Neutral Citation Number: [2026] EWHC 1962 (Admin)

AC-2025-LON-004708

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Royal Courts of Justice
Strand London WC2A 2LL

Date: 30 July 2026

Before :

SIR PETER LANE

- -

Between :

THE KING
on the application of

STAUNCH CAMPAIGN LIMITED

Claimant

- and -

NORTH NORTHAMPTONSHIRE COUNCIL

Defendant

- and -

I.M. PROPERTIES LIMITED

Interested party

- -

Mr Paul Stinchcombe KC and Ms Steph David (instructed by Goodenough Ring Solicitors) for the Claimant
Mr Killian Garvey (instructed by North Northamptonshire Council, Legal Services) for the Defendant
Mr Paul Tucker KC and Ms Stephanie Hall (instructed by Town Legal) for the Interested Party

Hearing dates: 23 & 24 June 2026

- -

APPROVED JUDGMENT

This judgment was handed down at 10:30am on 30 July 2026 by circulation to the parties or their representatives by email and by release to the National Archives

Sir Peter Lane:

1 The Claimant challenges the Defendant's decision dated 21 November 2025 to approve Planning Application Ref. A21 2 NE/22/00698/OUT and grant planning permission for 185,000m² of Class B8 warehousing on 60.05 hectares of greenfield land on the outskirts of the village of Titchmarsh, to the northeast of Thrapston, Northamptonshire. The approval was of a 'hybrid' nature, being full permission for certain development, including a storage and distribution unit (Development Plot 1); and outline planning permission with all matters reserved for an employment park, with ancillary and associated works.

2 The Claimant, 'Save Titchmarsh and Upper Nene Countryside and Habitats' (STAUNCH), is a campaign group incorporated by guarantee, to protect the Upper Nene Valley from what it considers would be inappropriate and unsustainable developments.

3 The site of the proposed development of the Interested Party ('IP') is located next to a 75-hectare Castle Manor Farm site, in respect of which, on 22 October 2025, a Planning Inspector granted permission on appeal for a further 200,000m² of Class B8 warehouses. Taken together, these two proposed developments would involve the loss of more than 135 hectares of open land, on adjacent sites between Thrapston and Titchmarsh.

The Special Protection Area

4 The IP's development site lies within 10 kilometres of the Upper Nene Valley Gravel Pits Special Protection Area (SPA), albeit not within the SPA's boundary. The SPA's Site Improvement Plan states that the SPA consists of a chain of exhausted sand and gravel pits, extending for approximately 35 kilometres along the alluvial deposits of the River Nene in Northamptonshire. The open waters and associated habitats of the Upper Nene Valley Gravel Pits collectively form what is said to be one of the most important inland localities in England for waterbirds in the non-breeding periods.

5 The Defendant's Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document (August 2015) ('the SPD') recognises that there is potential for poorly located development to have an adverse impact on the SPA and that significant adverse consequences can arise, alone or in combination, from factors outside the SPA, including through the loss of supporting habitats, increased disturbance and changes in ecological condition due to a lack of management. The SPD refers to the need for surveys of 'land outside the SPA but which ecologically is functionally linked to the European site.' The SPD emphasises that any proposed mitigation must be considered on a case-by-case basis.

6 The SPD requires impacts to be considered for development up to 2 kilometres from the SPA. The Site is located within that catchment area, being located around 230 metres from the SPA's boundary, at its nearest point. Golden Plover and Lapwing are two of the qualifying species for the SPA, as part of its winter bird assemblage. Golden Plover and Lapwing are known to spend time feeding and roosting on agricultural land surrounding the SPA and up to 10 kilometres from it.

Functionally Linked Land

7 In 2024, Middlemarch, an environmental consultancy wholly owned by Warwickshire Wildlife Trust and acting for the IP, entered discussions with Natural England ('NE')

regarding the potential effect of the Development on the SPA. A Shadow Habitats Regulations Assessment, submitted by Middlemarch in June 2024, noted that the proposed development would result in a reduction of 0.06% of the total possible foraging and roosting habitat available to Golden Plovers and Lapwings within 10 kilometres of the SPA. Middlemarch's assessment of the absence of these species on the development site in 2025 was, however, not accepted by Natural England. NE noted that the information was contradicted by data verified by the Local Records Centre and Northamptonshire Biological Records centre, which demonstrated 'a wider use of the land by SPA birds.' NE's letter of 11 June 2025 therefore maintained its earlier view, from August 2024, that the Site was considered to be Functionally Linked Land ('FLL'), in that it was within 10 kilometres of the SPA boundary and contained 'appropriate habitat to support foraging [and] roosting Golden Plover and Lapwing.'

8 In October 2024, Middlemarch had submitted a Winter Bird Management and Monitoring Plan, which detailed a strategic approach to mitigation, suggesting the creation and long-term management of 'a smaller area of high-quality foraging habitat within the local vicinity' of the SPA. In its letter dated 21 November 2024, NE stated that the 'proposed mitigation land does not represent high quality foraging habitat for golden plover and lapwing.' The land proposed to be used was open to public access, crossed by public rights of way, adjacent to the urban edge and close to residential development and with overhead cables and other problematic features. NE set out in bullet point form their broad criteria for the provision of suitable foraging habitat for the SPA birds. These included like-for-like replacement habitat as a minimum, with the land being of similar extent and quality, or better, to that being lost. Golden Plover were said to favour 'open landscapes that are not too enclosed'. Smaller sites with dense hedgerows, woodlands and tall trees were therefore to be avoided. Mitigation 'should be as close to the existing site as possible', but 'free from any development disturbance. When selecting a mitigation site, you will need to be mindful of any disturbance that could discourage its use.' Golden Plover and Lapwing are unlikely to use fields that are too small, regardless of their habitat quality. The birds favour open landscapes, with an absence of features such as trees, hedgerows and fences likely to impede distant views and which are likely to harbour predators. 'Critically, golden plover and lapwing are known to require areas that are free from disturbance by people, noise and lighting.'

FLL at the Lilford Hall Estate

9 The 21 November letter stated that the land then proposed by way of mitigation did not meet these criteria and was not suitable. NE advised the IP to 'investigate the availability of an alternative more suitable site/s for the delivery of FLL mitigation. Natural England is aware of a number of sites that may offer potential to meet the essential suitability criteria discussed above. We will be pleased to continue working with the Applicant, through our Discretionary Advice Service (DAS) to identify an appropriate site/s and develop robust mitigation strategy.'

10 The witness statement of Christopher Walsh, who at relevant times was Natural Capital Solutions Leader with Middlemarch, states that on 19 December 2024, he received an email from NE, 'recommending two possible alternative [FLL] mitigation areas.' The actual email said 'it would appear there are 2 estates close by to the development we are currently working with who would have suitable land for mitigation. I am attaching their details below for you to make your enquiries.' One of the estates mentioned was the Lilford Hall Estate.

The writer of the email said ‘Both, I am informed, are in good proximity to the SPA and close to river habitats; according to our mapping, Lilford would appear to have the greater suitability.’

11 On 8 January 2025, Mr Walsh and Mr Staniewick of NE had a ‘Teams’ meeting, at which Mr Staniewick shared satellite imagery of the Lilford Hall Estate on screen and broadly identified several fields lying adjacent to the eastern bank of the River Nene, as well as a large rectangular grassland area to the north. There was discussion as to how the FLL area could be legally secured. It was agreed that a section 106 agreement would be the most robust mechanism, with the landowner of the Lilford Hall Estate being a signatory to it.

12 On 21 January 2025, Mr Walsh visited the Lilford Hall Estate to assess the suitability of the land. In some places, the grassland sward was too high for Golden Plovers and Lapwings, whilst in other places it was assessed to be too low. Mr Walsh nevertheless concluded that, with enhancement through habitat management, the areas ‘could provide excellent Functionally Linked Land mitigation and could provide high value foraging habitat for both overwintering Golden Plovers and Lapwings.’ Management measures to bring the land up to the required standard were discussed with the IP’s Development Director and the grounds keeper of the Lilford Hall Estate. Separately to this discussion, Mr Walsh and the owner of the Estate also discussed the possibility of establishing a Habitat Bank across much of the Estate. Mr Walsh suggested to the owner that the latter could discuss the Habitat Bank issue with officers of the Defendant. Following the site visit, on 21 January 2025, Mr Walsh emailed Mr Staniewick to say that the IP had selected the Lilford Hall Estate as the site of its FLL mitigation area.

13 A letter of 11 June 2025 from NE explained why, applying the precautionary principle and ‘without full details of mitigation’ NE had concluded that a likely significant effect to the SPA ‘could not be ruled out’ and why NE had been ‘unable to conclude that the habitat present on [the development] site is not suitable to act as functional habitat for the SPA’s qualifying features and therefore the proposal must provide suitable alternative parcels of land and/or enhance the FLL elsewhere, equivalent to that which is being lost by the proposal.’ The letter recorded NE’s advice, provided to the IP on 10 January 2025 through NE’s Discretionary Advice Service, that as a precursor to any development, a suitable parcel of land must be provided ‘in order to mitigate the loss of FLL.’ The advice stated that NE would be satisfied for this to be secured by a section 106 agreement and a suitably worded pre-commencement condition, which would need to be reviewed and approved by NE prior to any development taking place. Provision of this, along with a suitable Winter Bird Management and Monitoring Plan ‘would enable Natural England to rule out a likely significant effect to the Upper Nene Valley Gravel Pits SPA and therefore subject to the applicant meeting all prescribed requirements, have no further objection to the proposal.’

14 NE’s letter of 11 June 2025 reminded the IP that the Defendant was the decision-making body and competent authority under the Conservation of Habitats and Species Regulations 2017 (‘the 2017 Regulations’). As such, it was the duty of the Defendant to consider and attribute weight to the evidence presented, so as to determine whether the proposed development would adversely affect the integrity of the SPA: ‘Development should only proceed where adverse effects on integrity can be ruled out, in line with legislation.’

15 On 11 and 12 June 2025, Middlemarch conducted full Baseline Ecological Assessments of the Lilford Hall Estate, including the FLL mitigation area, with Mr Walsh leading the

habitats surveys on both days. A detailed ecological assessment and vegetative identification process was completed across the Water Meadows and North Fields areas. Multiple photographs were also taken, depicting the present condition of both habitat areas.

16 In order to assist with its duties under the 2017 Regulations, as they bore on the planning application for the Site, the Defendant engaged Place Services, an arm of Essex County Council that provides (*inter alia*) environmental assessments for other local authorities. Mr Walsh's witness statement records that on 19 June 2025, he attended a 'Teams' meeting with senior officers of the Defendant, representatives of the IP and Hamish Jackson of Place Services. Mr Chrusciak's witness statement says that, prior to this meeting, neither he nor Hamish Jackson of Place Services, were aware of the location of the proposed replacement FLL. At the meeting, it was discussed whether at that point it was sufficient only for the Defendant and Place Services to know the location of the FLL mitigation area, as this had not been made public by the owner of the Lilford Hall Estate, who feared a 'backlash' from the Claimant and others who had objected to the planning application. At this point in the meeting, Mr Jackson said he had not been made aware of the newly proposed FLL mitigation area. Mr Walsh explained how the land at the Lilford Hall Estate had come to be considered as FLL, including its identification by NE. Mr Walsh shared his screen in order that the other attendees could see a satellite image of the FLL in relation to the boundary of the SPA, so as to confirm it was within 10 kilometres of the SPA boundary. Mr Walsh said the FLL was 20 hectares in size and achieved all the criteria detailed as essential by NE. The Baseline Survey was the property of the Lilford Hall Estate, as it had been prepared in connection with the majority of the Lilford Hall Estate becoming a Habitat Bank.

