken as advised by the Councils … a positive decision could have been reached …*". I am certain in my own mind, based on the discussions that were had with the LPAs at the time, that the progress that

has been made on resolving many of the areas of dispute since the reasons for refusal were issued would not have occurred had it not been for the Appeal process.

8. Throughout the LPAs' planning evidence, there is what I would describe as an underlying tone of 'peevishness'. This starts with Mrs Evans' paragraph 2.1, but then continues throughout. Paragraph 2.6, for example, refers to the applications having been originally submitted "*…knowingly against the advice of the Councils*". Paragraph 4.8 notes *"It is disappointing that the opportunity for effective discussions was not taken up by the Appellants before making the application, and the appeal"*. Paragraph 5.17 refers to the pre-application advice provided by the LPAs and goes on to state "*The Appellants ignored this advice and submitted the application …*". These are just examples, the LPAs' evidence continues in this vein.

9. To be clear, the LPAs' pre-application advice was not ignored, it was carefully considered, but the Appellant simply disagrees with the substance of that advice, and still does.

10. If the LPAs had truly wanted to work proactively with the Appellant to minimise the issues between the parties, it would (a) not have placed unreasonable pre-conditions on further pre-application discussion (b) would have made resources available and (c) would not have refused the original applications after 13 weeks, when the Appellant had specifically asked for an extension of time to deal with consultation responses that had only recently been received. The actions of the LPAs in curtailing the pre-application process and then curtailing the application process speak louder than the empty words on encouraging pre-application whilst at the same time rendering that process futile.

11. I do not criticise the LPAs for not having the resources to engage at that time. I do not criticise the LPAs for having different opinions on some matters. I do however criticise the LPAs for their continued and wholly unjustified attempts to portray the Appellant's decision to proceed to Appeal as being anything other than an inevitable consequence of their decisions to refuse the submitted applications.

12. A second and equally unjustified theme that runs throughout the LPAs' written material is a suggestion that 'new evidence' has been the principal cause of their changing position on various Main Matters. I do not consider this an accurate representation.

13. It is true that additional information has been provided in respect of ecology since the applications were refused, and it is true that an archaeological field investigation has subsequently been undertaken (unnecessary at this stage, but done anyway). I accept that this has affected the LPAs' view on Main Matters 6 and 8. But I do not accept that additional information post-refusal has played any part in the changing views of the LPAs on other matters. I provide further brief comments on this under the various Main Matter headings below.

Main Matter 1 - Masterplanning

14. Ms Evans lists the areas of harm that she says arises from an alleged lack of masterplanning at her paragraph 5.5. With the exception of the first item (that the Appeal Scheme does not bring forward the whole allocation), all of the other issues are subject to other reasons for refusal and are covered under separate Main Matters.

15. As I noted at paragraph 9.6 of my proof, much like the LPAs' objection on the grounds of housing quantum, this first reason for refusal is actually just a summary of its other grounds of refusal, packaged under a generic heading of Masterplanning, but raising no actual freestanding issues of harm other than that the Appeal Scheme doesn't cover the whole allocation (which is a matter of land ownership).

16. On that latter issue of coverage, the LPAs raised the absence of the parcel of land opposite Westerfield House in their Statement of Case, and have now added a second parcel of land to the rear of the Tuddenham Road Business Centre to their concerns. For ease of identification, these two additional areas are marked on the sketch provided by Mr Russell-Vick.

17. In relation to the parcel of land opposite Westerfield House, both parties have noted the fact that an application for 13 homes submitted earlier in the year has been withdrawn. The layout for the 13 unit scheme can be viewed at CD OT21.1. I note that the LPAs have not provided an explanation as to why the scheme was withdrawn, and so we have contacted the agent for the application, who has explained that it was because the LPAs are concerned that the submitted scheme had not properly assessed its impact on the setting of the Grade 2 Listed Westerfield House. In Mr Selby's Heritage Impact Assessment for the Ipswich Examination (see page 30 of CD H5), the heritage constraints of the parcel are explained, and Mr Selby identifies no "area of opportunity" for development on that parcel (the meaning of his red line around that parcel on page 29 of CD H5).

18. Whilst I do not agree with Mr Selby that the site has no opportunity for development, it is also clear to me that the 13 unit layout submitted earlier this year as an application has not properly addressed the principal façade/setting of Westerfield House, and that ultimately, a smaller development area will be needed. I also note Mr Self's observations in his Rebutall regarding the limitations of the line of poplars, and the effect this will have on the scale of development that could be achieved.

19. The submitted layout for that parcel (as shown at CD OT 21.1) does however help to demonstrate that there is no intrinsic inter-relationship or interdependency between the development of the Appeal Site and the development of this parcel, such that its absence from the Appeal Scheme has no adverse impacts whatsoever. Even if this parcel of land had been included in the Appeal Scheme, it would make no difference to the Appeal Scheme or the Parameter Plans that have been submitted for approval.

20. As I noted in my proof (paras 9.9 to 9.13), the absence of the rectangle of land opposite Westerfield House was not considered important enough to be raised as an issue of concern at pre-application stage (or application stage), and has only been raised belatedly to support RfR #1.

