



Department for  
Communities and  
Local Government

Mr T Blaney  
Trevor Blaney Planning  
Burgh House  
Waldron  
Nr HEATHFIELD  
East Sussex  
TN21 0SB

Our Ref: APP/H3510/V/14/2222871

31 August 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY LORD DERBY  
LAND AT HATCHFIELD FARM, FORDHAM ROAD, NEWMARKET  
APPLICATION REF: DC/13/0408/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Christina Downes BSc, DipTP, MRTPI who held a public local inquiry from 14 April – 1 May 2015 into your client's application for outline planning permission for up to 400 dwellings plus associated open space (including areas of habitat enhancement) foul and surface water infrastructure, two accesses onto the A142, internal footpaths, cycle routes and estate roads at Hatchfield Farm, Fordham Road, Newmarket in accordance with application reference DC/13/0408/OUT dated 2 October 2013.

**Inspector's recommendation and summary of the decision**

2. The Inspector recommended that outline planning permission be granted. For the reasons set out below, the Secretary of State disagrees with the Inspector's recommendation and he has decided to refuse outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers are to that report.

**Matters arising since the inquiry**

3. Following the close of the inquiry, the Secretary of State received representations submitted by the Newmarket Horsemen's Group dated 18 September 2015 and by the Rt Hon Matthew Hancock MP dated 18 September 2015. On 7 October 2015 the Secretary of State wrote to parties to give them the opportunity to submit comments on these representations and, on 30 October 2015, he circulated the representations he had received.

4. Further representations, dated 19 February 2016, from Sellwood Planning on behalf of the applicant, Lord Derby, were received. On 2 March 2016 the Secretary of State wrote to parties to give them the opportunity to submit comments on these representations. On 15 April 2016 he circulated the representations he had received and further sought any comments on the implications of the *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* judgment.<sup>1</sup> On 5 May 2016 he circulated the responses he had received.
5. The Secretary of State has also received a number of other representations which were submitted too late to be considered by the Inspector. He has given careful consideration to those representations, but as they do not raise new matters that would affect his decision, he is satisfied that it is not necessary for him to circulate them to parties for comment prior to determining this case.
6. In reaching his decision, the Secretary of State has taken account of all the representations and responses referred to in paragraphs 3-5. Details of these representations are at Annex A. Copies are not enclosed with this letter but will be provided on application to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

7. In deciding this application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan consists of the saved policies of the Forest Heath Local Plan (1995), the Forest Heath Core Strategy Development Plan Document (2010) (CS) and the Forest Heath and St Edmundsbury Councils Joint Development Management Policies Document (2015) (JDMPD). The Secretary of State considers that the development plan policies of most relevance to this application are those set out by the Inspector at IR16.1-16.4 and IR17.1-17.4.
9. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations 2010, as amended.

### *Emerging plan*

10. In terms of emerging policy, the Single Issue Review (SIR) of Core Strategy Policy CS7 – Overall Housing Provision and Distribution, and the Site Allocations Local Plan – Preferred Options were published for consultation on 4 April 2016. The Secretary of State considers that the most relevant policies include: Policy N1 (Housing and Mixed Use Development in Newmarket); Distribution Option 1 (Higher growth at Mildenhall and Red Lodge and Primary Villages and lower growth at

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<sup>1</sup> *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168 (<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2016/168.html&query=suffolk+and+district&method=boolean>)

Newmarket); and Distribution Option 2 (Higher growth at Newmarket, enabling lower growth at Mildenhall, Red Lodge and Primary Villages). Distribution Option 1 is the Council's preferred option. Policy N1 allocates Hatchfield Farm for mixed use development, including 400 dwellings, while stating that the policy will be reviewed, if necessary, following the Secretary of State's decision on this case.

11. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
12. The Secretary of State has taken into account the early stage of the emerging plan, which has not yet gone through an independent examination. With regard to the second limb, he has taken into account that there are unresolved objections relating to development at Hatchfield Farm. With regard to the third limb, the Secretary of State considers that at this stage the relevant policies do not contain inconsistencies with the Framework, but are still subject to change. On balance he considers that little weight can be afforded to the relevant policies in the emerging plan.
13. A Neighbourhood Plan for Newmarket is in preparation, and a Neighbourhood Plan Designated Area Application has been submitted to the Council. The Neighbourhood Plan is at an extremely early stage of preparation. There are not yet any relevant policies, but draft objectives have been published and are consistent with the Framework. Overall the Secretary of State considers that very little weight attaches to the emerging Neighbourhood Plan.

## **Main issues**

14. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out at IR355.

*Housing land supply and the contribution that the proposal would make to the market and affordable housing needs of the District*

15. The Secretary of State has given careful consideration to the Inspector's analysis at IR356–364, and has also taken into account representations on housing land supply following the inquiry.
16. He notes that on 10 February 2016 the Council published an updated 'Assessment of a five year supply of housing land'. This sets out that under the Sedgefield approach, Forest Heath has a 6.2 year supply of housing land, and that if this application is refused by the Secretary of State, there is a 5.2 year supply. Sellwood Planning, on behalf of Lord Derby, indicated in its letter of 19 February 2016 that given the uncertain nature of some of the sites relied on, it is considered that the land supply situation is, at best, only around 5 years. The Secretary of State has taken account of representations on this matter, and considers that the Council has demonstrated it has a 5 year supply of housing land and therefore relevant policies for the supply of housing should not be considered out of date through the operation of paragraph 49 of the Framework.

17. The Secretary of State has considered the weight that should attach to the provision of housing. He agrees with the Inspector that the proposed 30% affordable housing is in accordance with Spatial Objective H 2 and Policy CS 9 in the CS, and that meeting affordable housing needs is an important objective in the Framework (IR363). He has also taken into account paragraph 47 of the Framework, which seeks to boost housing delivery significantly. Overall, he considers that the proposed provision of market and affordable housing is a substantial benefit and carries substantial weight in favour of the scheme.

*Whether the traffic generated by the proposed development can be accommodated on the network without severe residual highway impact, and effect on the Rayes Lane horse crossing*

18. For the reasons given by the Inspector at IR366–368, the Secretary of State does not consider that the application development would result in an unacceptable increase in congestion, and that the residual transport impact of the development would not be severe (IR369). He also agrees with the Inspector that the scheme would comply with development plan policy in this respect, in particular Spatial Objective T3 and Policy DM45 in the JDMPD (IR369). He agrees with the Inspector at IR495 that the improvements to the A14/A142 junction would result in wider benefits to those travelling on this part of the road network in peak periods, and that the significant improvement to southbound queues along this part of Fordham Road, and the reduction in rat running along Snailwell Road carry significant weight in favour of the proposal.
19. Notwithstanding the above conclusions, the Secretary of State notes that there would be an increase in traffic of about 5% (IR368). He has carefully considered the Inspector's analysis of highway safety issues, in particular in relation to the Rayes Lane horse crossing (IR375-391), and her conclusion that there would be associated improvements to the Rayes Lane horse crossing which would at the very least mitigate the impact of the additional traffic generated but also result in a material safety benefit (IR400). However, he has also taken into account the particular nature of the thoroughbred horses that would be using the crossing, and the evidence that was put forward that even the most skilled and experienced riders can lose control as a result of the unpredictable and extreme behaviour of their mount. He shares the concern expressed at IR380 that these behavioural traits coupled with the inevitable interaction with traffic at the road crossings has the potential for danger that could escalate to a serious injury to the rider, horse or road user. He therefore considers that material safety benefits which the Inspector cites are not certain. Overall he considers that the additional risks arising from the increased traffic are a material consideration which carries moderate weight against the proposal.

*The effect on the horse racing industry in Newmarket*

20. The Secretary of State has considered very carefully the arguments which were put forward in relation to the potential effect of this proposal on the horse racing industry and the Inspector's analysis at IR370–399. He has taken into account the unique nature and structure of the industry, the global context in which owners make their decisions, and the huge economic importance of the continuing success of the horse racing industry at Newmarket.

21. His conclusions on the risks associated with increased traffic are set out above. Policy DM48 seeks, amongst other things, to prevent development that would threaten the long term viability of the industry as a whole, unless the benefits would significantly outweigh the harm. The Secretary of State notes that the policy takes a precautionary approach, by requiring consideration of whether development would 'threaten' the long-term viability of the industry – it does not require a finding that there would be specific and identifiable adverse impacts on the industry arising from this development. He considers that the question of risk is highly relevant, and that there is a substantial risk that the potential adverse consequences of increased traffic at the Rayes Lane horse crossing will create perceptions among owners and others in the industry of a more negative context for the industry in Newmarket. The Secretary of State considers that this would threaten the long-term viability of the horse racing industry, and that the benefits of the scheme would not significantly outweigh the harm to the industry. The proposals are therefore in conflict with policy DM48 of the JDMPD, and also with Vision 2 of the CS, which seeks to preserve and enhance Newmarket's position as the international home of horse racing; with Spatial Objective ECO 5, which aims to protect its unique character; and with Policy CS1, which seeks to protect and conserve the importance of the horse racing industry and Newmarket's associated local heritage and character. In the light of the economic importance of the horse racing industry in Newmarket, the Secretary of State considers that the threat to its continuing success carries substantial weight against the proposal.

*The effect of the proposed development on nearby sites of nature conservation importance and whether Habitats Regulation Assessment is necessary*

22. The Secretary of State has taken account of the Inspector's introductory remarks at IR402–408. Having gone on to consider her analysis of the scheme's impact on Chippenham Fen Site of Special Scientific Interest (IR409-428), he agrees with her conclusion that the possibility of a significant effect, either by the application proposal or other reasonably foreseeable plans and projects, on the designated features of Chippenham Fen can be excluded and an appropriate assessment is not required (IR428).

23. The Secretary of State agrees with the Inspector's remarks about the scheme's recreational impact on Chippenham Fen at IR429-430, including her point that it can be safely concluded that there would be no significant effect from the application development either alone or in combination with other plans and projects (IR429).

24. As to the scheme's recreational impact on Breckland Special Protection Area (SPA), having taken account of her comments at IR431-439, the Secretary of State concurs with the Inspector's view that the likelihood of a significant impact on the SPA through increased recreational pressure can be ruled out (IR437) and that the application scheme would not be harmful to the SPA's interest features either alone or in combination with other plans and projects (IR440).

25. Turning to the Inspector's reasoning in respect of Snailwell Meadows SSSI (IR441-444) the Secretary of State, like the Inspector, does not consider that the application proposal would be likely to have an adverse effect on the SSSI (IR444). He also agrees with the Inspector's analysis (IR445-447) with regard to badgers and he too concludes that there is no reason to believe that the application

scheme would result in a significant adverse impact (IR447). He also concurs with the Inspector's views in respect of arable weeds at IR448-450.

26. The Secretary of State is therefore satisfied that the application proposal would not give rise to conflict with Spatial Objective ENV 1 or Policy CS 2 in the CS or Policies DM10, DM11 and DM12 in the JDMPD. He also concludes that the proposal would comply with Paragraph 118 of the Framework.

*Whether the proposed development would be premature*

27. The Secretary of State has taken into account the progress that has been made on the SIR since the inquiry, but has concluded (paragraphs 10-12 above) that the emerging plan carries little weight. He has considered the Inspector's analysis at IR455-464, and taken into account that there is now a 5 year housing land supply. He has also taken into account the Council's statement in their representation of 20 March, that the RAF Mildenhall site is not expected to come forward until 2020, and that should the position change fundamentally, the Council will undertake a review of their Local Plan. The Secretary of State agrees with the Inspector at IR462 that the proposed development would not constrain decisions on the timing, location and amount of development to be allocated in the SIR (IR462), and does not consider that the proposed development would be premature.

*Loss of countryside and agricultural land*

28. The Secretary of State has taken account of the Inspector's remarks that the proposal would result in the loss of about 20 hectares of best and most versatile agricultural land and that it would involve development in the countryside (IR468). Like the Inspector (IR469) he considers that the loss of countryside and best and most versatile agricultural land would not accord with local and national policies. The Secretary of State considers that the proposal would be in conflict with policy DM5 in the JDMPD, which seeks to protect the countryside from unsustainable development, and with policy DM27, which permits small scale housing developments in the country (IR468). He considers that this would be an adverse effect that carries moderate weight against the application proposal.

*Other matters*

29. For the reasons given by the Inspector, the Secretary of State agrees with her conclusion that the character and appearance of the Newmarket Conservation Area would be preserved and that there would be no conflict with Policy DM17 in the JDMPD (IR467).
30. For the reasons given by the Inspector at IR490, the Secretary of State considers that the economic benefits of the proposal carry moderate weight in favour of the proposal.

*Whether any conditions and obligations are necessary to make the development acceptable*

31. The Secretary of State has considered national policy as set out at paragraphs 203 to 206 of the Framework. He has also taken into account the Inspector's remarks at IR319-340 and IR470-471 and the schedule of conditions at Annex 3 of the IR. He agrees with the Inspector (IR471) that the proposed conditions are reasonable,

necessary and otherwise comply with the provisions of paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing outline planning permission.

32. The Secretary of State has also given careful consideration to the Inspector's analysis at IR341–354 and at IR472–484. For the reasons given by the Inspector at IR472–484, he too concludes that the obligations provided are in accordance with Regulation 122 of the CIL Regulations and paragraph 204 of the Framework. He agrees with the Inspector that at the time of the inquiry the provisions of Regulation 123 were not offended. Given his reasons for refusing outline planning permission, which do not relate to the obligations and would not be overcome by them, he has not considered it necessary to seek an update from the Council on this point.

*Overall conclusions and planning balance*

33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons given above, the Secretary of State concludes that the proposal is not in accordance with development plan Policies DM5, DM27, DM48, Vision 2 of the CS, Spatial Objective ECO 5 or CS1, and is not in accordance with the development plan as a whole. He has therefore gone on to consider whether material considerations indicate that this application should be determined otherwise than in accordance with the development plan.
34. The Secretary of State considers that the proposal is in accordance with the emerging development plan. However, the emerging plan carries little weight, and the Secretary of State considers that the proposal's accordance with the emerging plan carries little weight in the planning balance. The emerging Neighbourhood Plan carries very little weight, and the Secretary of State considers that the proposal's accordance with the draft objectives of the emerging Neighbourhood Plan carries very little weight in the planning balance.
35. He considers that the provision of market and affordable housing in this case carries substantial weight in favour of the development, and that the economic benefits of the development carry moderate weight in favour. The road improvements referred to in paragraph 18 above carry significant weight in favour of the proposal.
36. However, he considers that the threat to the horse racing industry carries substantial weight against the proposal. He further considers that the risks arising from increased traffic at the Rayes Lane horse crossing carry moderate weight. He considers that the loss of countryside and best and most versatile agricultural land also carries moderate weight against the proposal.
37. The Secretary of State agrees with the Inspector's conclusions at IR452 that there would not be a significant impact on nature conservation interests, and that there would be no significant impact on European sites, and that an appropriate assessment would not be required. He considers that these matters do not weigh against the scheme.
38. Overall, he concludes that there are no material considerations which indicate that he should determine the case other than in accordance with the development plan.

### **Formal decision**

39. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby refuses outline planning permission for up to 400 dwellings plus associated open space (including areas of habitat enhancement) foul and surface water infrastructure, two accesses onto the A142, internal footpaths, cycle routes and estate roads at Hatchfield Farm, Fordham Road, Newmarket.

### **Right to challenge the decision**

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the day after the date of this letter.
41. A copy of this letter has been sent to the Council and the Newmarket Horsemen's Group. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

**Maria Stasiak**

Authorised by Secretary of State to sign in that behalf



**SCHEDULE OF REPRESENTATIONS****General representations**

<b>Party</b>	<b>Date</b>
Matthew Hancock MP – enclosing an undated letter from Rachel Hood	13 August 2015
*Matthew Hancock MP – enclosing DeLoitte report	18 September 2015
*William Gittus on behalf of the Newmarket Horsemen's Group – enclosing DeLoitte report (same report as above)	18 September 2015
Sebastian Gosden	30 September 2015
Thady Gosden	23 October 2015

**Representations received in response to the Secretary of State's letter of 7 October 2015**

<b>Party</b>	<b>Date</b>
Bill Rampling, Forest Heath Rural Parish Alliance	19 October 2015
Andrew Appleby	19 October 2015
Philippa Kelly, Forest Heath District Council	27 October 2015
Hermione Brown, Chair, Planning Subcommittee, Lakenheath Parish Council	28 October 2015
Trevor Blaney, Trevor Blaney Planning – enclosing a letter from Sellwood Planning on behalf of Lord Derby dated 28 October 2015	29 October 2015

**Representations received in response to the Secretary of State's letter of 30 October 2015**

<b>Party</b>	<b>Date</b>
Philippa Kelly, Forest Heath District Council (no comment)	5 November 2015
Simon Rawlins, Bracher Rawlins LLP enclosing a letter from William Gittus for and on behalf of the Newmarket Horsemen's Group dated 9 November 2015	9 November 2015

<b>Party</b>	<b>Date</b>
*Sellwood Planning obo Lord Derby	19 February 2016

**Representations received in response to the Secretary of State's letter of 2 March 2016**

<b>Party</b>	<b>Date</b>
Hermione Brown, Chair, Planning Subcommittee, Lakenheath Parish Council	22 March 2016
Christopher Park, Bracher Rawlins LLP enclosing one from William Gittus for and on behalf of the Newmarket Horsemen's Group dated 23 March 2016	23 March 2016
David Whipps, Holmes & Hills LLP obo Forest Heath DC	23 March 2016
Sara Beckett	23 March 2016
Andrew Appleby	28 March 2016

**Representations received in response to the Secretary of State's letter of 15 April 2016**

<b>Party</b>	<b>Date</b>
Mz. Yvonne Zellen	23 April 2016
Philippa Kelly, Forest Heath District Council	27 April 2016
Simon Rawlins, Bracher Rawlins LLP – enclosing one from William Gittus, for an on behalf of the Newmarket Horsemen's Group	3 May 2016
Trevor Blaney, Trevor Blaney Planning – enclosing one	3 May 2016

from Sellwood Planning dated 3 May 2016	
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**Representations received in response to the Secretary of State's letter of 5 May 2016**

<b>Party</b>	<b>Date</b>
Mz Y Zellen	9 May 2016
Simon Rawlins, Bracher Rawlins LLP enclosing a letter from William Gittus for and on behalf of the Newmarket Horsemen's Group dated 13 May 2016, which attached an appeal decision in respect of Meddler Stud, Bury Road, Kentford, Newmarket CB8 7PT, APP/H3510/W/15/3070064, dated 16 March 2016.	13 May 2016

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# Report to the Secretary of State for Communities and Local Government

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 9 July 2015

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**TOWN AND COUNTRY PLANNING ACT 1990**

**FOREST HEATH DISTRICT COUNCIL**

**Application made by**

**LORD DERBY**

Pre Inquiry Meeting held on 1 December 2015

Inquiry held on 14-17 April; 21-24 April; 29, 30 April and 1 May 2015

Site visits held on 10 and 30 April 2015

Land at Hatchfield Farm, Fordham Road, Newmarket

File Ref: APP/H3510/V/14/2222871

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## **ABBREVIATIONS LIST**

<b>Term</b>	<b>Acronym</b>
Cam and Ely Ouse Licensing Strategy	Licensing Strategy
Community Infrastructure Regulations	CIL
Design Manual for Roads and Bridges	DRMB
Dwellings per annum	dpa
Environmental Impact Assessment	EIA
Forest Heath Core Strategy	CS
Forest Heath District Council	The Council
Forest Heath Local Plan	LP
Habitats Directive Review of Consents Stage 4 Options Appraisal	Atkins Report
Improvement package for the Rayes Lane horse crossing put forward by the Applicant	WSP Scheme
Improvement package for the Rayes Lane horse crossing put forward by Suffolk County Council as Highway Authority	SCC Scheme
Joint Development Management Policies Document	JDMPD
Lodes Granta Groundwater Support Scheme	LG Scheme
Manual for Streets	MfS
Megalitres	MI
National Planning Policy Framework	Framework
Newmarket Horsemen's Group	NHG
Planning Obligation by Agreement	Section 106 Agreement
Resource Zone	RZ
Secretary of State for Communities and Local Government	Secretary of State
Single Issue Review and Site Specific Allocations Document	SIR
Site of Special Scientific Interest	SSSI
Special Area of Conservation	SAC
Special Protection Area	SPA
Statement of Common Ground	SCG
Strategic Environmental Assessment	SEA
Suffolk County Council as Highway Authority	Highway Authority
Sustainability appraisal	SA
Sustainable drainage system	SuDS
Visitor Survey Results from Breckland SPA	Fearnley Report

**File Ref: APP/H3510/V/14/2222871**

**Land at Hatchwood Farm, Fordham Road, Newmarket, Suffolk**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 11 July 2014.
- The application is made by Lord Derby to Forest Heath District Council.
- The application Ref DC/13/0408/OUT is dated 2 October 2013.
- The development proposed is up to 400 dwellings plus associated open space (including areas of habitat enhancement) foul and surface water infrastructure, two accesses onto the A142, internal footpaths, cycle routes and estate roads.

**Summary of Recommendation: That planning permission be granted subject to the conditions in Annex Three.**

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**PROCEDURAL MATTERS**

1. The application was made in outline form with all matters apart from access reserved for consideration at a later date. Minor changes were made to the highway layout and the open space distribution, removing reference to the provision of allotments within the site. A Design and Access Statement accompanied the application and the Land Use Plan shows the disposition of uses across the site, including roads, green spaces and housing (*Documents CD/AP/1; CD/AP/4; CD/AP/9; Plan A/2*).
2. The application was accompanied by an Environmental Report, a Flood Risk Assessment and a Transport Assessment. Forest Heath District Council's Screening Opinion was that the proposal was Environmental Impact Assessment (EIA) development. The Applicant disagreed with this response and requested a Screening Direction from the Secretary of State for Communities and Local Government (Secretary of State) who determined on 20 December 2013 that the proposal was not EIA development. Permission was refused by the High Court on 14 March 2014 for Save Historic Newmarket Ltd to bring proceedings against this decision to judicial review (*Documents CD/COP6; FHDC/2, Appendix 4*).
3. The application was called-in by the Secretary of State for his own determination on 11 July 2014 (*Document CD/O/11*). The reasons were as follows:
  - 3.1 The proposal may have significant long-term impact on economic growth and meeting housing needs.
  - 3.2 The proposal could have significant effects beyond its immediate locality.
  - 3.3 Any other matters the Inspector considers relevant.
4. A Pre-Inquiry meeting was held on 1 December 2014 where arrangements for the forthcoming Inquiry were discussed and the main areas to be covered by evidence were agreed. Forest Heath District Council (the Council) made clear that it did not object to the application and therefore would be playing a secondary part in the Inquiry. The main objector was the Newmarket Horsemen's Group (NHG) and they were given Rule 6 status and took a leading role in the Inquiry (*Document CD/O/12*).
5. In February 2015 the NHG raised the further issue of prematurity as an addendum to its Statement of Case. Whilst this was a late addition it was one

that the other parties were able to address without prejudice to their respective positions (**Document CD/SOC/4**).

6. The three main parties were able to reach agreement on a number of matters and submitted 8 Statements of Common Ground (SCG). These included an agreed position on housing land supply between the Council and Applicant; agreement on highways and transport matters between the Applicant and the Highways Agency as well as Suffolk County Council as Highway Authority (Highway Authority); agreement on certain hydrological and general matters between the Applicant and NHG and agreement on contributions between the Applicant and Suffolk County Council (**Documents CD/SCG/1-CD/SCG/7; ID/2**).
7. I undertook an accompanied site visit early in the morning of 10 April and was shown the horses crossing the town, the various training grounds and gallops, and the National Stud, amongst other things. There was a further accompanied site visit on 30 April to view the site and its surroundings. Earlier that morning I visited the town unaccompanied to observe traffic conditions in the morning peak both within the town centre and along Fordham Road, Snailwell Road and Bury Road. On the evening of 15 April I visited Tattersalls Bloodstock Auctioneers to observe for myself a sale of two year old horses.
8. A 1.5 hectare site adjacent to the eastern site boundary and within the control of the Applicant would be available for a new primary school should this be required by Suffolk County Council as Education Authority. This is considered later in the Report concerning how the educational needs of the development would be met. However, for the avoidance of doubt, such a proposal is not part of the present application and the land is not within the application site.

## **THE SITE AND SURROUNDINGS**

9. A comprehensive description of the site and its context is provided in Document **CD/SCG/1, Section 2**. There are useful maps of the site and its relationship to the surrounding highway network, the wider settlement and the various nature conservation sites at **Documents CD/OP/14, Tab 3; APP/2/3, Appendix A; FHDC/2/Appendices 1,2; CD/OP/14, Tab 17; ID/52; ID/53**. The horse walks, horse crossings, training stables, stud farms and training grounds are shown in **Documents APP/2/3, Appendix JK; NHG/6/2 Appendices 2, 9**. There are helpful photographs in the Landscape and Visual Impact Assessment at **Document CD/OP/14, Tab 27**. A context aerial photograph is at **Document CD/OP/14, Tab 9**.

*The main points are:*

10. The appeal site is on the northern side of Newmarket close to the junction of Fordham Road and the A14. The latter forms part of the Strategic Road Network. Cambridge is to the west and Bury St Edmunds to the east. Newmarket is within the south western corner of the district and due to the way that the boundary has been drawn it adjoins East Cambridgeshire District on its north, west and south sides. Snailwell Meadows is a Site of Special Scientific Interest (SSSI) on the north western side of Snailwell village. Further north, and about 2.6 km from the application site is Chippenham Fen, which is an SSSI and part of the Fenland Special Area of Conservation (SAC). Breckland Special Protection Area (SPA) is a large area of forest and heathland and at its nearest point is about 8 km to the north east of the appeal site.

11. The town centre is about 1.5 km to the south of the appeal site. Newmarket is the largest settlement in the district with a population of over 16,000. It has a good range of shops and services as well as various recreation and employment opportunities. The railway station is in the southern part of the town and includes services to Cambridge and from there to London Kings Cross. The northern part of the settlement extends to the A14 where there is a large residential estate known as Studlands Park. To the south of this is a superstore, which is currently being enlarged, as well as an extensive commercial area with various employment and industrial uses.
12. Newmarket is world famous for its horse racing industry. Training stables are to be found within and adjoining the town and are concentrated near to the two main training grounds to the east and west, known as Bury Side and Racecourse Side respectively. Many of the stud farms are located outside of the town and within surrounding villages such as Exning to the north of the A14. The appeal site is to the north west of Stanley House Stud, which is owned by the Applicant. The main training yards are to the south and east.
13. The appeal site itself is generally flat and comprises about 20 hectares of arable farmland. It is part of a larger agricultural holding and the farm house and main farm buildings are immediately to the south east. There is one open sided metal storage barn on the site itself. The southern boundary adjoins the tree lined access drive to the farm and at its entrance are several farm cottages. Along the Fordham Road (A142) frontage there is a wide band of mixed woodland planting. The northern boundary has no natural delineation but the agricultural land continues to the wooded boundary with the A14.

## **PLANNING POLICY**

14. The development plan comprises the saved policies of the **Forest Heath Local Plan**, the **Forest Heath Core Strategy Development Plan Document** and the **Joint Development Management Policies Document**. Whilst all relevant policies have been taken into account, those that are considered the most pertinent to this appeal are set out below.
15. **The Forest Heath Local Plan** (LP) was adopted in 1995 (*Document CD/LP/1*). However following the adoption of the Joint Development Management Policies Document there is little policy provision remaining that is of relevance to this appeal.
16. **The Forest Heath Core Strategy** (CS) was adopted in May 2010 (*Document CD/LP/2*). However it was subsequently subject to a High Court Challenge and quashed by Order of the Court on 25 March 2011. This was because the Strategic Environmental Assessment had failed to properly explain the realistic alternatives to the strategic growth locations, including an urban extension for 1,200 dwellings to the north east of Newmarket, which included the application site. Accordingly all references to these residential growth areas in Policies CS 1, CS 7 and CS 13 were quashed along with Section 3.6 on housing provision.
  - 16.1 **Vision 1** refers to the whole district with development focused in the towns and key service centres, amongst other things. **Vision 2** addresses Newmarket as the largest town in the district and amongst other things seeks to preserve and enhance its position as the international home of horse racing. **Spatial Objective ECO 5** seeks to



develop the town as a tourism, leisure and cultural focus whilst protecting its unique character. **Spatial Objective H 1** aims to provide enough decent homes to meet needs in the most sustainable locations. **Spatial Objective H 2** seeks to provide a sufficient and appropriate mix of housing that is affordable, accessible and designed to a high standard.

- 16.2 **Spatial Objective ENV 1** sets out to conserve and enhance habitats and landscapes of international, national and local importance and improve the biodiversity of the district. **Spatial Objective ENV 2** seeks to guide changes in the built and natural environment to take proper account of climate change, minimising carbon emissions and flood risk and encouraging water efficiency. **Spatial Objective ENV 7** looks to achieve more sustainable communities by ensuring infrastructure, facilities and services are commensurate with development. **Spatial Objective T 1** seeks to locate development where there is the best opportunity for sustainable travel. **Spatial Objective T 3** supports strategic transport improvements serving the district, including the A14 road corridor.
- 16.3 **Policy CS 1** sets out the spatial strategy for the towns and villages in the district. There are various provisions for Newmarket, including recognition of the importance of the horse racing industry. Also included are provisions for the growth in employment, retail and leisure uses and housing on brownfield land within the settlement. **Policy CS 7** establishes the overall housing provision of a minimum of 6,400 dwellings and associated infrastructure between 2001 and 2021 and a further 3,700 dwellings and associated infrastructure between 2021 and 2031. Provision for affordable housing is set out in **Policy CS 9**, which sets a target of 30% on schemes of 10 or more dwellings.
- 16.4 **Policy CS 2** addresses the natural environment and seeks to protect and encourage enhancement of areas of biodiversity interest, including minimising the fragmentation of habitats and creating new habitats, amongst other things. Mitigation measures should result in a net gain to biodiversity. Development likely to lead to an adverse effect on Breckland SPA will not be permitted. **Policy CS 4** encourages development to deliver high levels of building sustainability and avoid areas of current and future flood risk. **Policy CS 12** concerns strategic road improvements and sustainable transport. **Policy CS 13** addresses infrastructure requirements and makes provision for developer contributions to meet site specific requirements and create sustainable communities.
17. The **Joint Development Management Policies Document** (JDMPD) was adopted by Forest Heath District Council and St Edmundsbury Borough Council in February 2015. This plan, as its name suggests, does not contain any policies relating to the location of housing development.
  - 17.1 **Policy DM1** sets out the presumption in favour of sustainable development in accordance with the National Planning Policy Framework (Framework). **Policy DM2** concerns development principles and local distinctiveness. Amongst other things, and taking account of mitigation, there should not be adverse effects on sites, habitats, species and

features of ecological interest. **Policy DM5** seeks to protect the countryside from unsustainable development and restricts new building to a limited range of purposes. **Policy DM27** sets out the circumstances when housing in the countryside will be permitted. **Policy DM6** concerns flooding and sustainable drainage.

- 17.2 **Policy DM10** sets out the considerations for development proposals that may impact on sites or interests of nature conservation importance, including consultation with Natural England and the Suffolk Wildlife Trust. **Policy DM11** includes provisions for development that would have an adverse effect on protected species. **Policy DM12** concerns the protection and enhancement of biodiversity and mitigation of adverse impacts. All new development that would increase recreational disturbance on Breckland will need to contribute towards management projects and monitoring of visitor pressure and urban effects.
  - 17.3 **Policy DM17** contains various provisions relating to the preservation or enhancement of the character or appearance of conservation areas. **Policy DM41** includes a requirement for developers of address any impact on community facilities and services through various means including financial contributions. **Policy DM42** includes provisions for open space and amenity areas in new residential developments. **Policy DM44** makes provision for improvements to rights of way in association with new development to enable new and improved links or access to the countryside. **Policy DM 45** requires Travel Plans and Transport Assessments for major developments which should demonstrate the satisfactory mitigation of travel impacts.
  - 17.4 **Policy DM48** states that any development within or around Newmarket that is likely to have a material adverse impact on the operational use of an existing site within the horse racing industry, or which would threaten the long term viability of the horse racing industry as a whole, will not be permitted unless the benefits would significantly outweigh the harm to the horse racing industry. **Policy DM50** seeks to encourage the retention and improvement of horse walks in Newmarket and Exning.
18. The Council is currently preparing a **Single Issue Review** of the CS and a **Site Specific Allocations Document**. This has been ongoing for some time and it has now been decided that the two will be combined in a single document. This will reconsider housing requirements to reflect objectively assessed housing needs in accordance with Framework policy. It will also consider the distribution of housing across the district. Further assessment is being undertaken before producing Issues and Options for consultation. The Council anticipates that the plan will be submitted for examination in the summer of 2016 with adoption in 2017 (**Document ID/18**). In the circumstances, this document can be afforded little or no weight at the moment. Hereinafter the combined development plan document will be referred to as the SIR.

## **RELEVANT PLANNING HISTORY**

19. In March 2012 outline planning permission was refused on appeal by the Secretary of State for a mixed use development on the whole Hatchfield Farm

site, which comprised about 67 ha. This included up to 1,200 dwellings; up to 36,000 sq m of employment floorspace; up to 1,000 sq m of community facilities; up to 300 sq m of A Class uses; 100 space Park and Ride; primary school site; two new accesses; infrastructure, open space and landscaping.

20. The Council refused permission on various grounds, including highways impact, impact on the horse racing industry, effect on biodiversity, lack of infrastructure provision and prematurity in advance of its review of housing figures. The Secretary of State agreed with the Inspector that the appeal should be dismissed on the grounds that it would be premature to allow a strategic development of this scale and in this location in the absence of a proper evaluation through the development plan process.

## **THE CASE FOR THE APPLICANT: LORD DERBY**

*The Appellant's case is fully set out in its evidence, including its opening and closing submissions (Document ID 57). The main points are:*

### **INTRODUCTION**

21. This is an application for much needed residential development on the only significant site available in the district's most sustainable settlement. It has the full support of the democratically elected decision-maker, who has resolved to grant planning permission. This is notwithstanding that between resolving to approve the development and now, the Council considers that has a 5 year housing land supply. It recognises that the Framework provides the basis for judging the sustainability of this development and the conclusion is that this development is indeed 'sustainable development' and should be approved in the public interest (*Document CD/SCG/2, Section 6*).
22. The proposal is also supported by Suffolk County Council, as Highway Authority, because it is contributing to the scheme for highways improvements set out in the Local Transport Plan. Furthermore, the Highways Agency has concluded that the scheme would make important improvements to the functioning of the strategic highway network, and in particular the A14/A142 junction. Natural England is of the view that there are no ecological objections and likely significant effects on European sites of nature conservation importance can be excluded. This is a view shared by the Environment Agency, who raised no objection (*Documents CD/SCG3; CD/SCG/4; APP/4/3, Appendix 3*). The statutory bodies and decision-makers are united in their position that the scheme is unobjectionable with no justification for withholding permission.

### **PLANNING POLICY CONTEXT**

23. The settlement boundaries in the 1995 LP were drawn up in order to meet the development needs perceived as a result of the 1992 Structure Plan to 2001. The SIR will provide for development needs in a Framework compliant way but its Issues and Options report is yet to be published or consulted upon. It is agreed by all of the main parties that by virtue of Paragraph 215 of the Framework, the 1995 settlement boundaries are 'out of date' for the purposes

of Paragraph 14<sup>1</sup>. Vision 1 and 2 and Policy CS 1 of the CS establishes a settlement hierarchy and spatial strategy, which remain unscathed by the High Court Order. Forest Heath is recognised as a very rural district, with only three market towns. Newmarket is the largest and most sustainable in terms of population, public transport, employment facilities and services. Within the town the CS provides for the protection of the important horse racing industry and takes the matter forward in policies of the JDMPD.