17 On 30 June 2025, a further 'Teams' meeting took place between Mr Jackson of Place Services and Mr Walsh, to discuss the FLL mitigation area at the Lilford Hall Estate. The Middlemarch Baseline Report was shared with Mr Jackson and discussed in detail. Also shared was a map, showing the FLL mitigation area. The two men reviewed photographs of the Water Meadows and North Field areas, the Phase 1 Ecological Baseline map showing the FLL area within the context of the surrounding habitats, the current ecological condition of the habitats within the FLL area and Appendix 1 to the Middlemarch report, showing tables setting out detailed descriptions of each habitat area and their current vegetative composition. The two discussed what habitat management prescriptions could be undertaken and what current management actions would have to cease, in order to maximise the area's usage by Golden Plover and Lapwing. Mr Walsh confirmed the willingness of the owner of the Lilford Hall Estate to implement the management measures Mr Walsh had discussed on 21 January 2025 with the Estate's grounds keeper. As well as maintaining the requisite winter sward height, there would be the creation of 'habitat piles' for invertebrates and several shallow pools and ditches to provide additional foraging opportunities for the overwintering birds. Mr Jackson said the planning obligation would need to secure the appropriate management of the FLL for a period of 80 years. Mr Walsh and Mr Jackson agreed that overwintering bird monitoring should be undertaken by the landowner in years 1, 3, 5, 10 and 15 and every five years thereafter until the end of the 80 year period.

18 On 7 July 2025, Place Services produced a Habitats Regulations Assessment. This included an Appropriate Assessment ('AA'). Pursuant to the 2017 Regulations, the Defendant, as competent authority, is required to carry out an assessment of whether a plan or project will significantly affect the integrity of (here) the SPA, in terms of impacting the site's conservation objectives, before making a decision about permission for any plan or project that may result in a likely significant effect on the site.

19 The significance of the proposed development in relation to the FLL associated with the SPA was addressed at 4.2 of the AA. Having described the differences between the IP's bird survey and those highlighted by NE (paragraph 7 above), the AA stated that in line with the 'precautionary principle,' the Defendant concluded that a mitigation strategy was considered necessary. This included mitigation in line with the broad criteria provided by NE (which was then set out). Having referred to the earlier proposed FLL replacement area, which NE considered to be unsuitable, the AA referred to alternative land, said to be 'recommended' by NE's Land Management team, which was within 10 kilometres of the SPA, with its furthest point being 4.27 kilometres from the SPA boundary. Reference was made to the location being requested by the landowner to be kept confidential. 'Nevertheless, the site has been reviewed by representatives of the Council and confirmed as being suitable for the proposed functionally linked land mitigation strategy. As a result, the Council is satisfied that a realistic mitigation package will be secured and delivered by the applicant.' Reference was made to the mitigation package being secured by a section 106 agreement, for a period of at least 80 years. The agreement would require the submission of an Ecological Mitigation Plan, prior to the commencement of any works, to be reviewed and agreed by the Defendant. Amongst the land management prescriptions would be cessation of all harmful management activities, such as pesticide spraying and ploughing, a conservation grazing regime, shallow pool and dich creation, clearance of rushes and ecological monitoring (including overwinter bird surveys), in years 1, 3, 5, 10, 15 and then every five years to the end of the agreement.

July 2025 Officer's Report

20 A Planning Officer's Report ('OR') was prepared for the meeting of the Defendant's Planning Committee on 9 July 2025, when the planning application was to be considered. The OR noted that the applicants had proposed mitigation in relation to the replacement FLL, set out in the draft section 106 agreement. Titchmarsh Parish Council, Thrapston Town Council and six other parish councils had objected to the application. A substantial number of letters of objection had been received, raising a wide range of issues. Amongst the matters mentioned, were cumulative impacts, with the proposed development at Castle Manor Farm, impacts on SPA etc designations and impacts on nature, wildlife, biodiversity, protected species and FLL. The involvement of NE was described at 5.8 of the OR. It was said that the Place Services AA was expected to be received prior to the Committee. Officers would review this and provide an update and report to the Committee.

Update Report

21 A Committee Update Report ('UR') recorded receipt of the Habitats Regulations Assessment and AA from Place Services on 7 July 2025. The UR stated that these had been shared with NE 'to confirm whether they have any comments.' As NE's response was not anticipated before the meeting of the Committee on 9 July, the Officer's recommendation had been amended to reflect both the production of the HRA/AA and that the comments of NE were awaited. The recommendation was that the Committee should delegate powers to the Executive Director of Place and the Economy to approve the proposed development subject to (*inter alia*) the completion of an Appropriate Assessment to satisfy the requirements of the Habitats Regulations and the completion of a satisfactory section 106 agreement to secure the heads of terms set out in Appendix 1 to the OR (as amended by the UR).

Planning Committee

22 On 9 July 2025, the Committee heard representatives of CPRE, the Claimant and Titchmarsh Parish Council, as well as three councillors of the Defendant, expressing their concerns about the application. The minutes summarise the points raised. They included the asserted decline in the numbers of Golden Plovers wintering in the area since 2011; that Thrapston was not identified in the development plan as a growth town; the application site was 'a short distance from the previous application [for Castle Manor Farm] that was recently refused and it was more intrusive having an impact on St Mary's Church, Titchmarsh and the listed buildings'; and that a site visit should have taken place by the Committee. The Committee resolved by 8 votes to 2 to delegate approval, as proposed by the OR.

23 The witness statement of Alex Chrusciak, the Defendant's Interim Head of Planning Transformation, records that after the Committee meeting, the Defendant agreed to ask the IP to make public the location of the FLL site. An updated AA was also required, pursuant to the Committee's resolution of 9 July 2025. On 15 October 2025, the Defendant informed Mr Shapland, of the Claimant, that the draft section 106 agreement and associated documents, including details of the FLL mitigation land, had been published on the Defendant's website. This was done to allow the public to review and comment on the details.

October 2025 Appropriate Assessment

24 On 16 October 2025, Place Services produced an updated Habitats Regulations Assessment, including an updated AA. A flow chart of the Four Stage Approach to the Assessment of Plans under the Habitats Regulations was included as Figure 1, based upon Article 6(3) and (4) of the Habitats Directive and regulations 63, 64 and 68 of the 2017 Regulations. Under stage 1, screening is undertaken to establish whether the project is likely to give rise to significant effects on the European Site (here, the SPA). If the answer is negative, viewing the project alone or in combination with other projects, the project in question can be authorised. If significant effects are likely, an AA must be undertaken. If the result of the AA is that the project (either alone or in combination) will have no adverse effect on the integrity of the Site, the project can be authorised. If it will have such an effect and there are no alternative solutions, the project may be authorised only for imperative reasons of overriding public interest ('IROPI') and on the basis of compensatory measures. Under the heading 'Appropriate Assessment,' the document stated that some policies of the plan can be used to mitigate some of the potential likely significant effects identified. These can be considered in the AA, which therefore becomes an iterative process as avoidance and reduction measures can be incorporated in order to be able to ascertain that there is no adverse effect on the integrity of the Site, before making a final assessment.

25 The updated AA reiterated the IP's approach as being to apply the precautionary principle and adopt a mitigation strategy with regard to the FLL. The strategy included that replacement FLL should be as close to the existing site as possible and managed to a high specification. The AA recorded that the land originally identified for this purpose was regarded as unsuitable. Accordingly, the IP had produced a separate mitigation strategy to avoid adverse effects on the integrity of the SPA, in collaboration with NE, the Defendant and a third-party landowner. This included 'a 20ha area of land at the Lilford Hall Estate, which was recommended by Natural England's Land Management team. The location mitigation area has been included in Appendix 3 and includes an area of land within 10km

of the Habitats sites, with its furthest point from the mitigation area being 4.27km away.' (4.2.7). 4.2.8 recorded that the mitigation area was originally made confidential at the request of the third-party landowner. The site was, however, assessed by representatives of the Defendant and was confirmed as being suitable for the proposed functionally linked land mitigation strategy. As a result, the defendant 'is satisfied that a realistic mitigation package will be secured and delivered by the applicant.' (4.2.8). 4.2.9 recorded that the mitigation package would be secured by means of a section 106 agreement for at least 80 years, with measures to be enacted and sustained by the landowner, as detailed in the Schedule to the agreement. This included submission of an Ecological Mitigation Plan, prior to the commencement of any works, to be reviewed and agreed with the Defendant. The document then listed the land management prescriptions to be included; namely, cessation of all harmful management activities; enactment of a conservation grazing regime; shallow pool and ditch creation and maintenance; clearance of rushes; creation of hibernacula/invertebrate refuge; and ecological monitoring, with periodic habitat monitoring and periodic overwinter bird surveys.

26 4.3 is headed 'Impacts in combination with other plans and projects.' The AA noted that a series of individually modest impacts may, in combination, produce a significant impact. Cumulative impacts may only occur over time, so plans or projects which are completed, approved but uncompleted, or proposed should all be considered. There must be 'a degree of flexibility in an in-combination assessment and the Competent Authority is entitled to exercise judgment over which other plans and projects to take into account (*Walton (Scottish Courts) 2011 CSOH 13).* In addition, there is no basis to carry out an assessment of in-combination effects when there are no effects from [the] subject proposal to take into account (*Foster and Langton) v Forest of Dean DC and Homes and Communities Agency [2015] EWHC 2648 (Admin) Cranston J.*).'

27 Table 3 set out the in-combination assessment with other specified plans and projects. One was the application for warehousing at Castle Manor Farm. Table 3 noted that the HRA for the project confirmed FLL and water quality impacts as part of the AA. 'However, the mitigation package ensures that the development can avoid impacts from the development alone. The Table recorded that the 'application has been refused, but the scheme is currently a live appeal.' Under the heading 'Potential for in combination effects,' Table 3 said: 'No potential for in combination effect, as potential impacts upon FLL will be addressed by the proposed mitigation package for the development. It is also not reasonable to take account impacts upon this project where there is no guarantee that consent will be granted by the secretary of state.'

Objections

28 Later in October 2025, CPRE Northamptonshire and the Claimant objected to the section 106 agreement (then in draft form) and proposed replacement habitat. CPRE contended that not revealing the location of the replacement FLL undermined CPRE's democratic right to examine the proposal; and that Councillors reached a decision 'without full knowledge of all the material considerations relating to the proposal.' The Claimant said that under regulation 63 of the 2017 Regulations, the AA to be conducted where a proposal was likely to have a significant effect on a **European protected site** 'must establish, beyond reasonable scientific doubt, that the development will not adversely affect the integrity of the site. If not, **mitigation or compensation** must be planned in advance of a planning application being submitted for approval or refusal.' (original emphases). The Claimant said that the

HRA produced by Place Services had a number of problems. These included the failure to provide a 'qualitative assessment of the new mitigation site at Lilford Hall,' a failure 'to account for in-combination effects with other nearby projects' and ignoring 'recent relevant planning decisions (e.g. Wood Lodge and Castle Manor appeals) which raised valid ecological and legal concerns.' The Lilford Hall Estate land was unsuitable for Golden Plover and Lapwing in its current form, being small, enclosed fields bounded by hedgerows, trees, woodland, reed and even stonewalls, conditions explicitly unsuitable for the species. There were questions regarding its functional linkage and the area was smaller than the minimum required by NE. The land was also being considered as part of a Habitat Bank, which fell within a different regulatory framework, 'and dual-use may not be compliant.'

29 In its conclusion, the Claimant said: 'Given that the site proposed as "mitigation" is currently totally unsuitable, is also identified as a Habitat Bank by NNC, and at best might generously be viewed as "compensation" [this would leave the SPA as seriously damaged]. If it can only be viewed as "compensation" then the higher test for planning balance is set as IROPI [Imperative Reasons of Overriding Public Interest]. This higher test must then be addressed in full by Members of the Planning Committee.'