21. The same is true for the absence of the parcel of land at the rear of the Tuddenham Road Business Centre. Had it been raised at pre-application stage, I would have provided the information that I give now, which is that it is my understanding from the former landowner that this parcel of land contains the ground source heat pumps that serve the adjoining veterinary surgery, and that because of this underground infrastructure, that parcel has been sold to the veterinary practice, and is not available for development. It is part of the allocated area, but it is not a part of the allocated area that, as it has subsequently turned out, is available for use.

22. I can see nothing from the LPAs' evidence to change my view that the procedural and substantive harms alleged by the LPAs to exist as a result of an alleged absence of masterplanning are factors that I would ascribe no weight to, either because no harm arises, or the matters where harm is alleged are part and parcel of other reasons for refusal.

23. I turn now to consider the new material provided by Mr Russell-Vick, and I start firstly with the consequences of the preceding paragraphs. To help understand the implications of Mr Russell-Vick's suggestions, PRP have overlain his sketch onto the submitted Land Use Parameter Plan, and I append a copy of the resulting drawing (Appendix C).

24. By adding the two additional parcels of land referred to above, Mr Russell-Vick enlarges the site area by 1.3 ha. Not that it is particularly relevant, but Mr Russell-Vick's given site area of 33.18 ha was, I understand, derived from adding the site areas given in the two policies (23.28ha plus 9.9 ha). The Appeal Site area (accurately measured from the OS base and the red line on CAD) is 31.52 ha, and therefore the size of the Appeal Site with the additional land included by Mr Russell-Vick is 32.82 ha.

25. Of the additional 1.3 ha added, PRP's plan indicates that 0.8ha of this comprises additional development land, and forms part of Mr Russell-Vick's 15.97 ha of development land. He applies an average density of 37.5 ha to this to get 599 homes.

26. For the reasons explained above, one of those two extra parcels is not available for residential development, and the other has no realistic prospect of delivering the number of homes that would be required to meet Mr Russell-Vick's requirement. Removing that 0.8 ha of land from the equation means that, within the Appeal Site, Mr Russell-Vick's plan does not achieve 599 homes, but only achieves 569 homes, even with his increase in density to 37.5 dph.

27. If to that number I add a notional 10 homes for the land opposite Westerfield House, as a rough proxy for that site, even at his higher density, Mr Russell-Vick's plan does not actually achieve the number of homes indicated by the site-specific policies, which given the circumstances of land supply in Ipswich, I would regard as the minimum level of delivery.

28. However, for clarity, I should note at this point that it appears that density is not being calculated in the same way between the Appeal Scheme and Mr Russell-Vick, which is why there is a different figure for the density of the Appeal Scheme in Table 1 on page 62 of Ms Evans' evidence, compared to the figures quoted in the application documentation.

29. The difference is this – the size of the residential development parcels, as shown on the application Land Use Parameter Plan, include the road infrastructure within the parcel. It is the Land Use Plan development parcel areas that sum up to the 18.86 ha referred to in the application material (excluding the 0.33 ha shown for the local centre). Whilst it is not uncommon to exclude strategic road infrastructure from the calculation of density, in this case, the spine road is serving a relatively small development and is offering no wider connectivity, and hence it was considered not to be sufficiently 'strategic' in nature to be discounted from the development parcel. 18.86 ha times 35 dph equals 660 homes.

30. Therefore, in order to get a like-for-like comparison, I would first need to enlarge Mr Russell-Vick's development parcel sizes to include the elements of spine road that sit within them. I also then need to factor in a reduction for a like-for-like comparison on the basis

that Mr Russell-Vick appears to have included the local centre site as part of his development areas, rather than it being treated separately.

31. I have asked PRP to measure the corresponding areas from Mr Russell-Vick's plan on a like for like basis, and they calculate a total of 16.07 ha (See Appendix D). The black area figures are those that the Appeal Scheme calculations are based on, the blue figures are the corresponding figures for Mr Russell-Vick's scheme, as accurately as they could be measured, and on the same basis.

32. From the 16.07 ha I need to deduct the 0.08 ha that Mr Russell-Vick has used outside of the Appeal Site boundary, and also deduct the 0.33 ha for the local centre, for a direct comparison (the Appeal Scheme is 19.19 ha with the 0.33 ha local centre, and 18.86 ha without it).

33. Therefore, on a like-for-like basis, the scheme presented by Mr Russell-Vick provides 14.94 ha of residential development land, compared to the 18.86 ha in the Appeal Scheme.

34. On that like-for-like basis, therefore, the LPAs' alternative scheme would only deliver 561 homes, even with the density increased to 37.5 ha. With a notional 10 units added for the Westerfield House parcel, the alternative scheme is still below the number of homes set out in the policy. Compared to the 35 dph average on the Appeal Scheme, the like-for-like density comparison for the alternative scheme to get to 599 homes is 40 dwellings per hectare (599 divided by 14.94).

35. I am of course quite happy to accept that by raising development density, as Mr Russell-Vick has done, it is possible to get the same number of homes on a smaller site area. Frankly that is just a statement of the obvious. But where is the evidence to say that 37.5-40 dwellings per hectare is an appropriate <u>average</u> density on the Appeal Site?

36. I noted at Paragraph 11.13 of my proof that simply 'upping' the housing density is not a solution. The Appeal Scheme is based on achieving an *average* of 35 dwellings per hectare. The 40 dph density area on the Density Parameter Plan marks an area where density could be higher, but the wider zones within which the 40 dph development could occur are still set to achieve an average of 35 dph, and so wherever advantage is taken of increasing the density in the centre of the site, there would be a corresponding decrease below 35 dph on the edges. I consider this important, given the countryside edges of the site.