24. The Court Order removed any allocations or distribution of housing from the CS. As such the development plan, subject to the still-extant spatial hierarchy, is 'silent' on housing distribution for the purposes of Paragraph 14 of the Framework. Since the quashing of the distribution policies it has been recognised by the Council that its CS housing requirement has become 'out of date' by virtue of not being derived from an assessment of objectively assessed need as is now required by the Framework. Consequently, this is a matter that will also be covered by the SIR. There is thus no dispute between the main parties that this is a case which falls to be determined under the 'decision-making' half of Paragraph 14 of the Framework (*Document APP/5/2, Paragraphs 5.2.6, 5.7.1-5.7.3*).
25. In addition on the Council's housing requirement and supply figures, there is a 4.9 year's supply once the post 2011 backlog has been provided for using the preferred 'Sedgefield' methodology. Paragraph 49 of the Framework is thus engaged and 'relevant policies for the supply of housing', which include settlement boundaries, are also 'out of date' (*Document CD/SCG/2*).
26. In the light of the compliance with the spatial strategy and settlement hierarchy, as well as absence of conflict with the horse-racing and ecological policies of the JDMPD, the scheme materially accords with the development plan and so should, under the first bullet of Paragraph 14 be permitted 'without delay'. However the Rule 6 Party has alleged Paragraphs 118 and 119 of the Framework would be breached and that therefore the second bullet of Paragraph 14 would apply.
27. Paragraph 118 concerns biodiversity.
  - 27.1 The first bullet is only engaged where the residual impact is one of significant harm. The second bullet only applies where harm to a Site of Special Scientific Interest's (SSSI) notified special interest features is likely to arise. This should not be confused with the reversed test of whether likely significant effects can be excluded when screening out the need for 'appropriate assessment' for European sites. In the absence of a finding of 'significant harm' to biodiversity the first bullet would not indicate that development should be restricted.
  - 27.2 For the second bullet to operate, there needs to be a finding of likely harm to a SSSI as a result of the scheme. If there is, there needs to be a balancing of the benefits against the resultant residual harm. If benefits clearly outweigh the harm, the test in the second bullet is passed.

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<sup>1</sup> This was agreed by Ms Parsons in cross-examination by Mr Boyle, although she did say that she did not know whether this would mean that more greenfield land would need to be released.

- 27.3 In the absence of a finding of 'likely' harm from the development to a SSSI's notified special interest features, or where such harm is found likely but is clearly outweighed by the benefits of the scheme, Paragraph 118 would not indicate that development should be restricted. As such the second indent in the second bullet of Paragraph 14 would not be engaged and attention then returns to the 'tilted balance' in the first dagger. Permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits.
28. Paragraph 119 concerns appropriate assessment.
- 28.1 This paragraph is curiously worded. On its face, it indicates that if an appropriate assessment is required the presumption in favour of sustainable development in Paragraph 14 does not apply. Thus, on a plain reading, where impact on European sites is not a relevant issue at all, or where an appropriate assessment has been 'screened out' because it has been judged that likely significant effect can be excluded, Paragraph 14 is applied. However where an appropriate assessment is required, Paragraph 14 is not applied.
- 28.2 This makes perfect sense where an appropriate assessment is required and, in the light of that appropriate assessment, the decision-maker cannot ascertain that the scheme will not adversely affect the integrity of the European site. Regulation 61(5) of the Habitats Regulations would generally prevent permission in those circumstances. However it makes little sense where an appropriate assessment has been required, has been undertaken and has been passed so that the decision-maker can conclude that the scheme would not adversely affect the integrity of the European site.
- 28.3 The main parties were united in their view that where an appropriate assessment is required, and conducted, and passed, then Paragraph 119 would not operate to deny the scheme the presumption to be found in Paragraph 14 of the Framework.
- 28.4 However even if the effect of Paragraph 119 is to remove the 'tilted balance' in Paragraph 14 it does not mean that permission should be refused. Quite the contrary because an appropriate assessment that has been undertaken and passed leaves a scheme able to weigh the benefits and harms in the traditional planning balance but with the clear finding that European sites will not be adversely affected.
29. Policy DM48 of the JDMPD is the recently adopted policy protective to the horse racing industry that is applicable to the scheme. It was agreed by the Rule 6 Party that Policies DM47, DM49 and DM50 would not be offended by the proposals. Policy DM48 protects the industry but does not preclude development even if there is some harm. It permits it if the benefits significantly outweigh the harm. However there must first be a finding that the development would, not 'might' or 'may', threaten the horse racing industry. That threat must be to its long term viability and it must be to the viability of the industry as a whole. It is for the objectors to show that there is harm under Policy DM48. There is no policy justification for adopting a

precautionary approach of requiring the developer to show that there is no harm before permission can be granted<sup>2</sup>.

## **BACKGROUND AND THE SECRETARY OF STATE'S PREVIOUS DECISION**

30. The 2011 decision by the Secretary of State provides an important context (*Document CD/O/1*). The scheme had been vociferously opposed by various manifestations of the horse racing industry across a range of grounds. The Secretary of State found that a scheme of that scale would be premature to the then imminently promised SIR on housing distribution. However he concluded that a scheme for 1,200 houses would not have an unacceptable impact on either highways conditions or on the safety of horses using the highways network, nor would it harm the horseracing industry generally. Further, he found that botanical interest, bats, reptiles and badgers would not justify refusal of the scheme. He found that he could exclude likely significant effects on any European site apart from Chippenham Fen SAC.
31. Very often similar objections were made as were put to the previous Inquiry, despite the Note from the Pre-Inquiry Meeting stating that a repeat of previous evidence would not be acceptable (*Document CD/O/12*). It was conceded that the effect on bats and reptiles were no longer being pursued. However new points were added, including the recreational impact on the botany of Chippenham Fen and the on the stone curlews of Breckland SPA. Neither of these matters was considered worthy of pursuit when considering the larger mixed-use development. The Secretary of State will have to ask himself whether there are new considerations that now justify him reaching a different conclusion for the 400 house scheme from that reached in respect of the 1,200 house scheme.

## **HABITATS REGULATIONS**

32. The Habitats Regulations require that before the Secretary of State, as the competent authority, decides to grant planning permission for a project which is likely to have a significant effect on a European site, alone or in combination with other plans or projects, he must make an appropriate assessment of the implications for that site in view of the site's nature conservation objectives.
33. The purpose of that appropriate assessment is to ascertain whether or not the scheme will adversely affect the integrity of the European site, in consideration of which, regard must be had to the manner in which the project is proposed to be carried out and to any conditions or restrictions to which the permission would be granted. Subject to certain exceptions not relevant to this case, it is only after having ascertained that the scheme will not adversely affect the integrity of the European site that permission may be granted. Thus, where an issue of potential impact on a European site is raised, the first consideration is whether or not it is likely to have a significant effect, either alone or in combination. The approach, following European case-law,<sup>3</sup> is to ask whether a likely significant effect can be excluded.

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<sup>2</sup> All of the points in this paragraph were accepted by Ms Parsons in cross-examination by Mr Boyle.

<sup>3</sup> For example *Waddenzee* and *Sweetman* (*Core Documents CD/O/7 and CD/O/8*).

34. If likely significant effects can be excluded, impact on the European site is considered to be 'screened out' and does not need to be considered further. That is a planning judgement for the decision-maker, challengeable only on a *Wednesbury* basis. At the last inquiry, for 1,200 houses, the Inspector and Secretary of State considered that recreational impact on Chippenham Fen could be screened out and no appropriate assessment was required to consider that issue further (**Documents CD/O/2, Paragraph 12.1.13**).
35. If likely significant effect cannot be excluded, the Secretary of State must proceed to make an appropriate assessment of the implications for that site in view of that site's conservation objectives. For the purpose of that assessment, he must consult Natural England and may consult the public. There is no set format for an appropriate assessment<sup>4</sup>. However it can be expressed simply in a few paragraphs and the judgement as to impact on integrity is a planning judgement, for the decision-maker, challengeable only on *Wednesbury* grounds.
36. In parallel with the duty of competent authorities considering new applications, there is also the duty placed on competent authorities to review existing consents under Regulation 63 of the Habitats Regulations. Thus the Environment Agency, as competent authority for water abstraction licences, undertakes a process to consider whether or not it should affirm, modify or revoke them. For that purpose an appropriate assessment of the impact of those licences must be made. For Chippenham Fen, the Environment Agency has reported the outcome of that process in the *Cam and Ely Ouse Abstraction Licensing Strategy* (Licensing Strategy) of March 2013 (**Document CD/H/3, Pages 39-40**).
37. At the last inquiry the Inspector noted in respect of hydrology that the Environmental Statement concluded permanent negative effects on water resources. In addition, there were outstanding objections from the Environment Agency and Natural England. It is thus not surprising that he found that there must be at least some doubt and an appropriate assessment would be needed in respect of hydrological impact on Chippenham Fen. Although the information to undertake that appropriate assessment was not before the last inquiry, both the Inspector and the Secretary of State concluded that there was no reason why it could not be sought.
38. Things have very significantly changed in terms both of the information now available on hydrological matters and of the position of the responsible statutory bodies. The Environment Agency has reported through the Licensing Strategy that, as the competent authority for abstraction licences, it does not need to reduce any of the licences which potentially affect Chippenham Fen. Anglian Water has, therefore, its full abstraction licence to deploy in order to serve the Newmarket Resource Zone within which the application site sits (**Document CD/H/1**). The application scheme is, even with other permitted and foreseeable development, some 4,000 houses off the number able to be supplied within that existing licensed abstraction (**Documents ID/35; CD/H/1**). The Environment Agency does not object to the scheme and Natural England

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<sup>4</sup> *Walton v Scottish Ministers and Waddenzee* (**Documents ID/57/3, Paragraph 75; CD/O/8, Paragraph 52**).

has concluded that hydrological likely significant effects can be excluded, and hence screened out (**Document APP/4/3, Appendix 3**).

39. Likely significant effects by reason of hydrology can now be excluded and, hence, screened out. However if the Secretary of State disagrees there is more than sufficient information for him to undertake an appropriate assessment and ascertain that this scheme would not adversely affect the integrity of Chippenham Fen. The only consequence in policy terms would be that by virtue of Paragraph 119 of the Framework, the scheme would have to be judged on an even balance, not the tilted one in Paragraph 14. It would not prevent the grant of this highly beneficial scheme.

### **THE CONTRIBUTION THAT THE PROPOSAL WOULD MAKE TO THE MARKET AND AFFORDABLE HOUSING NEEDS OF THE DISTRICT**

40. There is no doubt that 400 houses would make a meaningful contribution to housing supply in the district and in Newmarket in particular. Since the adoption of the CS the Council has had a deficit against targeted delivery and in the Committee Report on the application the supply was recorded as being just over 3 years (**Document APP/5/2, Paragraph 6.3.1**). In addition affordable housing is a pressing social need. The April 2015 waiting list figures show 1,010 households in need, with 316 identifying a need to be housed within Newmarket. The 30% affordable housing contribution would provide 120 affordable homes.
41. Newmarket is the most sustainable settlement for additional housing growth, being one of only three market towns in an otherwise rural district, and significantly larger than the other two. Hatchfield Farm represents the only significant parcel of land for housing development at Newmarket unaffected by horse racing policies (**Document NHG/6/2, Appendix 2**). This underscores the importance of the site for the provision of housing and affordable housing for Newmarket's needs, as well as the district's. The provision of much needed housing in this sustainable location is, therefore, a matter to be given significant weight.
42. On the now customary 'Sedgefield' approach to meeting post-adoption backlog, the Council accepts that it can only show a 4.9 year housing land supply (**Document ID/37**). This is using an annual requirement of 350 dpa and the Council's own assessment of supply. However both are uncertain. Counsel's Opinion has expressed doubt about whether the 350 requirement is compliant with the Framework (**Document APP/5/2, Paragraphs 6.3.2-6.3.5**). In any event it has yet to be endorsed through the SIR. The deliverability of the supply has not been tested as it is not pertinent to this case. Paragraph 49 of the Framework is engaged.
43. The Council has recently espoused the 'Liverpool' method and points to a 5.1 years supply (**Document CD/LP/17**). However as the Council has agreed, this difference should not alter the approach to be taken to this application (**Document ID/37**). Housing provision is still a matter to be given significant weight and the application falls still to be judged against Paragraph 14 of the Framework. The development plan's housing policies are variously 'absent', having been quashed by the High Court; 'silent', awaiting the emerging plan; or 'out of date', pre-Framework and not representing an assessment based on objectively assessed needs. Whether or not there is a 5 year land supply, the



provision of housing, with its full 30% contribution of affordable housing, in this sustainable location, is a matter that attracts significant positive weight.

### **WHETHER THE TRAFFIC GENERATED CAN BE ACCOMMODATED ON THE NETWORK WITHOUT SEVERE RESIDUAL HIGHWAY IMPACT**

44. The Rule 6 Party agreed that the question of severity of residual impact in the third bullet of Paragraph 32 of the Framework relates to highway capacity rather than safety (*Document NHG/2/1, Paragraphs 3.13, 14.32*). Parts of the highway network undoubtedly experience congestion. However the approach, as adopted by the Secretary of State in the previous appeal, is that the development is tested for its own impact to see whether the *residual* highway impact is severe.
45. In respect of the strategic road network, a scheme of improvements has been agreed with the Highways Agency for the A14/A142 junction. This would not only adequately mitigate the impact of the development but would also have the additional benefit of easing congestion at that junction significantly. Queuing is expected to be considerably less with the mitigation and the development traffic compared with a situation without these measures and without the development traffic. There would be a considerable reduction in the length of the significant southbound queue on the A142, Fordham Road (*Document CD/SCG/4*). The residual highway impact for the strategic road network would thus be beneficial. One consequence is that the rat running of traffic on Snailwell Road would be lessened by significantly reducing the southbound queues on the Fordham Road as it approaches the A14. This again would be a benefit.
46. The only part of the local highway network that would experience a material change in traffic flow would be the Fordham Road south of the A14. This would only be 5.1%, which would be barely above the 5% threshold for immateriality. This would only be in the peak of the morning peak period. At all other times the change in traffic flows along Fordham Road as a result of the development would be below the 5% threshold (*Documents CD/OP/13, Appendix G; ID/13*). The highway modelling, which has not been disputed, does not show a severe residual highways impact from the development. The previous appeal scheme was judged to add some 15% but its highway impact was found acceptable.

### **THE EFFECT ON THE HORSE RACING INDUSTRY IN NEWMARKET**

47. The NHG has mounted a two-pronged objection relating to harm to the horse racing industry and harm to nature conservation interests. On its own evidence the current proposal actually benefits the industry in Newmarket. Therefore to contend that the scheme should be refused for ecological reasons is to argue contrary to its own good. It has to be assumed that the NHG would not wish to prevent 400 houses at Hatchfield Farm if they would improve the situation for the horse racing industry<sup>5</sup>. That however is precisely what the evidence of the NHG shows the application scheme would do.

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<sup>5</sup> Mr Gittus in cross-examination by Mr Boyle confirmed that he would welcome a scheme which reduced the number of incidents at the Rayes Lane horse crossing.

48. The NHG has presented substantially the same evidence as it did to the previous Inquiry. This dealt with the importance of racing to Newmarket and the nation; the inherent danger of the sport; and the skittish nature of thoroughbreds and the potential for them to be spooked by ordinarily occurring stimuli. None of this is in dispute and indeed it was the subject of clear findings by the Secretary of State (*Documents CD/O/1, Paragraph 14; CD/O/2, Paragraphs 12.4.1-12.4.3*). The importance of horse racing to Newmarket and the importance of Newmarket to horse racing, is a key area of common ground in the present case. The evidence is essentially in agreement about the core proposition that the horse racing industry in Newmarket is a thriving success story, even through the recent global recession. Newmarket is the pre-eminent location for training and breeding flat race horses in the UK, Europe and arguably the World (*Documents APP/1/2, Section 7; NHG/1/2, Pages 1-12; NHG/6/1, Pages 3-30, 34-36; NHG/12, Pages 3-8; CD/E/1*).

### Effect on the Rayes Lane horse crossing

49. The disputed matter is the extent to which the traffic from 400 houses at the appeal site would make any difference. This is particularly pertinent given the findings in the previous appeal that 1,200 would not. Moreover since 2011, the Snailwell Road/Fordham Road junction has been signalised. Consequently, the only material highways impact that has been alleged is in respect of the Fordham Road/Rayes Lane horse crossing<sup>6</sup>. This is a crossing where there is no evidence of injury to horse or person (*Document APP/2/2, Paragraphs 5.3.11-5.3.14*). The Highway Authority has put forward an enhanced package of improvements (the SCC Scheme) compared to that found acceptable for 1,200 units (the WSP Scheme) (*Documents ID/41; NHG/2/2, Appendix 6*).
50. The “incidents” set out in the NHG evidence embrace as little as a head toss or sideways skitter, and in all but one the rider remains in unperturbed control throughout. What these incidents do not do is translate into accidents. What is seen is horses behaving as horses do – and can be seen to behave all over Newmarket. This behaviour was recognised in the previous appeal decision but what has changed in the present proposal is a reduced volume of development traffic and an enhanced improvement package. For the first time the NHG highways evidence has recognised an *improvement* in safety conditions at the Rayes Lane crossing by virtue of the mitigation proposals and their likelihood of reducing incidents.
51. The NHG consider that the existing situation is unsafe. This means however that it would be irresponsible to increase horse numbers on the Rayes Lane crossing even if traffic numbers remained unchanged. The horse racing industry should not accept or encourage any additional horses unless and until improvements are made. Whilst the Jockey Club Estates previously opposed signals at the Rayes Lane crossing it has now become convinced that only traffic signals or an underpass would be acceptable to resolve the situation of more traffic and more horses. Regardless of the current application, the Jockey Club Estates will be working with the Highway Authority to seek to

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<sup>6</sup> Mr Cottey in cross examination by Mr Boyle agreed that the widening of the horse walk that accompanied his signalisation proposal, would not be necessary to bring about speed reduction of traffic approaching the new signals or to implement the signals.

implement one or other of the NHG schemes<sup>7</sup>. However NHG has limited control over horse numbers. If they increase in connection with a planning application then a contribution could be sought. However if not the funding would have to come from some other source, including Jockey Club Estates or other horse racing industry resources. There is no doubt, given the horse racing industry's access to resources, that a mere £½ m to solve the existing situation at Rayes Lane could and would be found. It is noted that serious consideration is being given to building a new hill on Racecourse Side, which would cost several £m.

52. For practical as well as financial reasons, it is unlikely that the underpass would be favoured over the signalisation, not least because of its limited additional incident savings. The application proposal commits to no specific highways improvement. The £60,000 contribution is based on the costing of the improvement found acceptable by the Secretary of State in respect of the 1,200 unit proposal (**Document NHG/2/2, Appendix 6**). It could equally well be applied to the SCC Scheme, which was worked up with the Jockey Club Estates in response to the Tesco superstore application where a £100,000 contribution was made. It is notable that the signalisation itself has been costed at £160,000, which would be met by the contributions from the Tesco development and the application proposal. This would not pay for the Fordham Road horse-walk, which was included as part of the NHG signalisation scheme (**Document NHG/2/1, Paragraph 12.1**). However that part of the improvement scheme was agreed not to be necessary in order to implement the signals because few of the incidents had anything to do with the horse walk. As indicated, the horse racing industry can, and on the evidence should and would, invest its own resources to improve the horse walk.
53. Currently the Highway Authority is not convinced that signalisation is necessary or appropriate at the Rayes Lane crossing. It cannot be blamed for this position because until recently the Jockey Club Estates was *opposed* to a signalised crossing at Rayes Lane. Indeed, the SCC Scheme was worked up in consultation with the Jockey Club Estates. The Highway Authority has not been told that the Jockey Club Estates now finds it unacceptable and favours a signalised solution. It therefore has not had the opportunity to consider whether the signalised scheme put forward by NHG should be preferred to its previously agreed non-signal improvements. In any event the application proposal can contribute to whichever scheme the local Highway Authority ultimately considers is appropriate.
54. For the time being though the evidence is that the Highway Authority is unconvinced that the existing or "with development" situation justifies signals, and it is intending a non-signal improvement. Whilst in due course the NHG

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<sup>7</sup> The two alternative improvement schemes proposed by Mr Cottee on behalf of NHG for the Rayes Lane horse crossing are explained at **Document NHG/2/1, Paragraph 12.4** and illustrated at **Document NHG/2/2, Appendix 8** and **Document NHG/2/3, Appendix 10**. Option 1 involves signalisation and Option 2 an underpass. In cross-examination by Mr Boyle, Mr Gittus said that he no longer supported an informal horse crossing having seen the video clips produced by Mr Cottee and Professor Waran in **Document NHG/2/2, Appendix 2** and **Document ID/47**. Mr Gittus said that he would be aiming to persuade the Highway Authority to carry out the improvements as proposed by Mr Cottee.

- may persuade it otherwise, for the moment the expectation must be, on the evidence, that it is the SCC non-signalised Scheme that will be implemented.
55. At the last Inquiry, much time and evidence was taken up with attempts by the horse racing industry to show that the crossings under consideration, including Rayes Lane, were or would be unsafe as a result of the development. It was unable to persuade the Secretary of State of that (**Document CD/O/2, Paragraphs 12.3.46, 12.4.11-12, 12.4.38-40**). Risk is a fact of life and whether a piece of the highway network is safe is a matter of judgment. It is properly judged by outcome and by evidence that the risk of accidents manifests itself in actual accidents. Most usually this is judged against personal injury records within a given period. In the circumstances of Newmarket and the Rayes Lane horse crossings, it would not be unreasonable to judge it against injuries to people and also to horses.
  56. The Jockey Club Estates requires accidents and near-accidents to be recorded and notified to it (**Document CD/T/2**). However given the rather lax approach to the enforcement of this Code of Conduct and the apparently recent introduction of this requirement, it would be not unreasonable to accept evidence of accidents to horses or persons not just from formal records but from whatever source. From all of the evidence however, including many hours of video footage, it is noteworthy that there is *not one* injury to horse or rider evidenced at the Rayes Lane crossing. There were no accidents involving horses in the 5 years preceding the 2011 inquiry or in the four years since (**Document APP/2/2, Paragraphs 5.3.11-12**). This is in the context of literally millions of crossings by horses (**Document NHG/6/1, Paragraph 2.4.4**). There is now at least a ten year period of assessment and some witnesses spoke with up to 63 years of experience. None could identify an injury on the Rayes Lane crossing in any of that time. The conclusion is that a crossing which has no evidence of recorded or un-recorded injuries, serious or otherwise, to horses or to people, can currently be judged 'safe'.
  57. There can be no doubt that Fordham Road, a street in the middle of Newmarket, currently subject to a statutory speed limit of 30 mph and an advisory speed limit of 20mph, is a road to which Manual for Streets (MfS) applies. Anything in the Design Manual for Roads and Bridges (DMRB) should be used with caution, and applied in the light of MfS and MfS2 (**Documents CD/T/7; CD/T/8; CD/T/9**).
  58. An X distance of 5 m has been taken from DMRB TA 90/05 because MfS does not contain X distances for equestrian crossings (**Document CD/T/9D, Table 3.3**). A Y distance of 47 m is taken from MfS as TA 90/05 does not contain Y distances for roads at the speeds being considered (**Documents CD/T/7, Table 7.1; ID/39**). Where there would be the absence of the full preferred X distance of 5m, this would be achieved to about 4.75m instead. In two cases the full 5m preferred distance is only not achieved due to walls over which riders and horses can both see and be seen. What is unarguable is that the sightlines would be considerably improved over the current situation (**Document APP/2/4, Appendix B**).
  59. Such an improvement was recognised as a benefit in the previous appeal decision (**Document CD/O/2, Paragraph 12.4.14**). The improvements, and hence benefit, are greater with the enhanced SCC Scheme and should be weighed

accordingly. The improvements to the existing crossing, even if not meeting whatever is judged to be the applicable guidance in every respect, certainly cannot be characterised as harm.

60. In addition to the improvements to sightlines, the improvements to warning signage and the geometry of the crossing in the SCC Scheme combine to make the crossing safer for all users, including horses and riders (**Document ID/39; APP/2/4, Appendix B**). The NHG evidence has sought to quantify that improvement in safety (**Documents NHG/2/1, Paragraph 10.13; NHG/2/2, Appendix 2**). The existence of incidents at Rayes Lane is not in dispute but these occur all over Newmarket. Equally these incidents do not translate into accidents. All over Newmarket horses react adversely. Yet how wide or how far back one looks, accidents are numbered on the fingers of one hand. The NHG view on the existing situation was not that the situation was unsafe as a result of injuries but as a result of *risk* of injuries.
61. The risk of injuries can only stem from the existence of the incidents in the first place. If the number of incidents is reduced, the risk is reduced and the crossing, whether currently judged safe or unsafe, becomes safer<sup>8</sup>. The question in issue is what effect the development proposals would have. In this case the net effect of the proposal's development traffic with its highways mitigation would be to reduce the number of incidents (**Document APP/2/4, Appendix C**). The NHG accepted that there would be a net improvement in the number of incidents<sup>9</sup>.
62. The expert evidence of the NHG on horse behaviour included a great deal that was considered by the Secretary of State in the previous appeal. This confirmed that thoroughbreds are particularly skittish and that the stimuli that trigger spooking include traffic but also other otherwise normal stimuli. Also incidents, where horses react adversely to stimuli including traffic, occur all over Newmarket and at Rayes Lane. Horse incidents were studied from video footage and those behavioural incidents caused by traffic were identified. It is only the latter and smallest category that could conceivably be increased by additional traffic from the development. The equine expert evidence was that if incidents are increased, risk is increased and that is unacceptable. However the flip side of that is that if incidents are reduced, so too is the risk. This was already known and taken into account by the Secretary of State at the last appeal (**Document CD/O/2, Section 12.4**).
63. The NHG provided evidence of the percentage of incidents potentially saved by each of the four improvements schemes for the Rayes Lane horse crossing (**Documents NHG/2/1, Paragraph 10.13; NHG/2/2, Appendix 2**). The WSP Scheme considered acceptable for the 1,200 house proposal would result in a 10% saving. The SCC Scheme would result in a 20% saving. The undisputed

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<sup>8</sup> In cross-examination by Mr Boyle, Professor Waran agreed that the incident creates the risk and that a net reduction in incidents would result in a reduction in risk, albeit that the risk would still remain. Mr Gittus in cross-examination by Mr Boyle said that he would welcome a reduction in incidents at the Rayes Lane crossing.

<sup>9</sup> In cross-examination by Mr Boyle, Mr Cottee agreed that the improvements to the Rayes Lane crossing would result in a marginal improvement of 1-2 incident saving a day (depending on which scheme was implemented) but that a meaningful improvement would require signalisation or an underpass (**Document ID/22**).

modelling evidence shows an additional traffic flow in the morning peak of 5% (**Document APP/2/2, Table 4.7**). If incidents were to rise pro-rata with the increase in traffic the development would result in 0.48 more incidents a day. With the WSP Scheme in place there would be a net saving of 0.94 incidents per day and with the SCC Scheme a net saving of 2.23 incidents per day (**Document APP/2/4, Appendix C**).

64. This assessment was robust in a number of regards. It applied the effect of traffic growth to all of the incidents identified in the video footage even though the equine behaviour expert accepted that there were only a smaller category of traffic-related behavioural incidents which could be affected by additional traffic<sup>10</sup>. Further new vehicles are simply adding to the existing flows to which horses are already exposed, and so not all represent new opportunities for spooking (**Documents APP/2/4, Paragraph 2.9.8; ID/13**). There was no suggestion that the development traffic would or could have a more than pro-rata impact, which would be required to counter the conclusion that there would be a net improvement as a result of the application proposal.
65. A scheme which improves safety is a scheme which creates a benefit in planning terms. Arguments can be made as to the degree of improvement and the weight to be given to it, but that is a matter for the decision-maker. Whatever it is, an improvement must weigh on the 'benefit' side of the scale and it is considered, given the importance placed by the NHG on the risk of conflict between horses and vehicles, that this should be accorded significant positive weight. If it is accepted that the existing crossing is safe and as agreed by the NHG that the proposal makes it safer, the second bullet of Paragraph 32 of the Framework is clearly met. It would be irrational to refuse to grant planning permission for a development which will make the highway network a safer place for all users.

### **Effect on the horse racing industry as a whole**

66. NHG contend that the industry would be harmed by the mere fact of approval as a positive decision would indicate that it was not valued by decision-makers and protective policies had been abandoned. It is said that the industry would move away from Newmarket, abandoning its pre-eminent world-beating advantages, and go somewhere else. Much of this turned on seeking to imagine the thought-processes of '8-10 key owners'. It is noteworthy, therefore, that there was no indication, in writing or otherwise, from these individuals that 400 dwellings at Hatchfield Farm would cause them to either take horses away from, or not bring horses to Newmarket.
67. The Managing Director of Godolphin and Darley's companies in the UK<sup>11</sup> was careful to say that it was not his evidence that 400 houses at Hatchfield Farm would cause his boss, Sheikh Mohammed, to change his strategic investment decisions. Moreover, it was apparent that he had not understood the implications of the proposal properly as the development would not increase rat running on Snailwell Road, it would alleviate it; it would not put cyclists and pedestrians onto Snailwell Road to which it would have no access; the Council had not abandoned its protective policies, it had just re-affirmed them by

<sup>10</sup> This point was agreed by Professor Waran in cross-examination by Mr Boyle.

<sup>11</sup> Mr H Anderson who appeared as a witness for NHG.

adopting the JDMPD. He had failed to advise his employer that NHG's own evidence showed that the scheme would improve existing conditions at Rayes Lane. Another NHG witness<sup>12</sup> spoke of the concern by racehorse owners, not about this scheme, but about the precedent it might set. In addition he appeared to labour under the impression that any traffic exponentially increases the risk of accidents but the appeal proposals would actually reduce incidents (**Document NHG/12, Paragraphs 4.9, 4.13-4.16**).

68. In contrast the evidence of an owner of 30 horses in training and two stud farms with a 100 horses at stud<sup>13</sup>, was that this allegation by the NHG that owners will either leave or not invest further as a result of this scheme was *'just a scare put about'* and that *'it is not true'*.
69. It was not suggested by the NHG that racehorse owners were anything other than shrewd. They may be in a position to make their own decisions and act accordingly, but they would weigh all the world-beating benefits of Newmarket against any disadvantages and it is not credible to suggest that the development of 400 houses, which reduces incidents at the only crossing under consideration, would cause them to alter their view that Newmarket should be where they train and/or breed their horses. It is not difficult to convey to an owner that the scheme will actually improve the safety situation<sup>14</sup>. Further, the perception of owners will be influenced by trainers and others in the horse racing industry. There is no reason why they should choose to misunderstand the implications of a clearly justified approval by the Secretary of State, or to persuade owners to take their investment away from Newmarket following an approval.
70. Further, on the basis that the Secretary of State found that there would be no harm to the horse racing industry from 1,200 houses, the fact that he would come to the same conclusion for 400 can surely raise neither surprise nor alarm to the rational observer. On the basis that the NHG's own highways evidence is that the scheme would make road conditions safer, the industry as a whole and these important owners in particular, if they are properly informed, should positively welcome the grant of permission.

### Other matters

71. It was apparent from the NHG evidence what the concern about urbanisation really related to traffic. In terms of the actual built development of the proposal, no horses are sent down the Fordham Road north of Snailwell Road and there would be no impact on where horses train. Moreover, access to the training areas involve crossing through the centre of town. Seeing horses in the centre of town is one of the unique glories of Newmarket. Habituating young horses to the busyness found in Newmarket is a valuable part of preparing them for racing (**Document ID/16**).
72. The NHG highway witness did not want to support the suggestion that the development traffic would make any material difference to general traffic

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<sup>12</sup> Mr J Gosden, owner of Clarehaven Stables and long established racehorse trainer.

<sup>13</sup> Mr W Gredley.

<sup>14</sup> Ms Parsons agreed in cross-examination by Mr Boyle that owners will hear what is said to them and then make their own mind up based on what they see and hear.

levels in Newmarket so as to delay owners and trainers. The Secretary of State found that the traffic from 1,200 houses would not delay owners and trainers so as materially to harm the horse racing industry. There is no reason to depart from that conclusion for a 400 house scheme (**Document CD/O/2, Paragraphs 12.4.20-12.4.22**).

73. In conclusion, as was found by the Secretary of State for a scheme three times the size with a more modest highway improvement, development of 400 houses at Hatchfield Farm would not threaten the horse racing industry in Newmarket. Newmarket is thriving and growing as the world-centre of flat racing. The application proposal would improve the conditions the industry has to operate in. Policy DM48 is complied with and this objection is unfounded.

## THE EFFECT ON NATURE CONSERVATION AND HABITATS REGULATION ASSESSMENT

### Ecology on the site

74. Fine-leaved fumitory is an arable weed with no legal protection. It could be eradicated through conventional agricultural activity, or if the existing field went to permanent pasture. The proposed mitigation would be by way of translocation, which is well established and has not been challenged in principle (**Documents CD/COP/5, Section 4d; APP/4/2, Paragraphs 6.2.7-6.2.20**). Given the weeds' precarious current status this would mean that the prognosis for their survival would be likely to be improved. In reality NHG's only concern was that a future application might come forward on the translocation site. However, the impact on the fine leaved fumitory would be a material consideration in the determination of that future, and hypothetical, planning application. If the future application would have an adverse effect on the weeds, that would either result in permission being refused, or in a requirement for further mitigation. Either way, the arable weeds would continue to be protected.
75. In the previous appeal the Secretary of State did not consider that badgers were a constraint on development. This was in the context of a scheme which would have resulted in the majority of the foraging area being lost, together with a number of setts (**Documents CD/O/1, Paragraph 15; CD/O/2, Paragraphs 12.5.1-12.5.3**). The mitigation proposed under this scheme, which includes increased use of the Stanley House Stud land for foraging, mirrors that put forward last time. Whilst the badger population has increased in number since the previous Inquiry, what has not changed is the pattern of badger activity, upon which the mitigation scheme is premised.
76. The sole objection centred on whether the existing surveys demonstrated that Stanley House Stud was being used for foraging. However Suffolk Wildlife Trust was broadly satisfied with the impact on badgers, their main concern being the impact of further development on Stanley House Stud (**Document APP/4/3, Appendix 5**). That would be a consideration for any future planning application for the land. The survey point had been made at the previous appeal and rejected. The full badger study area, including Stanley House Stud, has been surveyed both in 2011 and 2014. There is a significant amount of information to demonstrate that this area is used for foraging, including the presence of push-throughs from the northern part of the study area towards Stanley House Stud and badger pathways. The stud land is optimal badger



foraging habitat because of its high earthworm population and there is no barrier to stop badgers going from Hatchfield Farm into the stud-land. The absence of latrines suggests that Stanley House Stud is not being used by another sett. Indeed, given the absence of latrines at the boundary of the stud land, it is likely that this sett's territory extends further to the south and south east, and that the amount of foraging land is even greater. As a result, the survey work is sufficient to conclude that the existing badger setts are using the land of Stanley House Stud for foraging (**Document 4/2, Paragraphs 4.6.16-4.6.31**).

77. Even if the surveys were not sufficient to demonstrate that Stanley House Stud is being used for badger foraging now, there is no reason why it could not be used in the future, for the same reasons set out above. The previous proposal's mitigation scheme, which sought to increase the attractiveness of the stud land for foraging, could also be delivered through this scheme at reserved matters stage. Therefore, either Stanley House Stud is already being used for foraging, in which case the amount of foraging loss from the development is under 25% or, with the mitigation strategy in place, the amount of land available for foraging would be greater than existing, so that the position for badgers would be improved. On any analysis the impact on badgers is not a sustainable reason for refusal.