30 In its letter of 24 October 2025, Pilton, Stoke Doyle and Wadenhoe Parish Council also objected to the section 106 agreement. Concern was expressed at the fact that the location of the FLL land was not known when the Committee took its decision on 9 July. The Parish Council doubted that the land was suitable, given its proximity to tall trees and dense woodland. It also questioned how the land could operate as both a Habitat Bank and as FLL land.

Inspector's Report on the Castle Manor Farm development

31 On 22 October 2025, the Inspector who had been appointed to determine the appeal against refusal of planning permission for storage and distribution etc at Castle Manor Farm published his decision. The Inspector had held a public inquiry on 22-25 July, 5-8 August and 12-13 August 2025. The present Claimant participated at the inquiry as a rule 6 party, represented by Mr Stinchcombe KC. The present IP also participated, being represented by Mr Tucker KC. The Inspector allowed the appeal.

32 One of the main issues was 'whether there would be an adverse effect on the integrity of the Upper Nene Gravel Pits Special Protection Area and Ramsar site.' Paragraphs 111 to 124 of the decision concern Mitigation. The issue to be addressed was whether the adverse effects of the site being FLL that would be lost in the event of the development 'could be mitigated to ensure that any such effects are reduced to an acceptable level and whether the mitigation measures have been secured with the necessary degree of certainty.' (paragraph 111). The mitigation land would cover approximately 44 hectares and be situated immediately north of the site. Maintaining a particular pattern of arable use would encourage invertebrates and hence be attractive to birds.

33 Paragraph 113 recorded that the proposed mitigation was shaped following engagement with NE through its Discretionary Advice Service, where the necessary criteria were set out 'which led NE to conclude that it was satisfied that the proposed mitigation would be adequate for golden plover and lapwing which, at that time, covered a smaller area of 22ha.' The Inspector rejected as unsubstantiated the present Claimant's suggestion that the Council did not consider the mitigation scheme properly 'and I see no reason why the NE advice

should not carry significant weight, as established by the Courts.' Footnote 44 cited in this regard *Smyth v SSCLG* [2015] EWCA Civ 174.

34 At paragraph 119, the Inspector addressed the present Claimant's submission that there was potential for disturbance to birds using the FLL replacement land during the construction phase of the development. The Inspector accepted this could occur and that habituation to this disturbance would not necessarily occur. The Inspector concluded, however, that 'this would be a temporary effect and both golden plover and lapwing are highly mobile species which are able to rely upon an extensive area of FLL in this particular instance.'

35 At paragraph 120, the Inspector held that, in terms of disturbance during the operational phase, 'the bund would reflect acoustic disturbance which would be controlled by condition. Moreover, the buildings and associated yards would be well away from the majority of the mitigation land and this would be hundreds of metres in most instances.'

36 At paragraph 123, the Inspector addressed the present Claimant's submission that 'imperative reasons of overriding public interest apply in this instance and that the Council's HRA was flawed for not considering in-combination effects.' The Inspector concluded that 'these assertions are predicated on the assumption that the mitigation would not be effective which is contrary to my own findings and the views of NE. Furthermore, where an adverse effect alone is mitigated, there can be no in-combination effects with other plans or projects and there can be no in-combination effects with other plans or projects and there is consequently no need to consider imperative reasons or alternative solutions.' Accordingly, at paragraph 124, the Inspector was satisfied that the mitigation measures were 'appropriately secured and are sufficient to rule out adverse effects on the integrity of the SPA and Ramsar site beyond all reasonable scientific doubt. There would be no residual effects arising from the scheme that would be capable of adding to any in-combination effects from other schemes.'

Natural England's views

37 On 3 November 2025, NE emailed the Defendant to note that the latter had, as competent authority, undertaken an AA of the proposed development in accordance with regulation 63. The email said that NE was a statutory consultee at the AA stage of the HRA process. The email recorded that the AA concluded the Defendant 'is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question.' The writer confirmed that, having considered the AA and the measures proposed to mitigate all identified adverse effects that could potentially occur, NE 'advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given. Please accept this email as our required statutory response to your consultation.'

Claimant's complaint to Natural England

38 On 12 November 2025, the Claimant made a formal complaint to NE regarding its statements of 3 November. In broad terms, the complaint asserted that there were flaws in the process that led NE to concur with the Defendant's conclusion that the proposed development would not have adverse effects on the integrity of the SPA.

39 On 14 November 2025, NE responded to the Claimant's request for information, which the Claimant had made on 14 October. NE said it had not had any meetings or correspondence

with the owner of the Lilford Hall Estate nor had NE carried out any site visits there to assess biodiversity. During a Microsoft Teams meeting, the Estate was referenced solely in the context of wider discussions about 'seedcorn-funded mapping and the identification of suitable areas for potential mitigation.' During the meeting, Lilford was mentioned alongside other estates, such as Drayton, as 'examples of landscapes that could, in principle, offer compatible ecological characteristics. This advice was high level.'

The section 106 agreement

40 On 20 November 2025, the section 106 agreement was completed between the Defendant, the IP, the Peterborough Diocesan Board of Finance (as the 'Owner' of the development site) and Michael and Camilla Bloch (as owners of the FLL mitigation area). The 'Functionally Linked Land Mitigation Area Owner' was defined as including successors in title to the present owners.

41 The Owner (defined to include its successors in title) covenanted under Schedule 1 to the agreement to submit to the Defendant for approval (in consultation with NE) the Detailed Functionally Linked Land Wintering Birds Mitigation Strategy prior to commencing the development; and not to commence development unless and until that Strategy had been submitted to and approved by the Defendant (in consultation with NE). The Strategy makes detailed provision 'to mitigate the loss or disturbance of land potentially functionally linked' to the SPA/Ramsar site, including the creation of open habitat of about 20 hectares in size, of similar or greater quality to that lost for the development. Harmful management activities are to cease. A conservation grazing regime is to be established, with the aim of establishing a grassland sward eight of approximately 7-10 cm during the overwinter period 'as the grassland is currently unmanaged [and] unsuitable for over-wintering ... Golden Plover and Lapwing.' Shallow pools and ditches are to be created, rushes cleared and refuges for invertebrates established along the edge of the area. The agreement also makes detailed provision for a Functionally Linked Land Monitoring Report. This must, as a minimum, provide detailed evidence of compliance with the Strategy; set out the results of monitoring undertaken in accordance with the Strategy; and 'comply with any relevant updated requirements, guidance or monitoring metrics as may be published from time to time by the Council and/or Natural England.' The Strategy is to be substantially in accordance with the Outline contained in Annex B. This provides that, by delivering the habitat enhancement measures, the landowner of the Lilford Hall Estate 'would establish and maintain a high value area of Functionally Linked Land... to support the overwintering populations of [Golden Plover and Lapwing] and other wintering bird species.' The Outline states that habitat monitoring and overwinter bird surveys are likely to be required across the 80-year span of the project 'to ensure and evidence both the enhancement of the habitat areas and its increased usage as FLL by the target bird species.' The monitoring and surveys are to occur in years 1, 3 and 5 and then at five-year intervals to year 80.

November 2025 Officer's Report

42 On 19 November 2025, Mr Chrusciak produced a delegated report on matters arising since the decision of 9 July 2025. Reference was made to the Claimant's comments on the draft section 106 agreement, published on 15 October 2025, alleging various matters, including flaws in the decision-making process, inadequacies in the HRA and Mitigation Strategy and the unsuitability of the proposed mitigation land. The report also referenced the complaint of CPRE and the concern of the Pilton, Stoke Doyle and Wadenhoe Parish Council. It was

also noted that the Claimant had made a complaint to NE and that the Claimant wanted that process to be completed before the Defendant made any decision on the planning application for the development.

43 Paragraphs 4.1.1 to 4.1.10 of the report set out the history of the FLL issue and its proposed mitigation. The report stated that the updated HRA and AA of 16 October 2025 'confirms that the mitigation strategy to avoid adverse effects upon site integrity' of the SPA 'includes a 20ha area of land at the Lilford Hall Estate. The site was assessed by representatives of the Council and was confirmed as being suitable for the proposed functionally linked land mitigation strategy.' Reference was made to NE's email of 3 November 2025, advising that 'we concur with the assessment conclusions.'

44 At 4.1.10, the report concluded that the terms of the delegation to officers on 9 July had been met. Officers were satisfied that the AA complied with the requirements of the Habitats Regulations. Mitigation measures were 'robustly secured in the legal agreement to prevent adverse effects on the integrity of the SPA and Ramsar site. Furthermore, there would be no residual effects arising from the scheme that would be capable of adding to any in-combination effects from other schemes.'

45 Paragraphs 4.1.11 to 4.1.16 dealt with the late disclosure of the identity of the FLL at the Lilford hall Estate. Although not made public at the time, the report said that the ecology advisor at Place Services knew the details of the site to inform the drafting of the AA. Furthermore, the mitigation land was 'recommended by Natural England's Land Management Team.' It was suggested that not sharing the specific identity of the land did not prevent the Committee from reaching their conclusion. 'The delegation to officers to satisfy themselves of the robustness of the mitigation was lawfully made.' If the application were to be returned to the Committee now that the identity of the mitigation land was known 'the recommendation of officers would remain the same.' Whilst the Committee would be aware of the concerns raised by the Claimant and the Parish Council, that would need to be balanced against 'the consistent advice of Natural England and Place Services that the site is acceptable,' subject to the securing of the mitigation by legal agreement.

46 Paragraphs 4.1.17 to 4.1.19 addressed the concerns of the Claimant and the Parish Council regarding the FLL's suitability. The section 106 agreement ensured that, prior to the commencement of development, the detailed Functionally Linked Land Wintering Birds Mitigation Strategy must be submitted to the Defendant for approval, in consultation with NE. 'This will ensure that suitable replacement foraging habitat will be created and maintained for a minimum of 80 years.'

47 Paragraph 4.1.20 addressed the Claimant's concern that land at the Lilford Hall Estate was being considered for use as a Habitat Bank. It was, however, understood that no formal designation of such land had taken place. Once the section 106 agreement was signed, that would secure the land as FLL, which would not be capable of being managed as Habitat in a manner inconsistent with the section 106 agreement.

48 Paragraphs 4.1.21 to 4.1.24 addressed in-combination effects. The report informed the Committee that, since the publication of the AA, the Castle Manor Farm appeal had been allowed. Reference was made to paragraph 124 of the Inspector's report, in which he found that the mitigation measures for that development would rule out adverse effects on the integrity of the SPA; and there would be no residual effects arising from the scheme capable

of adding to any in-combination effects from other schemes. So far as the present development was concerned, the report advised that it too would rule out adverse effects on integrity and there would be no residual effects of the present development, capable of adding to any in-combination effects from other schemes.

49 Paragraphs 4.2.1 to 4.2.3 addressed the representations received regarding the section 106 agreement. The report stated that the agreement fully accorded with the 9 July Committee resolution. The Claimant's assertion that the agreement contained weak monitoring requirements was rebutted at paragraphs 4.2.3 and 4.2.4. Should the annual monitoring reports highlight that the approved Strategy was not being managed or maintained, the Defendant would have the ability to enforce or threaten enforcement of the obligations in the agreement by way of injunction. The report explained that the agreement did not make provision for the habitat to be altered if monitoring showed that, when operating in full accordance with the agreed strategy, it was not performing as anticipated.

50 The report concluded by stating that officers considered that the conditions of the Committee's resolution of 9 July had been satisfied; that there were no new or material considerations that altered the recommendation to the Committee or which would reasonably lead Members to make a different decision; that there were no matters arising that required the application to be referred back to the Committee; and that accordingly the delegated authority to grant planning permission could now be exercised. Permission was issued on 21 November 2025.