37. I note that in the consultation response dated 2nd May 2024 from the urban design officer from East Suffolk, a concern relating to density is raised, to the effect that densities on the "sensitive countryside edge to the north-east" should be lower than suggested, and lower than towards Humber Doucy Lane (for the reason I explain above, the Density Parameter Plan already allows for this). I am also aware (for example from the Ipswich urban design officer's consultation response) that maintaining the "semi-rural" character to Humber Doucy Lane is important (hence why again, the Density Parameter Plan seeks to restrict higher density to the centre of the site, so that densities to the edges can be lower).

38. There is a policy requirement for a minimum of 35 dwellings per hectare (in Ipswich at least), but that does not mean that there is any rationale for developing above 35 dph, particularly on an urban edge site where there are sensitivities to all sides that will, in practice, restrict the extent to which it is possible to achieve higher densities.

39. My use of 35 dph as an appropriate density for the Appeal Scheme can be 'sense checked' against Policy ISPA4.1, which, as explained elsewhere, assumed, presumably on the basis of an assessment of the location and nature of the site, that 35 dph was the correct average density to apply when calculating the site yield, at the time the policy was drafted (and examined). If IBC had felt that the Appeal Site should be developed at a higher density than 35 dph, it would have used a higher figure when calculating the site yield.

40. To my knowledge, the LPAs have never suggested that densities should be increased above 35 dwellings per hectare, until now. Indeed, I am not sure that even now, the LPAs do actually support an average density above 35 dph. In her evidence, at paragraph 5.28, Ms Evans states:

"… the assumption of an average of 35dph has not been justified, and is not the product of a design-led approach. It is apparently simply based on Policy DM23 [DP1], which establishes density requirement of at least 35dph, but this ignores that this is subject to exceptions having regard to the "site location, characteristics [and] constraints", with the supporting text noting that "Sites on the urban edge of Ipswich may require lower densities in certain circumstances where development needs to respond sensitively to the adjacent countryside and surrounding character."

41. It is very hard to read the above extract as anything other than a suggestion that the LPAs consider that an average of 35 dph on the Appeal Site is too *high*, not too low.

42. I can also 'sense check' the use of 35 dph as an appropriate density against the other large edge-of-town development currently in the course of implementation, the Ipswich Garden Suburb. Policy CS10 of the adopted IBC Plan (page 76 of CD DP1) states that the IGS is to provide around 3,500 dwellings on around 100 ha of residential land i.e. 35 dwellings per hectare. Whilst I recognise that the IGS is a "garden suburb", it is also a larger development that includes substantial new community infrastructure and a district centre, which would tend to support higher densities. I cannot see any rationale, particularly in the light of the comments made by Ms Evans (as quoted above) and the urban design responses, for the Humber Doucy Lane site being developed at a higher average density than the Ipswich Garden Suburb.

43. Therefore, when the correct density of 35 dph is applied to Mr Russell-Vick's adjusted development parcel area of 14.94 ha, his scheme would actually only deliver 524 homes, and even if I then add a notional 10 homes for the Westerfield House parcel, the yield from the site is still only 534.

44. I note with some irony that Ms Evans persists in arguing that the Appellant has not justified the quantum of housing on the site by suggesting that applying a density of 35 dph to the development areas is too simplistic (her paragraph 5.28) – yet Mr Russell-Vick is apparently allowed to apply a density of 37.5 dph to his development areas, without offering any explanation at all as to why that figure is appropriate, and somehow this does not seem to attract the same criticism.

45. Leaving aside the shortfall in housing, it is also notable that, whilst increasing the overall amount of Green Infrastructure compared to the Appeal Scheme, the LPAs' alternative scheme doesn't actually fundamentally change the Open Space Strategy proposed in the Appeal Scheme.

46. Firstly, I note that Mr Russell-Vick's scheme does not allow for the relocation of the rugby pitches, which the LPAs now argue is required - I explain this further under Main Matter 10.

47. Secondly, whilst Mr Russell-Vick's scheme would provide a larger area of natural/semi-natural greenspace, it is essentially in the same locations, and whilst the buffer is larger, as Mr Self explains in his rebutall, it would still be an area of semi-natural greenspace adjacent to new housing, and it would still be an area of semi-natural greenspace that would contain SuDS, play, and walking and cycling opportunities.

48. The key point is that decreasing the development parcel size and increasing the width of the green infrastructure around the boundaries of the site adversely affects the ability of the Appeal Site to meet the number of homes required, without actually achieving the types of green infrastructure that the LPAs now say is required.

49. All Mr Russell-Vick's plan does, therefore, is demonstrate that all of the Green Infrastructure that the LPAs now say is required is not physically capable of being provided on the Appeal Site with the requisite number of homes, even with an unjustified increase in density – exactly as I said at paragraph 11.15 of my proof of evidence.

50. Finally on this matter, it is of course the responsibility of the decision maker to determine the scheme in front of them, not to consider whether or not there is a potential alternative scheme that could achieve a better outcome. In that context, the sketch provided by Mr Russell-Vick is essentially irrelevant to the outcome of the Inquiry, as it is not the scheme that the Inspector is required to consider.