#### **Recreational disturbance on Chippenham Fen SSSI and Breckland SPA**

78. Chippenham Fen is part of the Fenland SAC. It is designated for its flora and invertebrates and so would be unlikely to be affected by visitors as was concluded in the previous appeal (**Document CD/O/2, Paragraph 12.1.13**). The footpaths at Chippenham Fen are highly regulated and the prospect of anyone going off the paths is remote. This was not raised as a concern by Natural England and the risk of recreational disturbance on Chippenham Fen can be excluded (**Document APP/4/3, Appendix 3**).
79. The possibility of the development causing significant recreational disturbance on Breckland SPA can also be excluded. Natural England expressed no concern on this point and this is an opinion which should be given great weight. Indeed cogent reasons need to be given by the decision-maker to depart from it (**Document APP/4/3, Appendix 3**)<sup>15</sup>. Also the matter is not addressed in the previous Inspector's report either because it was not raised by the objectors or because the Inspector did not find that it had any merit. Either way, nothing has changed since 2011 to elevate recreational impact on Breckland as a cause for concern on a scheme one third the size.
80. The Report by Fearnley and others entitled *Visitor Survey Results from Breckland SPA* (Fearnley Report) concludes that new housing within 10km of

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<sup>15</sup> In ***R (Hart DC) v Secretary of State for Communities and Local Government*** [2008] EWHC 1204 (Admin) (2008) 2 P. & C.R. 16, Sullivan J held at para. 49: "*Mr Hockman rightly accepted that the weight to be given to the views of NE was a matter of planning judgment for the first defendant. Since Natural England is the "appropriate nature conservation body", as defined by Reg.4 of the Regulations, the first defendant was entitled to give "great weight" to its views if she chose to do so. Indeed it would have required some cogent explanation in the decision letter if the first defendant had chosen not to give considerable weight to the views of Natural England.*"

the SPA should be considered as being likely to have a significant effect, in the absence of any countervailing measures. This however is in the context that people use Thetford Forest as their local greenspace. The closer new housing is to the Forest, the greater the additional recreational pressure will be. The only part of the SPA within 10 km is the Breckland Farmland SSSI. This is a large site of predominantly arable land use of vegetable and root crops and outdoor pig rearing, which is designated for its stone curlew population. It would not be attractive for use by new residents as their local greenspace or for dog walking. It is about 8 km away and there are much closer alternatives.

81. Even if people did visit this part of the SPA they are unlikely to wander off the footpaths or let their dog off the leash into the farmland and thus disturb the ground. Fearnley found that visitors to the SPA are more likely to go to honeypot locations, which themselves are specifically managed to accommodate visitor pressure. A relatively small cluster of visitors interviewed originated from the Newmarket area (**Documents APP/4/3, Appendix 10 and Appendix 15, Paragraphs 6.7, 6.10; CD/EC/12, Paragraphs 4.2.5, 5.3.15-5.3.18; ID/53**).
82. The prospect of increased recreational pressure beyond the part of Breckland SPA that falls within 10km of the appeal site can also be excluded. The Fearnley report concludes that the visitor rate declines with distance from the SPA until a distance of 10km and beyond this there is little change. Newmarket people are no more likely to visit from there than anywhere else (**Document APP/4/3, Appendix 15, Figs 8 and 9 and Paragraphs 4.51-4.52**).
83. So far as cumulative impact is concerned, where there is no prospect of harm, as here, there is nothing to 'combine' with other plans and projects. In any event, the Applicant has assessed the cumulative impact of the development with reasonably foreseeable development within 10km of the SPA, and concluded that the risk of significant effects could be excluded (**Document APP/4/2, Paragraph 5.3.20**). It is unnecessary to widen the area of search in view of the conclusion in the Fearnley Report about visitor levels beyond the 10 km zone.
84. It is impossible to assess the cumulative impact of the proposal with development to come forward in the SIR because no-one knows what that is<sup>16</sup>. The plan is not even at Issues and Options stage, and therefore the quantum, phasing, and location of housing all remain unknown. Whilst the existence of the plan itself might be reasonably foreseeable, what it will deliver and where is not. Therefore it is not possible at this stage to determine how much development will come forward close enough to Breckland SPA to have a potential recreational impact. It is undoubtedly for this reason that the JDMD, which has been found sound and has not been the subject of legal challenge, did not seek to assess itself in combination with the SIR (**Document CD/LP/13, Pages 18-22**).

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<sup>16</sup> Mr Whipps put to Ms Parsons in cross examination that the in-combination effect of all dwellings could not be taken into account when it is not known where it is going to be sited. She agreed and said that the in-combination effects of the developments that are known about as set out in the evidence of Mr Forbes need to be understood.

85. In any event the SIR will itself be subject to Habitats Regulations Assessment and will consider the cumulative impact together with existing development, including the proposal, to form the basis of the allocation and distribution of housing. If this were found to have an adverse effect, then the Council would have to lower its housing provision. Individual applications in the future will also be subject to screening before any development had the potential to have "in combination" effects together with the appeal proposal. Planning permission would not be granted for these currently unknown applications if they would have an adverse effect on the integrity of Breckland SPA. In any event there are safeguarding mechanisms in the JDMPD and such proposals would be subject to Policies DM10 and DM12.
86. This approach to emerging plans has recently been endorsed by the Court of Appeal in *Smyth v Secretary of State for Communities and Local Government*, which considered how to assess in-combination effects of a development with an emerging Core Strategy with no site allocations (**Document ID/57/4, Paragraphs 98-102**). As a result, considered alone, in combination with reasonably foreseeable projects, and together with the impact of the future SIR, the possibility of the application development having adverse impacts on Breckland SPA can be excluded. Therefore, the development can be screened out under Regulation 61, and there is no need for an appropriate assessment.
87. Even if the Secretary of State reaches a different conclusion and considers that appropriate assessment is necessary, he has the necessary information before him to be able conclude that there would not be an adverse effect on the integrity of the SPA (**Documents APP/4/3, Appendices 3, 10 and 15; CD/EC/12**).

## Hydrology

88. There is common ground that the scheme itself has no adverse effect on groundwater (**Document CD/SCG/6**). The sole issue is the potential effect of the abstraction of water by Anglian Water in order to serve the proposed development, and the impact of that on designated SACs and SSSIs. There are two relevant sites: Chippenham Fen SSSI and Snailwell Meadows SSSI.

### *Chippenham Fen*

89. At the last Inquiry, the Secretary of State found that an appropriate assessment under the Habitats Regulations should be carried out to assess the impact of water abstraction on the ecology of Chippenham Fen before planning permission could be granted (**Document CD/O1/Paragraph 12**). However, there has been a significant change in circumstances since 2011.

### Water balance

90. In assessing the impact of the development on Chippenham Fen, the starting point is to consider whether the development would result in a net increase in groundwater abstraction. There are two parts to the water balance calculation. The first is the impact of the development on groundwater recharge and the second is the estimated net water consumption from the development.
91. Through the implementation of a sustainable drainage system (SuDS) the 60% of the site that would be covered with impermeable surfaces post-development would contribute an additional 34.4 MI/annum of recharge to the underlying

chalk groundwater system. This is because rainwater that is currently being lost to evapotranspiration would instead return to the chalk aquifer through soakaways. The remaining 40% of the site would continue to recharge at the existing rate of 9MI/annum (**Document APP/3/2, Paragraphs 5.21-5.22**). Even if the highway land within the site boundary is excluded from the baseline position the development would still have a net positive re-charge to the aquifer. The NHG pointed out that the Flood Risk Assessment indicates that it is 60% of the residential area that would be impermeable not 60% of the whole site. However it is likely that the Flood Risk Assessment excludes permeable surfaces, which would have the same effect as soakaways.

92. The application site is up-gradient of Chippenham Fen and downstream of the Newmarket abstractions (**Document ID/34**). An increase in groundwater recharge as a result of development would therefore increase the resource available from the chalk aquifer with a potential benefit to the groundwater resources available at Chippenham Fen. As a result, the development would be supplied by water from the chalk and would recharge the same amount of water into the chalk up-stream of Chippenham Fen. There would thus be no net increase in groundwater abstraction from the development and the potential for likely significant effects at Chippenham Fen can be eliminated.
93. The estimated water demand for the proposed development is approximately 44 MI/annum, which is not in dispute. From the Environment Agency's own figures, 40% of abstracted water is returned to the catchment through wastewater treatment (18 MI/annum) (**Document APP/3/2, Paragraphs 5.42-5.43**). The water returns to the Newmarket waste water treatment works, which is 2 km south of Chippenham Fen. This in turn discharges back to the River Snail, upstream of Chippenham Fen. As a result, the development would result in a net water consumption of 26MI/annum, upstream of Chippenham Fen and within the same groundwater catchment as where the abstraction is coming from. This additional water resource can be used to supply the Chippenham River which directly serves Chippenham Fen. There is a sluice gate control on the Chippenham River just before it joins the River Snail. This is designed to manage water levels in the Fen. If there is an additional contribution to the River Snail, this can be used to contribute to flows in the Chippenham River by management of the sluice gate (**Document ID/11**). Also by supporting flow in the River Snail, the base flow coming from the chalk into the river would be reduced.
94. If both sides of the water balance equation are applied, the total increase in groundwater recharge from the development of 43.4 MI/annum exceeds the estimated net water consumption of 26 MI/annum by over 17 MI/annum. Therefore, on a conservative estimate the development would not lead to any loss of water resource, and it may in fact result in a net contribution of water of approximately 8MI/annum. The development would thus be a net contributor to water resources within the catchment. As a result, there is no basis for finding that the development could have an adverse impact on groundwater resources or result in additional harm, either alone or in combination.
95. It is only if the above is rejected, and a finding is made that the development could increase demand on groundwater resources, that it is necessary to consider the impact of this increased water demand from the development.

### Abstractions with the potential to impact on Chippenham Fen

96. The starting point is to understand how abstraction for public water supply could impact upon Chippenham Fen. The chalk aquifer serving Chippenham Fen forms part of a continuous groundwater system which covers about 3,000 km<sup>2</sup> (**Document CD/H/3, Page 9**). However the only public water supply abstractions that have the potential to impact on Chippenham Fen are those within a radius of 10 km. This is the approach taken by Atkins Limited in its report for the Environment Agency for the *Habitats Directive Review of Consents Stage 4 Options Appraisal* (the Atkins Report) (**Document CD/H/6, Page 91; ID/34**). There is no reason to depart from the approach taken by the Environment Agency. The radius of influence of an individual borehole is 3.2 km and the effect of all borehole abstractions pumping at the same time is to increase this to 5 km. The Atkins Report doubles this and assumes a search area of 10km in order to provide confidence that all of the abstractions that have the potential to impact on Chippenham Fen are modelled.
97. All public water supply boreholes within 10km of Chippenham Fen supply water to Anglian Water. Anglian Water has divided the area it supplies into a number of different resource zones (RZ) (**Document CD/H1/1, Page 6**). Each borehole within 10km of Chippenham Fen can be categorised according to the resource zone that it serves. The majority of the boreholes within 10km of Chippenham Fen serve the Newmarket RZ and supply water for existing and new development within this RZ, including the application development. It is common ground between the parties that the “reasonably foreseeable” development within the Newmarket RZ is 1,876 dwellings (**Document ID/35, Table 6.5**). Boreholes outside of the 10km zone, whatever RZ they serve have no potential to impact upon groundwater at Chippenham Fen.

### The Licensing Regime

98. The ability of water companies to extract water from public water supply boreholes within 10km of Chippenham Fen is highly regulated by the Environment Agency. It is responsible both for granting new abstraction licences to allow the removal of water and regulating the use of water under existing licences (**Document CD/H/3, Page 21**). The Environment Agency therefore controls how much water is abstracted through its licensing system. In making decisions regarding water abstraction licences, the Environment Agency is the competent authority under the Habitats Regulations. It must ensure that any authorisation likely to have a significant effect on a European site is subject to appropriate assessment, and that any final decision will not adversely affect the integrity of the site.
99. As a matter of law, the Environment Agency is not permitted to make an authorisation under the Habitats Regulations which would result in an adverse effect on the integrity of Chippenham Fen. When abstraction from an existing licence is causing damage or has the potential to do so the Environment Agency also has the power to amend or revoke existing licences, or to restrict new abstractions. By this process, the Environment Agency can require a reduction in the deployable output permitted under an existing licence, known as a “sustainability reduction” (**Documents CD/H1, Page 54; CD/H/3, Pages 5, 37**). This is a proven mechanism to ensure that abstraction does not cause harm to designated sites and is also a mechanism that the Environment Agency has

deployed in the area within which Anglian Water operates (*Document CD/H/1, Page 29, for example*).

### The restoring sustainable abstraction process

100. In 2013, the Environment Agency completed an investigation into whether existing abstraction licences in the Cam and Ely Ouse Area had the potential to cause an impact on designated features of protected sites, including Chippenham Fen SAC (*Document CD/H/3, Page 5*). The purpose of the assessment was to consider whether impacts from the existing abstraction regime meant that there needed to be a reduction in licensed capacity in order to protect the environmental integrity of European Sites. The Environment Agency had the power to reduce the deployable output permitted under Anglian Water's existing licences, if it concluded that this was necessary to avoid adverse effects on designated sites. The Environment Agency concluded that no changes to existing licences were necessary (*Document CD/H/3, Section 4.5 and Table 8, Row 11*).
101. Anglian Water has confirmed that water could be supplied to the proposed development from within its existing abstraction licences. It also has the capacity within its existing licences to supply water to 6,250 additional properties within the Newmarket RZ. This amount of development could be supplied immediately, without the need for further authorisation or consent from Anglian Water. As a result, by concluding that no licence changes were necessary in the Licensing Strategy, the Environment Agency concluded that the water required to supply far more development than the 400 dwellings permitted by Hatchfield Farm and the 1,876 committed and "*reasonably foreseeable*" developments in the Newmarket RZ would not have an adverse impact on the integrity of Chippenham Fen (*Documents CD/H/1, Page 287, Table 24.2; CD/H2, Section 3; CD/H/16; ID/35, Table 6.5*).
102. There is no evidence to suggest that the Environment Agency's supply-demand balance assessment was flawed in any way. This provides the best evidence of the risk that the proposal would have a likely significant effect on Chippenham Fen. This is because the Environment Agency's decision would have taken into account all of the following factors:
  - 102.1 The Environment Agency's assessment considered all public water supply abstractions likely to have an impact on Chippenham Fen, regardless of which RZ they were in. In particular, it will have considered boreholes serving the Ely and Cheveley RZ.
  - 102.2 Chippenham Fen is a highly managed eco-system, in which water levels are maintained through an Environment Agency mitigation scheme known as the Lodes Granta Groundwater Support Scheme (LG Scheme). There are six abstraction locations, each with their own discharge points near Chippenham Fen. The LG Scheme operates by discharging water to three ditch locations on the south-east margin of the Fen, from where water flows into the adjacent fields. The need to use it has historically been very limited and since it came online in 1991, it has only been called upon on 3 occasions and has only operated at 17% of its licensed capacity. The Environment Agency is fully aware of how the LG Scheme operates and any issues with its effectiveness and will have taken this into account when deciding not

to reduce licensed capacity.

- 102.3 Actual abstraction rate for all public water supply boreholes within 10km of Chippenham Fen SSSI has been on average about 65% of the amount permitted (**Document CD/H/6, Page 91**)
- 102.4 Existing and historic water level monitoring data shows that the existing level of abstraction, in combination with the operation of the LG Scheme, is not resulting in a reduction in groundwater levels in the chalk beneath Chippenham Fen. Water level monitoring data from the Environment Agency shows little to no variation in groundwater levels over the monitoring period 2005-2012. The only historical evidence of groundwater reduction has occurred from the superficial deposits towards the centre of the site. These are away from the LG Scheme ditch system. The reduction is unrelated to chalk groundwater levels or licensed abstraction (**Document APP/3/5, Paragraphs 2.14-2.20, Appendices R2, R3**). The Atkins Report records that the improving condition of the most sensitive feature, the black bog rush, over recent years suggests that recent historical abstraction has been acceptable (**Document CD/H/6, Page 13**). The Environment Agency has expressly taken its monitoring data into account in its sustainable abstraction programme (**Document CD/H/3, Page 10**).
- 102.5 The *Information Sheet on Ramsar Wetlands* for Chippenham Fen, produced by the Joint Nature Conservation Committee, makes no reference to groundwater or abstraction as adversely affecting the site's ecological character (**Document CD/EC/1, Section 26**). Similarly, the Atkins Report concludes that the reason for Chippenham Fen's "unfavourable" condition does not relate to water quantity or level (**Document CD/H/6, Paragraph 3.5.4**). Whilst Natural England's *Chippenham Fen National Nature Reserve Management Plan* does make reference to abstraction from the chalk as a potential source of water level decline at Chippenham Fen, this was produced in 2009. The most recent Natural England condition status report for Chippenham Fen raises no concerns in relation to water abstraction (**Documents CD/H/7; ID/6**).
- 102.6 The Atkins Report assesses the impact on the chalk groundwater regime at Chippenham Fen if all of the public water supply boreholes within a 10 km radius all operated together at the same time, at full licensed abstraction. It assumes 100% consumption, rather than the Environment Agency's normal assumption that 40% of the water will be returned to the catchment (**Documents CD/H/6, Pages 87-88, Scenarios 2-4; APP/3/5, Paragraph 2.23**). The Atkins Report concluded that abstraction at this level would not have an adverse effect on the integrity of Chippenham Fen, subject to effective enhancement of the LG Scheme (**Document CD/H/6, Paragraphs 10.2.3, 10.5.2, Table 9.6 top row**). The Environment Agency will have taken the Atkins Report into account in its decision not to reduce licensed capacity. Atkins only identified a potential impact at full licensed capacity and concluded that this impact would be mitigated through an improvement to the LG Scheme.

103. There is no evidence to suggest that the decision of the Environment Agency in 2013 not to reduce licensed capacity based on the above factors was wrong. There is no evidence that the Environment Agency, as competent authority under the Habitats Regulations, acted unlawfully in making this decision. Therefore, the Secretary of State can rely on the decision made by the Environment Agency in 2013 to exclude the risk that this development, in combination with reasonably foreseeable projects, could have an adverse impact on Chippenham Fen.

#### The modelling in the Atkins Report

104. The Atkins Report does not seek to model the impact of this development together with reasonably foreseeable development, which is what Regulation 61 of the Habitats Regulations requires. The Atkins model assumes that all 12 boreholes within 10km of Chippenham Fen is taking the maximum amount of water permissible under the licence. It was only at this level of abstraction that the Atkins Report found that the level of abstraction is potentially greater than the acceptable level (*Document CD/H/6, Page 14*).
105. However, the application development, both alone and in combination with reasonably foreseeable developments, would not result in full licensed abstraction from all the boreholes within 10km of Chippenham Fen or anything close to it. 7 of the boreholes serve the Newmarket RZ and Anglian Water can extract water to supply 6,340 additional dwellings within this zone under its existing licences. There is a headroom of supply within existing licences serving the Newmarket RZ, sufficient to supply almost 4,000 additional houses, before the conditions modelled by Atkins are reached. The same conclusion is reached even if development in the Ely and Cheveley RZs is taken into account.
106. Not only will the effects on Chippenham Fen modelled by Atkins not take place until existing licences reach full capacity but even when full capacity is reached, sometime in the future, there is the LG Scheme to provide mitigation. The Atkins Report concluded that this would have sufficient water available to it, even at full licence capacity, to mitigate the effects on Chippenham Fen. The Atkins Report was available to the Environment Agency and Natural England during consultation on the current application. Both organisations do not object to the proposed development. There is no reason for the Secretary of State to depart from this conclusion.
107. That the planned development within the groundwater catchment of the Newmarket RZ substantially exceeds Anglian Water 2015 forecasts to date is irrelevant. The speed with which development is coming forward in the RZs does not matter because Anglian Water has the potential to supply water up to its licensed capacity tomorrow, should that be necessary<sup>17</sup>. The claim that Newmarket RZ will go into deficit before 2040 as a result of water transfer schemes is incorrect. Newmarket RZ is not intended to be the recipient of any additional resource. In any event if the Newmarket RZ, or any other RZ reaches full licensed capacity, Anglian Water will simply import supplies from outside the RZ (*Documents CD/H/1, Page 12; CD/H/16; CD/H/17*).

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<sup>17</sup> Mr Forbes agreed this point in cross-examination by Mr Boyle.



108. It would not be possible to assess the impact of the application proposal in combination with the housing that may come forward under the unpublished SIR for the reasons given in relation to recreational impacts in Paragraphs 83-85 above. In any event it would be unlawful as a matter of European law for the SIR to allocate housing that could adversely impact on Chippenham Fen through increased abstraction. It would also be unlawful for the Environment Agency, as competent authority, to grant new licences to supply that development if that would adversely impact on Chippenham Fen. There is thus no prospect that the SIR in combination with the application development would have the potential to adversely affect the fen. The risk can be excluded and an appropriate assessment is not required.
109. Even if the above is rejected and the Secretary of State concludes that the risk of likely significant effects on Chippenham Fen cannot be excluded, he has sufficient information to carry out an appropriate assessment, in consultation with Natural England and the Environment Agency. There is the benefit of extensive monitoring data, the current Natural England report on the condition of Chippenham Fen, the Atkins Report and the outcome of the Environment Agency's Licensing Strategy. It is hard to conceive of what additional information the Secretary of State would require to make a decision as to whether the development would have an adverse effect on Chippenham Fen. The NHG has not suggested that there is inadequate information or provided any evidence that there would be an adverse effect as a result of the scheme. Instead, it wholly focuses on the inability to exclude the possibility, which a matter that goes only to screening and not to the outcome of the appropriate assessment itself.

#### *Snailwell Meadows SSSI*

110. Snailwell Meadows is located less than 1 km from Chippenham Fen SSSI, and is supported by groundwater springs from the same chalk aquifer as Chippenham Fen SSSI. If the Secretary of State concludes that likely significant effects on Chippenham Fen SSSI can be excluded, there is no basis to conclude that the development is likely to have an adverse effect on Snailwell Meadows SSSI for the purposes of Paragraph 118 of the Framework.
111. The evidence from monitoring shows that there has been no historical reduction in chalk water levels. In any event, the LG Scheme is able to support water levels at Snailwell Meadows, should this be necessary, as the discharge from Borehole 5 discharges upstream of the meadows (**Document ID/27**). Further, because the proposal would result in a net contribution to the catchment area, there would be additional water going into the aquifer upstream of Snailwell Meadows, which would mitigate any ground level impacts that could arise from groundwater abstraction. Consequently the proposal would actually provide a net benefit to Snailwell Meadows SSSI.
112. Snailwell Meadows was not raised in relation to hydrological vulnerability or dependency in scoping discussions with Natural England during the preparation of the 2013 Environmental Report. Neither did it raise any concern about impact on Snailwell Meadows in its letter dated 21<sup>st</sup> November 2013. There is no basis for the Secretary of State to reach a different conclusion (**Documents APP/3/5, Paragraphs 2.8-2.11; APP/4/3, Appendix 3**).

## SUSTAINABLE DEVELOPMENT TAKING ACCOUNT OF THE 3 DIMENSIONS IN THE FRAMEWORK

113. In order to judge whether development is sustainable the Framework requires the benefits to be weighed against harms in the light of the Framework as a whole. The three dimensions in Paragraph 7 provide a useful framework.

### Benefits of the proposed development

114. *Construction benefits.* The scheme would inject about £45.6 million of private sector investment into Newmarket. This would create 51 jobs through direct employment, 77 jobs from indirect or induced employment and would generate £8.3m of direct and indirect GVA per annum during the construction phase (**Document APP/1/2, Paragraph 6.25**).
115. *Expenditure benefits.* The scheme would deliver a significant boost to the local economy by generating a first occupation expenditure of £2million and £3.5 million of new additional annual resident spending on shops and services. In total, the increased resident spending would support a further 30 FTE jobs (**Document APP/1/2, Paragraph 6.25**).
116. *Council revenue benefits.* The scheme would deliver £528,235 of Council Tax receipts per year once the scheme is built out and occupied, and £3.3 million of New Home Bonus payments profiled over the first six year period (**Document APP/1/2, Paragraph 6.25**).
117. *Employment benefits.* The scheme would provide an increase in the workforce to counteract demographic trends, which show a reduction in the working age population in Newmarket, and reduce the prospect of job losses in Newmarket (**Document APP/1/2, Pages 24, 42**).
118. *Infrastructure and scheme benefits.* The scheme and its associated legal agreement would provide a number of benefits including:
- 118.1 The opportunity for Suffolk County Council to take up an adjoining site for a new primary school.
  - 118.2 Ecological enhancements.
  - 118.3 Additional areas of open space.
  - 118.4 Off-site footpath and cycleway improvements.
  - 118.5 Off-site horse crossing improvements.
119. *Social/housing benefits.* The proposal would deliver 400 new homes in a sustainable location, providing much needed housing in a district that is currently failing to meet its full objectively assessed needs for both market and affordable housing. In addition, 30% of the homes would be affordable and available to reduce the waiting list of 316 households wishing to live in Newmarket. The development would not only provide market, intermediate and affordable rent housing but it would also offer a variety of house types and dwelling sizes.
120. *Environmental benefits.* As part of the scheme, opportunities have been taken to enhance the development for biodiversity in line with the Framework through habitat creation and enhancement measures (**Document APP/4/2, Paragraphs 6.1.22-6.1.26**).

121. *Benefits to the horse racing industry.* The scheme would lead to improved safety conditions at the Rayes Lane horse crossing<sup>18</sup>. Given the importance of horse safety and the importance of the horse racing industry to Newmarket this is a benefit to which the Secretary of State should attach great weight.
122. In the context of Paragraph 7 of the Framework and the inter-relationship between the three dimensions, it is noteworthy that the evidence as to the adverse consequences of not permitting housing in Newmarket was in substance unchallenged.
123. There is a genuine contemplation by NHG of no material additional housing in Newmarket, and that this could be a serious option for the SIR. However the adverse consequences would be a drop in labour force or additional unsustainable in-commuting traffic and this was largely unchallenged. This would be in conflict with the desire of NHG to keep additional traffic away from Newmarket (**Document APP/1/2, Tables 5.1, 5.5, Figure 5.1, Paragraph 5.49**). As the Framework indicates, the economic, social and environmental dimensions of sustainability are all interlinked. The opposition to housing that Newmarket needs cuts across and causes detriment to all three.

### **Adverse effects of the proposed development**

124. The evidence relating to impact on European sites can never be weighed in the planning balance against the application proposal. If there is an adverse impact on the integrity of European sites, then permission will be refused as a matter of law.
125. *The impact on arable weeds.* The proposal would involve translocating fine-leaved fumitory. This would result in some short-term disturbance. However the long-term prognosis for the arable weeds would be likely to be improved, as they would be translocated to a location where they are less likely to be eradicated through conventional farming practices.
126. *The impact on badgers.* There could be short-term disturbance but the mitigation measures may mean that in the long-term the amount of foraging land available would be increased.
127. *Loss of countryside.* Development would be outside the settlement boundary (**Document FHDC/2, Appendix 2**). However this is out of date because it was based on housing requirements established in 1995. The Strategic Housing Land Availability Assessment, upon which the Council relies for its 5 year housing land supply, includes greenfield sites beyond the 1995 settlement boundaries. There can be no dispute that the development would be in a sustainable location and also the site is not subject to any protective designation.

### **PREMATURITY**

128. The issue is raised in relation to the SIR. However this is a document where the Issues and Options report has not yet been published and which is not programmed to be consulted upon until later this summer. It may indeed, be

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<sup>18</sup> Ms Parsons recognised that the net reduction in incidents at the crossing would result in a benefit but she considered it would be one of marginal importance.

delayed still further to take account of the announcements regarding Mildenhall promised for September<sup>19</sup>. When assessing weight to be given to emerging policy, Paragraph 216 of the Framework sets out three factors and none of them justifies any weight to be given to a document that does not exist.

129. The Planning Practice Guidance makes clear that arguments that an application is premature are unlikely to justify a refusal other than where it is *clear* that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Such circumstances are likely, though not exclusively, to be limited to situations where the development is so substantial as to undermine the plan-making process by pre-determining decisions which are central to the emerging plan *and* that the emerging plan is at an 'advanced stage'. This would be unlikely to apply before the plan has been submitted for examination. In making a case for refusal on the grounds of prematurity, the objector must indicate clearly how the grant of permission would prejudice the outcome of the plan-making process.
130. The current circumstances surmount none of these hurdles. It cannot seriously be suggested that 400 dwelling would be central to the SIR, which has yet to even establish the objectively assessed housing need that it is working to. Nor can a plan that does not yet exist be described as at an advanced stage.
131. There was a suggestion from the Mayor of Newmarket that the whole matter should be delayed until the Neighbourhood Plan is in place. However this not only has not been written, its potential boundaries are yet to be established. The *Newmarket Enquiry by Design Workshop Report* by The Prince's Foundation for Building Communities endorsed Hatchfield Farm as the only available greenfield extension to Newmarket. The only published document that is intended to inform the emerging Neighbourhood Plan therefore expressly supports development on the application site (**Document CD/O/26, Pages 44-45**).
132. The only recent change in circumstance to justify the NHG mounting a prematurity objection in December 2014 is the announcement that the United States Air Force will be leaving Mildenhall some time in the future. This announcement will either leave the SIR process unaffected because it is too uncertain and too far into the future, or it will delay the plan still further. The other reasons given were the planning objections to the application itself. However if they do not justify refusal of planning permission, they cannot be resurrected to support a prematurity objection.
133. It was suggested by NHG, supposedly based on the case of *Wells v Secretary of State for Transport, Local Government and the Regions*, that to grant planning permission without an allocation would be to avoid 'sincere co-operation' with European law by avoiding having to undertake the Strategic Environmental Assessment / Sustainability Appraisal process to which a development plan document is subject (**Document ID/55/6**). The consequences

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<sup>19</sup> In January 2015 the US Government announced that the airbase at Mildenhall is to be closed. The timescale is not precisely known but is likely to be around 2019/ 2020. More details are expected in September 2015. Further information is at **Document ID/36**.

of this argument are that the Council could grant no planning permissions for houses until the SIR is in place. There is no support for such a wild submission in *Wells*, which simply says that where there has been a breach of European law, there needs to be a remedy. That principle was complied with by the Court Order which quashed the offending parts of the CS. It does not extend to scrapping Paragraph 14 of the Framework, which is what this argument amounts to.

134. The question is not what would be lost by delaying development for 2 years until the SIR is in place but rather what justification there would be for refusing a sustainable development now. There would be none.

### **THE CASE FOR FOREST HEATH DISTRICT COUNCIL**

*The Council's case is fully set out in its evidence, including its opening and closing submissions (Document ID 56). The main points are:*

135. The Council's position is to some extent that of a third party supporter of the proposal although its views should carry significant weight. On many of the issues expert evidence was not called and reliance was placed on the consultation responses. The determination of this application is important to the Council and it remains firmly of the opinion that planning permission should be forthcoming.

### **APPROPRIATE ASSESSMENT**

136. There can be no doubt that Regulation 61 is engaged and the Secretary of State must determine whether the proposal is likely to have a significant effect on either Chippenham Fen and/or Breckland SPA either alone or in combination with other plans or projects. This assessment must be robust but flexible and also needs to reflect the value judgment inherent in any environmental assessment (*Document CD/EC/16, Page 11*).
137. An assessment was undertaken when jurisdiction to determine the proposal lay with the Council (*Document FHDC/2, Page 102*). This assessment has been criticised by some but the situation has moved on and it is for the Secretary of State to make his own assessment based on the information and evidence now available. Moreover, a significant amount of new information is available including the 2015 Environmental Report, the Habitats Regulations Assessment and the expert witness evidence to the Inquiry from both the Applicant and NHG (*Documents CD/EC/12; CD/EC/13*). It is recognised that much of this new information or evidence was given by other parties. It is however appropriate to express some broad observations.
138. The NHG consider that the water demand for this development would be such that it would result in there being insufficient water available to maintain the integrity of Chippenham Fen as a nature conservation site of European significance. However the NHG has cherry picked bits and pieces of Reports but has failed to apply an objective mind to the totality of the evidence. Much time was spent at the Inquiry looking at the Atkins Report, the Licensing Strategy and Anglian Water's *Water Resource Management Plan* (*Documents CD/H/1; CD/H/3; CD/H/6*). These documents demonstrate unequivocally that even taking into account planned or envisaged new residential development, there will be sufficient water available to maintain the integrity of Chippenham

Fen. The issue is whether this water can be adequately distributed within the fen. This is a management issue for Natural England. The proposed development would not influence whether this issue is appropriately addressed.

139. The proposal of itself is not likely to have any significant effect on Chippenham Fen due to lack of water. Considerable weight should be given to the absence of an objection from Natural England, which is a statutory consultee, manages the site and is in the best position to advise (**Document CD/COP/15, Paragraphs 257-261**).
140. No evidence has been produced to show that Chippenham Fen is either attractive to visitors or that this issue is currently a matter for concern. There is no evidence of significant visitor numbers now, let alone anticipated in the future. The Council did consider the matter in its own assessment. There is here express reference to whether visitor pressure could have a likely significant effect and it was concluded. Significant weight should be given to the Council's local knowledge (**Document CD/COP/15, Paragraph 263**).
141. The issue of increased visitor pressure on Breckland SPA was raised by Suffolk Wildlife Trust and Suffolk County Council but not Natural England. Natural England as a statutory consultee would have hardly been likely to forget the existence of this site. It is worthy of note that when the issue of whether this proposal constituted EIA development was before the Secretary of the State he consulted Natural England who, again, raised no objection. Furthermore the Fearnley Report says that there is no current cause for concern in terms of visitor pressure (**Document APP/4/3, Appendix 15, Paragraph 6.11**). From the Council's local knowledge it can be concluded that there would be no adverse impact on Breckland SPA due to visitor pressure.
142. In terms of cumulative impacts the Council's assessment considered the Tesco development and the additional houses at Red Lodge (**Document FHDC/2, Page 102**). It has been suggested that it should have considered the effect of around 5,000 additional dwellings in the district. However no worthwhile in-combination assessment could be undertaken in this regard until it was known with greater certainty where those dwellings are to be located.
143. *Managing Natura 2000 Sites* points out that plans in the nature of policy statements should not be treated as 'plans' for the purposes of Article 6(3). This is particularly the case if any initiatives deriving from such policy statements must pass through the intermediary of a land-use plan (**Document CD/EC/17, Paragraph 4.3.2**). When undertaking the SIR an assessment will be undertaken under the Habitats Regulations and if the present application is approved, regard will be had to it. A not dissimilar approach was adopted in the preparation of the Habitats Regulations Assessment compiled for the JDMPD and that approach was found to be sound (**Documents CD/LP/11; CD/LP/13**).
144. Much was said of the need to adopt a precautionary approach in determining whether or not an appropriate assessment would be required. It is not disputed that this is the correct approach, but it must not be translated such that an appropriate assessment becomes necessary in all cases or, to put it another way, no decision can be made at this stage of the process. A decision is needed as to whether there is likely to be any significant effect on any

European site. On an objective consideration of the evidence it can be concluded that there would be no likely significant effect and so appropriate assessment would not be required.

## **POLICY BACKGROUND AND APPROACH**

145. The CS provides for 6,400 dwellings to be built between 2001 and 2021. This was based on housing figures provided to the Council through the Regional Strategy but was not the objectively assessed need. This has now been assessed through the Strategic Housing Market Assessment and the Memorandum of Cooperation between authorities (*Documents CD/P/7; CD/P/12*). It assesses the objectively-assessed need as 7,000 dwellings between 2011 and 2031. In other words, the annual requirement has increased from 320 to 350 dwellings. The CS is, therefore, in part at least, out of date. A further problem with the CS is that following the Court Order quashing part of it, there is no distribution policy. Whilst there is an identified need for housing there is no policy as to where that housing should be located. The CS is therefore silent on a key point.