Natural England's response to the complaint

51 On 1 December 2025, NE responded to the Claimant's formal complaint. NE stated that as a statutory consultee, its role was to advise, not make decisions. NE's role was to advise local planning authorities on whether its HRA provided sufficient evidence to conclude that there would be no likely significant effect on the integrity of a European Site, provided that mitigation was secured and delivered as described. NE did not approve mitigation land. NE assessed it against the criteria for FLL that had been developed by legal advisers, planning officers and bird specialists. NE's advice was based on information supplied by the Defendant. NE had not visited the proposed mitigation land and did not produce or verify the site descriptions within the developer's submission. NE did not conduct site visits for HRA, relying instead on evidence supplied through the planning system, published data and aerial imagery, as well as its national guidance on FLL and bird ecology. The responsibility for verifying on the ground conditions rested with qualified ecologists and the competent authority. NE provided general criteria for suitable mitigation for Golden Plover and Lapwing. These were advisory principles. Whether a specific site met those principles was a matter for the local planning authority to assess when undertaking its HRA.

52 The present claim for judicial review was filed on 29 December 2025. Four grounds were advanced. On 9 February 2026, Lang J granted permission. On 3 March 2026, the Claimant sought permission to amend its Statement of Facts and Grounds, to add a new ground (to be numbered 2) and to adduce further evidence in support of it. Ground 2 has been ordered to be dealt with on a 'rolled-up' basis.

Legal framework

53 Article 6(3) of Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (referred to above as the Habitats Directive) provides:

> "3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

54 Article 6(3) is transposed into domestic law by regulation 63 of the 2017 Regulations, which states:

"63- (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which— (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives …
…
(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.
…

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given."

55 Regulation 64 gives domestic effect to article 6(4) of the Directive. It provides:

'64.—(1) If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site, the Ramsar site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

(b) any other reasons which the competent authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest.

(3) Where a competent authority other than the Secretary of State or the Welsh Ministers desires to obtain the opinion of the appropriate authority as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

(a) identifying the matter on which an opinion is sought; and

(b) accompanied by any documents or information which may be required.

(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.

(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

(a) the Joint Nature Conservation Committee;

(b) where the appropriate authority is the Secretary of State, the devolved administrations;

(c) where the appropriate authority is the Welsh Ministers, the Secretary of State, and the other devolved administrations; and

(d) any other person the appropriate authority considers appropriate.

(5) Where a competent authority other than the Secretary of State or the Welsh Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for the site concerned—

(a) it must notify the appropriate authority; and

(b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which its notification was received, unless the appropriate authority notifies it that it may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the competent authority in any such case prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.'

The Claimant's grounds of challenge

56 **Ground 1**: the Defendant, as competent authority for the purposes of the 2017 Regulations, failed to assess whether the replacement FLL proposed by the IP was a mitigation measure or a compensation measure. As a result, the Defendant failed lawfully to discharge its obligations under regulations 63 and 64 of the 2017 Regulations.

57 **Ground 2** (to be decided on a 'rolled-up' basis): the Defendant failed to take into account a mandatory material consideration; namely, that the owner of the proposed replacement FLL had been reported to both the Environment Agency and the Defendant for burying rubbish on land adjacent to the proposed replacement FLL, information which was manifestly relevant to whether there could be reasonable scientific certainty that the proposed replacement FLL would be effective mitigation.

58 **Ground 3**: the Defendant failed to take into account a mandatory material consideration; namely, the SPA's Supplementary Planning Document, in particular, where it states that it is 'very difficult to implement mitigation for proposals causing physical loss or fragmentation of habitats' and that new habitats will be compensation.

59 **Ground 4**: the Defendant failed, as competent authority, to undertake a lawful assessment of the effects of the development in combination with other local development, notably that of the Castle Manor Farm site, also in breach of the 2017 Regulations.

60 **Ground 5**: in light of the matters raised in Grounds 1 to 3, the Defendant failed to give lawful reasons as to why, in its view:

(i) the proposed replacement FLL constituted mitigation (rather than compensation); and

(ii) why the Defendant was satisfied, beyond reasonable scientific doubt, that the development would not adversely affect the integrity of the SPA.

The Claimant's case on Ground 1

61 The Claimant submits that the status of the development site as FLL to the SPA is not in dispute. As a result, the Defendant was legally required to determine whether the development, either individually or in combination with other developments, would adversely affect the integrity of the SPA. Since only mitigation measures can be taken into account as part of the AA, and compensation is relevant only for the IROPI exception in article 6(4) of the Directive and regulation 64, the Defendant had to assess the legal status of the measures proposed. The issue was raised by the Claimant in its objections of May 2024 and October 2024, as well as by the Wildlife Trust and Elton Parish Council in August and November 2024 respectively. The issue was a 'principal important controversial issue' in respect of which reasons needed to be given: *South Buckinghamshire DC v Porter (No. 2)* [2003] 2 AC 558 at para 36. The Defendant could not rely on the IP's assertions as to the nature of the FLL, nor on NE, who had made clear the limits of their advisory role in their communications with the Claimant. NE had not visited the Lilford Hall Estate and had not assessed the land in question. It was, in any event, for the Defendant to reach its own conclusion on the matter.

62 The Claimant relies upon EU and domestic case law, in support of Ground 1. The distinction between mitigation and compensation was considered by the CJEU in *Briels v Minister van Infrastrucuur en Milieu* [2014] PTSR 1120. At paragraph 36 of her Opinion, AG Sharpston said that the basic semantic distinction between mitigation and compensation did not appear to be very controversial. Mitigation lessens the negative effects of the project, with the aim of ensuring, if possible, that the integrity of the site is not adversely affected, albeit that some insignificant and/or transient effects might not be totally eliminated. A compensatory measure, by contrast, does not achieve that goal within the narrower framework of the plan

or project itself. Rather, it seeks to counterbalance the failure to do so through different, positive effects with a view to, at the very least, avoiding a net negative effect within a wider framework of some description. In its judgment, the Court held at paragraph 31, that the measures proposed were not aimed at avoiding or reducing the significant adverse effects caused by the motorway project. Instead, they tended to compensate after the fact for those effects. They did not guarantee that the project would not adversely affect the integrity of the Site within the meaning of Article 6(3). At paragraph 32, the Court noted that, 'as a rule, any positive effects of a future creation of a new habitat which is aimed at compensating for the loss of area and quality of that same habitat type on a protected site, even where the new area will be bigger and of higher quality, are highly difficult to forecast with any degree of certainty and, in any event, will be visible only several years into the future ... Consequently, they cannot be taken into account at the procedural stage provided for in article 6(3) of the Habitats Directive.'

63 In *Grace v An Bord Pleanála (ESB Wind Developments Ltd intervening)* [2019] PTSR 266, the CJEU reiterated that a distinction must be drawn between, on the one hand, protective measures intended to avoid or reduce direct adverse effects, in order to ensure the project did not adversely affect the integrity of an SPA (covered by article 6(3)) and, on the other hand, measures which, in accordance with article 6(4), were aimed at compensating for the negative effects of the project on the SPA, which could not be taken into account in the assessment of the implications of the project. At paragraph 51, the Court held that it was only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out. At paragraph 52, the Court said that 'as a general rule any positive effects of the future creation of a new habitat, which is aimed at compensating for the loss of area and quality of that habitat type in a protected area, are highly difficult to forecast with any degree of certainty or will be visible only in the future.'

64 In *Smyth v SSCLG* [2015] PTSR 1417, the Court of Appeal (per Sales LJ) held at paragraph 65 that:

'... preventive safeguarding measures which have the effect of eliminating completely or mitigating to some degree possible harmful effects of a plan or project on a protected site (in the sense that they prevent such effects from arising at all or to some degree) may be taken into account under article 6(3), and a competent authority is not confined to bringing them into account under article 6(4). If preventive safeguarding measures have the effect of preventing harmful effects from arising, or reduce them to a level where they are not significant, then the conservation objectives of article 6(3) ... will have been fulfilled ... and there would be no further discernible or proportionate justification for preventing the plan or project from proceeding or for imposing the stricter requirements involved in satisfying article 6(4) before authorising it.'

65 At paragraph 66, Sales LJ reiterated that:

'... the basic distinction which is relevant for the purposes of the application of the Habitats Directive is clear enough. If a preventive safeguarding measure of the kind I have described is under consideration, which eliminates or reduces the harmful effects which a plan or project would have on the protected site in question so that those harmful effects never arise or never arise to a significant degree, then it is directly relevant to the question which arises at the article 6(3) stage and may properly be taken into account at that stage.'

66 At paragraph 68, Sales LJ contrasted this situation with the position:

'... where measures are proposed which would not prevent harm from occurring, but which would (once harm to a protected site had occurred) provide some form of offsetting or compensation so that the harm to the site is compensated by new environmental enhancing measures elsewhere, then it cannot be said that those offsetting measures prevent harm from occurring so as to meet the preventative and precautionary objectives of article 6(3) of the Habitats Directive. In the case of offsetting measures, the competent authority is asked to allow harm to a protected site to occur, on the basis that this harm will be counterbalanced and offset by other measures to enhance the environment elsewhere or in other ways. In order to allow the harm to a protected site which article 6(3) is supposed to ensure does not occur, a competent authority will have to be satisfied that such harm can be justified under article 6(4),taking account of the offsetting compensation measures at the stage of analysis under article 6(4) of the Habitats Directive. Such measures would not be capable of bearing on the application of the tests under article 6(3), and so could not be relevant at the article 6(3) stage.'

67 In *R (Lee Valley Regional Park Authority) v Epping Forest DC* [2016] Env. L. R. 8, Dove J held at paragraph 80 that, on the facts of the case before him, the works proposed to water bodies used by relevant bird species would eliminate, avoid or reduce the likely significant effects of the project. 'This was, in my view, clearly mitigation, not compensation.' He contrasted the case before him with *Briels*, where the public interest was a type of habitat that would be adversely affected, and the proposal was to create new areas of that habitat type. In *Briels*, 'the new areas of habitat were not mitigation but compensation for the impact on the habitat type, which was the nature conservation interest concerned. It was not, like the present case, a measure designed to eliminate, avoid or reduce the impact on the protected nature conservation interest in the first place.' (paragraph 81).

68 In *R (Wyatt) v Fareham Borough Council* [2023] PTSR 1952, Lindblom LJ (drawing on both European and domestic authority) pointed out that the duty imposed by article 6(3) 'rests with competent authorities, not with the courts.' Whether a plan or project will affect the integrity of a European site 'is always a matter of judgment for the competent authority itself.' It is 'an evaluative judgment, which the court is neither entitled nor equipped to make for itself.' In a legal challenge to the decision of a competent authority, 'the role of the court is not to undertake its own assessment, but to review the performance by the authority of its duty under regulation 63.' Commenting on the 'Dutch Nitrogen' case [2019] Env LR 27, in which the CJEU said it was for the national courts to carry out a thorough and in-depth examination of the scientific soundness of an AA, Lindblom LJ said there was nothing in that judgment to suggest the CJEU 'intended to transform the respective roles of the competent authorities and the domestic courts by giving the court the job of undertaking an alternative appropriate assessment of its own.' When reviewing the performance of a competent authority, 'the court will apply ordinary public law principles ... If the competent authority has properly understood its duty under regulation 63, the court will intervene only if these is some *Wednesbury* error in the performance of its duty.' The ordinary *Wednesbury* standard applies 'not a heightened standard, such as "anxious scrutiny."' A competent authority can be expected to give significant weight to an agency with relevant expertise in nature conservation, 'such as Natural England.' The duty imposed by article 6(3) and

regulation 63 on the competent authority 'does not need to be established to the standard of "absolute certainty." Rather, the competent authority must be satisfied there is no reasonable doubt as to the absence of adverse effects on the Site's integrity. An AA must be based on the best scientific knowledge in the field and be up-to-date and not merely the expert's bare assertion. The test of 'best scientific knowledge is inherent in the precautionary principle and in the concept of 'no reasonable doubt. (paragraph 9).