51. Having said that, in my view the Appeal Scheme is far superior to that sketched by Mr Russell-Vick, because out of the two, only the Appeal Scheme is able to deliver a level of housing commensurate with the allocations at an appropriate density, whilst the inclusion of additional semi-natural greenspace in Mr Russell-Vick's scheme offers no benefit, both because (a) it does nothing to address the (limited) harm that arises from the loss of the existing rugby pitches and (b) the Appeal Scheme already exceeds the policy requirement for semi-natural greenspace (and will ensure no adverse effect on the integrity of European Sites for the reasons explained by Dr Aidan). Therefore, the additional greenspace achieves no material benefit, it just means that less houses can be built, which, given the land supply and affordable housing position, is a major disbenefit.

Main Matter 2 – Effect on Character and Appearance

52. Matters relating to the evidence of Ms Chittock are dealt with in Mr Self's Rebutall evidence.

53. As the Inspector will be aware, that part of IBC RfR#3 that alleged an adverse impact on character/visual impact/amenity from the siting of the proposed Humber Doucy Lane signalised junction was withdrawn by the LPAs in their amended Statement of Case (CD SC4). The Appellant has not submitted any new material on this matter, the LPAs appear to have just realised, rather belatedly, that the argument was not defensible, and so they have correctly withdrawn it.

Main Matter 3 – Effect on designated Heritage Assets

54. The Inspector will recall that the LPAs' Statement of Case (paras 7.21 to 7.28 of CD SC3) made clear that Heritage impact was a matter of dispute and that in its view, the Appeal Scheme was required to achieve zero harm to heritage assets. The LPAs' revised Statement of Case (CD SC4) raises no such objection, and instead, the relevant SoCG (CD SoCG3) shows that the LPAs now agree with the position set out by the Appellant i.e. that heritage impact is at the lower end of less than substantial harm, and that the policy balancing exercise is that set out at paragraph 208 (now 215).

55. At paragraph 7.25 of her evidence, Ms Evans explains that she has done the paragraph 215 balancing exercise, and she states: "*I have considered the benefit of the delivery of open market and affordable housing to outweigh the harm identified*".

56. No additional information has been submitted on heritage matters since the refusal of the applications. There has been no change in heritage policy, and there has been no change in the LPAs assessment of heritage harm.

57. In short, therefore, the evidence of Ms Evans confirms that heritage impact should never have been cited as part of IBC RfR #4 (ESC RfR #3), and the LPAs have correctly, if belatedly, recognised this.

Main Matter 4 – Effect on Highway Safety

58. Matters relating to off-site active travel interventions, junction design, and highway modelling I leave to Mr Hassel's evidence, and like Ms Evans, I will restrict myself to commenting only on the matter of interconnectivity between the two main parcels (Parcels B and C).

59. RfR #2 describes the connectivity between these parcels as "inadequate". However, Mr Cantwell-Forbes states in his evidence at paragraph 6.78:

"The walking and cycling infrastructure between the eastern and western parcels detailed within submitted Drawing Number 0004 Revision B (CDAD2(10)) are generally acceptable …"

60. Mr Cantwell-Forbes' caveat to that statement, that the proposed zebra crossing should be a parallel crossing, is a matter of detail that can be addressed as part of the detailed design without needing to formally amend application plans, as it essentially only relates to road markings (see Mr Hassel's Rebutall evidence).

61. Ms Evans continues to suggest that somehow a wider Masterplanning process could have resulted in a different proposal, using land owned by the Rugby Club (her paragraphs 5.47 and 5.48). I think that highly unlikely, but moreover, I think it irrelevant. This is because the duty of the decision maker is to consider the scheme as submitted, not whether an alternative scheme may be possible. The evidence from Mr Cantwell-Forbes makes clear that far from being "inadequate" as alleged in RfR#3, the proposed interconnectivity between the parcels is actually "generally acceptable", and therefore whether or not an alternative exists is not a matter for the decision maker to be concerned with.

62. Very much in line with his original consultation response on the applications, Mr Cantwell-Forbes outlines at his paragraphs 6.89-6.92 why in his view as to why the Appeal Scheme might be better if land owned by the Rugby Club were included, but as he rightly makes clear at the start of his paragraph 6.89, these observations do not relate to the scheme as submitted.

63. In respect of the evidence of both Ms Evans and Mr Cantwell-Forbes on this matter, it needs to be emphasised that the Rugby Club land is not part of the ISPA4.1 allocation, and therefore provision of a link across that land is not part of the ISPA4.1 policy requirements, and nor could it be.

64. No new information has been provided by the Appellant on this matter. The proposals for pedestrian and cycle connectivity between Parcels B and C referred to by Mr Cantwell-Forbes as being "acceptable" are the proposals shown on the submitted application plan. I do not believe the Highway Authority's original consultation response ever suggested that the linkage between the two parcels was inadequate, and that the use of this word in RfR #3 was never actually based on advice from the Highway Authority.

65. On the single issue of the interconnectivity between Parcels B and C, therefore, the evidence of Mr Cantwell-Forbes supports the Appellant's contention that no issues of highway safety arise.