## **KEY ISSUES**

### **Housing Land Supply**

146. The Council has 2 obligations with regards to this matter. The first is that objectively assessed need for both market and affordable housing must be addressed through the development plan. The second is that it must be able to identify a 5 year supply of deliverable sites together with a 5% buffer. The fulfilment of these objectives will ensure the housing needs of the District are met and that there is choice and competition in the marketplace and their importance cannot be understated.
147. It appears to be common ground that the objectively assessed need is currently not less than 350 dwellings per annum which results in an initial 5-year supply requirement of 1,750 dwellings. To this figure must be added a 5% buffer and a proportion of the backlog to date. The backlog is relatively small and it makes little difference whether it is met within the first 5 years or throughout the plan period. The 5-year requirement is, therefore 1,870 dwellings or thereabouts but the precise figure depends upon how the shortfall to date is dealt with. The latest information was published in February 2015. It is a snapshot of the position as at 31 March 2014 (*Document CD/LP/17*).
148. On the supply side it identifies major and minor sites with planning permission and then in Appendix B provides a list of sites which had already been identified within the Council's Strategic Housing Land Availability Assessment and which the Council considers are likely to be brought forward for development within the following 5 years. This approach accords with Paragraph 47 of the Framework and in particular Footnote 11. There are references to planning permissions having been granted post 31 March 2014 but these are notes to set out the latest position in respect of those sites. There has not been any double counting. The high level of activity demonstrates that developers are keen to build within the District, which has a buoyant housing market.

149. The position is that the Council either has or does not quite have a 5-year supply depending upon the precise figures used. What, however, is absolutely clear is that the Council's position with regard to the 5 year land supply is fragile. It has not over the past 3 years met its annual target of 350 dwellings. It has been in the order of 37 dwellings per annum short. There is, therefore, a need for the Council to feed its supply as otherwise it will very shortly find itself in the red again. The Council, therefore, contends that significant weight should be given to the need to provide additional land for housing.
150. The NHG argues that the degree of urgency for housing proposals on unallocated sites is altered and the weight of the benefit reduced. This argument is flawed and planning permissions are already being granted on unallocated sites to boost the supply of land available for housing. Moreover, the Council has a continuing duty to ensure a 5-year supply. The Council is not in a position to simply wait for 2 years until the emerging SIR process is completed and in any event this time estimate cannot be guaranteed. Furthermore it is clear that well before this time the Council will be back in the red. The application proposal, if granted planning permission now, would be able to deliver housing sooner and would give certainty. There is no evidence to demonstrate that sites allocated through the SIR will not have the same time constraints as applied to the application site. The application site is by far the most advanced and can meet the existing and emerging demand and make a very important contribution to meeting the necessary market and affordable housing needs of the District.

### **Traffic**

151. The Council relies upon Suffolk County Council as Highway Authority to provide it with advice and to comment upon development proposals. Whilst it has not offered expert evidence on highway issues, it is the role of the Council when considering planning applications to have regard to a vast array of technical evidence and accordingly its view does carry weight. It does not dispute that at peak times there can be some traffic congestion in Newmarket and further, that the position is exacerbated on race days or when there are issues on the A14. It does not, however, believe the current situation is severe or that the evidence has demonstrated that the additional traffic arising from this proposed development would give rise to a severe residual highway impact.
152. Both Surrey County Council and the Highways Agency considered the planning application in detail and concluded that the development was acceptable. Significant weight should be given to the views of these 2 statutory consultees. Following the Inquiry the Council sees no basis for changing its original conclusion that in highway terms, this development would be acceptable. Weight should be given to the highway benefits that would flow from this development. These are the improvements to the Rayes Lane horse-crossing, the A14 junction and the Yellow Brick Road.

### **The effect on the horse racing industry in Newmarket**

153. It is indisputable that Newmarket is a major centre for the horse racing industry. It is the home of a significant cluster of horse-related activities, including training, racing, sales and breeding. These various activities give Newmarket a distinctive, if not unique, character. Moreover this cluster



generates significant economic activity within Newmarket and the wider area. The industry is, therefore, very important to the district. This importance has long been recognised by the Council. Its LP and CS both contain policies aimed at protecting the training grounds, racecourses, training yards and breeding establishments. They also recognise that further development might be required to maintain the industry.

154. The policies of the LP have now been replaced by those in the 2015 JDMPD. The key policy is Policy DM48. This provides that any development that would threaten the long term viability of the horse racing industry as a whole will not be permitted unless the benefits significantly outweigh the harm to the industry. It is however necessary to conclude whether the development would "threaten" the horse racing industry. If so, it would have to be a threat to the "long term viability" of the horseracing industry "as a whole". Also any harm would have to be weighed against the benefits of the proposal.
155. It was frequently said that when considering this policy a precautionary approach should be adopted. Such an assertion is not supported by the JDMPD itself. Policy DM48 does not require any particular party to demonstrate either compliance with or breach of the policy. It therefore falls upon the decision-maker to make an objective assessment based upon the totality of the evidence. A number of people spoke who have clear ties to the horse racing industry in one way or another and there was also some expert evidence.
156. It is acknowledged that the proposal would introduce more traffic onto the highway network. In the context of the horse racing industry the main concern was in respect of traffic from the site passing through the Rayes Lane crossing in the morning peak. The Transport Assessment indicated 48 traffic movements and this figure was not disputed. However this should be considered in the appropriate context, namely whether the additional vehicles would cause or result in an unacceptable situation. The reality of the position, is that this proposal would ensure that an improvement scheme to the crossing would be implemented and so there would be a net gain. Although on a few occasions the need of the industry to travel unhindered through the town was mentioned, there is little or no evidence to show that this is a real difficulty. Whilst the number of horses in training has increased and so have traffic levels since the last Inquiry, the increase has not been such that a different conclusion should be reached.
157. Although the proposal would increase the number of houses in Newmarket and its population, it is questionable whether this would materially impact on the horse racing industry. The training grounds, racecourses and stud farms would all remain unaffected. The proposed additional dwellings cannot possibly threaten the industry as a whole. Indeed some of those in the industry were not so concerned with the current proposal, but saw it as the start of something much bigger, such as a reversion to the original scheme. Whilst this may be their thought, this factor cannot carry weight. This application has to be considered on its own individual merits.
158. It was said that the Council attached too little weight to the importance of the horse racing industry and ultimately this will result in certain bigger owners and investors leaving Newmarket causing irreparable damage to the industry.

The Council would not wish to see the horse racing industry harmed but equally, it does not accept that there should be an embargo on housing development in Newmarket. The Council firmly believes that Policy DM48 provides adequate protection.

159. The horse racing industry has, in recent years, been able to expand. This has occurred despite some increase in traffic in Newmarket. The essential infrastructure for the industry remains and there are possible future developments such as the new hill on Racecourse Side. A significant amount of the infrastructure, such as the training grounds and racecourses are permanent features. There is therefore very little incentive for the industry to move away from Newmarket.

### **Nature conservation**

160. The Council has relied upon the advice of Natural England with regard to any effects on Snailwell Meadows SSSI. This advice does not appear to have been criticised by NHG to any significant extent. It is clear and unequivocal that the application proposal would not result in any harm. An objective assessment of the evidence simply confirms that this is the position.
161. In relation to on-site ecology it is considered that appropriate mitigation strategies for badgers and the translocation of arable weeds can be achieved by the imposition of planning conditions. These are not, therefore, matters that justify the refusal of a planning permission.
162. The conclusion on ecology is that the proposal would be policy compliant and in particular there would be no breach of Policy ENV1 in the CS or Policies DM10, DM11 or DM12 in the JDMPD. Similarly, there would be no conflict with Paragraphs 118 and 119 of the Framework.

### **Prematurity**

163. Prematurity was not an issue initially raised by NHG in their original Statement of Case. It appears to have been raised for the first time following the announcement that the United States Air Force were intending to leave RAF Mildenhall. However there is no certainty that the site will become available for housing and it may be required by the UK government. No consideration has been given as to the suitability of the land for housing. In any event, it is abundantly clear that the land will not become available until post 2020. At best, therefore, it would not become available for housing until the medium or longer term. This factor can, therefore, be grappled with during the course of the SIR but it is not justification for refusing the application proposal now (*Document FHDC/1, Paragraphs 7.5.18-24*).
164. There are situations in planning where it is appropriate to refuse an application on grounds of prematurity but each case has to be treated on its merits and there is no basis for refusing this application on grounds of prematurity. If the Council were minded to refuse planning permission on this ground, under current guidance, they would need to indicate clearly how the grant of planning permission would prejudice the outcome of the plan-making process. This same requirement should, therefore, also apply to the NHG.
165. There is all the necessary evidence and information to enable this application to be properly considered now on its merits. In particular, the impact, if any,

on the highway network, the horse racing industry and any hydrological or ecological impacts can be considered now. There is no need to await further information. The impact of this development, if permitted, can be taken into account during the course of the preparation of the SIR or any other subsequent planning applications.

166. It is not accepted that the scale of this development is such that to grant planning permission now would prejudice or predetermine decisions about the future sale, location or phasing of new development. Although the Council did object to the Meddler Stud proposal on grounds of prematurity, this was a completely different case and there is no inconsistency (**Documents FHDC/1, Paragraphs 7.5.8-12; CD/O/3**).
167. The proposed conditions and matters contained within the Section 106 Agreement would ensure a high quality development which would make appropriate contributions to local infrastructure and indeed would secure certain benefits for the locality.

### **THE CASE FOR THE RULE 6 PARTY: NEWMARKET HORSEMEN'S GROUP**

*The NHG case is fully set out in its evidence, including its opening and closing submissions (Document ID 55). The main points are:*

#### **THE PREVIOUS APPEAL DECISION**

168. Whilst the 2012 decision by the Secretary of State remains a material consideration there are a number of changes in circumstance that warrant a fresh appraisal in terms of the present application:
- 168.1 Traffic and horse numbers have increased and March 2015 was a record month for registrations for use of the training grounds (**Document NHG/6/1, Paragraph 9.3**).
- 168.2 The Framework was only available in draft form and has now been published along with the Planning Practice Guidance.
- 168.3 The JDMPD has been adopted and has acknowledged the need to deal with the issues of conflict and danger at Paragraph 9.19 and Policies DMB 50 and at DMB 48. By considering whether proposals may threaten the long term viability of the horse racing industry as a whole it adopts essentially a precautionary approach.
- 168.4 In response to the lack of survey work by the Applicants directed to the safety of the crossings, 7 days' of survey work was undertaken for the Rayes Lane crossing, in particular, and evidence of frequent daily incidents obtained and analysed.
- 168.5 Expert equine behavioural evidence has been for the first time dealing with thoroughbred horses and the safety issues have also been assessed from the perspective of this area of expertise<sup>20</sup>.
- 168.6 New and up-to-date evidence has been adduced to explain the economic importance of the horse racing industry and its equine cluster

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<sup>20</sup> By Professor Natalie Waran. Her qualifications and experience are set out at **Document NHG/7, Section 1**.

at Newmarket in the light of the recent study undertaken by SQW in 2014<sup>21</sup>. This considered its weaknesses and its potential to make further contributions if appropriately supported (**Document CD/E/1**). Further research is being undertaken by Deloitte.

- 168.7 Evidence has been adduced to explain the importance of the views of owners investing in the HRI in Newmarket and the importance of their perception of the effects of future change, including evidence from the Hunter Valley in Australia, which suggests that the issue may not have been correctly or fully understood by the previous Inspector<sup>22</sup>.
- 168.8 Evidence has been adduced on hydrology, which was not available at the previous Inquiry in 2011.
- 168.9 The issue of Breckland SPA was not considered in the 2012 appeal decision.
- 168.10 The impact from water abstraction on Snailwell Meadows SSSI was not considered in the 2012 appeal decision.

## THE EFFECT ON THE HORSE RACING INDUSTRY IN NEWMARKET

### The significance of Newmarket

- 169. It is not disputed that Newmarket is unique in terms of its character, its place as the focus of the horse racing industry in both the UK and worldwide and its long standing connection with the industry, which has shaped its character. The economic importance of the HRI and those it indirectly supports in Newmarket and the locality is very considerable. Such is its success in bringing foreign investment into the UK that the horse racing industry is also of national significance (**Documents CD/E/1, Pages 1-2; NHG/1/2, Paragraphs 6-29; APP/1/2, Paragraphs 7.11-50**). There is no dispute that the horse racing industry is the single most important source of employment and economic benefit in the locality. In view of its benefits and importance it was agreed it should be given a high level of protection and that a risk-based approach was appropriate<sup>23</sup>.
- 170. No other town in the UK or Europe has such a role, such connections or such character. No other town has thoroughbred horses crossing through its centre on a daily basis of such value and in such numbers. The circumstances in Newmarket can be characterised as unique and the approach to the application of policy and guidance in such a case must take account of this. Neither the Council nor the Applicant has properly understood or given effect to the consequences of Newmarket's unique importance and character.

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<sup>21</sup> The economic evidence was given by Mr B Wicksteed. In answer to my question he explained that he was a founder of SQW and now worked as a consultant economist.

<sup>22</sup> Evidence was given by various witnesses from the horse racing industry as set out in the Appearances list. Mr A Wiles, the Global Corporate Director of Godolphin and Darley gave evidence about the Hunter Valley in New South Wales (**Document NHG/10**).

<sup>23</sup> In cross-examination by Mr Elvin, Mr Spry agreed that Policy DM48 offered a high level of protection to the horse racing industry and that account should be taken of risk to the industry and evidence of that risk.

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171. Also no other economic cluster is so dependent on so few major players who are not dependent on obtaining the agreement of others in making their decisions as to how and where they will invest. It is these players and the investment that they brought to the UK and Newmarket in the 1980s that reversed the decline that was apparent in the horse racing industry in Newmarket in the 1970s (**Document NHG/12, Paragraph 4.22**).
172. The application of the precautionary principle is wholly appropriate where there is such a high value economic generator, which is so sensitive to the views and investments of so few. It is inappropriate to wait for harm to occur before an assessment is made as by that time it may be irreversible or at least highly damaging (**Documents NHG/5/2, Paragraph 3.25-6; ID/17, Page 16**). The significance or weight to be attached to that risk must be examined but it is also right to weigh it against the significance of the consequences should the risk materialise.
173. It is plainly unacceptable that development should be allowed to continue unless and until there is a serious accident that takes or threatens the life of a rider or a horse. The fact that there have been no such accidents in recent years is not a reason for complacency given the regular numbers of incidents noted even on the relatively few days' surveys<sup>24</sup>. Each day sees not only people put at risk but, in economic terms, the very high value of horses crossing the public highways as well. The conflict between racehorses and traffic and the danger it presents is recognised by Paragraph 9.19 of the JDMPD.
174. Although the circumstances are different, the position in the Hunter Valley in Australia, which appears to be the nearest equivalent to Newmarket, is informative. It demonstrates the adverse effect on investment that the negative perception by investors can have even though the precautionary principle was recognised by the decision-maker and the proposal was refused. These were individuals who were sufficiently wealthy to be footloose as to where they wished to locate (**Documents NHG/10, Sections 2-5; NHG/10, Appendix 5, Pages 10-11, 12, 16-17**). Due to concerns of future development in the Hunter Valley, two major horse racing industry investors have recently decided not to proceed with investment there despite the fact that no new permissions have been granted (**Documents ID/14; ID/15**).
175. A loss of investment in training would be critical since thoroughbred horses have a limited career and constantly need to be replaced with new young horses. This affects not only the training yards and equine support services, but also the sales at Tattersalls and the studs. The synergy between the various elements of the equine cluster is critical. However, the loss of that continuing investment would undermine the yards and world-class trainers out of business in Newmarket. Some 60-70% of horses in Newmarket are owned by the top 8-10 owners and it is their perception of, and satisfaction with, the circumstances in Newmarket that is critical. Even the loss of one or two major owners would have a significant adverse effect on the economic benefit of the

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<sup>24</sup> Video surveys on behalf of NHG were carried out by Mr Cottee in September 2014 and January 2015 (**Documents NHG/2/1, Paragraph 2.7; NHG/2/2, Appendix 2**).

equine cluster both locally and nationally given the number of horses which would be removed/not replaced at Newmarket.

176. Any development that may potentially affect either the existing success of the horse racing industry in Newmarket or its potential for further growth should be assessed on a precautionary basis given what is at stake. It is wrong to treat its current success as evidence of its resilience against future pressures as the Applicant seeks to do. There has been no attempt by the Applicant to consider and assess the weaknesses in the horse racing industry in Newmarket or to make an assessment of any potential threats to its success and future growth.
177. The objective of Policy DM48 objective is to avoid harm happening, hence the use of the word "threaten". That supports an approach to the issues here in a precautionary manner. The Council agreed that proposals should avoid threats to the horse racing industry and to its growth and the Applicant agreed that its importance warranted a high level of protection<sup>25</sup>.
178. It is clear that there were key elements of the previous appeal decision that show a misunderstanding of the nature of the horse racing industry in Newmarket.
  - 178.1 The suggestion that owners with substantial investments, such as the Maktoum family, would be more reluctant to move is a misunderstanding of the circumstances (**Document CD/O/2, Paragraph 12.4.27**). As several horse racing industry witnesses made clear, the 8-10 main owners in Newmarket have sufficient wealth and are following their passion for horse racing. They are footloose in the sense that their investment would not prevent their either ceasing to invest with new horses in training or moving their training establishments elsewhere if they became dissatisfied with Newmarket or what was occurring in Newmarket. The stud establishments could be retained but this would not of itself require the retention of the training establishments<sup>26</sup>
  - 178.2 The notion that owners would be unlikely to logically choose to move their horses away before the development takes place also appears to run contrary to the circumstances (**Document CD/O/2, Paragraph 12.4.28**). Owners can and will choose to act according to their own perceptions and the reference to logic makes it appear that the exercise which will be undertaken by these international, very wealthy owners will be akin to some form of planning exercise. That is both unrealistic and is not supported by the evidence to the present Inquiry, for example the Hunter Valley experience.

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<sup>25</sup> Mrs Kelly in cross-examination by Mr Banner agreed that harm to the horse racing industry should be avoided in the first place and that future growth should not be threatened. Mr Spry agreed in cross-examination by Mr Elvin that it should be given a high level of protection in accordance with Policy DM48.

<sup>26</sup> These points were made in the oral evidence to the Inquiry by Mr Anderson, Managing Director of Godolphin and Darley in the UK, Mr Gosden, owner of Clarehaven Stables, Mr Jarvis, owner of Phantom House Stables and Mr Gittus, Managing Director of Jockey Club Estates.

179. The fact that there have not been relocations or failures in investment to date despite the growth in traffic and horses is by no means conclusive and does not reflect the concerns expressed by owners (*Document NHG/12, Paragraphs 4.12-4.16*). It is also notable that in recent years the key housing policies of the CS were quashed in 2011 and the Secretary of State refused permission for 1,200 houses on the Hatchfield Farm land in 2012. However, traffic has increased and numbers of horses have increased (*Documents NHG/2/4, Section 3; NHG/6/1, Figures 19, 20*). It is also clear that there are frequent incidents at the Rayes Lane crossing that occur on a daily basis.

### **Interactions between horses, riders and traffic**

180. This case does not turn on the technical capacity of the highway network in and around Newmarket. However Newmarket is heavily trafficked, especially in peak hours. This is a considerable cause for concern and provides part of the background to the risk of conflict and danger at the Rayes Lane crossing. This informal crossing is unsafe and there is a risk of conflict and danger to pedestrians, schoolchildren, other road users and the many thoroughbred horses crossing every day and their riders. This is recognised in Paragraph 9.19 of the JDMPD. The video survey evidence shows the regular occurrence of incidents at the crossing.
181. The conflict and danger occurs because the incidents occur at and in the vicinity of the crossing at the point of interaction with traffic and pedestrians. Additional traffic enhances the risk of this occurring, regardless of whether it enhances to the same extent the risk of it causing the incident. The risk is not only to the physical safety of road users. It is also to the high economic value of the thoroughbreds being ridden and to the perception of their owners of Newmarket and their continuing confidence in investing. This issue is critical not only to the continued success of the horse racing industry in Newmarket but also to its growth.
182. The Applicant accepted that works to the crossing were necessary in view of the development traffic, in that Regulation 122 of the Community Infrastructure Levy (CIL) Regulations would be satisfied. This can only be on the basis that the development has an adverse effect on safety. The addition of extra traffic, even with the proposed mitigation, would not render the crossing safe even if it would bring about a marginal improvement.
183. The residual cumulative impacts of development referred to in Paragraph 32 of the Framework would be severe even with the proposed mitigation works. It is questionable that the last bullet of Paragraph 32 refers only to capacity as the second bullet relates solely to site access. The construction of the Framework is ultimately a matter of law but a better construction would be to include all highway network issues, including safety, within the scope of bullet three. In any event there is no dispute that safety is the overriding consideration (*Document NHG/2/4, Paragraph 2.9*).
184. The unchallenged expert evidence was that the current informal crossing at Rayes Lane is unsatisfactory due to the mix between horses, traffic and pedestrians at peak times resulting in a greater risk of conflict. The incidents occurring each day at this crossing are already unacceptably high when considering the potential risks to horses, riders and other road users. With no convincing mitigation measures being proposed to effectively deal with the

existing problems with the road crossing the problems will worsen as traffic and horse numbers increase. The horse and rider will still be reliant upon an informal crossing with traffic stopping voluntarily. This would not satisfactorily address the safety risks (**Document NHG/7, Paragraphs 4.2, 4.3.1**).

185. No countervailing expert evidence was called by the Applicant nor was the highway evidence sufficient to either grapple with the issues of safety, including equine behaviour. It did not properly understand the equine related issues or even take them sufficiently seriously to undertake research into safety issues. No survey of the use of the crossings and their safe use has been undertaken. Safety has been considered primarily from the perspective of capacity and accident data and the video surveys that were undertaken were from points relatively distant from the crossings themselves. This lack of engagement with a recognised issue is both surprising and disturbing. It might be thought to typify the Applicant's approach which is simply to rely on the 2012 decision, the capacity of the road network, and to approach highways guidance and standards in a manner which is not justified in the case of equine issues still less one in this special town.
186. The reliance by the Applicant that the NHG highway witness had agreed that the mitigation would result in marginal safety improvements was predicated on the assumption that incidents relative to traffic flow could properly be assessed through a pro-rata exercise (**Document APP/2/4, Appendix C**). However such an approach is not accepted given the unpredictable nature of equine behaviour. What was clear was that even with mitigation the crossing would not be safe and that what was required was a step change in safety.
187. Rather than deriving a spurious distribution of incidents per vehicle and then applying it to the development traffic, the NHG has applied judgment to the total number of incidents over 7 days. This had regard to the nature of the incidents recorded and the form of the mitigation to show comparative reductions in incident numbers (**Document NHG/2/2, Appendix 2**). Since the pro rata approach cannot reasonably be relied upon given the difficult issue of equine behaviour, it cannot therefore be maintained that the improvements proposed by either the WSP Scheme or the SCC Scheme would eliminate the additional risk created by the development traffic. The proposed mitigation may eliminate some issues, but there is no demonstrable logical correlation between that and the risk of additional incidents and the nature of those incidents. Had the Applicant wished to establish defensible conclusions, using non-parametric statistics, it should have undertaken safety studies of its own. It has not done so and the exercise is unscientific, unsound and is based on an untenable assumption.
188. The Applicant attempted to reduce still further the disputed pro-rata exercise by dividing incidents identified by the NHG equine behaviour expert into traffic-related and not traffic-related (**Documents APP/NHG/7, Table 1; NHG/2/2, Appendix 2; ID/7; ID/7A**). However it is predicated on a judgment that only behavioural incidents should be considered and even then only those incidents that were caused by traffic. Apart from the fact that viewpoints were limited it is also the case that behaviour apparently unconnected with the traffic may be a learned response to an earlier traffic incident in the same location.



189. Further, the concern as to safety and an increase in risk as a result of traffic from the application site would not depend simply on the fact that traffic may itself cause incidents at the crossing. There may be incidents at the crossing which are not caused by traffic but nonetheless occur where there is traffic and other road users. The increase in traffic therefore increases the risk of incidents occurring at the crossing and there is no means by which it can be determined that such incidents will not occur with the traffic depending on the behaviour. The source of the traffic means nothing to the horses. It is the creation of risk, and enhancing of that risk, which is the issue, not simply the number of incidents.
190. The standards and guidance for the design of the horse crossing adopted by the Applicant had no regard to specialist equine expert advice. The assertion that the current conditions are safe and that conditions after mitigation would also be safe has failed to combine consideration in both highways and equine behavioural terms. The starting point when approaching the application of standards and guidance must take account of the following:
- 190.1 They are general in nature but Newmarket is unique, particularly in terms of the numbers of horses that pass through the centre of town on a daily basis. It is likely that the Rayes Lane crossing is the busiest horse crossing in the UK, if not in Europe<sup>27</sup>.
  - 190.2 Not only is Rayes Lane the busiest crossing, but safety issues must take account of the fact that Fordham Road is heavily trafficked and there are two schools in close proximity, and a number of access points, in addition to ordinary pedestrians and other road users.
  - 190.3 The behaviour of horses, and the consequences of their natural flight response, is magnified in the case of thoroughbreds due to their youth and their training and also to their energy rich grain based diet. They are expected to be a competitive athlete at two years of age. They are more reactive than other types of horse and their training to race means that they are more predisposed to uncontrollable flight responses (**Document NHG/7, Paragraphs 2.1, 2.3, 2.4**).
191. These factors strongly support the conclusion that appropriate standards and guidance should be applied to the Rayes Lane crossing that do not err on the side of relaxation. The Applicant has relied on MfS and MfS 2 as a starting point, especially for visibility splays, in preference to the specific guidance on equestrian issues in DMRB and the Traffic Advisory Leaflet on Equestrian Crossings (TAL 03/03). No consideration had been given to the British Horse Society specialist advice on *Specifications and Standards recommended for equestrian routes in England and Wales* (**Documents CD/T/7; CD/T/8; CD/T/9; CD/T/12; CD/T/17**).
192. Although it is common ground that neither MfS nor MfS 2 gives advice on equestrian infrastructure or issues, the Applicant still wished to retain the much shorter Y distance rather than utilise that specifically prescribed for equestrians in DMRB. However, in doing so the Applicant departed from the advice in TAL 03/03 and the British Horse Society guidance, both of which are

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<sup>27</sup> This was agreed by Mr Plumb in cross-examination by Mr Elvin.

directed specifically to equestrians and both of which recommend the application of DMRB (*Documents CD/T/12, Introduction; CD/T/17, Page 4*).

193. In this context, the exceptional circumstances of the Rayes Lane crossing are obviously relevant, especially given that the 85<sup>th</sup> percentile speed on Fordham Road is in excess of the speed limit of 30 mph (*Document NHG/2/2, Appendix 7*). Moreover, on the issue of intrinsic safety the Rayes Lane crossing is unsafe and presents a genuine risk to all road users, including to horses and riders (*Documents NHG/2/1, Section 4; NHG/7, Paragraph 5.28*).
194. TAL 03/03 recognises that DMRB is written for high-speed roads but recommends that it should be read to appreciate the special needs of equestrians and that much of its advice will be applicable to all roads. MfS indicates that DMRB is not an appropriate design standard for streets in lightly-trafficked residential and mixed-use areas but it was agreed that Fordham Rd is not lightly trafficked. Indeed, it is not only heavily trafficked but its 85<sup>th</sup> percentile speed is 35 mph northbound and 33.5 mph southbound (*Documents NHG/2/1, Paragraph 8.4; NHG/2/2, Appendix 7*).
195. MfS 2 indicates that most of its advice can be applied regardless of speed limit and that it should be the starting point for a scheme affecting a non-trunk road. However it goes on to say that DMRB or other standards and guidance should only be used where the guidance in MfS is insufficient or where particular evidence leads a designer to conclude it is not applicable. (*Document CD/T/8, Paragraphs 1.3.2-1.3.3*). In this case the local context and unique circumstances would justify such an approach.
196. DMRB TA 91/05<sup>28</sup> provides general advice with regard to the cautious approach required for equestrians and TA 90/05 provides specific advice with regard to visibility where equestrians are emerging from a minor road onto a major road, such is the case with Rayes Lane and Fordham Road (*Documents CD/T/9, Volume 5, Section 2, Paragraphs 2.13-2.17; CD/T/9, Volume 6, Section 3(1)*). MfS does not provide any guidance for equestrian crossings and the local context in this case is unique. In the circumstances the application of the DMRB requirements are justified.
197. The Applicant has accepted this up to a point by applying the "X" distance from Table 3.3 of TA 90/05. However the "Y" distance of 47 m was taken from Table 7.1 of MfS. This is despite the fact that both the X and Y distances have been set by TA 90/05 precisely to accommodate the specific circumstances of equestrians approaching a major from a minor road. In Table 3.4 of TA 90/05 a Y distance of 135 m for 31 mph and 168 m for 37 mph. The Applicant argued that it was possible to take shorter Y distances as a result of later work in MfS on sight stopping distances SSDs (*Document APP/2/4, Paragraphs 2.7.2-2.7.3*). However MfS does not make any adjustment whatsoever for the specific circumstances of horses nor has any of the other more recent guidance, such as that from the British Horse Society, been modified to reflect MfS 2 (*Document ID/46, Paragraph 4*).

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<sup>28</sup> DMRB includes a suite of documents, including Standards and Advice Notes such as TA 91/05 relating to Provision for Non-Motorised Users and TA 90/05 concerning the Geometric Design of Pedestrian, Cycle and Equestrian Routes (*Document CD/T/9*).

198. The Applicant also departed from normal requirements for measuring the X distance of 5 m and took it from the centre line of Fordham Rd instead of the kerb line as advised in TA 90/5 and MFS. The Y distance also represents the visibility for riders emerging from Rayes Lane and not only the visibility for drivers on Fordham Rd of the riders emerging onto it. This demonstrates why it is correct to apply the Y distances in TA 90/05, which are specially applied to equestrians (*Documents CD/T/9, Volume 6, Section 3(1), Figure 3.3; CD/T/7, Paragraph 7.7.3; NHG/2/2, Appendix 6, Pages 73, 75; ID/46, Paragraph 5*).
199. The Applicant produced a further plan showing proposed improvements to the crossing (*Document ID/39*). However this does not support the 27 m distance given in evidence between the ramp and the centre of the crossing as an appropriate stopping distance, but a distance of 26m taken from a different location and equally flawed by the assumption that the traffic will be travelling at 20 mph or less. It has also utilised Y distances of 52 m rather than 47 m, which were untested and incapable of being provided over public highway. The Y distances to the south simply could not be achieved as they would cross private land or be obstructed by buildings. They still remain a long way short of those required for equestrian crossings by any applicable standard or guidance (*Document ID/46, Paragraphs 6-8*).
200. The SCC Scheme seeks to justify a stopping distance of about 27 m, assuming an 85<sup>th</sup> percentile speed under MfS Table 7.1 of 20 mph. However this relies on arrangements, which include ramps to reduce the speed of drivers to 20 mph or below without any basis for that assumption. While the measures may slow down drivers below the current 85<sup>th</sup> percentile speeds in excess of 30 mph, this does not mean that the drivers will be travelling at 20 mph by the beginning of the ramp. It should be noted that there is already a 20 mph schools zone and zigzag line in this area, which has not prevented an 85<sup>th</sup> percentile speed in excess of 30 mph. In any event the 27 m is to the centre of the crossing not to the nearest edge and only about 25 m can be achieved to the edge of the crossing.
201. The whole approach is therefore dependent on an untested hypothesis that the traffic will be at or below 20 mph by the time it reaches the ramp. No 20 mph speed restriction is proposed by the Highway Authority. Given the current traffic levels and usage of Fordham Road. The approach advocated by the Applicant is therefore unacceptable given the problems experienced and the existing risks of conflict and danger in the specific context of this crossing.
202. The use of ramps has not considered the generation of noise that might affect the thoroughbred horses. In the scheme put forward by NHG ramps are only used in connection with a light controlled crossing. This though allows enough time from the call on the lights for the traffic to stop by the time the horses have reached the Fordham Road and time for horses to clear the crossing (*Document NHG/2/2, Appendix 8*).
203. The inclusion of a zebra crossing in the SCC Scheme creates the possibility of traffic queuing across the horse crossing when the zebra crossing is being used. There would be no requirement under the Highway Code to give way when an informal horse crossing is used.
204. Although a contribution is proposed to make up the balance of a scheme of works for upgrading the Rayes Lane crossing this would not fund either of the

two alternative options proposed by the NHG (**Document NHG/2/1, Section 10; NHG/2/2, Appendix 8; NHG/2/3, Appendix 10**). No funding is proposed to upgrade the horse walk in Fordham Road, which also presents risks (**Document NHG/2/1, Section 11**). Whilst the horse racing industry would be willing to contribute to help with improvements this does not mean that it should bear the whole additional cost, especially given that the safety issue is in part attributable to other activities within the town.

205. Although a Grampian condition is proposed it is unclear when these works will be done (**Document ID/45**). The Highway Authority does not covenant to undertake the works in the Section 106 Agreement and no evidence has been presented as to when such works would be undertaken once the form of them has been agreed. The Planning Practice Guidance indicates that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. The Highway Authority has not presented clear evidence that this test will be met and although an upgrade is within the Local Transport Plan, there is no commitment to a specific scheme or timescale. The Highway Authority has frequently proved difficult to get to engage on issues of concern to the horse racing industry.

### **Impact on the horse racing industry**

206. The two issues are the specific concerns about the safety of the crossing at Rayes Lane and the general concern about the impact of the development on the perception of the key investors in Newmarket in terms of traffic and urbanisation. The first has been dealt with above in technical terms although it also contributes to the general issue.
207. The horse racing industry is a critical part of the economy of the district and an important contributor to the national economy as already considered. The wealthy investors are in Newmarket because the conditions suit them and their own perception of what their interests require. There is undoubted concern from the horse racing industry about the levels and effects of traffic on Newmarket and its attractions and also of continuing development on the unique character of the town. The safety issue at the crossing is one specific aspect of these concerns. It is important to maintain the continued confidence of the major owners not only in terms of thoroughbreds currently kept at Newmarket but with regard to future investment. Without new horses continuing to be brought to Newmarket for training, the industry would be seriously harmed.
208. The Applicant suggests that if permission is granted the owners' trainers and managers can inform them that it was not considered that there were issues of sufficient concern to refuse permission. However this ignores their concerns arising from what they see and what they see as likely to follow in the future. Their investment decisions are not based on some form of quasi-planning process. The NHG objections and participation in the appeal process is because the horse racing industry was genuinely concerned as to the effect and implications of the application. The perception issue is plain and it is consistent evidence from the industry of the nature of those keeping and owning the majority of thoroughbreds. The issue needs to be assessed in the light of the evidence presented in respect of the present application and

supports the view that the previous Inspector, and thus the Secretary of State, had not understood the position (**Document CD/O/2, Paragraphs 12.4.27-28**).