69 The Claimant contends that, in the light of these authorities, it was unlawful for the Defendant to fail to grapple at all with the issue of whether the FLL replacement land was mitigation or compensation. Even if the Defendant had purported to do so, the Claimant questions whether the Defendant could do so lawfully without visiting the proposed replacement habitat and/or knowing its location, its constraints and/or its attributes, all of which were so obviously material that any reasonable competent authority would have to have taken them into account.

70 On 21 November 2024, NE's initial consultation response (paragraphs 8 and 9 above) had pointed out that any proposed mitigation site should be 'as close to the existing site as possible;' an imperative repeated by Place Services in the AA. The replacement habitat at the Lilford Hall Estate is, however, between 5.21 and 6.55 kilometres from the development site/existing FLL. The Defendant needed to consider the 'checklist of criteria' in NE's letter of 21 November 2024 in deciding upon the suitability of the FLL replacement land, in order that it could be 'scientifically certain' there would be no impact on integrity. The June 2025 'online' meetings (paragraphs 16 and 17 above) were insufficient, and no-one acting on behalf of the Defendant saw the proposed site for themselves. They were entirely dependent on what they were told by Middlemarch and/or allowed to see remotely.

71 NE's letter of 1 December 2025 (paragraph 51 above) makes it plain that their early, high level strategic guidance was exclusively based on unverified information provided by the Defendant. The NE letter of 11 June 2025 (paragraph 13 above) could not rule out a likely significant effect on the SPA without full details of the mitigation being provided, which details had not been provided. NE's letter of 1 December 2025 (paragraph 51 above) made it plain that the decision as to whether the 2017 Regulations were satisfied was exclusively for the Defendant.

Ground 1: discussion

72 I agree with Mr Garvey for the Defendant that it is instructive to note that the Claimant does not contend that the FLL at the Lilford Hall Estate was incapable of being a mitigation measure. The Claimant agrees; but prays in aid the CJEU caselaw, in particular, which, in the Claimant's view, stresses that the effectiveness of replacement habitat is notoriously difficult to predict and that this makes it more difficult to be reasonably scientifically certain that it will sufficiently reduce harms, especially when the replacement land is far away from the existing site it is replacing.

73 It is important to realise that both *Briels* and *Grace* were cases where the project would involve development within the European Site itself. In such a case, it is likely to be difficult in practice even for experts to say with the requisite degree of scientific certainty that the proposed ameliorative measures will not affect the Site's integrity. The judgments need to be read in that light. To take a simple example, building a road on a material part of an SPA will harm the integrity of the SPA, even if it is proposed to compensate by creating habitat

of the same or even better quality somewhere else. The harm to the SPA will inevitably occur, regardless of when the new habitat is proposed to be established. The concern of the CJEU in *Grace* regarding the effectiveness of replacement habitat is understandable, where one is dealing with the very substance of the European Site, the habitat characteristics of which have led to its designation. The CJEU's observation about the difficulty in forecasting the effects of future creation of new habitat has to be read in the context that the proposed wind farm development in that case was to be located within the SPA. Part of that SPA would inevitably be lost. The Court's observation cannot be treated as an authoritative statement to the effect that the efficacy of any replacement of habitat outside an SPA for existing habitat outside the SPA is necessarily so difficult to predict that the distinction between mitigation and compensation is dissolved. If that were the true position, it is impossible to see how NE could have proceeded as it did in the present case.

74 The facts of *Briels* and *Grace* are emphatically nowhere near the facts of the present case. There was initially scope for debate over whether the land which it is proposed to be developed was even FLL. Applying the precautionary principle, and faced with bird surveys which differed from those obtained on behalf of the IP, NE concluded that the land should be regarded as FLL and that alternative FLL therefore needed to be provided. That was the basis of the subsequent discussion between NE, the IP's specialist advisers, Middlemarch, and the Defendant and its specialist advisers, Place Services. The factual background is set out in detail above. There is no suggestion that anyone involved considered there was any risk that the loss of the FLL at the development site would have a significant adverse effect on the SPA, if (as is legally required by the section 106 agreement) the replacement FLL at the Lilford Hall Estate was made into an appropriate habitat for Golden Plover and Lapwing to forage and roost in winter: see paragraph 41 above. In these circumstances, the fact that compensation under regulation 64 did not enter the discussion is not evidence of irrationality or other public law illegality but, rather, a clear indication that the professionals involved viewed the matter as falling squarely within the ambit of mitigation, and nothing else.

75 The Claimant's attempt to portray NE as merely giving high-level advice is without merit. NE is a statutory consultee. Its importance was specifically recognised by Sales LJ at paragraph 85 of *Smyth*, where he held that 'a relevant competent authority is entitled to place considerable weight on the opinion of Natural England, as the expert national agency with responsibility for nature conservation and ought to do so (absent good reason why not).' It is this passage that Lindblom LJ referenced at paragraph 9 of *Wyatt* (paragraph 68 above). NE's letters of 14 November and 1 December 2025 do not cast retrospective doubt on the fact that NE was at all material times offering its advice and opinion in the proper discharge of its functions; and that the Defendant, the IP and their respective advisers were entitled to place weight on both.

76 The Claimant mischaracterises the NE letter of 11 June 2025 (paragraphs 13 and 14 above). As the chronology set out in paragraphs 7 to 12 above makes plain, by 11 June, it was by then accepted that FLL replacement land was necessary and the focus was on land at the Lilford Hall Estate. The 11 June letter was recording part of the history of how matters had reached that point. This brings me to the issue of whether NE 'recommended' the Lilford Hall Estate land as potential replacement FLL. Insofar as there may be said to be a tension between NE's letter of 1 December 2025 and the email of 19 December 2024, it is appropriate to have regard to the latter. From this, it is manifest that the Lilford Hall Estate land was being mentioned by NE as suitable for mitigation; more suitable indeed than the other estate referred to in the email. Whether Mr Walsh was quite accurate to describe this

as being 'recommended' by NE is entirely beside the real point, which was that NE considered the Lilford Hall Estate land had the requisite potential. It is also relevant to note that this interaction did not come out of the blue. NE's letter of 21 November 2024 had said the agency would be 'pleased to continue working with' the IP, through its Discretionary Advice Service, 'to identify an appropriate site/s and develop robust mitigation strategy.' (paragraph 9 above).

77 The Claimant seeks to make something of the NE advice in its letter of 21 November 2024 that the Lilford Hall Estate land is between 5.21 and 6.55 kilometres from the development site and thus not in accordance with the 'broad criteria' in the letter, which state that 'Mitigation should be as close to the existing site as possible.' As far as I am aware, no one has suggested that there is suitable available land that is nearer to the development site. The important matter, however, is that the Lilford Hall Estate land was the focus of the October 2025 AA and that, on 3 November 2025, NE confirmed that, having considered the AA and the measures proposed by way of mitigation, NE concurred with the conclusions of the AA, providing that all mitigation measures were appropriately secured in any planning permission: see paragraph 37 above.

78 The Claimant contends that the Defendant's failure to explore or articulate the interface between mitigation and compensation is attributable, at least in part, to the fact that the Defendant and its advisers, Place Services, did not visit the site of the proposed replacement FLL, in order to assess its suitability. In the present context, the question of whether a physical visit to a site is necessary is, however, a matter for the professional judgment of those concerned. Mr Walsh's witness statement records that he was shown the land via satellite imagery by Mr Staniewick of NE in January 2025 and had made a physical visit to it later in January 2025, where he had assessed the amount of land that would be necessary as replacement FLL. Mr Walsh was, therefore, in a position to brief Mr Jackson of Place Services, which occurred at two online meetings, on 19 and 30 June 2025: see paragraphs 11, 12, 16 and 17 above. There is nothing to suggest that Mr Jackson was acting otherwise than professionally in concluding that the imparting of information by such means was sufficient to enable Place Services to discharge its advisory obligations to the Defendant. For the Court to assume otherwise, as the Claimant is in reality asking, would transgress the constitutional boundary described by Lindblom LJ in *Wyatt*. As Lord Carnwath observed in *R (Chapman) v North Norfolk DC* [2015] UKSC 52, the word 'appropriate' in the term 'appropriate assessment' 'is not a technical term. It indicates no more than that the assessment should be appropriate to the task in hand.' (paragraph 41). It is, in short, protean. And as Lang J held at paragraph 83 of *R (Wingfield) v Canterbury City Council* [2019] EWHC 1974 (Admin), although responsibility for making a Habitats Regulations Assessment rests with the competent authority, the Assessment can build upon and take account of the research and assessments of third parties.

79 The Claimant submits that the discussions underway in 2025 to establish a Habitat Bank at the Lilford Hall Estate, together with the currently unsuitable nature of the FLL replacement land for Golden Plover and Lapwing, show that the Defendant was wrong to assume that the land could offer appropriate mitigation; and that the integrity of the SPA was, therefore, at least potentially in issue: see paragraphs 12, 28 and 29 above. The short and complete answer to this is found in the updated OR of 19 November 2025: see paragraph 47 above. The section 106 agreement secures the land as replacement FLL. Any Habitat Bank that might be established on the Estate will, therefore, have to accord with the terms of the agreement, which make detailed provision for bringing the land in question into a state that is suitable

for the overwintering needs of the birds. The agreement requires the detailed Functionally Linked Land Wintering Birds Mitigation Strategy to be approved in consultation with NE before development can commence: see paragraph 41 above.

80 The Claimant does not specifically challenge the fact that the location of the replacement land at the Lilford Hall Estate was initially kept confidential, at the request of the owner of the Estate: see paragraph 16 above. The Claimant submits that this factual issue is, nevertheless, important in the context of the claim. I do not consider the matter takes the Claimant’s case any further. There is no question that the AA of October 2025 is about mitigation on specific land on the Estate. The location was made public on 15 October 2025: see paragraph 23 above. The Claimant and others were thus able to make representations regarding the land, which were considered by the Defendant’s officer, Mr Chrusciak, and reported to the Planning Committee: see paragraphs 42 to 47 above.

81 Ground 1 has a close connection with Ground 4, which concerns the proper interpretation of the SPA Supplementary Planning Document. I shall have more to say about the mitigation/compensation issue when considering that Ground. There is also an element of Ground 1 which overlaps with the ‘reasons’ challenge in Ground 5. The Claimant suggests that whether the replacement FLL was mitigation or compensation was a principal important controversial issue (‘PICI’) because it was raised by various parties. The issue therefore required reasons to be given by the Defendant for concluding the matter was one of mitigation.

82 I do not consider that the issue was put in terms, such as to make it a PICI. In May 2024, the Claimant had objected to a number of planning applications, including those of the IP and the application in respect of Castle Manor Farm. Concerning the effects on the SPA, the Claimant argued that ‘Mitigation [is] not possible with such massive and numerous warehouses & solar farms over such a large area so close to the SPA/Ramsar.’ The objections were in general terms and only cursory reference was made to compensatory measures at 2.4 (‘Counteracting Measures’). I agree with the Defendant that one cannot glean from these objections any level of controversy as to whether any replacement FLL that might be proposed by the developers would have to be considered as potentially compensatory, rather than mitigatory.