66. I would point out that there is nothing within the Appeal Scheme that would prevent the LPAs' preferred alternative occurring in the future, should the Rugby Club bring forward proposals for their land. As there is an existing PROW crossing the Rugby Club land alongside the boundary of the Appeal Site, the submitted Pedestrian Parameter Plan already shows a connection between the Appeal Site and the Rugby Club land being maintained on Parcel B. The Appellant is happy for a connection up to the Appeal Site boundary to be required by condition. Although not shown on the Parameter Plan, a similar condition could be applied to the north-western edge of Parcel C, such that a future pedestrian connection between the two parcels is not precluded.

67. Finally on Mr Cantwell-Forbes' evidence, I note that he very fairly acknowledges at his paragraph 6.60 that the wider walking and cycling enhancement scheme between Colchester Road and the Town Centre, to which the Appeal Scheme would be required to contribute financially, has wider benefits over and above facilitating access by residents of the Appeal Scheme. I had not factored this into my list of benefits in my proof, but I have added this to the summary benefits/harm table appended to this Rebutall. The same would be true of any additional pedestrian/cycle improvements closer to the Appeal Site that may yet be agreed between the parties.

Main Matter 5 – Flood Risk and Drainage

68. My comments on this matter can be restricted to the following four points:

(1) The "new information" referred to by Ms Evans in her paragraph 3.13 and again in her paragraph 5.68 was the information submitted during the processing of the application, in response to the LLFA's holding objection. It was the LPAs' choice not to reconsult the LLFA at that time. Had it done so, the misunderstanding by the LLFA which appears to have led to their objection points 1-4 could have been resolved then.

(2) Ms Evans' comments at paragraph 5.69 are not quite complete. Point 8 of the LLFA's original objection regarding the 'school site' (Early Years) was only ever a point of clarification on what the modelling had assumed, and was easily addressed just by confirmation being given that no restriction to discharge from the Early Years site had been assumed. The additional note on the revised Drainage Strategy Plan referred to in the drainage Statement of Common Ground (which can be found at CD APD1) that says for Catchment 1C "Unrestricted Discharge Rate" was only added as a way of confirming what had been modelled, it does not actually change the strategy. The revised Drainage Strategy Plan was produced primarily to address point 5 of the LLFA's original objection, which related to concerns regarding the 'on plot' sustainable drainage measures. It is important to emphasise that the revised version P.02 that can be found at CD APD1 contains exactly the same drainage strategy as submitted with the application (at Appendix I of the Flood Risk and Drainage Strategy dated February 2024), save for:

(a) The addition of the spine road swales, which had always been allowed for, just not shown;

(b) The addition of the flow diagram showing the proposed 'treatment train' to provide comfort that the correct levels of treatment have been allowed for, and to provide comfort that the drainage strategy does allow for on-plot measures; and

(c) The inclusion of an indicative swale cross section, to provide comfort that an appropriate width of swale has been allowed for.

(d) The note regarding the unrestricted flow for the Early Years site mentioned above.

Drawing P.02 does not therefore contain any substantive changes to the drainage strategy – rather, it provides additional clarity that has enabled the LLFA to withdraw the 5th and 8th parts of their original objection, leaving only parts 6, 7 and 9 still in dispute.

(3) The Drainage *Strategy* is just that – it is a strategy that shows how surface water is to be managed within the Appeal Site. It is not an application plan for approval. It is not, and has never claimed to be, a detailed drainage design. Paragraph 17 of the Drainage SoCG is highly relevant in this context, as it records the agreement of all parties (including the LPAs) that the general locations of the strategic attenuation areas are appropriate in principle, and that it is acceptable for these to form part of the wider on-site Green Infrastructure. The Green and Blue Infrastructure Plan, which is the application plan that actually covers drainage matters, is therefore essentially agreed by all parties to be correct.

(4) As Mr Fillingham explains in his evidence, the remaining points of objection from the LLFA (points 6, 7 and 9) are essentially matters of detail that can be appropriately addressed as part of the detailed drainage design in due course.

Main Matter 6 – Effect on Ecology

69. As this matter is now resolved, there is no need for further comment from me.

70. Contrary to Ms Evans' comment at paragraph 2.5 of her proof, no new evidence has been provided on Biodiversity Net Gain.

Main Matter 7 – Effect on designated conservation sites

71. Dr Marsh has provided a short Rebutall on matters of detail relating to this issue.

72. The alternative Land Use Budget by Mr Russell-Vick shows a total of 14.66 ha of "SANGS and open space uses", compared to the 11.5 ha in the Appeal Scheme, but with the exception of the northern field, the locations for his green infrastructure are essentially the same locations as those shown in the Appeal Scheme, and would inevitably also include the "*SUDS basins, play space and other infrastructure*" that Ms Evans takes exception to in her paragraph 5.85.

Main Matter 8 – Effect on archaeological significance.

73. As this matter is now agreed to have been resolved, my only comment relates to the fact that Ms Evans has very fairly assigned a "minimal benefit" to the fact that archaeological investigation of a previously un-investigated area provides beneficial information, whereas I had missed this element. In my summary table of weightings at the end of this document I have noted my agreement to that weighting.

Main Matter 9 – Air Quality

74. The relevant SoCG serves to demonstrate that air quality should never have been a reason for refusal in its own right, as it was only ever a matter of agreeing the appropriate mitigation to match the damage cost calculation. The agreed mitigation that the SoCG points to was part of the list of air quality mitigation measures referred to in the report that accompanied the application. Contrary to Ms Evans' comment at paragraph 2.5 of her proof, therefore, no new evidence has been submitted on air quality.