209. This is not an issue of precedent in planning terms. It is about the views of those most closely responsible for the functioning of the horse racing industry in Newmarket who are neither planners nor have to tailor their investment decisions to a planning based approach. If investors see it as the thin end of the wedge and that further development is likely which would add to traffic, the risk of incidents with thoroughbreds and further urbanisation, there is a risk of damage to the industry that cannot easily be reversed. The concerns are emanating from the owners not the trainers. "Talking down" Newmarket is the last thing that the professionals in the industry want but they have to live with the reality of the concerns of their clients. Owners when they come to Newmarket cannot but see the effects of development and heavy traffic and experience the difficulties of getting through town (**Document NHG/9, Paragraphs 8.5-8.11**).
210. There is also concern about development which is urbanising the semi-rural character of Newmarket and changing it from an environment which is favourable to horses and the industry to one which is less appropriate and more hostile, especially in terms of traffic (**Documents NHG/6/1, Section 6; NHG/8, Sections 5, 6; NHG/9, Paragraphs 8.6-8.8; NHG/12, Paragraphs 4.11-22**). It is no answer to point to the layout of the existing yards, and the training grounds, which are such an important aspect of the town's character, and the fact that owners have accepted the situation as it is today. The concern is about the impact of future development and it is incumbent on the local plan process to properly balance the key character and unique qualities of the town with needs for housing and other employment uses in the District which do not throttle the one truly unique aspect of the town. It is all the more unfortunate in this context that the Single Issue Review has been so delayed. Epsom presents a cautionary tale of a centre of racing which has declined due to inadequate protection provided to HRI interests (**Document NHG/6/1, Section 8**).
211. A precautionary approach supports an analysis where it is not possible to predict the outcome precisely but where the risk of harm should be weighed in the light of the importance of the interest at risk of harm. As the Applicant has accepted, an economic interest of the importance of the horse racing industry is deserving of a high level of protection. The existing circumstances at Rayes Lane are unsafe and would remain so despite the proposed works. The anticipation of the effect of the application proposal and development that would be likely to follow it, does present a risk to the horse racing industry and to its continuing success.

## THE EFFECT ON NATURE CONSERVATION AND HABITATS REGULATION ASSESSMENT

### Appropriate Assessment

#### *Legal principles*

#### The threshold for appropriate assessment

212. Under Regulation 61 of the Habitats Regulations, the Secretary of State cannot lawfully grant planning permission for the application proposal without an

appropriate assessment of its implications for the Fenland SAC, which incorporates the Chippenham Fen SSSI, and the Breckland SPA, unless he is satisfied, applying the precautionary principle, that there is no risk of any significant effects on these sites, including effects *"in combination with other plans or projects"*.

213. This is a very low threshold and only if there is *no risk* of the scheme having significant effects on a European site can it be said that an appropriate assessment is not necessary. The requisite certainty does not exist if there is *"reasonable scientific doubt"* as to whether there would be an adverse effect<sup>29</sup>. Accordingly, where there is scope for reasonable disagreement between experts, then it follows that the low threshold for appropriate assessment is met. The question at the threshold stage is merely *"should we bother to check?"* and it is only at the appropriate assessment stage that the question *"what will happen to the site if this plan or project goes ahead?"* is addressed<sup>30</sup>.

### Cumulative effects

214. It is common ground that the "in combination" exercise includes not simply existing permitted projects and adopted plans, but also those future projects and plans that are reasonably foreseeable (**Documents CD/EC/16, Pages 14, 19, 26; CD/EC/17, Pages 34-35**). The SIR is a reasonably foreseeable plan which is *"proposed"* by the Council and programmed for adoption by May 2017 (**Document NHG/5/2, Paragraph 3.42**). Although the SIR is still in progress, there are reasonably foreseeable parameters for it, which include the allocation of at least 5,299 dwellings to 2031, to be distributed in one of the 8 ways to be consulted upon by the Council (**Documents APP/5/2, Paragraphs 6.8.7-8; ID/18, Pages 8-12**).
215. The Applicant suggested that one can rule out the potential for cumulative effects of the application scheme and the SIR in combination with each other on the basis that the SIR will itself be subject to screening and, if required, appropriate assessment. That suggestion is wrong in law. The requirement for appropriate assessment, if the risk of likely significant effects cannot be ruled out, applies both at the plan stage and at the project stage. This dual layer of protection is a deliberate aspect of the habitats regime and reflects the precautionary approach to be taken to assessing the potential for harm and avoiding such harm occurring save in cases of over-riding public interest. Ruling out appropriate assessment of cumulative effects at the project stage because it can be undertaken at the plan stage would therefore be unlawful.

### The relevance of mitigation

216. The principles relating to the relevance of mitigating measures were summarised in *Hereford Waste Watchers Ltd. v. Herefordshire Council* [2005]. Amongst other things this establishes that mitigating measures can be taken into account provided they are sufficiently specific, available and there is no

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<sup>29</sup> See the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) (**Document CD/O/8, Paragraphs 44, 45, 59, 61, 67**).

<sup>30</sup> See the Opinion of Advocate General Sharpston in Case C-258/11 of Sweetman v An Bord Pleanala (**Document CD/O/7, Paragraph 50**),

real doubt about their effectiveness. Future potential difficulties cannot be sought to be regulated merely by the imposition of conditions. The competent authority cannot dispense with the need for further information on the basis that it is not sure whether or not there are significant environmental effects, but that even if there are, other enforcement agencies will ensure that steps are taken to prevent improper pollution. However, it should assume that other agencies will act competently and it should not therefore anticipate problems or difficulties on the basis that those agencies may not do so (*Document ID/55/3, Paragraph 34*).

### Impact on Chippenham Fen from abstraction

217. Chippenham Fen SSSI is a calcareous fen that supports sedges, rushes and wetland meadows. Its vegetation is dependant on spring water which holds specific nutrients and is at a lower temperature to rainwater (*Documents NHG/4/1, Paragraphs 4.6.2-4.6.3; ID/53*). There is no dispute that there is a risk that over-abstraction of the aquifer feeding Chippenham Fen may impact upon the ecology for which the Fen is significant (*Document CD/EC/12, Paragraphs 5.2.3, 5.2.14*). This view is also supported by the following documentation:
- 217.1 The *Chippenham Fen National Nature Reserve Management Plan*, which refers to the site becoming too dry in summer and pointed to abstraction as a potential cause of this (*Documents CD/H7, Page 2.1/4; NHG/4/2, Page 2.1/4*).
- 217.2 The Atkins Report, which explains that public water supply licences contribute to drawdown in groundwater levels. The groundwater feeds the springs which support the ecology of the Fen, albeit that the degree to which the Chalk groundwater interacts with the superficial deposits and the dyke system elsewhere in the Fen is "uncertain" (*Document CD/H/6, Pages 11-16, 76-77*).
- 217.3 The previous Inspector's Report (*Document CD/O/2, Paragraphs 12.1.14-12.1.19*).
218. Accordingly, the Applicant's suggestion that in recent years groundwater levels may not have been affected by abstraction and that hydrological change at Chippenham Fen may be related to changes in the perched water in superficial deposits, rather than changes in the Chalk groundwater, is a red herring (*Document APP/3/5, Paragraphs 2.12-2.20, 3.6*). What matters is that the potential that at some point abstraction may affect the ecology of Chippenham Fen cannot be ruled out. Therefore the potential for the development to contribute to this, in combination with other existing and reasonably foreseeable plans and projects, must be considered.

### *The need for appropriate assessment in the light of the conclusions of the Atkins Report*

219. The Applicant's case for screening out the need for appropriate assessment reflected Natural England's consultation response. In summary this was that the development, in combination with other reasonably foreseeable development, could be accommodated within the capacity of existing abstraction licenses and that the potential for existing licences to have an effect on Chippenham Fen could be ruled out on the basis of the Atkins Report. It was also the rationale of the Council's habitats screening opinion (*Documents*

**FHDC/2, Appendix 10, Pages 98, 103; FHDC/2, Appendices 11, 12).** The Atkins Report concluded as follows:

- 219.1 Abstraction at 100% of existing licenses, which is described as Option 1, would not be a viable outcome and therefore has the potential to adversely affect site integrity (**Document CD/H/Page 14**).
- 219.2 The evidence indicates that the current operation of the LG Scheme was not fully effective in supporting the designated habitats at Chippenham Fen. There is sufficient water available from the scheme to mitigate any effects from fully licensed abstraction *if a more suitable means of delivery can be designed*. However, action will be required to investigate in more detail the most cost effective means of achieving this on the ground and in the meantime reliance on the LG Scheme carried a low/ medium risk of failing to protect the ecology for which the Fen is significant (**Document CD/H/6, Pages 15, 118, 122**).
- 220. Atkins therefore did not rule out the risk that abstraction of 100% of existing licences, in combination with LG Scheme, would result in harm to the ecology for which Chippenham Fen is significant. The ability of LG Scheme to mitigate the effect of this level of abstraction to a point at which there was no risk of harm to the habitats remains uncertain pending further work. There is no evidence of that work having since been done. Accordingly, Natural England mischaracterised Atkins in stating that it demonstrated that the LG Scheme *would* be capable of maintaining appropriate water levels at Chippenham Fen and that it would ensure that there is no adverse effect on site integrity from existing water abstraction licences (**Document FHDC/2, pages 106, 111**). The proper characterization of what Atkins found, as the Council accepted, was merely that the LG Scheme *might* achieve this outcome.
- 221. This mischaracterisation is fundamental since it went to the heart of Natural England's assumption that the risk of abstraction within the capacity of existing licenses having a likely significant effect on Chippenham Fen could be ruled out. The Applicant's *Technical Report to Inform Habitat Regulations Assessment*, which sets out its case for screening out the need for appropriate assessment, and the Council's Screening Opinion relied on Natural England's consultation response and repeated that assumption (**Documents EC/12; FHDC/2, Pages 102-104**). The Council therefore agreed that it therefore could not stand by its habitats screening opinion on this issue<sup>31</sup>.
- 222. Moreover, the Atkins Report indicated that the existing abstraction licences did not necessarily need to be used at full or near-full capacity before there was a risk of likely significant effects on Chippenham Fen. When five boreholes<sup>32</sup> were modelled at just 70% use, which is referred to as Option 2a, the results indicated that the acceptable level of abstraction thresholds are still failed and there was low/medium risk of failing to achieve the requisite outcomes for the

<sup>31</sup> Mrs Kelly agreed in cross-examination by Mr Banner, that on the principle of Sweetman the Natural England consultation response does not provide a proper basis for ruling out appropriate assessment and that on this basis the Council could not maintain its screening position on hydrology.

<sup>32</sup> These were Warren Hill, Long Hill and Ashley Road, within the Newmarket RZ; Lower Links, within the Cheveley RZ; Isleham, within the Ely RZ. They are listed in the Atkins Report (**Document CD/H/6, Paragraph 9.1.3**) and can be identified on the **Map at ID/34**.



habitats. It was noted that uncertainties remain about the impact of abstraction at this level. Whilst Option 2a excluded consideration of the LG Scheme, a significant effect cannot be ruled out in view of the uncertainties about the effectiveness of that mitigation (**Document CD/H/6, Pages 15, 113, 122, 123**).

223. Of the five abstraction licences modelled at 70% under Option 2a, two were already used at 79% of capacity in 2005 and a third, Isleham, was recorded at 66% of capacity. The remaining two were already at 49% of capacity in 2005. Therefore even ten years ago there was only limited headroom between the use of these licences and the point at which Atkins considered significant effects on the Chippenham Fen habitats could not be ruled out.
224. Of the public water supply abstraction licences within 10km of Chippenham Fen, which were modelled at 100% abstraction under Option 1, 4 are within Ely RZ, 1 is within Cheveley RZ, and the remaining 10 are within Newmarket RZ (**Documents CD/H/6, Page 91; ID/34**). Applying the precautionary principle, Atkins considered that abstractions from these boreholes should be considered as having the potential to affect groundwater levels. The Applicant agreed that 100% use of abstraction licences in both Ely and Cheveley RZs was a likely consequence of reasonably foreseeable development<sup>33</sup>.
225. Anglian Water's *Water Resources Management Plan* predicts that this will happen in the Ely RZ within just 10 years and in the Cheveley RZ within 15 years (**Document CD/H/1, Table 22.3, Page 265 and Table 23.3, Page 276**). In fact, in the Ely RZ the headroom is likely to be reached significantly more quickly. Anglian Water predicts it will be reached after 5,000 dwellings. However existing and reasonably foreseeable projects in the two Council areas affecting the Ely RZ already account for 9,177 dwellings and this does not include additional dwellings to come forward in Forest Heath pursuant to the SIR (**Documents CD/H/1, Table 23.2, Page 276; ID/35**).
226. In the Newmarket RZ it is common ground that the existing and reasonably foreseeable projects amount to about 1,876 dwellings (**Document ID/35, Table 6.5**). The difference between the parties is whether dwellings to be allocated by the SIR should also be included. This is a reasonably foreseeable proposed plan that will identify a minimum of 5,299 new dwellings and possibly more if the Applicant is right about the potential need to increase the housing requirement (**Document APP/5/2, Paragraphs 6.3.2-6.3.4**).
227. Although some of Forest Heath District is within the Ely RZ this will already be at headroom within a maximum of 10 years with no scope for additional abstractions within that RZ (**Document CD/H/3, Pages 17-18**). Development coming forward under the SIR is thus likely to draw significantly on the Newmarket RZ. The headroom will be virtually used up in the Newmarket RZ at 6,250 dwellings<sup>34</sup>. After subtracting the 1,876 dwellings coming forward

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<sup>33</sup> This point was agreed by Mr Foster in cross-examination by Mr Banner, although he pointed out that it was only development abstracting from boreholes within 10 km of Chippenham Fen that would be relevant.

<sup>34</sup> Anglian Water has corrected Table 24.2 in its *Water Resources Management Plan* on the basis of a trend estimate of 1,250 dwellings per annum. However this adds up to 6,250 dwellings over the period of the Plan and not 6,340 as Anglian Water has stated. The parties

pursuant to reasonably foreseeable projects there would be 4,374 dwellings left before headroom is reached. In circumstances where the SIR will be identifying at least 5,299 dwellings, the prospect of Newmarket RZ abstractions licenses being at or close to capacity pursuant to existing and reasonably foreseeable projects and plans is clear.

228. Pulling this together the position is that:

- 228.1 Atkins concluded that the risk of significant effects on the Chippenham Fen habitats cannot be ruled out where existing abstraction licences within 10km of Newmarket RZ are used to full capacity or where the five licences are used to 70% capacity. Two were already above 70% capacity in 2005, one was at 66% and two were at 49%.
- 228.2 the risk of at least one of these situations happening as a consequence of the development in combination with existing and reasonably foreseeable projects and plans also cannot be ruled out.
- 228.3 The risk of the development having potential effects on the Chippenham Fen habitats in combination with other plans and projects cannot be ruled out and accordingly appropriate assessment is required.

229. Appropriate assessment cannot properly be screened out on the basis that the Atkins Report is over-cautious as the Applicant claims (**Document APP/3/5, Paragraph 2.23**). In particular:

- 229.1 The precautionary principle requires regard to the worst-case scenario, which would be 100% consumptive.
- 229.2 There is no evidence that the Environment Agency does not consider that the conclusions in the Atkins Report, which was undertaken on its behalf, no longer remain valid. Indeed the Environment Agency's Licensing Strategy indicates that it stands by the Atkins Report and is in the process of implementing it (**Document CD/H/3, Page 40, Row 11**)<sup>35</sup>.
- 229.3 As noted above, where there is scope for reasonable disagreement between experts, appropriate assessment cannot be screened out. It cannot be said that the approach taken by Atkins on behalf of the Environment Agency is unreasonable.

230. It is not satisfactory to contend that Anglian Water might be able to import water from elsewhere. In particular:

- 230.1 The *Water Resources Management Plan* does not even contemplate the prospect of importing water into Newmarket RZ since it assumes that headroom will not be reached until 2040. That assumption is unsafe in the light of the extent of dwellings likely to come forward pursuant to existing and reasonably foreseeable projects and the SIR.
- 230.2 Whilst the *Water Resources Management Plan* refers to potential options for transferring water to the Ely and Cheveley RZs, there are

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agreed that 6,250 dwellings was the correct figure to use (**Documents CD/H/3, Page 287; CD/H/16**).

<sup>35</sup> ROC is the Review of Consents and includes all evidence of which the Atkins Report is part.

no concrete plans in place. No new source has been identified to meet the additional water demand for these RZs. The point was recognised by the previous Inspector (**Documents CD/H3, Paragraphs 22.4.1, 23.6.5; CD/O/2, Paragraph 12.1.15**).

- 230.3 The fact that Anglian Water and the Environment Agency have their own duties under the Habitats Regulations does not absolve the need to subject the present application to appropriate assessment if the risk of significant impacts cannot be ruled out. Moreover, it is wrong to assume that Anglian Water will in future inevitably act in a way that avoids harm to the Chippenham Fen habitats. They might conclude that there are reasons of over-riding public interest justifying a course of action which would have an adverse impact.
231. The Environment Agency's potential ability to modify or revoke existing abstraction licences if it concludes that they are causing or may cause adverse impacts on Chippenham Fen habitats is also not a reason for screening out appropriate assessment of the development. In particular:
  - 231.1 The Environment Agency is not bound to modify or revoke abstraction licences in such circumstances. It too could apply the over-riding public interest test, particularly in the light of the range of impacts that reductions in abstraction such as Options 2a or 2b could have on the public (**Document CD/H/6, Pages 122-123**). Despite Atkins indicating that the LG Scheme might not provide adequate mitigation against abstraction within existing licence capacity, the Environment Agency has not revoked or modified any licences to date. This indicates it is considered as a last resort.
  - 231.2 In any event, the fact that there may be a further process further down the line engaging the Habitats Regulations does not absolve the need for appropriate assessment of the development now if the risk of significant effects cannot be excluded on the basis of the evidence currently available.
  - 231.3 The Environment Agency's powers were not considered by the previous Inspector to justify ruling out the need for appropriate assessment (**Document CD/O/2, Paragraphs 12.1.14-12.1.19**)

*Effect of the development on the catchment water balance*

232. The Applicant has put forward two arguments. The first is that through the use of policy-compliant SuDS the developed site would return an additional 34.4 MI/annum of water to the chalk aquifer or 78% of the total amount abstracted. The second is that an additional 18 MI/annum would be returned to the River Snail catchment via the waste water treatment works (**Document APP/3/2, Paragraphs 5.18-5.22, 5.42-5.43**).
233. This hypothesis did not form any part of the basis upon which the *Technical Report to Inform Habitat Regulations Assessment* accompanying the planning application contended that appropriate assessment could be excluded. It was not the basis on which Natural England, the Environment Agency and Anglian Water were consulted or on which the Council assessed the impacts of the development and screened out the need for appropriate assessment. Nor did Atkins consider it appropriate to rule out the risk of significant effects from

abstraction on this basis, despite such points being applicable to any greenfield development within 10 km of Chippenham Fen that delivers policy-compliant SuDS and which discharges into a waste water treatment works within the catchment. If the solution really was that simple, one would expect Atkins or the Environment Agency to have said so.

234. These points immediately indicate that the Applicant's hypothesis is not a safe basis on which to rule out the need for appropriate assessment on the basis that the risk of significant effects from abstraction is beyond reasonable scientific doubt.

#### The Applicant's hypothesis on water recharge to the chalk aquifer

235. Even if the hypothesis proved to be correct, there would still be a net deficit of water drawn from the Chalk aquifer of about 10 Ml/annum. This would contribute to the overall draw from groundwater levels under Chippenham Fen to which the Atkins Report referred. The development would thus continue to have effects in combination with other reasonably foreseeable plans and projects. In any event the hypothesis is dependent upon rainwater falling at levels which are adequate to compensate for the abstractions being drawn from Chippenham Fen. There is no evidence of likely predicted rainfall in future years in this area. The worst effects of abstraction on the habitats are likely to be felt during the summer months when the Fen is at its driest, whereas the effects of recharging the aquifer would be spread evenly over a long period. It is thus far from clear or certain that there will be like for like compensation at the time when the Fen is at greatest threat.
236. The calculation is based upon assumptions which are highly questionable let alone certain. In particular:
- 236.1 It is predicated upon the existing uncultivated site area being 19.8 ha, 60% of which would be impermeable surfaces benefiting from SuDS. In fact about 2 ha of that area is public highway, which is already drained. There has therefore been a material over-estimation of the area that would benefit from SUDS.
- 236.2 It is also predicated upon the impermeable surfaces amounting to 60% of the entire site when in fact the Flood Risk Assessment, which is the document specifically designed to describe SuDS and upon which the Environment Agency signed off the application, indicates that 60% of the residential areas would be impermeable. This would total 8.5 ha, which is little more than two thirds of the 11.8 ha assumed. The Applicant relied on the Environmental Report for the figures but that cross-refers to the Flood Risk Assessment (***Documents APP/3/2, Paragraphs 5.20-5.21; CD/OP/12, Paragraph 3.1.3; CD/COP/5, Tab 2D; CD/OP/3, Paragraph A.2.20***).
- 236.3 It was also assumed that all the SuDS would be soakaways. However the Flood Risk Assessment indicates a range of options, including trenches, swales and a dry infiltration basin. All of these would have a higher evapotranspiration rate than had been assumed. The Applicant contended that the Flood Risk Assessment was merely indicative. However it was the document on which the Environment Agency and Council concluded that flood risk would be adequately addressed and the Secretary of State's EIA screening opinion relied. The SuDS

strategy will have to be in general accordance with the Flood Risk Assessment but the Applicant's hypothesis is not (**Documents CD/OP/12, Page 17 and appended Plan CA10597-016; CD/COP/15, Paragraphs 236-240**).

- 236.4 The Applicant's hydrology witness had not spoken to the author of the Flood Risk Assessment to explore the inconsistencies between his assumptions and what the Flood Risk Assessment said<sup>36</sup>.
- 236.5 There is no evidence to support the evapotranspirative savings that have been put forward for the application scheme. Neither of the hydrology witnesses could identify a development where this rate of savings, year on year for its lifetime, had been achieved.
- 237. The Applicant's hydrology witness referred unprompted to this hypothesis as representing a "*potential*" saving and, when challenged, accepted that it could not be concluded for certain that it would be achieved. The suggestion that SuDS will mitigate the effects of abstraction does not satisfy the principle in *Hereford Waste Watchers Ltd. v. Herefordshire Council* because it cannot be said that there is no real doubt about its effectiveness. In the language of Advocate General Sharpston in the *Sweetman* case, it cannot be said that the Applicant's hypothesis has demonstrated that it is not worth even "*bothering to check*" what the impact of the development would be on Chippenham Fen.

#### Water returned to the catchment via the waste water treatment works

- 238. The Applicant contended that in its licensing strategy the Environment Agency has assumed that 40% of abstracted water is returned to the catchment through wastewater treatment. However that figure is taken from a charging schedule and its basis is not explained. The Government guidance referred to related to the amount of water going in to the treatment works not the water coming out of it (**Document APP/3/2, Paragraph 5.43; APP/3/3, Appendix 7; ID/4, Page 6**). In any event water used by the development, which is ultimately discharged by the treatment works, will go via a tributary into the River Snail, and will not flow past Chippenham Fen (**Document ID/11**). Atkins concluded that there was no ecological connectivity between this discharge point and Chippenham Fen (**Document CD/H/6, Paragraph 3.2.5**).
- 239. The majority of this water will end up in the sea. The Applicant hypothesised that it might potentially reduce the need to use the LG Scheme to top up the River Snail but this has not been assessed, quantified or discussed with the Environment Agency who operate the LG Scheme. The evidence suggests that this hypothesis is unlikely given the way that the Environment Agency currently operate the Snailwell Pond outlet of the LG Scheme (**Document ID/42**).

#### **Impact on Breckland SPA from increased visitor pressure**

- 240. The application site is about 8 km from Breckland SPA. The Fearnley Report was commissioned by the Council and St Edmundsbury Borough Council to consider the implications of recreation from new development on the SPA and how this related to the legislative duties under the Habitats Regulations. This concludes that development within 10 km is likely to result in increased access

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<sup>36</sup> Mr Foster confirmed this point in cross-examination by Mr Banner.

and therefore potentially increased recreational disturbance. Any new housing within this radius should be identified as development that would be likely to have a significant effect as a result of recreational disturbance upon the SPA, in the absence of any counteracting measures and taking a precautionary approach (*Document APP/4/3, Appendix 15, Paragraph 6.7*).

241. The application proposal falls within the scope of this recommendation because it is within 10 km of the SPA. There would be no counteracting measures which in themselves justify ruling out appropriate assessment.
  - 241.1 The Applicant and Council agreed that the availability of open space on site and within Newmarket was not a “standalone” reason for ruling out the need for appropriate assessment<sup>37</sup>.
  - 241.2 There has been no assessment of the extent to which the quantitative or qualitative characteristics of the open space on site or in Newmarket would divert residents away from Breckland SPA. The Gallops, for example, are privately owned and not open to the public until after 1300 hours. This would limit their attraction and there was no quantitative assessment of the extent they are currently used for recreation.
  - 241.3 The open space on site would, in qualitative terms, need to be at least equally if not more attractive to divert people from Breckland SPA. It is unrealistic to suggest that the open space on this urban fringe housing estate would be as attractive as the SPA (*Document APP/4/3, Appendix 15, Paragraph 6.9*).
  - 241.4 The Council does not consider the provision of open space to be an appropriate strategy for dealing with impacts on Breckland SPA. Policy DM12 in the JDMPD refers to contributions towards management projects and/or monitoring as the appropriate strategy for potentially mitigating impacts. No such contributions have been offered by the Applicant and there has been no assessment of the extent to which they would fully mitigate any potential impacts on Breckland SPA. Provision of a contribution would thus not enable the conclusion that the risk of significant impacts can be ruled out without the need for appropriate assessment.
242. The Applicant relies on two reasons for avoiding appropriate assessment:
  - 242.1 The Fearnley Report indicated that only a small number of visitors to the SPA originated from Newmarket. Those that did tended to visit ‘honeypot’ locations. The residents of Hatchfield Farm would be likely to share the same propensity as existing Newmarket residents and the number of additional visitors would be unlikely to be significant and would be likely to visit ‘honeypot’ locations only.
  - 242.2 The area of the SPA within 10 km of the application site is farmland with limited access.
243. The finding in the Fearnley Report that the majority of visitors are local residents living within 10 km of the SPA was expressed to apply to all

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<sup>37</sup> This point was agreed by Ms Rogers and Mrs Kelly in cross-examination by Mr Banner.

development with no exception for that in or around Newmarket. Also the assumption that the propensity of Hatchfield Farm residents to visit Breckland SPA would be similar to existing residents in Newmarket is untested. It would depend upon a number of factors such as comparable demographics and proximity to the SPA. These factors have not been assessed.

244. The Fearnley Report did not suggest that those who lived within 10km of the SPA would only visit those parts that were within a 10 km radius of their home. Of the vast majority who visited by car, about 55% were interviewed at a point within the SPA that was over 10km of their home. For persons not on holiday the average distance between their home and the location where they were surveyed was 16.7 km (**Document APP/4/3, Appendix 15, Paragraphs 4.28, 4.34, Figure 6**). The point made by the Fearnley Report is that the majority of visitors live within 10km of the SPA and it is a misinterpretation to conclude that 87% of people only visited points within the SPA that were within 10 km of their home (**Document APP/4/3, Appendix 15, Paragraph 6.7**). There is in fact a case for a greater than 10 km radius given that the average distance from home to survey location was 16.7 km. Indeed the Habitats Regulation Assessment for the SIR uses a 20 km radius for screening significant effects on Breckland SPA (**Document CD/EC/5A, Page 5**).
245. Appropriate assessment can only be screened out if the Secretary of State is satisfied that the authors of the Fearnley Report acted unreasonably in failing to draw the conclusions that the Applicant had drawn from their data. Given their expertise and the obvious flaws in the Applicant's approach, the Secretary of State cannot be satisfied about this or that the risk of significant effects can be excluded beyond reasonable scientific doubt. This is all the more apparent from the Suffolk Wildlife Trust consultation response that the Council must make an appropriate assessment before granting permission.
246. Suffolk County Council's consultation response, which was written following site visits, specifically expressed agreement with the Suffolk Wildlife Trust consultation response (**Documents FHDC/2, Appendix 13, Page 114; FHDC/2, Appendix 8, Pages 77-78**). Policy DM10 in the JDMPD requires the Council to give particular weight to expert nature conservation advice provided by Sussex Wildlife Trust and other specialist sources. There was no dispute that such sources included Suffolk County Council.
247. Natural England's consultation response does not assist the Applicant since it does not even mention Breckland SPA and fails to provide a sound basis for screening out appropriate assessment. It does not provide any basis for concluding that the Fearnley Report, Suffolk County Council and the Suffolk Wildlife Trust were all acting unreasonably in concluding that the risk of significant effects on Breckland SPA cannot be ruled out (**Document FHDC/2, Appendix 11**).
248. The conclusions of the Applicant's *Technical Report to inform Habitat Regulations Assessment* and the Council's screening opinion in relation to cumulative impacts are also flawed. In particular:
  - 248.1 The Council's screening opinion only looked at potential effects in combination with the Tesco expansion and Red Lodge. The Council

conceded that it ought to have looked at a lot more than that<sup>38</sup>.

- 248.2 The Applicant used the same flawed approach to screen out cumulative effects of other existing and reasonably foreseeable projects within 10 km of Breckland SPA as described in Paragraph 242 above.
- 248.3 No account has been taken of the potential effects in combination with existing and reasonably foreseeable plans in the relevant districts. In particular the SIR, which will plan for at least 5,299 new dwellings to 2031, has not been considered.

### **Impact on Chippenham Fen from urban vandalism**

249. The *Chippenham Fen National Nature Reserve Management Plan* produced by Natural England identifies this as a serious problem (***Documents NHG/4/1, Paragraph 4.7.1; CD/H/7, Page 2.1/4***). The application development has the potential to add to this effect and this is not a matter that has been grappled with in the Council's screening or in the evidence.

### **Consequences if appropriate assessment is needed**

250. If appropriate assessment is needed permission cannot be granted until it has been undertaken. Unless the conclusion is reached that the development would not risk adversely affecting the integrity of the European site(s) in question, permission must be refused. The Applicant has disavowed any reliance on the derogation provisions of Regulation 62. The Secretary of State can in principle undertake appropriate assessment prior to reaching his decision. However it would follow from the fact that risk of impact cannot be ruled out on the basis of the existing evidence, that there is insufficient information at present to rule out adverse impact on integrity. Therefore as a minimum the Secretary of State would need to go back to the parties prior to concluding an appropriate assessment and it is likely that the Inquiry would need to be re-opened in order to provide a fair opportunity of testing new evidence.
251. There may also be consequences for whether the application requires EIA because the potential impact on protected habitats is a specific consideration to which regard must be had in screening for EIA purposes. The Secretary of State's EIA screening direction was predicated on there being no likely significant effects on European habitats. That reasoning cannot stand if it is now decided that, in the light of the evidence at the Inquiry, appropriate assessment is required (***Document CD/COP/6***).

## **OTHER ECOLOGICAL ISSUES**

### **Snailwell Meadows SSSI**

252. Snailwell Meadows are fed by springs and lie on the same chalk aquifer as Chippenham Fen. However even if there was found to be no adverse effect from abstraction on the Fen that does not mean that Snailwell Meadows would necessarily be similarly unaffected. This is because a variety of soil conditions contribute to the grassland communities that provide the reason for the site's

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<sup>38</sup> Mrs Kelly agreed that the Habitats Regulations Assessment did not have regard plans and projects that it should have taken account of.



designation. The communities, including the rare Cambridge milk parsley, are dependent on the hydrological regimes relating to spring flow and will be individual to the site. No parallel can therefore be drawn with changes in hydrology due to abstraction at Chippenham Fen and, in any event the vegetation communities are different and hence would not react similarly (**Documents NHG/4/1, Section 5; ID/21**).

253. There has been no assessment of the potential impact of abstraction from the application proposal on Snailwell Meadows and in accordance with Paragraph 118 of the Framework a balancing exercise cannot be undertaken and permission should be refused. The suggestion by the Applicant that the LG Scheme might mitigate an impact on the SSSI is untenable in the light of the Environment Agency's recent response (**Document ID/42**).

## On-site ecology

### Badgers

254. Paragraph 99 of Circular 06/2005: *Biodiversity and geological conservation – statutory obligations and their impact on the planning system* requires the extent to which badgers are affected by the development to be established before permission is granted. Whilst there is provision for post-permission surveys in exceptional circumstances, the Applicant did not rely on such circumstances in this case.
255. There was no dispute that the loss of more than 25% of a badger group's range could have a major adverse impact on that group. The Applicant relies upon Stanley House Stud being within the badger group's range in order for the development to be below this 25% threshold (**Documents CD/OP/14, Tab 46, Paragraphs 6.13-6.14; APP/4/3, Appendix 7, Drawing CA10819-CA01**).
256. The surveys do not however justify the conclusion that Stanley House Stud is within the badger group's range. All they have indicated is the existence of a sett on Stanley House Stud without any monitoring of the extent to which it is used for foraging. Reliance was placed on the absence of barriers and the availability of habitat, but those are simply observations about the features of the land rather than surveys of the extent to which the land is actually used by the badger group. The kind of survey techniques available and required in such circumstances is clear under the relevant guidance and includes bait marking and/or camera traps (**Document ID/9**). The reference to "push-throughs" being found on site is no substitute for such surveys since they could have been caused by foxes or muntjac deer<sup>39</sup> (**Document NHG/4/2, Paragraphs 5.1-5.3**).

### Botany

257. The importance of the fine leaved fumitory found on the site has been underplayed as it is a nationally scarce plant and of more than neighbourhood significance (**Documents NHG/4/1, Section 3.1; NHG/4/2, Section 2**).

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<sup>39</sup> Ms Rogers agreed in cross-examination by Mr Banner that push-throughs could have been made by foxes or muntjacks. However she thought it more plausible that they had been made by badgers on the site.

258. The proposal for translocation of this plant and any corn spurrey that exists on site is inadequate in the absence of a guarantee that the recipient site will be maintained for this purpose in perpetuity. If a further round of translocation were to take place in future, this would have a significant adverse effect. The Applicant was unable to point to a previous case where such plants were successfully translocated on multiple occasions without significant loss.

## CLAIMED BENEFITS OF THE APPLICATION PROPOSAL

### Housing provision

259. The benefit of providing housing ahead of the SIR has been overstated. In particular the housing land supply situation is now significantly improved from 3.15 years at the time of the resolution to grant planning permission to either 4.9 or 5.1 years, depending on whether the Liverpool or Sedgefield method is used. A quick start on completions would be unlikely given the need to identify a purchaser and complete the land sale before drawing up designs for reserved matters approval and discharging pre-commencement conditions.
260. It is difficult to see why the benefits of housing cannot be obtained by locating it otherwise than on the application site. In the absence of any assessment of the comparative travel distances when comparing in-commuting and out-commuting it cannot be maintained that it is more sustainable for the housing to be located in Newmarket rather than elsewhere, especially given that a significant number will be commuters. Indeed the evidence suggests that the majority of commutes into Newmarket are more local than the commutes out of it (*Documents APP/1/2, Paragraph 5.26; APP/1/3, Appendix 5; CD/OP/10, Paragraph 7.6, Appendix I; ID/50*).
261. The employment benefits, whilst in part dealing with other matters must also be significantly connected to the horse racing industry. It should also be borne in mind that accommodation is provided for some of those directly employed by the horse racing industry so that there is unlikely to be a direct correlation between employment and housing.
262. The Applicant sought to underplay the contribution of the horse racing industry to the local economy. However it was agreed that notwithstanding the direct employment figures, a very significant proportion of employment within Newmarket depended on the horse racing industry although it was not possible to put a precise figure on this<sup>40</sup>.
263. The Applicant tried to use data at a small area level in its economic analysis but this carries a wide margin of error. The figures cannot be relied upon as indicating the argued outcomes with any accuracy:
- 263.1 Regional and district level modelling derived on a "top down" basis from national data has been used and then applied to the two Newmarket Middle Layer Super Output Areas (*Document APP/1/3, Appendix 1*). There is nothing to indicate that such a top down application through regional and district levels took full account of the special circumstances in Newmarket.