83 The Wildlife Trust objection of August 2024 made a purely passing reference to ‘The proposed compensation fields’ having multiple footpaths and permissive paths around and across them... ‘Both compensation fields are much smaller than the fields within the area proposed for warehousing. As a result, we do not consider the functionally linked land compensation suitable.’ The Trust appears to be referring to the originally-proposed FLL, which NE would dismiss as unsuitable: see paragraphs 8 and 9 above. There is no suggestion that the Trust was referring to ‘compensation’ in contradistinction to ‘mitigation.’

84 Elton Parish Council’s objection of 30 November 2024 merely speaks of the proposed off-site areas for birds being unsuitable for farmland birds and Golden Plover. The Claimant's objection of October 2024 states: ‘Given that the site proposed as “mitigation” is currently totally unsuitable, is also identified as a Habitat Bank by NNC, and at best might generously be viewed as “compensation” [this would leave the SPA seriously damaged] If it can only be viewed as “compensation” then the higher test for planning balance is set as IROPI [Imperative reasons of Overriding Public Interest]. This higher test must then be addressed in full by Members of the Planning Committee.’

85 This passage is the closest one gets to an articulation of the issue which the Claimant seeks to present as a PICI. On analysis, however, it is really nothing of the kind. It is premised on two matters, which are factually and legally erroneous; namely, that the land would remain in its present state and that identification as a Habitat Bank would somehow preclude the land from being made suitable for Golden Plover and Lapwing. There was accordingly no proper basis (or need) for any engagement by the professionals concerned with the issue of compensation as opposed to mitigation. I agree with the Defendant that the true PICI was whether the proposed replacement land was suitable as mitigation. That issue was discussed at length in the AA: see paragraph 25 above. The existence of the flow chart at Table 1 (paragraph 24 above), far from supporting the Claimant's contention that compensation was in issue, shows why, on the facts of this case, the 'flow' stopped with the AA and regulation 63. At all times, the replacement FLL was treated as a mitigation measure and described as such in the relevant documentation.

86 There was, accordingly, no requirement for the Defendant's AA (or any other document) to give reasons why the view had been taken that the FLL replacement land was mitigation, as opposed to compensation. I nevertheless accept the Defendant's alternative submission, which is that adequate reasons were, in any event, given. At 4.1.1 of the OR of November 2025, the conclusion of the AA is described as being 'subject to Natural England's formal response, that provided the mitigation proposals for the functionally linked land were secured by section 106 agreement ... the proposed development would not have any adverse effects on the integrity of the Upper Nene Gravel Pits SPA and Ramsar site, either alone or in combination with other plans or projects.' This was, in other words, the reason why the replacement FLL was mitigation, as opposed to compensation.

87 The Defendant's final, alternative submission on the 'reasons' aspect of Ground 1 is that, even if there was a failure to give a reason in terms which said, in terms, that the replacement FLL was mitigation and not compensation because its provision with the necessary section 106 safeguards etc meant the project would not have any adverse effects on the integrity of the SPA, then relief falls to be refused under section 31(2A) of the Senior Courts Act 1981.

88 I bear in mind the very recent observations of the Senior President of Tribunals at paragraphs 50 to 56 of his judgment in *R (BUJ) v London Borough of Bromley* [2026] EWCA Civ 888, on the proper application of section 31(2A). As the foregoing analysis makes plain, this is quintessentially a case where, if it were necessary to do so, I would find that section 31(2A) applies and refuse to grant relief, were the Claimant to have made good this element of its Grounds of challenge. Following the approach in *Wyatt,* I would have no difficulty concluding, like Dove J in *Lee Valley*, that this is plainly a case of mitigation. It is at the very least 'highly likely' that the outcome for the Claimant would not have been substantially different.

89 Standing back, it is evident that, as the Defendant has submitted, Ground 1 is, at heart, a disagreement with the Defendant's decision-making. It is in truth a 'merits' challenge. Ground 1 fails to disclose any public law illegality on the part of the Defendant.

The Claimant's case on Ground 2

90 Ground 2 has its own factual matrix, albeit related – in the Claimant's view – to the wider one summarised above. Before the impugned decision was taken, those in ownership of the

proposed FLL replacement land at the Lilford Hall Estate had been reported to the Environment Agency ('EA') and the Defendant for burying and burning waste materials on adjacent land. On 21 October 2025, an unnamed individual, referred to by the Claimant as 'the Whistleblower,' emailed the EA to say that, following a communication earlier in 2025 when the owners were said to have burnt construction waste and rubbish before digging a hole and burying it, rubbish was still being massed and large holes dug, with the rubbish again being buried. An email to the Defendant on 13 November 2025 stated that the burying of construction waste had continued daily and was increasing in volume. Asbestos and other hazardous waste had been buried beside the river, in the area 'designated a section 106 offset' for the IP's development.

91 On 18 November 2025, the EA sent a letter to the Whistleblower, in which reference was made to a letter the EA had sent to the owner on 2 May 2025, commenting that 'he appears to have taken little or no intervention to stop any tenants undertaking waste activities which is disappointing.' The EA told the Whistleblower that the Defendant was the lead for statutory nuisance, including the burning of waste, and they had the powers and ability to deal with small to medium waste sites and activities including the burial of waste.

92 On 18 November 2025, the Defendant's Environmental Health Officer ('EHO') informed the EA that a visit had been made to the site and the person in control was advised not to continue burning. This appeared to have happened; but the Whistleblower said that waste was continuing to be buried in pits. They were advised to contact the EA to report the matter. Also on 18 November, the Whistleblower emailed the EA to assert that over a thousand tons of rubbish had been buried, with the largest and worst tipping occurring 95 metres uphill from the River Nene 'with known drainage down to the river.' No membranes or other lining of holes had taken place, so as to stop leaching into watercourses.

93 On 2 December 2025, the EHO told the EA that the Defendant was continuing to receive reports of the possible burial of waste on the land. The owners were reportedly demolishing buildings and structures and moving the resulting material around to various locations and burying it. On the same day, the EA told the EHO that the EA would not grant any environmental permits for such activities. It was something for the defendant to investigate, being 'knowingly permitting the illegal deposit of waste.' In further exchanges that day, the EA confirmed that, while the activities were 'at the top of what my team would deal with,' the writer's team was funded to deal with significant and serious waste crime and it had so much work at the serious level, involving organised crime, that there were not enough resources to deal with minor-medium persistent offending.

94 On 6 March 2026, the EHO informed the EA that further evidence had been submitted showing there had been substantial burying of waste. The EA was asked whether this was something the EA would be interested in. The EA replied that it thought the Defendant was going to investigate the reports. The same point was made as in December, about the EA's lack of capacity. Further exchanges revealed disagreement between the Defendant and the EA as to the nature and extent of the former's powers to deal with the matter. The EA stated that the owners 'would never get a permit to dispose of waste at the site in the alleged manner they have.'

95 Two letters were adduced on the second day of the judicial review hearing. On 16 April 2026, solicitors acting for the Claimant wrote to the Defendant, setting out the history of the matters, with aerial photographs of the FLL and of the three sites where the alleged activities

are said to have taken place. One of these (site A) is close to part of the boundary of the FLL. The letter requested the Defendant to review alleged statutory nuisance at the Estate; investigate alleged unauthorised waste activities and take appropriate enforcement action; and confirm the same to the Claimant as a matter of urgency.

96 The Defendant replied on 5 May 2026. In short, the Defendant's officers visited the site on 30 April 2025, informing the person in control to cease burning materials, which occurred immediately. The smoke from the burning was assessed as localised, low-level and diminishing. Officers assessed that the burning did not meet the threshold for statutory nuisance. As for the alleged burial of waste, the EA was said to be the lead regulator. There was no obligation on the Defendant to investigate the matter, which occurred on private land. The complainant was advised to report the matter to the EA. There was ongoing liaison between the Defendant and the EA throughout 2025 and 2026. The alleged activity was assessed to present a low immediate risk to public health. Regarding planning controls, the Defendant raised the issue with the agent appointed in respect of a planning application for five holiday lets at the Former Estate Office. In the determination of the application, remediation conditions were secured to ensure that, prior to the commencement of development, a strategy must be approved by the Defendant to deal with risks associated with the contamination of the site.

97 The Claimant submits that there is no indication that Middlemarch was aware of these alleged activities by the owners of the Lilford Hall Estate when it undertook the Full Baseline Ecological Assessment ('BEA'): see paragraph 15 above; or that Middlemarch considered the activities when assessing ecological conditions. The BEA was not given to Place Services because the latter were assessing the FLL land for its suitability for Golden Plover and Lapwing, whereas the BEA was concerned with the viability of the Estate as a Habitat Bank.

98 The Claimant contends that the Defendant's failure to conduct a case/site-specific assessment with rigour is epitomised by its failure, as competent authority, even to investigate whether there had been unauthorised tipping and burning on adjacent land in the same ownership. The confidentiality requested by the owners during much of 2025 meant that the Claimant and others could not bring the matter to the attention of those considering the IP's application. The 'waste' issue exacerbates the Defendant's failure to conduct a site visit. Any reasonable authority would have ensured the reports of the activities were before the relevant decision-makers. The issue was so obviously material as to make it unlawful for the Defendant to have failed to address it as competent authority: *R (Friends of the Earth Ltd) v Heathrow Airport Ltd* [2021] PTSR 190. In particular, the 'waste' issue was directly relevant to NE's criteria for suitability of the habitat, which included the requirement for the habitat to be free from any development disturbance, including noise. The FLL might be environmentally impacted by reason of ground levels and leachate; a concern expressly referenced by the Whistleblower. NE guidance requires the FLL to be managed to a high specification for a long period of time. The reports raise a serious question whether the owners can be trusted to manage the FLL to the requisite standard, especially when the Defendant's own SPA SPD recognises that significant adverse effects can arise from changes in ecological condition due to a lack of management.

Ground 2: discussion

99 The Claimant appears to accept that in order to make good this Ground, it must show that the burning/burying of waste was so obviously material that it was *Wednesbury* unreasonable for the Defendant not to take it into account, as competent authority, when considering the efficacy of the proposed FLL. This is a high threshold to surmount.

100 Whilst I accept that a degree of caution is appropriate where we are concerned with what are allegations of misfeasance, there is sufficient evidence before the Court to indicate that, for the purposes of these proceedings, burning and- more pertinently – burying of waste has occurred at the sites identified by the Claimant. The issue is whether these activities have any material bearing on the lawfulness of the impugned decision by demonstrating a flaw in the Defendant's conclusion that the FLL replacement land at the Lilford Hall Estate will be effective mitigation.

101 Louise Fox, Principal Ecological Consultant at Middlemarch, has filed a witness statement dated 2 April 2026. She has undertaken a desktop assessment to determine whether there are feasible pathways for contaminants to pass between the Areas A, B and C, where unauthorised waste activities are said to have taken place, and the FLL Mitigation Area. Ms Fox cannot rule out that contaminants could potentially impact the FLL Mitigation Area. Ms Fox considers it important to review what impacts such contaminants could potentially have upon the FLL Mitigation Area 'and whether this would have the potential to render the land unable to deliver the objectives of mitigation, as approved, which is to provide suitable replacement foraging habitats for the SPA Birds.' A key aim is 'to ensure an abundance of invertebrates during the winter months whilst maintaining an open landscape to enable predator avoidance.'