Main Matter 10 – Loss of Sports Pitches

75. In her evidence, Ms Evans starts by considering the planning history of the existing use. At paragraph 5.93 she confirms *"…the most recent permission has expired"*. She also confirms at paragraph 5.92 that even when the use was operating under the benefit of its temporary permission, *"The temporary permission limited the use to Sundays between 10am to 12:30pm and required that the playing fields not be used at the same time as the existing senior pitches."*

76. It appears therefore to be common ground that whilst the use has continued, and whilst according to the Rugby Club themselves the usage has been outside the scope of the permission, that use is unlawful.

77. At paragraph 5.97, Ms Evans comments that the use by the Rugby Club *"…appears to have potentially exceeded the limitations of the temporary permission…"*. Given the content of her preceding paragraphs, there is no need for Ms Evans to be so guarded - there is no question that current activities do not have the benefit of planning permission.

78. Whilst Ms Evans says that the Council is prepared to turn a blind eye to this, she cannot of course, as an officer, make that decision on behalf of the Council. Whilst the Council may at the current time be turning a blind eye, I do not consider that the Inspector is able to similarly turn a blind eye to the fact that the existing use is unauthorised.

79. The question for the Inspector is therefore what weight is it reasonable to assign to the cessation of an unauthorised use? Technically it should be no weight, but I have assigned a medium weight (perhaps generously) on the basis that the use has existed, and on the basis that, had a further application for a temporary/restricted use been submitted, it would probably have been allowed, as previous restricted consents had been. Ms Evans does not appear to have made any allowance for the fact that the existing use is unauthorised in her weighting of the harm arising from the cessation of that use – I note this in my appended summary 'harm' table at Appendix B.

80. I note Ms Evans refers in her paragraphs 5.101 and 5.102 to submissions made by my company as part of the 2020 Ipswich Examination, which made reference to the potential for reprovision of playing fields on land elsewhere controlled by my client at the time. This was correct at the time but is not now. Moreover, is not relevant now, for the reasons set out at paragraphs 4.29-4.21 and 4.35 of my proof i.e. neither the site-specific policy nor Policy DM5 specifically requires reprovision, and in any event, this would only be likely to occur if the Rugby Club were relocated in its entirety, which has not been achieved to date.

81. In my opening paragraphs on Main Matter 10 in my proof I explained the importance of comparing 'apples with apples', specifically as regards not confusing a shortfall for a particular type of sport with a shortfall for a wider typology. However, I consider that in her paragraphs 5.108 to 5.118, Ms Evans does exactly this, switching repeatedly between references to playing fields as a whole, and rugby in particular.

82. The Open Space Assessment submitted with the application identified a surplus of playing field supply against standards for the North-East part of Ipswich. I cannot see anything in Ms Evans' evidence that provides an alternative calculation for playing field provision or anything else that contradicts that finding.

83. I believe therefore that the Inspector can take my evidence that a surplus of playing fields exists as unchallenged. That is not, of course, the same as saying that there is a surplus of rugby pitches, but that is a different matter, and I deal with the impact of the loss of the rugby pitches in my proof.

84. Obviously I disagree with Ms Evans on her assessment of Policy DM5, but as my reasoning is all set out in my proof, there is no need for further comment here.

Main Matter 11 – Quantum of Development

85. Ms Evans helpfully clarifies at her paragraph 5.160 that the LPAs' objection in respect of Main Matter 11 is "… not because of an in principle objection to more housing being delivered on the site, but because the Councils consider that this quantum of housing cannot be achieved on this site without generating significant conflicts with policy requirements."

86. This very much confirms the assumption that I have made previously, that IBC RfR #11 (ESC RfR #9) is not actually a reason for refusal in its own right, and that if the Inspector is satisfied that the Appeal Scheme is not in conflict with the other policies that the LPAs cite in respect of open space and green infrastructure, then this Main Matter falls away anyway.

87. Whilst Ms Evans assigns a level of harm of "very substantial weight" to the fact that the scheme had 61 homes over and above the 599 assumed in the site allocation policies, this is in fact therefore a duplication of the weight that she attributes to the harm that she alleges arises in terms of open space and green infrastructure, it is not actually a level of harm that arises from having 61 more homes.

88. By contrast, in my view, the provision of 61 more homes comprises an additional benefit of the Appeal Scheme, and is both a social benefit (more homes, and particularly more affordable homes), and an economic benefit (more expenditure, more employment etc).

89. I have separately commented on the material produced by Mr Russell-Vickes under Main Matter 1 of this Rebutall – all that material does is demonstrate that the LPAs' current wish list for the site is impossible to achieve.

Main Matter 12 – Green Infrastructure (Quantum and Quality)

90. From paragraph 5.140 of Ms Evans' proof, the quantum of open space proposed is essentially agreed at being around 11.4 ha. I note Mr Russell-Vickes has measured areas from the drainage strategy for his 11.39 ha, but presumably this would have been measurements from the PDF file, whereas PRP have the CAD plans for their measurement of 11.44 ha. Ms Evans confirms in any event that either figure is more than required under Policy DM6.

91. The Open Space Strategy for the site has been covered by Mr Self in his evidence, and I do not need to repeat that, or to explain again why the decision was taken to increase the quantum of semi-natural greenspace over formal parks/gardens.