<sup>40</sup> This point was agreed by Mr Spry in cross-examination by Mr Elvin.

- 263.2 There is no indication in the Applicant's economic evidence about the margin of error in applying such data to a local level (**Document NHG/1/3, Paragraphs 1-3**).
- 263.3 The errors were compounded by an adjustment to the national ONS data in considering the employment rates of those in the younger and older age brackets (15-24 years; 60-74 years) (**Document ID/26**). This was relied on in the Applicant's economic conclusions (**Document APP/1/2, Paragraphs 5.18-5.21**). However the ONS data was not specific to Newmarket; did not take account of recent pension changes; and did not exist for the period after 2020 even though the analysis runs to 2032 (**Document ID/26**). It appears that such projections would be more unreliable the further into the future they go. The data had therefore been subject to a number of manual adjustments and had been subject to a model, neither of which was properly explained.
- 263.4 The Applicant agreed that the following adjustments had been made to obtain the derived forecast of economic activity rates, which had been applied to the modelling (**Document APP/1/3, Appendix 1; ID/26; ID/38**):
- A manual adjustment was made to the district level 2011 census rates of economic activity rates to derive a forecast for Newmarket.
  - The ONS projections stop at 2020. Adjustments had been made beyond 2020 for the younger age groups but not the older ones.
  - The 2011 census only details economic activity rates for a single group aged 65 years and over. A further subdivision of the group was estimated.
  - An adjustment was made to reflect the changing pension age that was introduced subsequent to the ONS projections. More recent changes relating to retirements at 70 years in the longer term had not been taken into account even though the table runs to 2032.
  - Applying unexplained adjustments reduced the percentages in active employment between 2020 and 2024 to the 15-19 year and 20-24 year groups, which appeared to be at double the rate over 4 years as in the preceding 9 years from 2012 to 2020:
    - Females 15-19 years show a reduction of 6% in the 8 years to 2020 and a further 6.8% in the 4 years to 2024 and females 20-24 show a reduction of 1.2% in the 8 years to 2020 and a further 1.7% in the 4 years to 2024 (which are not ONS based projections)
    - Similarly the males 15-19 years show a 6.6% reduction in the 8 years to 2020 and a further 5.5 % in the 4 years to 2024. Males 20-24 years show a reduction of 3.6% in the 8 years to 2020 and a further 3.3% in the 4 years from 2020 (which are not ONS based projections)
264. The Applicant's analysis favours the development proposals and downplays the significance of the horse racing industry. The indirect employment benefits have not been properly considered. Potential threats to the industry have not been addressed in the assessment (**Documents NHG, Paragraphs 44-49; NHG/1/3,**

**Paragraphs 6-10, 16-17).** The purpose of the SQW Report Newmarket's Equine Cluster was to assess the economic significance of the horse racing industry and was not a general assessment of the position of the industry and its weaknesses (**Document CD/E/1, Page 4**).

265. The Applicant's conclusions that additional housing is required in order for Newmarket to sustain and grow its economy cannot be relied upon due to the flaws in the assessment. The projections of employment growth should not be used to determine the appropriate size of the settlement (**Document ID/50**). These are in any event, plainly issues to be considered in the local plan context against an evidence base which is properly derived and fully tested.

## PREMATURITY

266. The 2012 appeal decision considered the issue of prematurity in the context of the Framework, which was in draft form at the time. The conclusion reached was that the presumption in favour of sustainable development did not justify the grant of permission prior to the SIR (**Documents O/1, Paragraph 3; ID/O2, Paragraph 12.14.26**). The subsequent publication of the Framework, which was substantially the same in terms of Paragraph 14 and the presumption, would not therefore be a good basis for distinguishing the present case from the previous appeal.
267. The publication of the Planning Practice Guidance also does not justify a different approach since it makes clear that prematurity must be considered in the context of the Framework and the presumption in favour of sustainable development. It indicates that where the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits a prematurity objection is permissible.
268. The limitations regarding the substantial nature of the development and the advanced stage of the emerging plan were agreed not to be exhaustive and the Council acknowledged that the situation regarding the SIR is highly unusual<sup>41</sup>. When considering this issue what matters is the benefits and adverse impacts of granting permission as opposed to awaiting the SIR, given that this is the choice being made in the context of a prematurity objection.
269. It cannot be suggested that a prematurity objection can only be sustained if it is advanced by the Council as that would put form over substance. In any event the Council's non-objection is of limited weight in circumstances where it was thought it appropriate in February 2015 to ask Members to review their resolution to grant permission in the light of the intervening changes of circumstances, in particular the improved housing land supply position.
270. Members were originally advised that the housing land supply position undermined the Council's ability to make a prematurity objection. It is not known what members would have concluded had the issue been revisited (**Documents CD/COP/15; NHG/5/4, Appendix 1**)<sup>42</sup>. It is notable in this context

<sup>41</sup> Mrs Kelly agreed in cross-examination by Mr Banner that points a) and b) in Paragraph 014 to the Planning Practice Guidance are not exclusive. She also agreed that in her experience of 15 years it was unusual for a plan to take as long to prepare and adopt as the SIR.

<sup>42</sup> Mrs Kelly explained in cross-examination by Mr Banner that she had considered it important to update members of the housing land supply situation and to ask them to re-affirm their

that the Officer's Report at the time of the original resolution to grant advised members that the then housing land supply position undermined the Council's ability to make a prematurity objection (*Document CD/COP/15*).

### **Claimed benefits of granting permission now as opposed to awaiting the SIR**

271. The current best estimate is that the SIR will be adopted by May 2017 (*Document NHG/5/2, Paragraph 3.42*). Assuming that the Secretary of State issues his decision in November 2015, the headstart that granting permission would provide would be about 18 months. The Applicant considers it unlikely that there would be any occupations for 18 months after the date of permission and agreed that it was conceivable that it could take at least 2 years given the need to identify a purchaser for the site, for the transaction to be completed, for reserved matters approval to be obtained and conditions precedent discharged<sup>43</sup>. On the Applicant's own evidence, therefore, the site is unlikely to deliver a single dwelling before the anticipated adoption of the SIR.
272. Even assuming that it would take a similar lead-in time for occupations to come on-stream after the adoption of the SIR, if Hatchfield Farm ended up being allocated, the 18 month headstart that granting permission in November 2015 would provide compared to awaiting the adoption of the SIR in May 2017 would translate into just 45-90 dwellings (*Document NHG/5/2, Paragraphs 1.24, 3.42*). This is less than the headstart anticipated in the 2012 appeal decision, which was considered to be 2 years or around 160 dwellings (*Document CD/O/2, Paragraphs 12.14.16-12.14.20*).
273. This decreased headstart falls to be considered against the context of a housing land supply position which is 4.9 years or 5.1 years rather than 3.6 years as at the time of the 2012 appeal. Bearing in mind that the 3.6 year figure did not include any buffer as it pre-dated the Framework, the improvement in the housing land supply position is therefore at least 1.5 years. That is substantial and can give the Secretary of State confidence that the Council's position is a matter for considerably less concern than at the time of the previous appeal. No allowance has been made for windfalls, but it is not unreasonable to think that a degree of windfall provision will come forward. Although this is not included in the formal housing supply figure it provides a degree of further reassurance.
274. The need to maintain a 5 year housing land supply going forward is right. However it must be viewed in the context of the Council's subsequent confirmation that there was no evidence that it would be unable to do so if planning permission were to be refused. It was conceded that the above factors mean that the benefits of granting permission now as opposed to awaiting the SIR are smaller than they were at the time of the earlier appeal.

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resolution. However the matter was not put before the Committee because the application had been called-in and was now in the hands of the Secretary of State. There was no longer any power to change the resolution.

<sup>43</sup> My note indicates that Mr Sellwood said in cross-examination by Mr Banner that he thought the process would take about 18 months although it could be less.

## Adverse impacts of granting permission now as opposed to awaiting the SIR

275. The conclusions of the Secretary of State regarding the disadvantages of granting permission rather than waiting for the SIR were central to his reasoning on prematurity and remain valid (*Document CD/O/2, Paragraphs 12.14.16, 12.14.20, 12.14.26*). The size of the previous appeal development was different and it was observed that it would amount to about 16% of the residual requirement for the whole District and would thus pre-empt the proper operation of the Development Plan process (*Document CD/O/2, Paragraph 12.14.21*). However, the thrust of this conclusion still applies for the following reasons:

- 275.1 The proportion that the present scheme represents of the current residual requirement for the whole District would be 7.5% or 9.6% if the sites which have already been identified in the Council's 5 year housing land supply figures are deducted. On this basis the present scheme would not be insignificant as a proportion of the residual requirement.
- 275.2 Secondly, the Meddler Stud appeal decision for 102 dwellings is a recent, post Framework case. Here a development representing an even lower proportion of the residual requirement was dismissed on grounds of prematurity. The Inspector considered it appropriate to view prematurity in the context of Kentford rather than the district-wide, given the village's infrastructure shortcomings (*Document CD/O/3, Paragraphs 47-57*). However the present scheme should similarly be considered in the context of Newmarket where the highway and water supply infrastructure are also under immense pressure, which is more appropriately dealt with on a plan-led basis.
- 275.3 The grant of permission now would pre-empt the proper operation of the development plan process for the following additional reasons:
  - As well as the question about whether Hatchfield Farm should be released, there is also the issue of when and how it should be released. These are all matters for consideration as part of the SIR having regard to issues with the highway and water supply infrastructure, amongst other things. Even if the Applicant were right about the inevitability of an allocation at Hatchfield Farm, that does not mean that there would be no prejudice to the development plan process.
  - The quashing of the housing distribution policies by the High Court was not simply procedural but went to the substance of the decision to adopt those policies over the reasonable alternatives. The consequence of the judgment is that the Council is obliged under European law to nullify all the unlawful consequences of its breach of the SEA Directive by undertaking SEA of the reasonable options for housing distribution in the District following which new housing policies will be adopted (*Document ID/55/6, Paragraphs 64-65*).
  - The process cannot be prejudged especially in relation to the assessment of options and reasonable alternatives in the SIR. To do so would be to breach this obligation. The Council is considering various options. However Option 1 would be inconsistent with the

grant of permission for the proposed development whereas Options 2 and 3 would have a potential impact on the horse racing industry in Newmarket (**Document ID/18**). The competing merits of these options as part of the SA/SEA process will need to be informed by:

- Consultation of the public and of relevant horse racing industry stakeholders.
- A robust evidence base including an assessment not simply of the strengths but also of the potential vulnerabilities of the horse racing industry.
- Consideration of the conflicts between horses and vehicles which Paragraph 9.19 of the JDMPD identifies as a serious issue and in which context the existing infrastructure will need to be assessed.
- The potential for Mildenhall to accommodate significant housing growth during the plan period through new development and the release of a potentially large amount of existing housing stock currently occupied by United States Air Force personnel (**Document ID/36**).
- The Applicant suggested that if the Habitats Regulations assessment or appropriate assessment of the SIR identified possible cumulative effects on European habitats from the development in combination with what is proposed, then the plan can be tailored in such a way as to avoid such effects. This further demonstrates the scope for the grant of permission to prejudice the plan-making process. If there is any potential for the development to constrain decisions as to the timing, location and amount of development to be allocated within the SIR, then the grant of permission would prejudice the SIR process.

276. There is a great deal more to be lost from granting permission now rather than awaiting the outcome of the SIR. The benefits are smaller than those prevailing at the time of the previous appeal whilst the adverse impacts identified remain and are augmented by the additional considerations referred to above. The proper conclusion is that the adverse impacts of granting permission now as opposed to awaiting the outcome of the SIR significantly and demonstrably outweigh the benefits of doing so.

## PLANNING CONSEQUENCES

277. The application is contrary to the development plan and the Framework. In order for the prohibition on development that would *threaten* the long-term viability of the horse racing industry to be engaged, it is not necessary to show that harm had already been caused. Policy DM48 seeks to avoid such harm happening in the first place and as such reflects a precautionary approach. The application is in breach of this policy since it poses such a threat and the compelling justification required to outweigh has not been made out (**Document NHG/5/2, Paragraphs 3.46-3.93**).

278. The absence of appropriate assessment in relation to Chippenham Fen and Breckland SPA means that permission cannot be granted. If appropriate assessment were to be undertaken, the information currently available does

not justify a conclusion that the risk of adverse impact on integrity can be ruled out. In the absence of further information which enables such a conclusion to be reached, permission must as a matter of law be refused.

279. The deficiencies in assessing the impact of the development on Snailwell Meadows SSSI means that the application is contrary to Paragraph 118 of the Framework and the shortcomings in the badger surveys mean that Paragraph 99 of Circular 06/05 has also been breached.
280. The prematurity objection is free-standing and justifies refusal on the basis that the adverse impacts of granting permission now as opposed to awaiting the impact of the SIR significantly and demonstrably outweigh the short-term benefits of a limited headstart.
281. Such benefits as may be found to arise do not outweigh the adverse consequences of the matters identified above and in evidence.

### **OTHER ORAL REPRESENTATIONS TO THE INQUIRY**

*The main points are:*

282. **Mr W Hirst** was, at the time of the Inquiry, a District and Town Councillor for the Severals Ward in which the application site is located. He also lives locally. He talked of traffic queues along Fordham Road and along the A14 slip road in peak periods. Many Newmarket residents commute to places such as Cambridge or Bury for work. He considered that the proposed highway improvement to the A14 slip road should first be tested by putting in temporary signals to see if the queuing problem improved. It was not sustainable if residents could not move around the town easily due to congestion. He believed that there should be an independent test of the local network before further development is approved.
283. **Mr A Drummond** is a District Councillor and at the time of the Inquiry he was Chairman of the Council and Vice Chairman of the Development Control Committee. His representations are at **Document ID/29**. He considered that there was undue haste in deciding to follow the recommendation to approve the application and that it was primarily supported by non-Newmarket members of the committee. They did not want development in their own wards, which was a likely prospect in view of the housing land supply situation.
284. His main objection related to the inadequacy of the junction of Fordham Road and the A14. The latter is a very busy trunk road where accidents and long delays are frequent. There is no hard shoulder for emergency services. Newmarket is close to Cambridge and is popular with commuters. The application development would become a dormitory estate and add significantly to the existing congestion at the junction and along the A14. It would be far better to build in the surrounding villages where occupiers would be more likely to work within the district. This has been happening, at Red Lodge for example. Now there is a 5 year housing supply so the application scheme is unnecessary. The closure of RAF Mildenhall is also a concern as many servicemen live in the district. The local housing market will need to be carefully managed and adding new houses at the application site would compound the issue.



285. **Ms R Hood** is a Town Councillor and at the time of the Inquiry she was also a District Councillor and Mayor of Newmarket. She lives locally and she represented Severals Ward in which the application site lies. She is a partner in the business with her husband, Mr J Gosden, a leading trainer in Newmarket and she also owns racehorses. She holds a number of other positions including being President of the Racehorse Owners Association, the founder and former Chair of Save Historic Newmarket and Trustee of the Museum of Newmarket. She submitted supporting information at **Document ID/32**.
286. Ms Hood spoke in her role as Mayor and representative of the Town Council. The main points she made were as follows:
  - 286.1 The Town Council recognises that development may be necessary in Newmarket to meet future needs. However this should be properly planned to preserve the unique qualities of the town. The Town Council represents everyone and is actively employed in positive initiatives to improve the town. Active initiatives were being taken, for example the Newmarket Vision, which is a collaborative process between the Town and District Councils and the local community.
  - 286.2 The Town Council has been consistent in its opposition to development at Hatchfield Farm because of the significant adverse effects on the horse racing industry and the environment. There would be irreversible consequences to the local economy, including tourism.
  - 286.3 The comments about congestion and traffic made by Mr Hirst and Mr Drummond were endorsed. The situation regarding Mildenhall and the position regarding the housing land supply represented new circumstances.
  - 286.4 The Town Council has resolved to draw up a Neighbourhood Plan and the Princes Foundation work is a precursor to this (**Document CD/O/26**). The area for the Neighbourhood Plan is being discussed and the District Council is assisting although there has been no formal designation as yet. The application is premature in advance of this process.
  - 286.5 Infrastructure is insufficient to support the new development. The police station, hospital and court no longer exist and doctors' surgeries are full. Traffic is getting heavier and the number of horses and trainers is increasing.
287. Speaking in her role as a District Councillor, Ms Hood was very concerned that the Council does not recognise the economic importance of the horse racing industry. This is despite the conclusion in the SQW Report that it is the largest economic contributor to the district (**Document CD/E/1**).
288. Speaking in her role as a racehorse owner, Ms Hood emphasised the unique position of Newmarket in the world, its historic importance and its vital contribution to the local and national economy. She repeated her concerns that the application was premature.
289. **Ms S Beckett** is a local resident and attended both the present Inquiry and the previous one. Her representations are at **Document ID/43**. She pointed out that Newmarket is not just any urban area as implied by the Applicant's use of road standards in MfS. Rather it is unique as an international centre for horse racing and breeding. Drivers do not necessarily slow down at crossings and

the interaction with horses can be unpredictable. There are daily traffic queues and congestion and the marginal safety improvements being proposed would not be sufficient. The perception of harm derives from those with knowledge of the town. It is unbelievable that the threat that many investors thought had been removed from dismissal of the previous appeal has now returned.

290. **Mr J Crowhurst** is a local vet at the Newmarket Equine Hospital, which has recently relocated to new premises on the edge of the town. He is a veterinary adviser to the Thoroughbred Breeders Association and a past Chairman of the Newmarket Stud Farmers Association. He was born in Newmarket and has worked in many of the main racing and breeding centres in the world. He therefore understands the special qualities of Newmarket as a centre for racing and breeding and its contribution to the local and the national economy. Mr Crowhurst works at the Newmarket Equine Hospital, which is now located on the edge of the town. He travels to support a number of clients and in emergency situations he frequently encounters difficulties with traffic hold ups especially along Bury Road and Fordham Road.
291. The major owners are mainly foreign and need to have confidence in the system otherwise they will move their investment elsewhere. The numbers of horses, especially on stud farms, has risen since the last appeal, which reflects confidence. No-one believes that Hatchfield Farm will remain as 400 houses but even with that number he disagrees that the impact on traffic conditions would be negligible.
292. **Mz Y Zellen** is a local resident and a Bahai poet. She has also submitted letters in response to the application and the main points are incorporated here (**Document WR/2**). She agreed with other speakers and said that she attended due to her love of horses and worked for many years riding and caring for racehorses. She considered the position of the site inappropriate and that most residents would commute to Cambridge rather than being any benefit to Newmarket. Newmarket is a unique and historic racing town with its heaths, studs and racing yards and if this development is allowed others will follow. Traffic in Fordham Road is already intolerable and the new development would make it worse. It would also be a drain on medical and educational services. .
293. **Mr A Appleby** was a District Councillor for the Severals ward until 2011<sup>44</sup> and has worked in racehorse transport for many years. His representations are at **Document ID/30** and he has also made written submissions in response to the application, which are incorporated here and can be found at **Document WR/5**. The Council is required to build around 7,000 houses and it is only right that Newmarket should take its share. Hatchfield Farm is better placed to accommodate this housing than the brownfield sites within the town centre. It has good access to the A14 and fewer implications for traffic and racehorse safety. There would be 120 affordable homes which are needed, not least by racing staff and their families. Mildenhall is unlikely to change matters at the moment as possible alternatives for the base are uncertain.

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<sup>44</sup> Mr Appleby was re-elected as a District Councillor in the May 2015 elections.

294. The concerns about negative impacts on economic growth come mainly from racing interests. The horse racing industry is the second largest employment sector in the town, after the care industry. However less than a quarter of the local population work in it either directly or indirectly. Economic diversity therefore exists and is essential to the wellbeing of the town. International investors, including the Maktoum family, have located at Newmarket for various reasons, including the availability of experienced racing staff. There have been horse and traffic safety conflicts during the 17 years that Mr Appleby has been in Newmarket. He is particularly horse aware as a horse box driver but nonetheless has experienced incidents between horses and traffic. When the trees are in leaf visibility is a big problem both at the Rayes Lane and the Bury Road crossings.
295. Members of the horse racing industry have either been oblivious to or chosen to ignore various ways of reducing risk to horses and riders, for example by restricting cross-town horse movements thus establishing two separate training areas. Also Jockey Club Estates could make land available so that training yards could relocate outside the town thus reducing safety risks of horses moving about the centre. It is surprising that wealthy owners have not invested more in measures to avoid horse and human injury and protect their investment.
296. Although the racehorse population in the town has grown from about 800 in the 1960's to some 3,000 today the town has degenerated. The application proposal would increase local spending and thus encourage local businesses to grow and diversification to take place. Extra council tax receipts would help fund infrastructure improvements and regeneration and help improve the vibrancy of the town centre. There would be a positive impact on economic and social growth and this would help attract and retain racing staff. It should be remembered that Newmarket was a market town long before it became the home of horse racing and that only about a third of the population are involved with racing, either directly or indirectly.
297. Mr Appleby lives near to the application site and frequently travels along Fordham Road in peak periods. He recognises that the application scheme would generate more traffic although points out that the National Heritage Centre for Horseracing and Sporting Art currently being developed in the town centre and supported by NHG will also attract a large amount of extra traffic. Congestion also happens on race days. The application site is on the edge of the town and away from the training yards and horse crossings. He considers that the proposed signalisation would greatly improve the existing difficulty of getting onto and off the A14 slip roads. He does not consider that the application development would have a detrimental effect on Newmarket or its racing industry or result in the movement of owners and investors elsewhere.
298. **Mr B Rampling** is Chairman of Moulton Parish Council and spoke in support of the application on behalf of the Rural Parish Alliance, which are a group of 15 rural parish councils in Forest Heath District. His representations are at **Document ID/31**. The group was formed to provide a collective voice against large scale unsustainable developments in the district. He is concerned that the refusal of permission adjacent to the largest and most sustainable market town in the district will result in continued pressure for speculative housing development in the rural villages as has happened since the dismissal of the

previous appeal. Despite the quashing of certain parts of the CS, it remains the Council's policy that the largest developments should go to the most sustainable settlements of Mildenhall, Brandon and Newmarket, which also accords with national policy.

299. The development would offer many advantages. The 30% affordable housing would help meet the housing needs of over 300 households on the waiting list. Without large scale development such demands will continue. Other benefits of this proposal include the provision of a school site and improvements to the A14 junction. Sites for large scale development such as this with all its advantages are in short supply in the district. Both Red Lodge and Lakenheath have both seen large scale housing schemes permitted since the High Court Challenge to the CS. However both already have schools at capacity.
300. **Mr W Gredley** has lived in Newmarket for about 40 years and owns 2 studs as well as about 100 horses, 30 of which are in training. He supports the application and will not be leaving the town if permission is granted. He considers that most others are of the same mind and that the objectors are scaremongering. The Jockey Club Estates is protecting its own interests and trainers like the situation as it is. No account has been taken of the interests of the community and the many who do not have a voice. More houses are needed and this would be a good site on which to build them. Mr Gredley's company compiled *A Vision for Newmarket Town Centre* in 2009 (**Document ID/49**). There needs to be a satisfactory resolution between traffic and horses. Horses have their own walks but the Jockey Club Estates has the funds to construct bridges over the roads.

## **WRITTEN REPRESENTATIONS**

### **TO THE PLANNING APPLICATION**

301. There were a large number of objections and one letter of support to the application prior to it being called-in (**Document CD/COP/16, Part 2**). These are summarised in the Committee Report (**Document CD/COP/15, Paragraph 66 and 67**). There were also representations submitted following the call-in (**Documents WR/1-WR/9**).
302. **Matthew Hancock MP** echoes the concerns of others about the effect on the horse racing industry, increased traffic congestion in the town and adverse impacts on its economy and character. He referred to the Meddler Stud appeal which he considers has important implications. The present proposal should be considered premature on the grounds that the SIR has not yet even been consulted upon.
303. **Exning Parish Council** was particularly concerned about major congestion around the A14 and Fordham Road junction. The cumulative effect of the application scheme along with other developments approved in the area will greatly impact on the junction and the village. Installing traffic lights will not solve the problem and roundabouts are the long-term solution. Before any permission is granted trials of the proposed signalisation should take place to see whether the situation will in fact be improved.
304. **Newmarket Town Council** objected on the grounds of damage to the horse racing industry and damage to the town's culture and historic status. There is

insufficient infrastructure to support more residents such as schools, doctors, police and hospitals. There would be environmental damage, including to Chippenham Fen SSSI. There was also concern about traffic issues, loss of agricultural land, archaeological matters and water supply.

305. **Lakenheath Parish Council** supports the application. Growth in Newmarket has stagnated due to the continual legal challenges by action groups with their large financial resources. As a consequence, the rural villages have already seen a large amount of speculative development due to the quashing of the Council's housing distribution policies. They are unable to absorb such growth due to lack of facilities and infrastructure. Lakenheath has seen a growth of about 43% but its school is at capacity. The application would provide a school site, affordable housing and much needed improvements to the traffic situation. It would be a sustainable location for further development on the outskirts of the largest market town in the district (**Document ID/48**).
306. Most points by other representors have been made either by the main parties or those who spoke at the Inquiry. I do not therefore repeat them here but note the following additional points.

*Those objecting to the application*

- 306.1 There was concern about increased traffic through surrounding villages, including Exning and Snailwell. Also objections were raised to the increased traffic on the surrounding road network such as St Albans Road. The build up of congestion at the Clock Tower has increased dramatically over the last two years and causes frequent delays to traffic in all directions. The lack of pedestrian crossings on Fordham Road was raised. Public transport within the area is poor.
- 306.2 There would be increased traffic pollution. The proximity of homes to the A14 and major roads would not be conducive to mental health, which is a growing problem.
- 306.3 There was insufficient infrastructure to support the new population, including schools, healthcare and emergency services. Services such as water supply and the foul sewerage system was inadequate to support the proposed development.
- 306.4 The scheme would result in the loss of good farmland and development should be on brownfield sites. The proposal would set a precedent for further development. It would adversely impact on the town's heritage status and tourism. There are already many empty homes in Newmarket and more are not needed. The proposal would include no employment opportunities and would turn Newmarket into a commuter town for Cambridge. The amenity for prospective occupiers would be poor.

*Those supporting the application*

- 306.5 There is a need for further housing and the site is in a good location, close to major infrastructure but outside the congested town centre and away from the training grounds and horse walks. It would allow easy access to the nearby industrial area and employment opportunities in Cambridge, Bury St Edmunds, Fordham and Soham.
- 306.6 The town should not be allowed to stagnate. The development would

encourage larger stores and better facilities in the town centre. The development could also attract more tourists and businesses to the locality although one supporter felt there should be more emphasis on facilities for residents rather than tourists.

- 306.7 The impact on the equine industry has been grossly overstated. The proportion of the town's population engaged in it has been exaggerated and is decreasing. Newmarket is one of a number of major equine industry areas in the UK and its status has been overplayed. Furthermore the industry adopts a contradictory attitude by supporting dwellings on equine land in Kentford. It also supported a previous proposal for playing fields on equine land in Exning Road to allow a new Sainsbury's on existing playing fields in Fordham Road. The latter would have had a far greater effect on the horse racing industry than the application proposal.

## CONSULTATION RESPONSES

307. Responses from external consultees are at **Document CD/COP/16, Part 1** and are summarised in the Committee Report at **Document CD/COP/5, Paragraphs 51-61**. There have also been responses subsequently and reference to these is given in the text below.

*The main points are:*

308. **Suffolk County Council** would prefer to see development dealt with through the SIR and raises the question of prematurity. Consideration should also be given to the impacts on the horse racing industry. However if the permission is to be given the County Council has offered comments on various matters.
- 308.1 The Transport Assessment and Travel Plan has been reviewed and it was concluded that, subject to the proposed mitigation, the residual effect on the local highway network would be acceptable in terms of safety and capacity and so the impact of development on the highway would not be severe. The improvements would be sufficient to mitigate the effect of the additional traffic on horses using the highway. Various conditions are recommended. A SCG has been signed between the Applicant and the Highway Authority (**Document CD/SCG/3**).
- 308.2 An option for 1.5 ha of land for a 315 place primary school is sought along with pro-rata build costs. There is also insufficient pre-school capacity and funding to provide this would be required. The County Council has a statutory duty to provide school places and, if necessary, temporary places would be provided in the short term. There is sufficient forecast capacity at Newmarket College to meet secondary school needs. Contributions towards libraries, household waste provision and fire hydrants would also be sought. A SCG on these matters have been provided between the County Council and the Applicant (**Documents CD/SCG/5; CD/SCG/7; ID/40**).
- 308.3 A sustainable drainage strategy should be implemented. A condition regarding archaeological investigation and assessment should be applied as the development would affect an area of archaeological potential. Improvements to Newmarket Bridleway 2 are recommended, which would provide a route to Newmarket College and

the leisure centre.

- 308.4 Generally the direct ecological impacts have been thoroughly considered. Proposed enhancements to biodiversity are reasonable and would be likely to result in an overall gain. The County Council agrees with Suffolk Wildlife Trust that the indirect impacts of recreational pressure on Breckland SPA have not been adequately assessed. A project-level Habitats Regulations assessment is recommended.
309. **Suffolk Fire and Rescue Service** raised no objection but suggest a condition relating to the provision of fire hydrants.
310. **The Highways Agency** raised no objection subject to implementation of the A14 junction improvements. A SCG has been signed between the Highways Agency and the Applicant to this effect (*Document CD/SCG/4*).
311. **NHS Property Services** comment that the proposal would be likely to significantly impact on the funding for delivery of local healthcare provision. A contribution would be required to increase the capacity of GP surgeries within the catchment, which are at present over capacity.
312. **Environment Agency** raised no objections subject to conditions about surface water drainage, construction methodology and improvements to the sewerage system.
313. **Anglian Water** raised no objections. The Newmarket sewage treatment works and the foul sewage network would have sufficient capacity to accommodate the development.
314. **Natural England** has raised no objections. The water requirement for the development would be met by existing licences and the level of abstraction permitted by those licences can occur without harm to Chippenham Fen. This takes into account the LG Scheme operated by the Environment Agency. Anglian Water's *Water Resources Management Plan* assesses future water supply in relation to predicted demand and it assumes a higher rate of new residential development than predicted by local authorities. The conclusion is a water supply surplus in the Newmarket RZ over the next 25 years. This allows a robust in-combination consideration and the conclusion to be reached that there would be no likely significant effect on the SSSI or Fenland SAC. It recommends a condition to prevent disturbance to bats on the application site.
315. **Suffolk Wildlife Trust** commented that the proposal should ensure suitable protection for protected species and BAP priority species. Bat habitat features around the boundaries of the site should be protected and impacts from lighting should be considered. The mitigation measures proposed for badgers would be broadly satisfactory for this site. Long term compensation for the loss of skylark territories should be secured. The feasibility of the translocation proposal for fine leaved fumitory, which is nationally scarce although not a BAP species, is queried.
316. The site is within 10 km of the Breckland SPA. In view of the findings of the Fearnley Report there may be increased recreational pressure arising from the development. An appropriate assessment is thus recommended along with consultation with Natural England.

317. **Sport England** raised no objection. It commented that there would be a demand on existing community sports facilities and that a contribution may therefore be necessary.
318. **The Ramblers Association** raised no objection but requests a pedestrian link between Fordham Road and Snailwell Road through off-site works. This had been provided in the previous application for the larger development.

## **PLANNING CONDITIONS**

319. The Council and Applicant produced a list of agreed conditions (**Document ID/45/1**). There were also further conditions provided by the parties relating to the proposed improvement to the Rayes Lane crossing, Design Codes, external lighting and energy provision taking account of the new technical housing standards (**Document ID/45/2**).
320. The conditions were discussed at the Inquiry and I suggested various changes in the interests of precision, enforceability and otherwise to accord with the provisions of the Framework and Planning Practice Guidance. In some cases I have found conditions overly complex and prescriptive and I have recommended shorter and more focused alternatives. It is noted that BS 42020:2013 *Biodiversity- Code of Practice for Planning and Development* recommends conditions relating to ecology I have adopted the gist of its recommended wording where appropriate (**Document ID/45/3**).
321. One area where I consider more detailed provisions are required relates to the matter of phasing. In order to try and ensure later phases come forward expeditiously it is important to include a timing clause relating to the reserved matters submissions and implementation of the final phase. The conditions that I recommend were discussed with the parties and the timescales were considered reasonable.
322. The conditions that I commend to the Secretary of State if he is minded to grant planning permission are contained in the Schedule in Annex Three. The numbering does not accord with that within **Document ID/45/1** as some conditions have not been recommended as I explain below. For the avoidance of doubt the condition numbers in this section of the Report and hereafter concur with those in the Annex Three Schedule.
323. **Conditions 1-3** relate to details which are required to be submitted in advance of the reserved matters applications. This is necessary because the reserved matters applications will need to incorporate the matters that these conditions cover to achieve consistency across the development as a whole.
324. The Design and Access Statement establishes the design strategy along with a Masterplan and indicates building heights, housing types, densities and character areas. **Condition 1** seeks to ensure that these principles are carried into the detailed design to achieve a high quality built environment. The quantum of open space to be provided would comply with the *Supplementary Planning Document for Open space, Sport and Recreation Facilities* (2011). However the Council is not satisfied with the distribution and connectivity of different types of open and green spaces shown on the Land Use Plan. It is therefore reasonable to require further details at an early stage in **Condition**



2. The suggested wording has been simplified in order to make it more focused and precise.
325. The reserved matters requirements have been provided in the alternative and will be dependant on whether the development is to be constructed in phases. As the Applicant will not be developing the site it is not known at present whether there will be one or more housebuilders. **Conditions 4-7** are in the event of a phased programme and **Conditions 8-10** are in the event that the scheme is constructed all at once. The model conditions have been adapted, not least by introducing some reductions in the statutory timescales to ensure expedient delivery. The housing land supply matters are considered in the Conclusions, but even on the Council's own figures the short term supply only stands at around 5 years. In the circumstances it is necessary to ensure that the application site comes on-stream expeditiously in order to contribute to the supply pipeline. The timescales were discussed at the Inquiry and considered reasonable bearing in mind that there will be a number of pre-commencement conditions, including highway improvements, to discharge.
326. **Condition 11** lists the application plans, which include details of the two new accesses and the general disposition of land uses, in the interests of proper planning and for the avoidance of doubt. Although the application is not EIA development much of the background material, including the Environmental Report, is based on a development of 400 dwellings. In the circumstances it is appropriate that **Condition 12** provides this as the upper limit. Whilst a condition limiting storey heights has been suggested, this is unnecessary as the matter would be covered by **Condition 1**.
327. The application site is within Flood Zone 1 and the Flood Risk Assessment indicates that the risk of flooding from all sources is low. A sustainable surface water drainage strategy is proposed using SuDS techniques, although the Flood Risk Assessment did not include a detailed scheme. The provision of sustainable drainage accords with Policy DM6 in the JDMPD. On the basis that it demonstrates that the infiltration of surface water would be feasible, the Environment Agency has no objection on grounds of flood risk. The success of sustainable drainage systems in the longer term depends on an effective management and maintenance regime. **Condition 13** addresses these matters to ensure an effective surface water drainage system is in place for the lifetime of the development. The matter of the SuDS scheme and its efficiency in terms of returning water to the catchment is further discussed in the Conclusions.
328. **Condition 14** concerns the proposed improvements to the A14/ A412 junction, including the introduction of traffic lights to ease slip road traffic flows. The mitigation is shown on the drawings in Plan B and has been found acceptable by the Highways Agency as confirmed in the SCG (**Document CD/SCG/4**). Whether the improvements would ameliorate adverse impacts arising from the proposed development and are thus necessary is further considered in the Conclusions.
329. This site is likely to take some years to build out and therefore would have the potential to cause a prolonged period of inconvenience and disruption to new occupiers as well as to existing residents living close by. Whilst this cannot be prevented it can be controlled through the submission of a Construction

Method Statement as detailed in **Condition 15**. The wording has been changed slightly to be more comprehensive and relevant to this site. There is a substantial tree belt along the boundary with Fordham Road and it is not necessary to require security hoarding, facilities for public viewing and the like. Construction activity invariably causes some noise although there is no evidence that piling techniques would be used. Although there are residential properties on the western side of Fordham Road, these are some distance away and there is an intervening tree buffer. From the information provided it is difficult to see what reasonable or enforceable noise restrictions could be imposed in this case.