102 In the course of the visits made to the Estate in March and September 2025, as recorded by Mr Walsh, Ms Fox notes that no concerns of any habitat degradation as a result of waste activities were raised at any point, either during the visits or in the assessments which followed. Ms Fox also observes that no evidence has been provided by the Claimant which indicates the habitats are, or could have been, in any way affected. Based on the information available and drawing on her professional experience, Ms Fox says there is no evidence that suggests the FLL Mitigation Area could not be relied on as mitigation for the loss of FLL. 'For potential contamination to undermine the ability of the FLL Mitigation Area to meet its objectives, the land would need to be rendered incapable of ecological enhancement from its current baseline condition, rendering it not feasible to improve it as a foraging resource for golden plover and lapwing.' She has seen no evidence to suggest that, if contaminated material is present within Area A as alleged or at all, it is or would negatively impact the habitats within the full FLL Mitigation Area. Based on her professional experience and expertise, Ms Fox is 'content that any potential contamination impact on the small area of the FLL Mitigation Area proximate to Area A would not affect the FLL Mitigation Area's overall integrity and/or preclude the ability of the whole FLL mitigation Area to function as intended to provide suitable replacement foraging habitat for SPA Birds.'

103 Having regard to the section 106 agreement, Ms Fox expects that NE and the Defendant would 'suggest, on a precautionary basis, that the Detailed Strategy proposes no habitat enhancement works which might impact the soils within the vicinity of Area A. This will in no way affect the capacity of the FLL Mitigation Area to accommodate the SPA Birds.' In

the light of the above, Ms Fox is 'firmly of the view that the ability of the FLL Mitigation Area to meet its objectives has not been diminished.'

104 As for Areas B and C, these are some 500 and 680 metres from the FLL Mitigation Area, with intervening habitats including developed land, open mosaic habitat, woodland and parkland. Ms Fox's desktop review leads her to conclude that 'there is no readily discernible evidence of a hydrological link between these areas and the FLL Mitigation Area.' There is accordingly no realistic evidence that any contamination from Areas B and C would negatively impact the habitats within the FLL Mitigation Area such that the objectives of the FLL Mitigation Area would be undermined.

105 The third witness statement of Mr Shapland (a director of the Claimant) notes that Ms Fox did not take account of the nature of the waste, which included rubble, plastics, insulation, asbestos and large LPG tanks. Mr Shapland does not, however, explain why this negatively impacts upon Ms Fox's conclusions. Plainly, it does not. Overall, I see no reason to doubt the specialised evidence and conclusions of Ms Fox. They decisively counter the case the Claimant has attempted to build on the waste issue.

106 There is also the following important point, touched upon by Ms Fox, but which needs emphasising. The Detailed Strategy must be agreed by the Defendant, in consultation with NE, before development can begin. The purpose is to ensure that, by delivering the habitat enhancement measures, the landowner will 'establish and maintain a high value area of Functionally Linked Land:' see paragraph 41 above. Any contamination which, contrary to Ms Fox's assessment, did render the land incapable of providing the requisite mitigation would in practice render the development a dead letter. Any breach of the agreement can be dealt with by normal legal means.

107 This is a convenient place to mention, for completeness, an aspect of the section 106 agreement, as explained by Mr Chrusciak's report of November 2025. The agreement does not make provision for the nature of the habitat on the replacement FLL to be altered, in the event that monitoring shows that, when operating in full accordance with the strategy, the FLL is not performing as anticipated: see paragraph 49 above. The Claimant has not relied on this aspect, in support of the Claimant's case on compensation/mitigation or otherwise. Even if it had, I do not consider that the matter supports the Claimant. On the contrary, the fact that the section 106 agreement does not contemplate that the habitat to be created on the FLL might need to be changed underscores the scientific confidence that NE and the Defendant's specialist advisers have in the ability of that habitat to provide the necessary foraging and roosting environment for Golden Plover and Lapwing.

108 For all the above reasons, the Claimant's *ad hominem* challenge, based on the alleged misfeasance of the current owners of the Lilford Hall Estate therefore founders. Whilst on the subject of ownership, it is relevant to observe that the section 106 obligations will run with the land and the definition of "Owner" in the agreement includes successors in title: see paragraph 40 above.

The Claimant's case on Ground 3

109 Given what the Claimant submits is the importance of determining whether the 'protective' measures were mitigation or compensation, it was also a manifestly material consideration that the SPA SPD expressly states that, whilst habitat enhancement within the protected land

(which the Claimant says is, in the present case, the FLL at the site of the proposed development) may constitute mitigation, habitat creation elsewhere (here, at the Lilford Hall Estate) is not mitigation but compensation. This emerges from the following passages of the SPD:

'**Appropriate assessment**

Assessing a proposal's impact is a complex process. The effects of development will vary from lake to lake, and similar proposals may have different effects on different lakes. The effects of a proposal must be considered in relation to both individual parts of the SPA and the entire SPA.

Where it is shown that there will be an adverse effect on site integrity or where the possibility of an adverse effect on site integrity cannot be ruled out, appropriate avoidance or mitigation measures must be incorporated into the proposals. Where avoidance is not possible, and where (despite mitigation measures) the risk of an adverse effect on site integrity cannot be ruled out, plans and projects can only be permitted if:

- There are no alternative solutions
- There are imperative reasons of overriding public interest why the plan or project must proceed
- Habitat compensation is provided, and
- Approval is given by the Secretary of State.

Applicants are advised that most plans and projects are very unlikely to be able to demonstrate that they meet all of these requirements.

...

Collecting information/surveys

Surveys may be needed to enable a proposal's impacts to be assessed. These include (but are not limited to):

...

- Surveys of land outside the SPA but which ecologically is functionally linked to the European site (e.g. farmland that provides off-site feeding habitat for birds which only use the SPA for roosting)

...

5. **Mitigating significant effects**

Within the Upper Nene Valley Gravel Pits SPA it will be very difficult to implement mitigation for proposals causing physical loss or fragmentation of habitats. Please note that providing new habitat outside the SPA boundary (even adjacent to it) is considered compensation, not mitigation. Likewise, following a European Court of Justice ruling, [*Briels*] habitat creation inside the SPA boundary cannot be considered mitigation. In rare circumstances, habitat enhancement inside the SPA may offer mitigation, but all such proposals must be discussed with Natural England at the earliest possible stage. Under the HRA process, compensation for damage can only be considered – and the plan or project approved – if it can first be shown that there are no alternative solutions and there are also imperative reasons of overriding public interest. Such cases are rare.'

110 The Claimant also draws attention to Appendix 1 of the SPD, which describes the SPA and its conservation objectives.

111 The Claimant submits that it has been authoritatively held that FLL has the same status and the same protection as the SPA itself. The authority relied on is the judgment of Ouseley J in *Royal Society for the Protection of Birds v SSCLG* [2014] Env. L. R. 30. That case concerned the proposed expansion of an airport, located close to a Special Area of Conservation, which included an SPA. At the planning inquiry, the RSPB raised the issue of disturbance to birds, as a result of the control measures (bird scaring), which would be taken to safeguard aircraft using the airport from risk of bird strike. The Inspector found there was little evidence there would be a significant decline in the size, distribution and functioning of the relevant bird species; and that, even if an AA were required, there was no evidence that there would be an adverse effect on the integrity of the SAC and other designated sites as a whole.

112 Ouseley J dismissed the challenge. At paragraph 26, citing paragraph 48 of the judgment of the CJEU in *Sweetman v An Bord Pleanála* (C-258/11), he held that a project could adversely affect the integrity of a site if it was 'liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority national habitat whose conservation was the objective justifying the designation of the site ... in accordance with the [Habitats] Directive.' At paragraph 27, Ouseley J said this:

'27 There is no authority on the significance of the non-statutory status of the FLL. However, the fact that the FLL was not within a protected site does not mean that the effect which a deterioration in its quality or function could have on a protected site is to be ignored. The indirect effect was still protected. Although the question of its legal status was mooted, I am satisfied, as was the case at the Inquiry, that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice.'

113 At paragraph 76, Ouseley J addressed the contention of the RSPB that:

'birds would be affected by disturbance in feeding from the FLL, and that it would sterilise an area of SPA used for feeding and roosting. But this possibility depended on the strength of [the Airport's] response which was that birds, scared off from the FLL, and from the small amount of SPA which could be affected by bird control measures during airport operational hours, would return to feed and roost on the FLL or the affected part of the SPA at night. The issue was principally feeding.'

114 Considering the RSPB's submission that it was for the developer to exclude evidence of significant effects on the basis of objective material, Ouseley J said 'The Inspector did not conclude that birds would not leave the SPA, or not do so because there was other FLL to which they would go. He did not say that they would feed somewhere else. But this, in my judgment, is to ignore the Inspector's evaluation of the evidence as to whether birds would return and feed during non-operational hours.' (paragraph 80).

115 In the present case, although the SPD is referenced in the AA and the IP's planning statement, these references are, the Claimant says, irrelevant to the issue regarding the categorisation of

the proposed habitat enhancement. The SPD's 'explicit advice' on the issue was ignored completely. As a result, the Defendant gave no explanation as to why, in this particular case and by reference to either the location or attributes of this particular proposal, the advice in the SPD was inappropriate and/or inaccurate.

Ground 3: discussion

116 The interpretation of the SPD is a proper matter for the Court. Read as a whole, the ordinary meaning of the document is not that for which the Claimant contends. The passages under the heading 'Appropriate assessment' are an accurate statement of the law, as reflected in the 2017 Regulations and the cases. They do not map onto the facts of the present case, so as to compel (or even suggest) the conclusion that the replacement FLL is to be treated as compensation, thus triggering the extremely stringent requirements described in the four bullet points under that heading: see paragraph 109 above. The Claimant's reliance upon the passages under the heading 'Mitigating significant effects' founders on the plain meaning of the opening word "Within." If there is physical loss of part of the SPA, the ameliorative measures are highly likely to be compensatory, within the ambit of article 6(4) and regulation 64; such that an AA cannot be used to categorise them as 'merely' mitigatory. But, as explained in paragraph 75 above, this is not the factual position here. The SPD does not purport to treat FLL as if it were an actual part of a European Site. Were it to have done so, it would have misstated the law. The SPD's reliance on *Briels* is instructive. Paragraph 1 of AG Sharpston's opinion tells us that the road-widening project affected an SAC because the project was 'likely in particular to reduce the area and/or quality of molinia meadows within that area.' New molinia meadows were to be created 'elsewhere in the same site.' The provision of the new meadows could not prevent the loss or degradation of the threatened meadows that were within (and so part of) the SPA. Paragraphs 31 and 32 of the CJEU's judgment fall to be read in that light: see paragraph 62 above.

117 The *RSPB* case is not authority for the proposition that FLL is in all respects equivalent in status to land within a European Site and so is to be protected in like manner. I agree with the IP that paragraph 27 of the judgment does not say that indirect effects on such a Site are to be treated as if they were direct effects on the SPA, in the *Briels* sense. Ouseley J's reference to indirect effects being scrutinised 'in the same legal framework' means that (now) the 2017 Regulations are in play. It does not mean that any loss of FLL must be treated as if it were the loss of part of the SPA.

118 It is possible to conceive a scenario where the development of FLL could have so great an effect on the SPA as to affect the integrity of the Site and make any ameliorative proposals compensatory in nature. Such could be the case where, for example, the carrying on of the activities facilitated by the development would be so persistently noisy or otherwise disruptive as to drive protected bird species permanently away from part of the SPA and so affect the SPA's integrity. That was, however, not the position in the *RSPB* case; and it is not the position here. The professional consensus was that creating the appropriate habitat on land at the Lilford Hall Estate would stop any significant harm from arising, as a result of the loss of the FLL at the development site. For all these reasons, the Claimant's invocation of the SPD is misconceived.

The Claimant's case on Ground 4

119 The Claimant submits that the Defendant was required to assess the in-combination effects of the development alongside other relevant developments. In so doing, the Defendant had to appreciate that, as Fordham J held at paragraph 61 of *R (Caffyn) v Shropshire Council* [2026] PTSR 104, 'Environmental protection is about real-world effects and the environmental reality takes effects of plans and projects when viewed together.'