92. In respect of playing fields, I have explained that there is a surplus of this typology in the local area, and although Ms Evans says at her paragraph 5.149 that she covers this in her paragraphs 5.90 to 5.122, there is in fact nothing more in those paragraphs that provides any evidence to contradict the findings of the Open Space Assessment that there is, indeed, a surplus for this typology.

93. From Table 2 in Ms Evans' appendix, it appears as if the LPAs are suggesting that circa 2.0 ha of playing fields should be included as part of the Appeal Scheme in order for it to be acceptable (1.91 ha for 599 dwellings or 2.25 ha for 660 dwellings). However, the alternative scheme presented by Mr Russell-Vick does not appear to include any land upon which playing fields could sensibly be provided, whether to replace the lost rugby pitches or for other playing field use. Whilst the northern field parcel is roughly 2ha in size, it is the wrong shape (and orientation) for accommodating sports pitches, and certainly incapable of replacing the two rugby pitches to be lost.

94. Therefore, the LPAs alternative layout of green infrastructure would presumably also rely on an alternative sports offer (i.e. as per the Appeal Scheme), or playing fields needing to

be provided off site on 3rd party land somewhere else, rendering the allocation undeliverable.

95. At paragraph 5.150, Ms Evans refers to allotments, and to the fact that the Open Space Assessment submitted with the applications showed a surplus against standards in North-East Ipswich. Again, there is nothing within Ms Evans' evidence to contradict the findings of the OSA, that there is indeed a surplus in the local area. The reason that the OSA did not seek to address the deficit in the neighbouring area of East Suffolk is because the geographical extent of Area 6 in East Suffolk is so large as to make its conclusions largely irrelevant for typologies such as allotments, that serve a very local catchment. The relevance of paragraph 3.11 of the application OSA, to which Ms Evans refers at her paragraph 5.150, is that the only two allotment sites that exist in East Suffolk's Area 6 happen to be in close proximity to the Appeal Site, as both are located at Rushmere St Andrew. In other words, the deficiency in allotment provision within East Suffolk Area 6 is not in the vicinity of the Appeal Site, where existing provision is generous on both sides of the border.

96. Ms Evans' justification for the Appeal Scheme including allotments is, as per her paragraph 5.150, therefore based on generic national policy, not local circumstances.

97. Notwithstanding all of the above, the Inspector will note that the indicative Landscape Strategy Plan already includes an area of Community Orchard on the eastern side of Parcel B close to Seven Cottages Lane. This happens to be around 0.6ha in area, and which could be used as allotments rather than community orchard if the Inspector were to be persuaded by Ms Evans' reliance on the NPPF as a justification for their provision.

98. Ms Evans has produced a number of tables showing different open space calculations. Without commenting in excessive detail, my main comments in response are:

(1) I do not agree that it is necessary to include land for playing fields/outdoor sports, for the reasons already explained;

(2) I do not consider that it is necessary to include land for allotments, for the reasons already explained, but if the Inspector were to consider otherwise, then the area shown as community orchard can be used for this purpose;

(3) I do not consider it is necessary to include as much land for parks and gardens, as there is a sound justification for delivering more semi-natural greenspace on this site, as explained by Mr Self.

(4) I do not therefore agree with the total policy requirement of 8.11 ha set out at the bottom of Table 2 for the Appeal Scheme (though the 11.4 ha proposed with the Appeal Scheme exceeds this anyway).

(5) I do not agree that there is a separate "secondary" Land Use requirement of 11.5 ha for SANG, as set out in Table 3, and nor do I believe the evidence of Mr Meyer suggests that SANG is separate and distinct from on-site semi-natural greenspace.

(6) I do not agree that the figure of 2.25ha for SuDS has any relevance, as SuDS can and should be accommodated as 'part and parcel' of other types of green infrastructure.

(7) I do not therefore agree with the figures of 11.5 ha for SANG and 5.56 ha for other green infrastructure in Table 4.

99. Although Ms Evans' tables have tried to make the matter more complex, the policy position is actually very simple – the Appeal Scheme exceeds the quantum of open space required under Policy DM6, regardless of whether the Policy requirement is 5.11 ha (as per Mr Self's proof of evidence, table 5, page 38), or 8.11 ha (as per Ms Evans' proof of evidence, table 2, page 64).

100. Open Space Assessments are tools that help to inform decision makers as to the type of open space required. In this case, the evidence from the OSA shows a surplus of playing fields against standards, and a surplus of allotments against standards, and these are therefore relevant considerations for the decision maker. The context of the site, and the policy requirements such as the inclusion of the Green Trail and buffers to the countryside edge help to inform decisions regarding open space typologies further.

NPPF Paragraph 11/5 Year Land Supply

101. I note that Ms Evans gives Ipswich Borough Council's 5 Year Land Supply as 3.49 years, but notes that with a 20% buffer (in accordance with the latest HDT results), supply is actually only 3.1 years.

102. Although the latter figure is generally in line with my expectation, I have not seen any evidence from IBC setting out its calculation at the time of writing, or showing the sources of supply that it relies upon to come to that figure. At this stage therefore I cannot say whether or not the figure of 3.1 years' supply is accurate, as no evidence has been produced to support it.