330. Even though it is not unreasonable to require details of the routes that construction traffic would take, the matter is notoriously difficult to control, especially on sub contractors' vehicles. It seems likely that the A14 would be the route of choice for many construction trips but it is difficult to see what penalty could be imposed on a driver travelling south through the town. Although the suggestion by NHG that measures should be included to minimise conflict with horse movements is well intentioned it is far from precise and would be unenforceable, in my opinion.
331. The Environmental Report considers the impact of the development on the ecology and wildlife of the site. It relies on various surveys, including a confidential badger report. Further updates to the ecological surveys were undertaken in connection with the Inquiry (*Document APP/4/3, Appendix 7*). Protected species on or close to the site include bats and badgers. There are also nationally rare species of arable weeds include fine leaved fumitory. The site may also support some common lizards and skylarks. The Environmental Report sets out mitigation measures to address the ecological impacts of the development.
332. There are also proposed enhancements, including the creation of new habitats. In order to conserve and enhance the biodiversity of the site a detailed Ecological Mitigation Statement is required to be agreed, implemented and monitored through **Condition 16**. It is also necessary to ensure landscape and ecological areas are managed properly to protect the biodiversity interest of the site over the longer term. **Condition 21** requires a Landscape and Ecology Management Plan to be agreed but the wording has been simplified in the interests of precision and enforceability.
333. The trees and hedgerows around the margins of the site are important landscape features and provide a green screen as well as a habitat for wildlife. **Condition 17** includes the necessary provisions to ensure that they are adequately protected during the course of construction although the wording has been made more precise. Parts of the site, especially the wooded margins, are used for commuting and foraging by bats. Bright lighting can cause disturbance to bats but this can be ameliorated by the use of bat friendly lighting. **Condition 3** requires a Lighting Strategy and this is to be agreed prior to the reserved matters applications. This is necessary to ensure that its provisions can be applied to the detailed submissions so that harm is avoided to the protected species. Although trial trenching has found little of interest, the County Archaeologist considers that the site has archaeological potential. It is reasonable to impose a condition but the suggested wording is

unduly prescriptive and the model form in **Condition 18** is more appropriate in this case.

334. There would be two new accesses off Fordham Road. It is necessary for one of them to be available for use at the start for use by construction traffic. The Highway Authority wish to see the section nearest the junction fully surfaced and this does not seem unreasonable. These matters are covered in **Condition 19**. **Condition 30** relates to the completion of both new accesses. The Highway Authority has judged that this needs to take place to serve the development once 150 dwellings have been completed and this seems reasonable. **Condition 20** is necessary to ensure that construction waste is dealt with in a sustainable way and in accordance with the Council's Waste Management Plan. There are various off-site highway improvements proposed as part of the proposal. These are aimed at encouraging new residents to exercise modal choices other than the car and hence improve the accessibility credentials of the site. This is considered further in the Conclusions.
335. **Condition 26** relates to the two new signalised crossings on Fordham Road and **Condition 27** relates to the improvements to pedestrian and cycle links to the Yellow Brick Road, which provides a footway into the town centre (*Document APP/2/3, Appendix A*). Both are Grampian style conditions whereby the works must be completed before any new dwelling is occupied. The plans referred to have been agreed with the Highway Authority and can be found at Plan B. Improvements to the capacity of Studlands Park Avenue and Exning Road by the installation of a mini-roundabout were considered necessary in the Transport Assessment and **Condition 29** requires this to be completed before 150 dwellings have been occupied.
336. The Rayes Lane horse crossing was the subject of a great deal of discussion at the Inquiry and is further considered in the Conclusions. The Applicant proposes improvements to the crossing by means of a financial contribution but is content that the money could be spent on bringing forward either improvements to the existing informal crossing or the introduction of traffic signals. **Condition 23** is a Grampian style condition to bring this into effect and whichever of the works are chosen they would be required to be completed prior to first occupation of the development.
337. Access is not a reserved matter but there is no indication of accessibility or circulation routes within the site as set out in the definition under Article 2 of the *Development Management Procedure (England) Order 2015*. In the circumstances it is necessary to require details of the estate roads and footpaths under **Condition 22**. In order to ensure a comprehensive approach this needs to be addressed for the site as a whole rather than on a phased basis, if the site is to be built out in this way. **Condition 24** addresses the submission and approval of a Travel Plan, which is required in order to encourage modal choice and a switch to sustainable travel opportunities. This would accord with Policy DM45 in the JPMPD.
338. **Condition 25** concerns the provision of fire hydrants. Although there was no dispute that they should be provided, there was not agreement whether provision would be made through other legislation. It is appreciated that there would be a cost to the developer that would otherwise have to be met by the public purse. Policy DM2 in the JPMPD requires development to produce

designs and layouts that take account of community safety, amongst other things. Such infrastructure is necessary to ensure the safety of future occupiers and it is not unreasonable in my opinion that it should be provided by the developer as an integral part of the application scheme.

339. Although layout is a reserved matter, it is appropriate to ensure through **Condition 28** that no dwelling is occupied until it has a road connection with the public highway.
340. There are several conditions that I do not recommend are imposed for the following reasons:
  - 340.1 Anglian Water has made clear that there is available capacity both at the sewage treatment works and within the foul sewerage network. In the circumstances a condition on **foul drainage** is unnecessary as the requisite connections will be dealt with under other legislation.
  - 340.2 **Hard and soft landscaping** will be dealt with as reserved matters and conditions concerning these matters are unnecessary.
  - 340.3 The site is agricultural land and although there is an oil tank within the farmyard this is not within the application site. In the absence of evidence of **contamination** on the site itself a condition regarding this matter is unnecessary.
  - 340.4 There is no evidence that the development would adversely affect **air quality** through the traffic generation associate with it. It would therefore be unreasonable to require a monitoring programme to be undertaken.
  - 340.5 The provision of adequate **parking** is clearly an important matter to be considered within the context of the needs of the development. The Suffolk County Council's *Suffolk Guidance for Parking Technical Guidance* (2014) gives detailed advice as well as setting out standards for different uses (**Document ID/52**). Standards for dwellings are set as a minima but it is made clear that a range of factors will be taken into account. It seems to me that until the layout and grouping of dwellings is known it would be difficult to be prescriptive as to how parking is to be provided and at what level. This is a matter that is best dealt with when reserved matters on layout are submitted.
  - 340.6 There was some duplication of provisions and it is unclear what a **Construction Environmental Management Plan** would achieve that is not covered by a Construction Method Statement (Condition 15). In similar vein the suggested **tree protection** condition adds little to the recommended Condition 17.
  - 340.7 Paragraph 95 of the Framework requires local requirements for building sustainability to be consistent with the Government's zero carbon buildings policy and to adopt nationally described standards. The new national technical standards were introduced in the Written Statement to Parliament: *Planning Update* (25 March 2015). For energy performance, reliance will be placed on the Building Regulations and there will no longer be the provision for local planning authorities to introduce policies requiring a higher standard of energy efficiency by virtue of the Deregulation Act (2015).

340.8 Policy CS 4 in the CS includes a provision that all new dwellings achieve Code for Sustainable Homes Level 3. The Code has now been withdrawn but in any event the Building Regulations currently require an equivalent standard of energy efficiency. When the Government's zero carbon homes policy is introduced in 2016 the requirement in the Building Regulations will be set at a level equivalent to the old Code 4. In the circumstances the energy requirements would be met through other legislation and a condition on **energy strategy** is unnecessary. I note that a condition was suggested to address the new Government guidance. I understand it was taken from a decision by the Secretary of State in January 2015. However this was clearly specific to that scheme and there is no evidence to support the percentage requirements or the dates that they should be achieved. In any event it was prior to the Planning Update document and prior to the 2015 Deregulation Act.

## **PLANNING OBLIGATIONS**

341. There is a Planning Obligation by Agreement made under Section 106 of the Town and Country Planning Act (Section 106 Agreement) between the Council, Suffolk County Council, the Applicant and the Mortgagee (**Document ID/44**).

## **AFFORDABLE HOUSING**

342. This document commits to the provision of 30% of the units being affordable. This would comprise the following mix:

- 20 x 1 bed apartments, which would all be affordable rent.
- 8 x 1 bedroom bungalows of which 2 would be shared ownership and 6 affordable rent.
- 8 x 2 bedroom bungalows of which 2 would be shared ownership and 6 affordable rent.
- 57 x 2 bedroom houses of which 24 would be shared ownership and 33 affordable rent.
- 2 x 3 bedroom bungalows, which would be affordable rent and adapted for those with disabilities.
- 20 x 3 bedroom houses of which 8 would be shared ownership and 12 affordable rent.
- 5 x 4 bedroom houses, which would all be affordable rent.

343. The First Schedule contains the triggers for delivery of the 120 affordable homes in 4 tranches, which would be linked to the disposal of market dwellings. The first trigger is set at 80 market dwellings and the last at 200. These triggers seem reasonable to ensure that the affordable units are delivered expeditiously.

## **EDUCATION**

344. There are two levels of contribution towards **primary education**. The first is £4,450 per dwelling. However this would be reduced to £4,321.13 if the Applicant provides a primary school site on 1.51 ha of land immediately to the north of the application site. The Second Schedule includes 4 triggers for the

payment of the education contribution based on the disposal of the dwellings. The first payment is made before any dwellings can be disposed of. The final trigger is set at 300 dwellings. There would be plenty of equity left in the site at this stage so that these triggers are reasonable. If Suffolk County Council decides to take up the option of the land for the school it would be transferred for a minimal payment of £1.

345. Provision is also made for **pre-school facilities** to be provided on the school site if required. A pre-school contribution of £589.64 per dwelling would be made and the Seventh Schedule establishes 3 triggers with the first payment being made before any dwellings are disposed of and the last at the stage of 240 dwellings.

## TRAVEL PLAN

346. There is provision for the implementation of the Travel Plan, which has been approved by the Highway Authority. Included is a **Bond** of £853.13 per dwelling which is to ensure compliance with its targets and objectives. A contribution of £25 per dwelling would be provided for monitoring the Travel Plan over a 10 year period. This would be undertaken by the Highway Authority in order to ensure continued effectiveness. A car share contribution of £5 per dwelling is intended to make residents aware of the facility and would be spent on maintaining links on the website.
347. The **Yellow Brick Road contribution** of £100,000 would be used for improvements to this footway and cycle route, which runs roughly parallel to Fordham Road into the town centre as shown on the Map at **Document APP/2/3, Appendix A**. Improvements would comprise lighting and local widening of narrower sections of the route. There is also a Grampian style condition requiring implementation prior to first occupation.

## RAYES LANE HORSE CROSSING IMPROVEMENT

348. The contribution would be £60,000. The Third Schedule states that it could be utilised for upgrading the crossing and this could mean improvements to the informal crossing or signalisation. It is similar in wording to the contribution relating to the Tesco development referred to in Paragraph 52 above. There is also a Grampian style condition to secure implementation before the first dwelling is occupied. The Rayes Lane horse crossing and the contribution is discussed further in the Conclusions.

## PUBLIC OPEN SPACE

349. The Sixth Schedule requires provision of the public open space by the time of the disposal of 90% of the dwellings in the development or any phase. There are also arrangements for its future maintenance, either by the Council or a Management Company. The latter would be set up as a private limited company for the sole purpose of maintaining and managing those parts of the development that the Council has declined to maintain and manage.
350. The public open space commuted sum is for the maintenance of the public open space. The amount is not specified but is to be calculated from the Supplementary Planning Document: *Open Space, Sport and Recreation Facilities* (October 2011) (**Document CD/LP/9**).

## OTHER CONTRIBUTIONS

351. A **healthcare contribution** of £165 per dwelling would be spent on capital funding to increase GP capacity within the practice area. The Fourth Schedule sets out the provision for payment in 2 tranches triggered by the disposal of 120 and 360 dwellings.
352. A **library contribution** of £170 per dwelling would be for improvements to Newmarket Library. The Fifth Schedule sets out similar implementation arrangements to those applying to the healthcare contribution.
353. A **Rights of Way contribution** of £68,880 is made and would be spent on improved signage to direct people onto the public rights of way network and promote walking and cycling as an alternative to designated sites within 2 km. Also included is improvement to the surface, width and signage of Bridleway 2. The Eight Schedule establishes that the contribution would be paid before the disposal of the 121st dwelling.
354. The Section 106 Agreement includes a “**blue line clause**” whereby an obligation would become unenforceable if the Secretary of State decides that it does not meet the tests set out in Regulation 122 of the CIL Regulations.

## INSPECTOR'S CONCLUSIONS

*The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.*

355. Taking account of the oral and written evidence and my site observations, the main considerations in this appeal are as follows:
- **Consideration One:** Housing land supply and the contribution that the proposal would make to the market and affordable housing needs of the District.
  - **Consideration Two:** Whether the traffic generated by the proposed development can be accommodated on the network without severe residual highway impact.
  - **Consideration Three:** The effect on the horse racing industry in Newmarket.
  - **Consideration Four:** The effect of the proposed development on nearby sites of nature conservation importance and whether Habitats Regulation Assessment is necessary
  - **Consideration Five:** Whether the proposed development would be premature
  - **Consideration Six:** Other matters
  - **Consideration Seven:** Whether any conditions and obligations are necessary to make the development acceptable.
  - **Consideration Eight:** Overall conclusions and planning balance to determine whether the proposal would be a sustainable form of development taking account of the three dimensions in the Framework.

## **CONSIDERATION ONE: HOUSING LAND SUPPLY AND THE CONTRIBUTION THAT THE PROPOSAL WOULD MAKE TO THE MARKET AND AFFORDABLE HOUSING NEEDS OF THE DISTRICT**

356. All parties are agreed that since the Council considered the application and resolved to grant planning permission, the housing land supply situation in the district has improved. The Committee report recorded that as of March 2012 there was a supply of deliverable sites of little over 3 years, based on the CS requirement of 320 dwellings per annum. In its latest assessment the Council say that it can demonstrate a supply of 4.9 or 5.1 years, applying a 5% buffer but depending on whether the backlog is dealt with within the first 5 years (the Sedgefield approach) or spread over the remaining CS period (the Liverpool approach). From these figures there has clearly been improvement in supply, whichever figure is chosen. This is particularly bearing in mind that the latest position is based on a higher requirement of 350 dwellings a year, which was derived from the Cambridge Sub Region Strategic Housing Market Assessment using 2011 census data [40; 42; 43; 259; 273; 284].
357. The CS was adopted in 2010 and its housing requirement of 320 dwellings a year was not based on objectively assessed needs in accordance with the Framework. The more recent requirement in the Cambridge Sub Region Strategic Housing Market Assessment provides the most up-to-date evidence on objectively assessed housing need but even this figure could be considered constrained because it does not meet the full need for affordable housing. Whether there are good policy reasons for this will be a matter to be considered in due course in the SIR. In the meantime it is not unreasonable to conclude that 350 dwellings a year does not represent the full objectively assessed need for market and affordable housing [16.3; 145].
358. On the issue of the backlog, the Planning Practice Guidance and also the Secretary of State in most appeal decisions favours the Sedgefield approach. This deals with the issue of past delivery failures promptly over the short term and accords with a key objective in the Framework to boost significantly the supply of housing. The Liverpool method can be justifiable in some circumstances but means that past failures to meet housing requirements continue to go unmet and this translates into a failure to provide homes on the ground for the people that need them. No particular reason was given by the Council as to why it had decided to deal with its backlog in this way in its most recent assessment of housing land supply. It is considered that it is most appropriate to apply the Sedgefield approach when dealing with the backlog in this case [42; 43;].
359. The objectors point out that the housing land supply assessment makes no allowance for windfalls. However the Framework makes clear that windfalls should only be included if there is compelling evidence that such sites have consistently become available and will continue to do so. This will be a matter to be considered during the examination of the SIR but at the present time no such evidence is available [273].
360. Quite clearly the Council has improved its supply position but at best it can demonstrate a supply of 4.9 years and, for the reasons given above, it seems to me likely that the situation is less optimistic. The Council itself has described the position as “fragile” and it is relevant to note that for the last 3



years there has been a failure to deliver 350 houses annually. The objectors point out that there is no evidence that there would be no other sites if planning permission is refused but equally there is no evidence that there are readily available alternatives. The fact of the matter is that the Council welcomes the 400 dwellings proposed on the application site to help maintain its supply pipeline as time moves forwards. The settlement hierarchy in Vision 1 and Vision 2 of the CS remains unaffected by the Court Order and this confirms Newmarket as the largest town in the district. Paragraph 47 of the Framework seeks to boost housing delivery significantly. Although the whole development of 400 houses would not be completed within the next 5 years a significant number could be, especially with the shorter implementation periods agreed by the Applicant. In the circumstances the delivery of these houses would be a significant benefit of the scheme [23; 149; 260; 273; 274; 284; 325].

361. Paragraph 49 of the Framework establishes that housing applications should be considered in the context of the presumption in favour of sustainable development. It goes on to say that relevant policies for the supply of housing should not be considered up-to-date if a five year supply of deliverable housing sites cannot be demonstrated. This has a direct bearing on the settlement boundary of Newmarket, which was drawn up in order to meet the development requirements associated with the 1995 LP. There is no dispute that this is out-of-date, whether by virtue of Paragraph 49 or Paragraph 215 of the Framework. This means that the fact that the application site is designated as countryside for policy purposes does not necessarily mean that the principle of development would be unacceptable [23; 25].
362. The Council is in a precarious position in terms of housing policy. Not only is the CS housing requirement out-of-date but, apart from the still extant spatial hierarchy in Vision 1 and Policy CS 1, it is silent on the matter of distribution by virtue of the Court Order of 2011. The situation is not helped by the fact that the emerging policy that will deal with these matters through the SIR is still at a nascent pre-submission stage, notwithstanding the passage of time that has elapsed [16; 24; 41; 43; 145; 149].
363. The application proposal would provide 30% affordable housing in accordance with Spatial Objective H 2 and Policy CS 9 in the CS. There is no dispute that there is a pressing need for the provision of homes for those in housing need in Newmarket and the district. Meeting affordable housing needs is an important objective in the Framework and this aspect of the development should be seen as a substantial benefit [16; 40; 119; 150; 293; 299].
364. It is therefore concluded that the proposed development of the site would contribute to the Council's housing land supply deficit and accord with the Framework in this respect. The proposal would not be in accordance with Policy CS 7 in the CS, which sets out the housing requirement, but this is out of date for the reasons given. Although Policy DM5 in the JDMPD refers to development within the countryside, it is dealing with countryside protection and sustainability and is essentially a permissive policy that is not relevant to the supply of housing.

## **CONSIDERATION TWO: WHETHER THE TRAFFIC GENERATED BY THE PROPOSED DEVELOPMENT CAN BE ACCOMMODATED ON THE NETWORK WITHOUT SEVERE RESIDUAL HIGHWAY IMPACT**

365. The planning application was accompanied by a Transport Assessment. Neither the Highways Agency nor Suffolk County Council as Highways Authority (Highway Authority) objects on the grounds of highway safety or congestion. As the responsible authorities for the strategic and local highway networks this is a matter of considerable weight. There are SCGs with both the Highway Authority and the Highways Agency. It is also relevant to note that the Secretary of State agreed with the Inspector that the 1,200 house scheme would not result in an adverse impact on the safety or capacity of the highway network [22; 30; 45; 152; 308; 310].
366. Paragraph 32 of the Framework indicates that development should only be refused on transport grounds where the residual cumulative impacts are severe. Whilst there is already congestion on parts of the network, especially at peak periods, the question to be answered is whether the addition of the development traffic would make matters materially worse [44].
367. There is significant congestion around the A14 junction with Fordham Road, especially during peak periods. The proposed mitigation would provide signals to the slip road junctions off the A14 so that traffic flows would be better controlled around this junction. Whilst it is noted that some objectors consider that a trial run should be introduced first, the scheme has been worked up in conjunction with the Highways Agency who consider that there would be capacity and safety improvements. This would mitigate traffic impacts arising from the new development but would also ease traffic flows and queuing along this section of Fordham Road to the wider benefit to all road users. There is a current problem of rat running along Snailwell Road by those living to the north of the A14 and wanting to travel into Newmarket. This should be lessened because the southbound queue along Fordham Road in the morning peak would be significantly reduced [45; 282; 284; 299; 303].
368. It is recognised that there is considerable congestion within Newmarket, especially at peak times and also on race days. This can make moving about the town difficult and result in considerable delays for road users. This was highlighted in letters from local people as well as representatives of the horse racing industry. However this is an existing problem and the evidence shows that the additional traffic from the application development would not make matters materially worse. There was no dispute about the Applicant's traffic modelling, including the trip generation and distribution. Overall there would be an increase in traffic of about 5%. The previous scheme would have resulted in an increase of about 15% but was still found to be acceptable in this respect [44; 46; 151; 286; 289; 290; 292; 297; 302-304; 306].
369. In the circumstances it is not considered that the application development would result in an unacceptable increase in congestion or harm to highway safety. The residual transport impact of the development would not be severe. The scheme would comply with development plan policy in this respect, in particular Spatial Objective T 3 in the CS and Policy DM45 in the JDMPD [16; 17; 151].

### CONSIDERATION THREE: THE EFFECT ON THE HORSE RACING INDUSTRY IN NEWMARKET

370. There is no dispute from anyone about the importance of the horse racing industry to Newmarket. It is a pre-eminent centre for the breeding, training, racing and sale of thoroughbreds. The stables, stud farms, training grounds and two racecourses all give Newmarket a special and unique quality that is greatly valued by those that live, work and visit it. Racehorses are moved around the town from their stables to the training grounds along specially constructed horse walks. This happens from early in the morning until about 1300 hours and the sight of the strings of these fine animals being taken for exercise is a very impressive spectacle. This was covered in considerable detail in the Report of the previous Inspector and I do not intend to repeat the same points again here [48; 169; 170].
371. It was made quite clear at the Pre-Inquiry meeting that the important matter was what has changed since the earlier appeal and that repetition of the previous evidence would not be helpful. In 2012, the Secretary of State recognised the importance of the industry both in local terms and also to the national economy and in the global context. The conclusion that was reached was that the additional traffic from the development, which was a much larger mixed use scheme, would not have an unacceptable impact on the safety of racehorses or the horse racing industry overall [30; 31; 48; 49; 62].
372. The NHG response to this conclusion, which it should be noted has not been challenged through the Courts, was basically that the Inspector and thus the Secretary of State had got it wrong. In particular they were said to have misunderstood the situation regarding horse behaviour and the motivations of wealthy racehorse owners. Indeed this was a recurring theme throughout the Inquiry and the impression was given by some participants that only those connected to the industry were able to understand it sufficiently well to make informed judgements. This attitude discourages reasoned challenge and is not particularly helpful, in my opinion [168; 178; 185; 190; 208].

#### Planning policy context

373. The development plan includes policies that recognise the importance of the horse racing industry. Vision 2 makes clear that the position of Newmarket as the international home of horse racing will be preserved and enhanced. Policy CS 1 reiterates this through the spatial strategy and highlights its contribution to the local heritage and character of the town. Since the last appeal the Council has adopted the JDMPD and this has a suite of policies directed to the matter. Those of particular relevance here are Policies DM48 and DM50. Policy DM50 relates to horse walks and its accompanying text highlights the clear conflict between racehorses and vehicular traffic. The policy can reasonably be said to include the horse crossings, which are essentially where the segregated walks cross the road network. Policy DM48 seeks, amongst other things, to prevent development that would threaten the long term viability of the industry as a whole, unless the benefits would significantly outweigh the harm [16].
374. There was a great deal of discussion about whether the relevant policies in the JDMPD adopt a precautionary approach. Policy DM48 is in two parts. The first relates to whether a proposal would be likely to have a material adverse

impact on the operational use of an existing site, which requires risk to be considered. However it is the second part of the policy which is engaged in this case. This refers to a proposal that would threaten the long term viability of the horse racing industry as a whole. The interpretation of planning policy is of course a matter for the courts. However on a straightforward reading of Policy DM48 it seems to me quite clear that what is required is a consideration of what the effect *would* be not what the effect *might* be. This is confirmed in the supporting text, which seeks to prevent any proposed development that *will* adversely affect the economic, social and environmental role of the horse racing industry. I find nothing in Paragraph 9.19 or Policy DM50 that would support any other reading of the policy thrust insofar as it is relevant to this application. That is not to say that risk is an irrelevant factor. On the contrary it is a material consideration of importance [29; 155; 168; 169; 173; 177].

### Effect on the Rayes Lane horse crossing

375. Whilst there was some concern about the safety of other horse crossings in the town, including Bury Road, the evidence concentrated on the informal crossing of Fordham Road from Rayes Lane, which is referred to here as the Rayes Lane crossing. It was generally agreed that due to its position in relation to the training grounds and stables, the Rayes Lane crossing is the busiest in Newmarket and probably in the UK and even Europe. Furthermore it is close to the entrance to two schools, there is pedestrian movement along the footways and Fordham Road is a busy main traffic route into the town, especially in peak periods. A segregated horse walk runs adjacent to the footway from Snailwell Road and along the eastern side of Fordham Road. Since the last appeal the junction of Fordham Road with Snailwell Road, which is a short distance to the north of the Rayes Lane crossing, has been signalled with dedicated red phases for equestrians. There is no dispute that over the last 3 years there has been a growth in the amount of traffic and number of racehorses within the town [49; 180; 190].
376. Like many others in Newmarket, Rayes Lane is an informal horse crossing, which means that it is not controlled by traffic signals but relies on traffic stopping to allow horses to cross. There are warning signs, which are activated by the riders on the approach to the crossing and give drivers a flashing advance notice as they approach along Fordham Road either from the north or the south. I saw for myself the operation of the crossing with strings of horses, sometimes in quick succession, going from one side to the other. Jockey Club Estates owns a large amount of land in Newmarket, including many of the training grounds and horse walks. It operates a Code of Conduct for trainers and riders. Amongst other things this states that an unmounted member of staff should help the string across the road, riders should arm the triggers to activate the flashing warning lights, riders should wait for vehicles to stop before crossing and they should thank waiting drivers.
377. It is appreciated that this Code is not mandatory and that not all yards are of sufficient size to support unmounted assistance. However it is in the interests of trainers to do what they can to behave responsibly. From my observations over several days, the above principles appeared to be put into practice with drivers and riders co-existing in a relatively harmonious way. I noted the skittish behaviour of the thoroughbreds although I did not see any particular instances where a horse got out of control or a driver behaved aggressively.

Nevertheless the video clips submitted by both the Applicant and NHG showed that not all road users are so thoughtful and there were a number of incidents recorded where horses reacted in an adverse manner to external stimuli. It should be noted that whilst the focus of attention was the Rayes Lane crossing, there are examples of such incidents occurring in many other parts of the town [50; 56; 62; 168; 173; 184].

378. The incidents are not always caused by poor driver behaviour and thoroughbred racehorses can be spooked by all kinds of things, including a moving twig, a loud noise or a plastic bag blowing in the wind. Nevertheless at the crossing a significant proportion of incidents appear to be traffic related. Examples include drivers hurrying through when the warning lights are flashing in the hope of beating the approaching string and so avoiding being held up; misjudgement of the queue and stopping on the crossing itself; and becoming impatient and moving forward before the whole string has finished crossing. Such behaviour does not appear to be just associated with those who are unfamiliar with Newmarket. One such offender caught on the video clips was a local taxi driver. When the horses spook as a consequence they can become a danger to themselves, the rider and other road users [62].
379. The expert evidence was that the mix of thoroughbred racehorses, traffic and pedestrians in the vicinity of the crossing results, especially at peak times, in the potential for danger and conflict. However, whilst there are incidents occurring at the existing crossing there is no record that these have translated into accidents or injury either to people or horses. To my mind this is of some consequence, not least because of the large number of horses that use this crossing daily and the amount of traffic that passes through it. Some accidents could perhaps go unrecorded, although the Code of Conduct does require them to be reported. There is no evidence that the Code is being ignored in this regard or that the notification of accidents is being deliberately suppressed. It seems more likely that the situation is kept under control primarily through the skill of the riders but also the reasonable behaviour of the majority of road users [49; 50; 55; 56; 60; 173; 180; 181].
380. However the evidence from the behavioural equine expert was that due to the specific characteristics of thoroughbred racehorses, the risk of accidents occurring is high. These are animals bred for flat racing and are more predisposed towards uncontrollable flight responses than other breeds of horse. They have a high grain diet and are kept confined to their stables for large periods of time so that when they go out for exercise there is a greater degree of reactivity and also more extreme responses to external stimuli. These are young horses and as juveniles they have a nervous, excitable and highly strung disposition as is clear from watching their skittish behaviour as they move about the town. Their natural response is to accelerate and move forwards not to slow down and stand waiting at a road crossing. The evidence was that even the most skilled and experienced riders can lose control as a result of the unpredictable and extreme behaviour of their mount. The concern is that these behavioural traits coupled with the inevitable interaction with traffic at the road crossings has the potential for danger that could escalate to a serious injury to the rider, horse or road user [90].
381. When considering how the application proposal fits in to this context it is important not to forget an underlying planning principle. That is whether the

proposal in question would make a material difference to the existing situation. As already noted the incidents at and around the Rayes Lane crossing are not all caused by traffic. Those caused by other stimuli would occur with or without the proposed development, albeit that a driver from the site may be affected by the consequences. However, it should be noted that if a thoroughbred racehorse has a bad experience with traffic this can be retained to memory and cause anxiety. On a future occasion an adverse reaction may occur even though there is seemingly no apparent link to vehicular movement. So when considering risk arising from increased traffic, it is not necessarily only the traffic related incidents that need to be taken into account [49; 188].

382. Nevertheless, it is logical to surmise that the risk of accident or injury at the Rayes Lane crossing is directly related to the number of incidents. These in turn are caused, in main part, by the interaction between horses and traffic. If either the number of vehicles or the number of horses increases then the potential risk from accident or injury would also rise. As has already been noted there has been a growth in horse numbers and it is probable that this will continue. However that would happen regardless of the outcome of the planning application. In such circumstances it would be entirely reasonable to expect horse owners and the Jockey Club Estates to fund improvements to the Rayes Lane crossing to mitigate any increased risk. During the Inquiry the high value of the thoroughbred horses was emphasised time and again and it would be expected that those involved would want to protect their investment when travelling through the town and using the horse crossings [51; 61; 189; 300].
383. The application scheme proposes improvements to the Rayes Lane crossing. There are 2 alternatives, the WSP Scheme and the SCC Scheme, both of which would enhance visibility but retain the informal nature of the crossing. The WSP Scheme would be similar to that advanced at the previous appeal for this crossing and was found acceptable by the Secretary of State to mitigate the impact of the traffic generated by the larger development. The SCC Scheme is favoured by the Highway Authority and would include an enhanced package of measures. These include kerb build-outs to improve visibility, better warning signs about 50 m from the crossing, a raised crossing platform, a ramp onto Rayes Lane, road markings and a pedestrian crossing [49].
384. The mitigation offered by the Applicant is in the form of a £60,000 financial contribution and would either pay fully for the WSP Scheme or contribute to the SCC Scheme. The latter has already been part funded by the Tesco development further along Fordham Road and the money from the application proposal would make up the difference. As the SCC Scheme is preferred by the Highway Authority it seems likely that it would to be the option that would be implemented [52; 54].
385. There was a great deal of discussion about the details of the improvement schemes and whether the standards from MfS or DRMB should be utilised in the design. Whilst normally MfS would be the starting point for urban roads such as this, it provides no guidance on equestrian infrastructure. The DRMB provides guidance for high speed Trunk Roads but includes standards applicable to equestrians. In terms of junction design this sets out an acceptable X distance of 3 m and a preferred X distance of 5 m. The Y distance depends on the speed of approaching vehicles on the main

carriageway. The traffic count data submitted by NHG establishes a 7 day average 85<sup>th</sup> percentile speed of 35.6 mph in the northbound direction and 33 mph in the southbound direction. Applying the DRMB standard this would require a Y distance of 168 m to the north and 135 m to the south. It is noted on the NHG's own evidence that the standard with a 3 m X distance can be met in all situations other than when approaching from the west along Rayes Lane and looking left. Here, the Y distance would be 128 m [57; 58; 191-199; 289].

386. There were other objections to the SCC Scheme. These included the sight stopping distances that had been assumed. Also the inclusion of a zebra crossing, which could result in traffic queuing over the horse crossing. It is acknowledged that the improvements would not result in a perfect solution. It is appreciated that many do not observe the current discretionary 20 mph speed restriction outside the schools. However the proposed road markings and ramps would be likely to reduce average speeds, in my opinion, although the extent to which this would happen has not been quantified. In any event the mitigation would result not only in significant improvements to the view that drivers have of horses and their riders but also to the view of riders of oncoming traffic as they approach the crossing from Rayes Lane. It is the NHG's own evidence that the SCC Scheme would have the potential to avoid 20% of the 96 observed incidents occurring at the crossing. The objectors considered this to be a "marginal" improvement but I would not agree. The benefit would be real and significant, in my judgement. It is further noted that the NHG consider that if the Code of Practice were fully observed, a further 7% of the observed incidents could also have been avoided [50; 59; 63; 200; 201; 203].
387. The NHG put forward its own proposal for improvement in the form of a signalised junction or an underpass with associated improvements to the width of the Fordham Road horse walk. It was pointed out that the incident savings would be significantly greater being in the region of 73% and 86% respectively. It would be difficult to conclude that the traffic generated by 400 houses would justify building an underpass which has been costed at well over £1m. However the financial contribution offered by the Applicant, along with the aforementioned Tesco contribution, would pay for the signalisation option if the Highway Authority could be persuaded that this would be an appropriate alternative. The evidence to the Inquiry was that the Jockey Club Estates would be working towards such an outcome. It should be noted that the NHG mitigation proposals would also include widening the Fordham Road segregated horse walk. Whilst this would no doubt bring safety benefits, there was no evidence that the safety of horses using the horse walk would be materially compromised by the traffic generated by the application development [49; 51; 52; 53; 54; 204].
388. There was a criticism made of the SCC Scheme that the inclusion of ramps up to the crossing platform could result in additional noise that may spook the horses. It seems likely that vehicles, even lorries, would be travelling relatively slowly at this point, especially if horses were nearing the crossing in either direction. There is no evidence that this would result in an unacceptable issue and in any event I note that the NHG signalisation proposal itself includes ramps up to the crossing platform. On the northern side of the crossing the ramp would be well in advance of the signal head. On the southern side it is

relatively close to the crossing in both schemes and so it seems likely that vehicles would not be driven up it until the crossing was clear [202].