120 In its skeleton argument and oral submissions, the Claimant concentrated upon the effects of the proposed development with that at Castle Manor Farm. Taken together, these would mean the loss of 135 hectares of foraging and roosting land for Golden Plover and Lapwing. In the October AA, the Defendant gave two reasons why Castle Manor Farm did not fall to be taken into account. The first was that there was no guarantee that permission would be given for that site's development. This reason was wrong in law. The Claimant is correct in this regard; and I did not hear the Defendant or the IP to contend otherwise. On its own, this error is, however, immaterial.

121 The second reason was that there would be no residual effects capable of adding to any effects from other schemes; or, to quote the words of the AA, 'No potential for in combination effect, as potential impacts upon FLL will be addressed by the proposed mitigation package from the development.' The Claimant acknowledges that the OR of November 2025 referred specifically to the Inspector's report, allowing the appeal in respect of the Castle Manor Farm development, where at paragraph 124, the Inspector had concluded that there would be no residual effects arising from that scheme which would be capable of adding to any in-combination effects from other schemes: see paragraph 36 above. The Claimant, however, in its skeleton argument, draws attention to EN's letter of 21 November 2024, which states that any proposed replacement habitat should be 'free from any development disturbance:' see paragraph 8 above. This leads the Claimant to submit that, where two nearby developments are proposed, each with its own replacement habitat as prospective mitigation, any decision-maker addressing in-combination effects must consider whether either development might impact on the effectiveness of the other's proposed mitigation. If, for example, the proposed replacement habitat for Development 1 is next door to Proposed Development 2, that replacement habitat would not be free from development disturbance and the in-combination effects might be significant.

122 That, the Claimant says, is precisely the position here. The skeleton argument refers to a plan annexed to the IP's Shadow Habitats Regulations Assessment of June 2024. The plan shows an area hatched purple along the top and part of the right-hand side of the site boundary for the present proposed development. The hatched area is described as 'Area of additional acoustic disturbance.' Part of this area overlaps a part of the replacement FLL for the Castle Manor Farm development. The Claimant contends that the Area of Additional Acoustic Disturbance 'covers a large part' of that replacement FLL. This must mean that the present proposed development may lead to an adverse effect on the effectiveness of the Castle Manor Farm replacement habitat and so harm the integrity of the SPA and its conservation objectives for qualifying species. This, the Claimant says, is precisely the kind of 'real-world' in-combination effect that the Defendant was obliged to consider. The Defendant unlawfully failed to do so.

123 Furthermore, the Claimant submits that the location of the replacement FLL at the Lilford Hall Estate raises its own concerns by reference to in-combination effects. The unauthorised

waste disposal was a ‘plan or project,’ which need to be assessed in combination with the IP’s plan or project. The Claimant relies upon the judgment of Owen J in *R (Akaster) v DEFRA* [2010] Env. L.R. 33, which held at paragraphs 72 to 77 that the words ‘project’ and ‘plan’ in the Habitats Directive were to be given a very broad definition and meaning, taking into account the broad objectives of the Directive. In addition, the proposed Habitat Bank at Lilford Estate entails interventions, such as extensive planting, which would be incompatible with suitable habitat for the qualifying bird species. The implications of all these in-combination impacts have been ignored, in the Claimant’s submission.

Ground 4: discussion

124 The Claimant’s challenge is not that in-combination effects were simply not addressed by the Defendant. Plainly, they were, as both the AA and the OR of November 2025 make plain. There are in substance three strands to the Claimant’s challenge under this Ground. The first is that the Defendant failed to appreciate that small impacts from discrete plans or projects, whilst in themselves insufficient to amount to a material impact on the SPA, can in combination amount to one. Second, the Defendant failed to address the acoustic disturbance issue, whereby the present development would appear to impact adversely upon the replacement FLL for the Castle Manor Farm development. Third, the Defendant failed to address the in-combination effect of the unauthorised waste operations at the Lilford Hall Estate and the proposed Habitat Bank.

125 There is no substance to the Claimant's first strand of challenge. The November OR is clear. In the light of the AA and the Inspector’s conclusions on the issue of in-combination effects, the OR said:
‘4.2.4 Officer assessment: The proposed development would include mitigation measures sufficient to rule out adverse effects on the integrity of the SPA and Ramsar site, and there would be no residual effects arising from the proposed development that would be capable of adding to any in-combination effects from other schemes.’

126 Leaving aside the acoustic disturbance issue, the Claimant does not point to any evidence to suggest that, notwithstanding the provision of the FLL for the Castle Manor Farm development and for the present proposed development, each would have some failing or deficiency that is capable of being aggregated, so as to produce a deficiency capable of impacting the SPA to a significant extent. Nor is it suggested that NE has raised any such concern. Accordingly, the position is precisely that articulated in the November OR.

127 I turn to the acoustic disturbance issue. The Defendant and the IP submit that neither this nor the invocation of the waste disposal at the Lilford Hall Estate are encompassed by the Statement of Facts and Grounds (‘SFG’); and no amendment has been sought to include them. There is some force in these submissions. Although paragraphs 81 to 87 of the SFG (as proposed to be amended to add ‘new’ Ground 2) refer expressly to in-combination effects, as between Castle Manor Farm and the IP’s development, they do so in general terms. The SFG criticise the November OR for adopting the Inspector’s reasoning regarding combined effects, contending that the Inspector’s approach was unlawful. The essence of the alleged unlawfulness to consider whether the proposed FLL ‘constitutes effective mitigation, in a silo and then once that calculation is complete, compare the output from the same silos-approach to a neighbouring large warehouse development that also sought to rely upon replacement FLL to reduce or avoid the effects on the SPA. It was a failure to consider the “real-world

effects" of the Development here.' The general complaint articulated in the SFG is addressed in paragraph 126 above.

128 If 'real-world' effects are to be considered (and, like Fordham J, I accept they are), it is incumbent on the person invoking them to say what they are likely to be; or at least give a reason which is more than fanciful why (applying the precautionary principle) an examination would be likely to disclose material effects.

129 So far as the acoustic disturbance issue is concerned, the Claimant's position at the hearing was that, although not specifically pleaded, it is covered by the assertion in paragraph 82 of the SFG that the in-combination effects of the two schemes were 'an obviously material consideration in assessing ... [t]he effectiveness of the proposed replacement land' for the Castle Manor Farm development.

130 With some hesitation, I am prepared to accept that, as a matter of procedure, the acoustic disturbance issue is covered by the pleaded Grounds. The fact that it was not specifically raised until the Claimant filed and served its skeleton argument is, however, significant, in addressing whether the issue discloses unlawfulness on the part of the Defendant. It is difficult to see how the issue can be said to be an 'obviously material consideration,' in whole or part, if the Claimant and its advisers did not alight upon it until this stage of the proceedings. Furthermore, in assessing this matter, the Court must be wary of becoming a primary fact-finder in a jurisdiction which generally affords primacy to those tasked by Parliament with making decisions that habitually turn on the application of specialised judgment.

131 That the acoustic disturbance issue was very far from being an obviously material consideration is underscored by the failure of the Claimant to raise the matter at the Castle Manor Farm Inquiry. The Claimant took a full part in those proceedings, being represented (as it is now) by Mr Stinchcombe KC. There is nothing to indicate that the Claimant or anyone else raised before the Inspector that the IP's development of the land to the north-west of the Castle Manor Farm site would materially impact on the efficacy of the adjoining Castle Manor Park FLL because there would be 'additional acoustic disturbance.' The Claimant's case in the present proceedings necessarily involves a legal criticism of the Inspector. It is common ground that, as an extant project, the IP's development fell to be considered by the Inspector in assessing the in-combination effects of the Castle Manor Farm scheme. The Claimant's stance means it is contending that paragraphs 123 and 124 of the Inspector's decision letter are wrong in law by reason of the Inspector's failure to consider the acoustic disturbance issue. The time for challenging the Inspector's decision has long passed. The presumption of regularity therefore means that this Court will be slow to conclude that the Inspector erred, absent cogent evidence to the contrary. This necessarily impacts upon the ability of the Claimant to make good the acoustic disturbance issue in the context of the present proceedings.

132 Not only is there a dearth of evidence to show there is anything in the Claimant's case on this issue; what evidence there is points firmly to the matter not being in any sense material. A perusal of paragraphs 111 and 120 of the Inspector's report reveals that the replacement FLL for Castle Manor Farm is 44 hectares, whereas NE considered that Golden Plover and Lapwing 'covered a smaller area of 22ha.' The plan showing the area of additional acoustic disturbance from the IP's development covers only a part of the western side of the Castle Manor Farm replacement FLL. According to the information on the plan, this part is not land

on which Golden Plover or Lapwing are recorded as being present, whereas Lapwing are recorded as being present elsewhere on the replacement FLL.

133 Additionally, the IP draws attention to the conditions attached to its detailed consent for Development Plot 1, which lies next to the replacement FLL for Castle Manor Farm. Condition 5 states that, prior to the commencement of any building in Development Plot 1, details of boundary treatments shall be submitted to and approved in writing by the Defendant. Mr Tucker KC submits that, if considered necessary, any acoustic issue can be addressed by requiring fencing that is designed to minimise noise disturbance outside the Development Plot. This, he says, is part of the 'real-world' scenario. I accept this submission, which is a further indication of the immateriality of the issue. My findings in paragraphs 130 to 132 above, are, however, themselves such as to cause me to reject this aspect of the Claimant's case under Ground 4.

134 The challenge based on an alleged failure to take account of the in-combination effects of the waste disposal at the Lilford Hall Estate founders for similar reasons. Whilst I am just prepared to accept that the issue is covered by paragraph 82b of the SFG, there is no evidence that what has occurred on the Estate has had any deleterious effect on the proposed FLL there. I refer to my findings above on Ground 2. In any event, any waste disposal on the FLL or on adjacent land that, in either case, affects the ability of that land to function as provided in the section 106 agreement can be addressed under the mechanisms provided in that agreement, which require whoever is the owner of the Estate to establish and maintain a high value area of FLL. The assertion that the creation of a Habitat Bank will adversely affect the functioning of the FLL is also misconceived, for the reasons given above in respect of Ground 2.

The Claimant's case on Ground 5

135 The Claimant submits that whether the proposed replacement FLL was mitigation or compensation was a 'principal important controversial issue'; and that no reasons at all, let alone legally sufficient reasons were given so as to enable the reader to understand why the matter was decided as it was: *Porter No. 2.* Nor were legally sufficient reasons given for why the Development would not have any adverse effects on the integrity of the SPA. The requirement to give reasons has to be seen in the context of, inter alia, the high standard of investigation required (*Wyatt*) and the number and nature of the objections to be addressed, including that no species had been recorded within 2.5 km of the proposed FLL, which is traversed by hedgerows and trees; and where it is proposed to have 'yet more planting.'

Ground 5: discussion

136 To a great extent, Ground 5 overlaps with Ground 1. I refer to what I have found at paragraphs 82 to 88 above. The reason why it was concluded that the IP's development would not have adverse effects on the integrity of the SPA are evident. Any potential adverse effects caused by the loss of the FLL at the development site would be avoided through the creation of a replacement FLL, secured by the section 106 agreement. I agree with the IP that no more needed to be said. An objective reader of the relevant documentation can be in no doubt about why the decision was reached that the replacement FLL would prevent the SPA being adversely affected. Golden Plover and Lapwing would feed and roost on the replacement FLL, as they had on the FLL at the development site.

Decision

137 Grounds 1, 3, 4 and 5 fail for the reasons set out above. Although I grant permission on Ground 2, it fails for the reasons I have given. The application for judicial review is accordingly dismissed.

138 I wish to thank counsel and those instructing them for the high quality of the parties' respective submissions.