103. Ms Evans deals with the relevance of the IBC shortfall in paragraph 4.16 of her evidence, and says that the 'presumption in favour …' "*… does not apply in this case because of the alleged adverse impact on the integrity of European Sites*". Whilst footnote 7 does indeed refer to "habitats sites", the impact on integrity of European Sites does not actually have any relevance for the overall balancing exercise, because it is a matter of legal compliance – if the Inspector were to find that the Appeal Scheme would have an adverse effect on the integrity of designated European Sites, it would need to be refused as to grant consent would be unlawful. On the other hand, if the Inspector were to find no harm arising to European Sites, then footnote 7 would not apply anyway.

104. As the only reason the LPAs give for the 'presumption in favour …' not being applicable is the separate legal test of compliance with the Habitat Regulations, the Inspector can reasonably assume that, in any balancing exercise of the benefits of the development against harm, the parties are agreed that the 'presumption in favour …' does apply.

105. The only issue for the Inspector is how to apply the 'presumption in favour …' to a cross-boundary application, where is it applicable to part of the development, but not all.

106. I believe that my approach to weighting, as set out at paragraph 13.4 of my proof of evidence, effectively addresses this matter in terms of the benefits of the Appeal Scheme, by differentiating between the weight to be attached to housing delivery in the Ipswich boundary area, compared to housing delivery in the East Suffolk area.

107. There are of course elements of the scheme which create harm - although as I have explained in my proof, the harm created is essentially integral to the allocation. In terms of those areas where I have accepted that harm arises (at my paragraph 14.2 of my proof), I would comment briefly as to how the 'presumption …' can be applied as follows:

- Matters of landscape harm (i.e. due to development on undeveloped land) would apply on either side of the administrative boundary, but as the harm created is integral to the scheme and embedded in the respective allocations, that harm is not reliant upon the application of the 'presumption …' for it to be outweighed. Any alleged harms that are within the Ipswich boundary (e.g. Humber Doucy Lane road frontage) would be subject to the Para 11(d) test in respect of the weight to be placed on that harm.

- Traffic impacts would be primarily but not exclusively felt within the Ipswich urban area. Whether or not the 'presumption …' would be relevant would depend upon whether or not the Inspector were to find any particular impacts within the Ipswich area that were significant enough to qualify as 'severe' under the NPPF test, and where the harm would then need to be balanced against the benefits. Anything less than 'severe' would not be likely to require such a balancing exercise, as the benefits of the scheme would be likely to outweigh non-severe impacts, with or without the operation of the 'presumption …'.

- The (unlawful) playing fields to be removed are within Ipswich, as is the proposed alternative sports provision. I note that Ms Evans, at her paragraph 5.115, says that the loss of the sports pitches is a cross-boundary issue, but of course, there is no reason for refusal relating to the loss of sports pitches on the ESC decision notice, and the LPAs only rely on Ipswich Policy DM5. I therefore consider that the harm arising from the loss of the rugby pitches is a matter to which the 'presumption in favour …' applies.

- The two Listed Buildings that are impacted are within East Suffolk, but the LPAs have already accepted that the benefits of the Appeal Scheme outweigh the harm, without the 'presumption in favour …' being applied.

108. I consider, on the basis of the above, that the 'presumption in favour …' can therefore be effectively applied in a nuanced way that takes into account that it is only applicable to that part of the development that lies within the Ipswich area, albeit it makes application a little more complex than it would normally be.

109. Ms Evans states at paragraph 4.10 of her proof that full weight should continue to be given to all relevant policies of the Ipswich Local Plan, as I understand it on the basis of an argument that the Plan is only out of date by reason of Footnote 8, rather than for any reason of substance. I assume that Ms Evans is therefore effectively saying to the Inspector that paragraph 11(d) has no practical bearing on the Inspector's decision making.

110. I disagree.

111. Firstly, and on a very specific matter, I would say that in the light of the Ipswich Plan being now out-of-date as regards housing land supply, the figure of 449 homes for the Appeal Site in the site-specific policy should attract even less weight than I have already ascribed to it – given that I have already explained why this figure should attract limited weight

anyway, this further loss of weight does not materially affect my assessment of the overall planning balance.

112. Secondly, and more generally, the lack of a 5 Year Land Supply will affect all policies that may act to constrain either the principle, quantum, or timing of housing delivery. That is not to say that any one policy is rendered completely out-of-date, but any policy that is used to constrain housing delivery must now attract less weight in the overall planning balance, because under Paragraph 11(d), the 'tilted balance' means that the harm arising from a policy conflict now has to "significantly" outweigh the benefits of housing delivery, as opposed to just outweighing the benefits.

113. In the judgement relating to *Suffolk Coastal vs Hopkins Homes*[1], Lord Gill explains at paragraph 83:

"*If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework would be frustrated*."

114. Whilst I therefore agree that no specific policy is rendered completely out-of-date, it is not correct to say that full weight applies regardless to every other policy, if that policy is being used to refuse or delay the provision of housing, and the harm created by the policy breach is not demonstrable and significantly outweighing the benefits of the scheme.

Conclusion

115. For the reasons explained above, there is nothing in the evidence provided by the LPAs or by SCC that leads me to conclude anything other than that the Appeal Scheme has been well conceived, is an appropriate and effective response to the policy context and site-specific circumstances, and will deliver a much needed, high quality development.

[1] [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)