389. There was no dispute that the application proposal would result in a 5% rise in traffic moving through the Rayes Lane horse crossing in the morning peak period and for the reasons given above, this would be expected to increase the potential accident risk. The point at issue is therefore whether the mitigation proposed would be sufficient to counteract the increased risk. The Applicant undertook an exercise which sought to assess this by taking the total number of observed incidents and the daily traffic flows and working out, on a pro rata basis, the number of incidents per vehicle per day. This was then assigned to the generated development traffic and compared with the potential incident savings of the mitigation proposals. The conclusion was that the SCC scheme would result in a net saving of just over 2 incidents a day. On this basis it could be concluded that the proposed development, with its mitigation scheme in place, would not increase the risk of accident or injury at the Rayes Lane horse crossing [61-63].
390. However, the analysis was criticised by the NHG on the basis that the behaviour of thoroughbred racehorses is unpredictable and that a pro-rata approach to assigning an incident to a vehicle was therefore flawed. However the exercise included all horse crossing incidents whether traffic related or not. As already mentioned some, but by no means all, of the non traffic related incidents would be affected by increased traffic by virtue of the memory associations of the racehorses. The number of incidents in the analysis is therefore likely to be too high. Furthermore, the total number of observed incidents was 96 and so there could not be a greater number of incidents per vehicle than in the pro rata assignment. If anything the Applicant's analysis is therefore likely to be on the conservative side. It is accepted that on some days there would be less or no savings and on other days more. The relationship would not be a linear one as the mathematical exercise assumes. However overall the analysis has validity in terms of a quantification of the improvement that would ensue through incident savings. Furthermore, there is no alternative evidence that the 5% increase in traffic arising from the application proposal would give rise to 20% more incidents, whether traffic related or not [64; 186-188].
391. In the circumstances it seems to me that on the available evidence the Secretary of State can have sufficient confidence to conclude that whatever the existing risk, the SCC Scheme would result in a net safety improvement with the application development in place. There was some discussion about whether the reference to a severe transport impact in Paragraph 32 of the Framework concerned the capacity or the safety of the network. It seems to me that in the circumstances of this case the improvements to the Rayes Lane horse crossing would provide an improvement to the network and a safety benefit and that whether or not safety is the relevant consideration, Paragraph 32 would not be offended [65; 183].

### **Effect on investment and the consequent impacts on the economy and character of Newmarket and elsewhere**

392. One of the great strengths of Newmarket is its importance as an equine cluster. It has a unique reputation as a centre of international excellence and



at its core are the training establishments and stud farms for thoroughbred racehorses. These are supported by a wide range of specialist facilities. Jockey Club Estates own and manage large areas of land in and around the town, with training grounds on Racecourse Side and Bury Side of international renown. Tattersalls holds world famous bloodstock sales. There is also the National Stud and British Racing School. Specialist veterinary surgeons provide expertise specifically directed to thoroughbred racehorses. The trainers have high standing and reputation. In addition there are all sorts of goods and services that indirectly support the industry. A main advantage of the cluster is its co-dependency with one part supporting another either directly or indirectly and many exporting their services elsewhere [153; 168].

393. The horse racing industry is a thriving success and has continued to grow in terms of its economic importance despite difficulties in the national economy. Directly or indirectly it is responsible for providing a large proportion of the employment in the town. It seems to me that the advantages of the cluster and the importance of the horse racing industry to Newmarket, Europe and the world was understood by the previous Inspector and taken into account by the Secretary of State in his decision [48; 169; 170].
394. It is contended by the NHG that what has not been properly understood by the previous Inspector, the Council or the Applicant is the inherent weaknesses that threaten the future prosperity and continuing growth of the horse racing industry. This was considered in the report by SQW, which was published in 2014 well after the previous appeal decision. One of the main findings is the reliance on a few major investors, who turned around the industry in the 1980's following its decline a decade before. One of the main points put forward by NHG was that these 8-10 very wealthy individuals, mainly of international status, and owners of 60-70% of the racehorses, are not accountable to anyone. They can make quick decisions to either withdraw their capital and take it elsewhere outside the UK or choose not to invest further in the future growth of their enterprises in Newmarket. Such loss of investment would be of critical importance because the stock of thoroughbreds needs to be continually replenished due to their limited racing career. The approach of the NHG was that it would be quite unacceptable to adopt a "*wait and see what happens*" approach because by that time the harm to the cluster, Newmarket and the national economy would be serious and probably irreversible. This is why a precautionary approach is advocated [66; 168; 170; 172; 175; 176; 178; 207; 208].
395. It is appreciated that just because racehorse owners have invested heavily in training or stud facilities in Newmarket in the past they will not necessarily continue to do so if the conditions do not remain favourable. It is clearly impossible to know what future investment decisions a wealthy individual will make. They could be made on a whim in which case it seems unlikely that the application development would be a determinant. However even though the owning of thoroughbred racehorses may be a hobby or pastime it is also a business enterprise. It is not unreasonable to surmise that most will base their decisions on a shrewd and rational consideration of whether or not Newmarket will continue to offer the advantages that attracted the investment in the first place. The evidence of the trainers is important because they can be expected to have insight about how the owners of their racehorses behave. They will be important conduits of advice to their owners and it is

inconceivable that a pessimistic picture would be painted if, on an assessment of the evidence, the Secretary of State considers that the application proposal would not be harmful to horse racing interests and decides to grant planning permission [69; 178; 208].

396. Owners will also form their own opinions as they travel round the town to visit their horses and watch them in training. There were various points that were made by the objectors as negative factors that may reduce their confidence in the town. The first was increased congestion and getting held up in traffic. However this is an existing issue and is particularly bad on race days. There is no convincing evidence that the application proposal would make a material difference and indeed the Secretary of State did not consider that the traffic from the much larger scheme would delay movement about the town. It is also noted that this was not a matter to which the NHG highway witness subscribed. Increased urbanisation was a second point but the application site is adjacent to the A14 junction on the northern edge of the town and opposite a residential estate and commercial area. It is well away from those training establishments that stand in leafy, green, semi-rural locations and it is hard to see how this situation would change. A third point was that by recommending that planning permission should be granted the Council was no longer supporting the horse racing industry. However it carefully considered the application on its merits and within the context of the policies that are protective of the horse racing industry. These include policies in the JDPMD, which was adopted as recently as February 2015 and leave no doubt about the high protection that the Council considers is merited. In the circumstances I find no substance in support of these three allegations [66; 67; 71; 72; 156; 158; 208; 209; 210; 290; 297].
397. The point that was made several times was that the 8-10 wealthy owners in question, including the Maktoum family who own the Godolphin and Darley racing and breeding operations, do not make decisions based on planning legislation. However for the reasons given above it is not considered that a reasonable and rational individual would make an adverse investment decision on the grounds that the application development had been granted planning permission. Many of those who objected to the proposal did so on the basis that it would inevitably lead to more houses on the Hatchfield Farm land. However that is not a part of the present proposal and any such scheme would be subject to consideration through the planning process. This is no doubt a point that would be explained by trainers and others in the horse racing establishment who understand the way in which the English planning system works. It is noted that there was no direct written or oral submission from any wealthy foreign investor on the matter of the application proposal or whether it would cause them to move their investment. Conversely evidence was given by an owner of a training yard and 2 stud farms that he would not be moving his investment and did not believe that others would either [66-68; 157; 208; 209; 291; 300].
398. The Hunter Valley in New South Wales, Australia is a longstanding and internationally important centre for breeding thoroughbred racehorses as well as being well known for its wineries and tourism. It is also an area of opencast mining and in 2011 a proposal was made for a mine within 500 m of the Darley stud. In recognition of the importance of the equine industry and the threat to future investment, the Government refused permission on a

precautionary basis. Even so, some have decided not to invest in the area due to the real or perceived risk from mining operations. This appears to suggest that the support of the decision maker was immaterial as investment suffered anyway. However the comparability to the present situation is tenuous. It is difficult to compare perceived risk from a proximate industrial operation, with all that this would entail, with the proposed housing development [174; 178; 210].

399. In the case of Epsom it appears that the damage resulted from redevelopment of training yards for residential use resulting in increased urbanisation and traffic. There are specific policies in the JDMPD to prevent this happening [201].

## Conclusions

400. The application proposal would not result in an adverse effect on or an undue risk to the existing economic importance, potential for future growth and continuing success of the horse racing industry. There would be associated improvements to the Rayes Lane horse crossing which would at the very least mitigate the impact of the additional traffic generated but also result in a material safety benefit.
401. The proposal would accord with the objective of Vision 2 in the CS, which aims to preserve and enhance the position of Newmarket as the international home of horse racing and Spatial Objective ECO 5, which aims to protect its unique character. It would conform to the spatial strategy in Policy CS 1, which seeks to protect and conserve the importance of the horse racing industry and Newmarket's associated local heritage and character. It would conform with Policy DM48 in the JDMPD as it would not threaten the long term viability of the horse racing industry as a whole. It would also meet the requirements of Policy DM50 through the improvement of the existing Rayes Lane road crossing, which is part of the system of horse walks through the town [16; 17].

## CONSIDERATION FOUR: THE EFFECT OF THE PROPOSED DEVELOPMENT ON NEARBY SITES OF NATURE CONSERVATION IMPORTANCE AND WHETHER HABITATS REGULATION ASSESSMENT IS NECESSARY

### Introduction

402. The European Habitats Directive has been transposed into English law by the *Conservation of Habitats and Species Regulations* (the Habitats Regulations) 2010. Under Regulation 61 the Secretary of State, as competent authority, must consider whether the proposal, either alone or in combination with other plans and projects, would be likely to have a significant effect on a European site. If it is likely to do so then before granting planning permission an appropriate assessment is required of the implications for the site bearing in mind its conservation objectives. There is therefore a two stage process. It is only if the Habitats Regulations assessment is positive that the decision maker has to go on to undertake the appropriate assessment [32; 212].
403. There are various legal judgements that have established important principles with regards to this legislation. The question to be asked in the Habitats Regulations assessment is whether a likely significant effect can be excluded and if it can be, the impact need not be considered further. However,

screening out the risk requires objective evidence and adopting a precautionary approach and if there is reasonable scientific doubt about an adverse effect, appropriate assessment will be required. In such circumstances the competent authority has to consult Natural England. Case law also confirms that mitigation can be taken into account, provided there is no real doubt that it would be effective [**33-35; 136; 144; 213; 216**].

404. In this case it is agreed that Regulation 61 is engaged and that the European sites in question are Chippenham Fen SSSI, which is part of Fenland SAC and Breckland SPA. The previous Inspector concluded that whilst recreational impacts on Chippenham Fen could be discounted, the hydrology evidence was insufficient to rule out the possibility of significant effects on the ecology of Chippenham Fen. Both the Environment Agency and Natural England had raised objections and my colleague concluded that an appropriate assessment would be required before permission could be granted. The Secretary of State agreed with this conclusion and that if he had been minded to allow the appeal he could call for the information to undertake the appropriate assessment. It is noted however that the matter of recreational impact on Breckland SPA was not mentioned [**37; 168**].
405. The Council undertook a Habitats Regulation assessment for the planning application and decided that significant impact could be ruled out and appropriate assessment was unnecessary. At the Inquiry the objectors criticised this conclusion on a number of grounds but since then there has been a great deal more information provided. In any event it is the Secretary of State who is now competent authority and no longer the Council [**137**].
406. Paragraph 61 of the Habitats Regulations requires not just the effect of the application proposal to be considered but also its effect in combination with other plans and projects. There is no explicit definition in the legislation as to what other plans and projects are within the scope of the in-combination assessment. Advice on managing Natura 2000 sites by the European Commission indicates that it would seem appropriate to restrict such plans and projects to those which have actually been proposed.
407. The main dispute in this regard related to whether the SIR should be included as a relevant plan for the purpose of the in-combination assessment. The difficulty here is that whilst the SIR is a proposed plan it is at such an early stage that it is not yet known what the housing requirement will be or how it will be distributed. Whilst it is likely that it will be at least 5,299 dwellings it is possible that policy constraints would justify lower numbers. More importantly it is not known at the moment where future housing will be located in the district. The Council has consulted on a number of options, one of which is an environmental constraint-led distribution. Furthermore, as the objectors frequently commented the effect of the Court Order is to require the consideration of alternative options, which will be subject to SEA and SA, the outcome of which is not known and cannot be pre-judged. Indeed the options may well change. Even if the housing numbers were known, the SIR would only be a relevant plan insofar as it proposes development that is likely to have a significant effect on the European sites. Until distribution of housing has been decided this matter cannot be known. In due course the SIR will itself be subject Habitats Regulation Assessment, including consideration of in-combination impacts [**84-86; 108; 214; 215; 226; 275.3**].

408. It is perhaps relevant at this stage to refer to Paragraph 119 of the Framework. This makes clear that the presumption in favour of sustainable development in Paragraph 14 does not apply where development requiring appropriate assessment is being considered, planned or determined. Despite the parties' views to the contrary the wording is unambiguous. In a case where appropriate assessment is found to be required, regardless of the outcome, the test to be applied is not that set out in Paragraph 14. In such circumstances a balanced judgement is to be made based on the development plan and all relevant material considerations [28; 39].

## **Impact on Chippenham Fen SSSI**

### *Introduction*

409. Chippenham Fen<sup>45</sup> is to the north of the A14 and Snailwell village and about 2.6 km from the application site. It is within the valley of the Chippenham River, which is a tributary of the River Snail. It is one of the components of the Fenland SAC and its qualifying habitats are calcareous fen, dominated by great fen sedge and meadows of purple moor-grass. Qualifying species are spined loach and great crested newt. The ecology depends on spring water from the underlying chalk aquifer, which has a lower temperature than rainfall and includes particular nutrients. Within the fen the chalk is overlain by a layer of Drift deposits of peat and silty clay, which varies in thickness and contains a perched water table. The link between the surface and ground water systems is not fully understood but the two seem to interact although the degree to which this happens seems to be variable across the fen [10; 217].
410. The application site is to the south of Chippenham Fen. The aquifer has a hydraulic gradient from south to north. The water level in the chalk is above that of the superficial deposits in the southern parts of the fen and this is a source of springs. The situation is reversed on the northern side where there is the potential for leakage between the Drift and the chalk. Chippenham Fen is sensitive to changes in the hydrological conditions and over abstraction from the chalk aquifer could impact on its designated interest features [92; 217].
411. The Lodes Granta Groundwater Support Scheme (LG Scheme) was established in 1991 and comprises abstractions from 6 licensed boreholes. It is operated by the Environment Agency to support low flow in rivers. One of the boreholes supports Chippenham Fen as well as Chippenham Park Lake. There are 3 discharge points at the fen and the pumps are operated by the Environment Agency at the request of the Natural England site warden. However, the scheme has only been brought into effect on 3 occasions in the past, the last being during the summer of 2006 [102].

### *Effect of the proposed development on the catchment water balance*

412. There is no evidence that the application proposal would cause harm to the water resource itself either during construction or thereafter. The dispute

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<sup>45</sup> Chippenham Fen is referred to in some of the documentation as Chippenham Fen and Snailwell Poor's Fen.

relates to its impact on groundwater resources and the hydrology of Chippenham Fen [88].

413. As the hydraulic gradient of the aquifer falls in a northerly direction, water penetrating the ground at the application site would have the potential to mitigate the effect of abstractions and so benefit Chippenham Fen. It is the Applicant's case that the development would result in a positive water balance as a result of the use of SuDS techniques. Whilst it is considered that in many respects the Applicant's arguments are persuasive they rely on a number of assumptions. The first is that surface water drainage will be by means of a soakaway system that continues to work at optimal efficiency. Even though future management and maintenance could be controlled through a planning condition, soakaways are not failsafe, and there must be some doubt whether the anticipated 34.4 MI/annum of water that would be returned to the aquifer through this method, could be guaranteed consistently over the lifetime of the development. It was suggested that this could be controlled by condition but I am not convinced that this would be reasonable or even enforceable [91-94].
414. The Flood Risk Assessment indicates that 60% of the residential area would be impermeable but it is not clear whether this includes internal road and parking infrastructure or permeable surfaces. The calculation by the Applicant's hydrology expert assumed 60% of the site itself would be impermeable, which would result in a larger area of land available for infiltration. The Flood Risk Assessment also refers to other SuDS measures, such as swales and trenches, and these would not return water to the catchment at the same rate. It is appreciated that a detailed scheme has not yet been drawn up but there would be no provision for flexibility if the re-charge is to be at the level anticipated. [91; 236].
415. The water balance hypothesis also depends on the return of a proportion of the consumed water back into the river system via the foul drainage system. This was assumed to be 40%, which is a figure used by the Environment Agency in its charging regime. The Applicant claimed it was a conservative figure in view of a Government estimate that 95% of water used in the UK is returned to the sewer network. However these figures refer to the amount of water that is being returned to the catchment via the waste water treatment works into the river system. That water will not necessarily return to the chalk aquifer feeding the fen. The waste water treatment works in question discharges into a tributary of the River Snail. Although this is at a point upstream of Chippenham Fen, the River Snail flows to the west of the designated site, which is served by the Chippenham River. This joins the River Snail through a sluice but there is little evidence that water from the latter flows back into the fen. The purpose of the sluice seems to be to hold back water in the Chippenham River in dry conditions as part of the water management regime of the fen. There will be some interaction between the surface water and ground water systems and when levels in the River Snail are high, the base flow from the chalk aquifer may well be reduced thus benefiting the fen in dry periods. However, the degree to which this would happen has not been quantified and so it is not possible to know what contribution the discharge into the River Snail would make to the hydrological conditions at Chippenham Fen [93; 238; 239].

416. Even though SuDS are the preferred method of surface water drainage for greenfield residential developments, neither the Environment Agency, Natural England nor the authors of the Atkins Report saw them as a means by which impacts of abstraction could be ruled out. I agree with the objectors that this seems surprising if the solution were as simple and reliable as the Applicant contends. It was perhaps telling that neither of the expert witnesses was able to identify a development where the suggested savings had been consistently achieved. So whilst some water would infiltrate into the chalk aquifer by virtue of the proposed SuDS system and some would be returned to the catchment via the sewage treatment works, it cannot safely be concluded that this would offset consumption so that an even or favourable water balance is achieved. Taking a precautionary approach it could not be concluded that the development would make no net demand on groundwater resources [90-95; 233; 236].

*Effect on the groundwater system*

417. In view of the above conclusion it is necessary to consider the effect of the water requirements from the application scheme on the groundwater system and thus the ecology of Chippenham Fen. When considering this matter other water demands on the aquifer must also be added so that the in-combination effect is fully taken into account.
418. The chalk aquifer is a continuous underground groundwater feature that covers a very large area and does not of course stop at the boundaries of Anglian Water's Resource Zones (RZ). The Atkins Report was prepared in 2010 for the Environment Agency for the purpose of assessing the impact of licensed abstraction on Chippenham Fen. It applies a 10 km study area around the fen as a means to assess those abstractions with the potential to impact on its hydrological regime. This is a robust approach as there is a limit to the zone of drawdown around each borehole of about 3-5 km. I am therefore satisfied that the 10 km zone used by Atkins includes all relevant abstractions. Most of the abstractions in question are within the Newmarket RZ but there are some to the south of Newmarket in the Cheveley RZ and a few to the south of Isleham in the Ely RZ. Any boreholes further afield would not have the potential to impact on the hydrological regime of Chippenham Fen [96; 97].
419. Water abstraction is subject to a licensing regime by the Environment Agency. In 2013 it published its Licensing Strategy. Under its Restoring Sustainable Abstraction programme it has considered whether abstraction is harmful to protected sites as part of its duties as competent authority for the purposes of the Habitats Regulations. In the case of Chippenham Fen the modelling work in the Atkins Report was taken into account in reaching the conclusion by the Environment Agency that there was no need to revoke or modify existing abstraction licences to protect the integrity of the European site. This is on the basis of the licences abstracting to 100% fully consumptive capacity. This is a worst case scenario because historically licences have not been generally used to full capacity and in any event some of the abstracted water will be returned to the catchment through discharge from the foul sewerage system as mentioned above [36; 98; 99; 100].

420. Anglian Water raised no objection to the proposal and has confirmed that it can supply the proposed 400 dwellings within the scope of its existing licences. Indeed within its *Water Resources Management Plan* it estimates that the Newmarket RZ from where the development would draw its water, has capacity to supply 6,250 dwellings within existing licences. Although this has been spread equally over 5 x five year periods to 2040, this amount of development could be supplied immediately. In 2040 the supply/ demand balance is expected to be just in surplus but not by much [101; 107; 313].
421. In terms of planned development in the Newmarket RZ the parties agreed that in the Newmarket RZ there would be about 1,876 dwellings on the basis of development envisaged in development plans for Forest Heath and East Cambridgeshire. I have already considered the SIR and for the reasons given concluded that it cannot be included as part of the in-combination assessment. It should be noted that the Forest Heath forecast is only until 2019 whilst the East Cambridgeshire forecast is until 2031. Nevertheless, adding the 400 houses from the application proposal would result in 2,276, which still allows a headroom of nearly 4,000 dwellings. Not surprisingly, Anglian Water has confirmed that there is currently sufficient capacity within existing abstraction licences to supply the application scheme [38; 97; 101; 226; 227].
422. Natural England's *Chippenham Fen National Nature Reserve Management Plan* (2009) indicated as a weakness that the site regularly becomes too dry in summer and that reduction in local water abstraction would be the most effective way of resolving water table issues. However a subsequent report in 2015 raises no concern about water abstraction. From the monitoring data it appears that the groundwater levels in the aquifer have remained relatively constant and that groundwater reductions have tended to occur within the Drift deposits and away from the ditches. Atkins indicates that the improving condition of the Black bog rush, which is the most sensitive designated feature, shows that historical levels of abstraction have been acceptable. However the important point is what may happen in the future and the worst case scenario of 100% fully consumptive licensed abstraction is what needs to be considered in a precautionary scenario [102.4; 102.5; 217; 218].
423. The Atkins Report considered the effect of fully licensed quantities at 100% consumption and found that the modelled water levels in drought years would be below acceptable levels, as defined by Natural England, to support the meadows and calcareous fens. Atkins concluded that there could be the potential to harm site integrity in such circumstances. The LG Scheme has the potential to mitigate these adverse impacts. Although Atkins did not consider that its current operation was fully effective it was made clear that this is not due to insufficient water being available from the scheme. Indeed the LG borehole that serves Chippenham Fen is recorded in Atkins as only having utilised 17% of its licence capacity. Rather, the problem lies with the distribution of the water to the ditch system and Atkins indicated that further work was needed on this. This is no doubt why the Environment Agency, as competent authority, concluded that there was no need to modify existing licenses. There is no evidence that this decision was flawed [102-104; 219; 220].
424. Most of the boreholes relevant to Chippenham Fen are operating at nowhere near their full licence capacity. Atkins did model 5 boreholes at 70% use and



whilst potential harm to site integrity was found, this would be less than the 100% use referred to above. It also did not take account of the LG Scheme, which for the same reasons as given above this would provide the necessary mitigation if required [102; 222; 223].

425. Natural England, in its consultation response to the application proposal, concluded that the LG Scheme would be capable of maintaining appropriate water levels in Chippenham Fen. In terms of capability this seems to me quite correct. The Atkins Report made clear that it is not the sufficiency of the water resource that is in question but the means by which it is distributed round the fen. Atkins recommended a feasibility study of the most cost effective and least disruptive way of doing this, including whether sustainability reductions to existing licences would be necessary in the future. The Environment Agency considered this very point in its Licensing Strategy (March 2013). Insofar as Chippenham Fen was concerned no licence changes were proposed to any of the boreholes affecting the site, including those in the Cheveley and Ely RZs [100-102; 106; 138; 219; 220; 221].
426. There is no evidence that the matter of water distribution around Chippenham Fen has yet been resolved. However the Environment Agency is responsible for operating the LG Scheme and for ensuring that it does its job properly and effectively. It seems inconceivable that it would have reached its licensing conclusions without taking account of Atkins' concerns about the effectiveness of water distribution within the fen. What can be said with certainty is that there is sufficient water in the aquifer to maintain the integrity of Chippenham Fen with the LG Scheme available if needed [102; 220].
427. As previously mentioned, Chippenham Fen is affected by abstractions in the Ely and Cheveley RZs too. Although the application site would not abstract water from these RZs the aquifer is a continuous feature and when considering the in-combination effect, the situation in these other two RZ's needs to be considered. The Water Resources Management Plan shows that by 2024 the water balance in the Ely RZ will be in deficit. However this is likely to happen more quickly because the 5,000 houses assumed by Anglian Water are likely to come on-stream much earlier than this. In Cheveley a deficit is shown by around 2029. Anglian Water will have to consider how it is going to deal with this issue and one option is to transfer water from elsewhere. There is no evidence that the Newmarket RZ, from where the application scheme would draw its water, which will be in surplus over the plan period, would be expected to contribute to deficits in other RZs, including Ely or Cheveley [105; 107; 224-227; 230].

### *Conclusion*

428. For all of the above reasons it is concluded that the possibility of a significant effect, either by the application proposal or other reasonably foreseeable plans and projects, on the designated features of Chippenham Fen can be excluded and an appropriate assessment is not required. This is on the basis of the worst case scenario, assuming abstraction is carried out at 100% consumptive licensing, and takes account of the LG Scheme mitigation. There is no evidence that existing licences will be revoked or modified and indeed the evidence is that significant impacts on Chippenham Fen will be avoided within existing licensing arrangements. It is the case that the two expert

hydrologists disagreed but that does not mean that on the proper consideration of the evidence the need for appropriate assessment cannot be ruled out. Considerable weight should be given to the consultation responses from the Environment Agency and Natural England and their lack of objection to the application scheme [139; 229-231; 312; 314].

### Recreational impact on Chippenham Fen

429. As already noted Chippenham Fen is designated for its vegetation and invertebrates. There are well defined pathways within the fen and many are bound by ditches and watercourses. Visitors are strongly discouraged from diverging from these well marked routes the chance of trampling on sensitive vegetation seems remote. It can safely be concluded that there would be no significant effect from the application development either alone or in combination with other plans and projects. It is relevant to note that the previous Inspector ruled out such impact in relation to a much larger development and the Secretary of State agreed with this conclusion. Furthermore Natural England raised no concerns on this point [78; 138].
430. The *Chippenham Fen National Reserve Management Plan* notes as one of the external challenges that there is vandalism of anything erected on the site. However, it is difficult to translate this into a concern about the interest features of the fen for which it has been designated [249].

### Recreational impact on Breckland SPA

431. Breckland SPA covers a large area of heathland and extends as far north as Swaffham and its southerly extent is about 8 km north-east of the application site. Its notified interest features include 3 protected bird species, the nightjar, stone curlew and woodlark. Various studies have shown that harm can occur through increased recreational visits for informal exercise, jogging, dog walking and the like. The breeding activities of these ground nesting birds is particularly at risk. People enjoy visiting Breckland for all sorts of reasons and many travel from great distances either as a day trip or as part of a holiday. A study of the effect of recreation on the Breckland SPA entitled *Visitor Survey Results from Breckland SPA* was undertaken by Footprint Ecology in 2011 (the Fearnley Report) and focused on the disturbance that can be caused to the protected bird species [80; 240].
432. The Fearnley Report conducted surveys from a number of visitor locations within Breckland to assess what people came to do and where they came from. It found that 87% of visitors had travelled from home and that on average these were local residents living within 16.7 km of the interview locations with half living within 8.81 km. Many local residents visited frequently, most travelled by car and they used the area as their local greenspace. Dog walking was a particularly popular activity and these people tended to live closer with half living within 5.6 km of the interview location. Walking and cycling were also popular and people travelled greater distances for these pursuits. The distance people travelled was related to the activity they intend to pursue and the place that they visit [80; 244].
433. The recommendation in the Fearnley Report was that development within 10 km of the Breckland SPA has the potential for recreational disturbance, in the absence of countervailing measures and taking a precautionary approach.

There was a dispute about whether the 10 km refers to the distance between home and the edge of the SPA or the distance between home and the SPA destination. It seems to me on a reasonable reading of the Fearnley Report that it is the former interpretation that is correct because the evidence is based on the surveys that took place at the visitor destinations. In some places, Newmarket being an example, the areas within a reasonable visiting distance are not those that are likely to be attractive to visitors, especially those travelling by car [82; 244].

434. The nearest part of the Breckland SPA to the application site is the SSSI known as the Breckland Farmland. Its interest feature is its internationally important population of stone curlew. It is predominantly privately owned arable farmland and is bordered and crossed by the Icknield Way Trail. However this is not particularly accessible from the application site and there is little convenient car parking. It is not readily distinguishable from the wider farmland landscape and so in my judgement is unlikely to be particularly attractive to visitors, especially dog walkers. Those people that do use it for recreation are unlikely to stray from the footpaths because the farmland is not publicly accessible. [80; 81; 240; 241].
435. Most of the visitors surveyed came from Brandon, Lakenheath and Bury St Edmunds, which probably reflects the size of these settlements and their proximity to visitor locations such as Brandon Country Park. Not many originated from the Newmarket postcodes and those that did tended to visit the honeypot locations. The nearest of these to the application site is West Stow Country Park and this is well over 10 km away. In fact it is probably double that distance. In any event this sort of location has car parks and facilities so that visitors can be accommodated without disturbing the bird populations [242].
436. There is no particular reason to think that the occupiers of the new houses would have a profile so markedly different from other Newmarket residents that they would behave in a different way. Although the site is a little closer to the A14 than some other parts of the town this is relatively marginal in terms of distance from the SPA visitor locations. There are also car parks to open access heathland to the north and east of Mildenhall. Whilst these locations may be more attractive for dog walking they are at least 15 km away. Fearnley found that dog walkers in particular travelled less distance than those undertaking other activities [243; 245].
437. Open spaces are to be provided on the application site and these would meet some of the recreation needs of the new population as part of a package of measures. There are also enhancements to Bridleway 2 and improved signage to direct people to recreational facilities other than protected sites within 2 km of the application site. There are open spaces and recreational opportunities within the vicinity, most notably The Gallops, which offer extensive areas of attractive downland. Whilst it is appreciated that these are owned by Jockey Club Estates, the public are permitted to use them after the racehorses have completed their training at 1300 hours. In my judgement the likelihood of a significant impact on Breckland SPA through increased recreational pressure can be ruled out [241; 353].

438. An in-combination assessment was undertaken by the Applicant as part of the Technical Report to inform the Habitat Regulation Assessment (February 2015). This considered all residential developments within 10 km of the SPA likely to have an in-combination effect with the application development. In my opinion this correctly interpreted the conclusions of the Fearnley Report. The nearest residential development to the SPA was at Red Lodge but this is still well over 10 km from the nearest honeypot location. Its own Habitat Regulation Assessment, which has not been challenged as far as I am aware, screened out adverse impacts on the SPA and planning permission was duly granted. Whilst the objectors make the same point about the inclusion of future development envisaged in the SIR, this cannot be taken into account for the reasons already given above [83-86; 142; 143; 248].
439. Natural England has not referred to Breckland SPA in its consultation response. It seems implausible that it would have been unaware of this large European designation or its location relative to the application site. It is not unreasonable to assume that if Natural England had considered that there would be adverse impacts from recreational pressures, it would have said so. Suffolk Wildlife Trust did raise concerns on the basis that the site is within 10 km of Breckland SPA and indicated that an appropriate assessment should be undertaken. Suffolk County Council agreed with the Wildlife Trust and recommended a project level Habitats Regulations assessment [79; 141; 246; 247; 308; 316].
440. I have had regard has to the views of consultees in accordance with Policy DM10 of the JDMPD. For all of the above reasons I do not consider that the application scheme would be harmful to the interest features of Breckland SPA through recreational pressure either alone or in-combination with other plans and projects. Policy DM12 in the JDMPD requires appropriate contributions towards the management and monitoring of visitor pressure on the Breckland SPA. However for the reasons given no such pressure would ensue and so such a requirement would not be necessary in this case. [141; 241; 246].

### **Impact on Snailwell Meadows SSSI**

441. Snailwell Meadows is an SSSI but not subject to any European designation and therefore not subject to consideration under the Habitats Regulations. They are spring-fed chalk meadows with an overlying peaty soil, which support a variety of grassland communities in wet and dry conditions. This is also home to the Cambridge milk parsley which is nationally rare. Snailwell Meadows is to the south of Chippenham Fen and is privately owned land with no public access. The River Snail runs through the designated area [10; 252].
442. It is acknowledged that the soil conditions that contribute to the variety of grassland communities are not the same as at Chippenham Fen. Whilst the hydrological conditions may be individual to this site, Snailwell Meadows relies on the availability of spring water deriving from the same chalk aquifer. It seems reasonable to me that if the Secretary of State agrees with my conclusions on Chippenham Fen then there is no reason for believing that existing licensed abstraction would adversely affect the spring flows from the chalk aquifer. It would appear that the LG Scheme provides support for the River Snail by means of a trickle flow into Snailwell Pond. This seems to be rather haphazard but there is no evidence that it is necessary in order to

support the water regime on which the ecology of Snailwell Meadows relies [110; 252; 253].

443. The evidence from monitoring is that the groundwater levels in the chalk aquifer have remained relatively constant. Paragraph 118 of the Framework indicates that proposed development likely to harm the interest features of a SSSI, either alone or in-combination with other developments, should not normally be permitted. However, if significant harm cannot be avoided the guidance sets out a balancing exercise to be undertaken [111; 253].
444. No evidence has been given that a likely adverse impact would ensue to the interest features of Snailwell Meadows. The objection was that the matter had not been considered. However, Natural England has not raised any concern about the effect on the ecology of the meadows, nor asked for further work in this respect to be undertaken. In the circumstances it is not considered that the application proposal would be likely to have an adverse effect on the SSSI. However, if the Secretary of State feels that such adverse effect cannot be ruled, the overall balance is dealt with in Consideration Eight [112; 160; 253].

## On-site ecology

### *Badgers*

445. Badgers are a protected species. There is a sett within the treed eastern boundary and also other setts within other parts of the Applicant's land ownership. The previous Inspector did not consider that the presence of badgers were an impediment to development subject to the mitigation proposals, which included the establishment of two new setts on the Stanley Farm studland. In that case a number of setts and much of the foraging area would have been lost. The present proposal would not result in any direct loss of a badger sett but there would be a loss of foraging ground. However, foraging land would continue to be available at Stanley House Stud and the main point of dispute is that there is insufficient evidence to show that the badgers use this area of land for feeding purposes [74].
446. Since the last appeal further badger surveys have been undertaken, two relatively recently in May and November 2014. These provide sufficient evidence that the animals are moving between the two sites. From the expert evidence and my own observations it seems to me most likely that the push-throughs along the hedged site boundaries were made by badgers rather than a deer or a fox. Furthermore there are no barriers to movements and the studland has a high population of earthworms, which are a staple part of a badger's diet. The absence of latrines, which mark a group's territory, indicate that Stanley House Stud and the application site is being used by a single social group. Sufficient survey work has been done to be satisfied of the extent to which badgers would be affected by the application proposal, in accordance with Circular 06/2005 [75; 76; 254; 256].
447. The Suffolk Wildlife Trust considered that the mitigation would be broadly satisfactory. It is to be noted that the use of Stanley House Stud is a similar mitigation proposal to that accepted for the much larger appeal development and there is no convincing evidence that the pattern of foraging activity has changed. There is thus no reason to believe that the usually accepted

threshold of 25% of the group's home range would be lost leading to a significant adverse impact [75; 77; 255; 315].

#### *Arable weeds*

448. Fine leaved fumitory is a nationally scarce Red Data List plant that has been found on the eastern arable field margin. Whether another Red Data List plant, corn spurrey, is also present is debatable but if it is it is likely to be in the same seed bed as the fine leaved fumitory. It is to be noted that these plants are not protected species and they are not listed in the local Suffolk Biodiversity Action Plan [74; 257].
449. The proposal is to translocate the plants to an area within the ownership of the Applicant, but outside the application site, where they would not be disturbed. Whilst the objectors are concerned that a future development proposal could require translocation again and that this could cause damage to the species, there is no current proposal for further development. If such a proposal were to be made however the matter would be considered, if necessary, at that stage. It seems likely that the future of the plant species would be more secure in a new location where it would not be subject to damage from adverse farming practices [74; 125; 258].
450. The mitigation would be controlled through planning conditions, including an Ecological Mitigation Statement and Landscape and Ecology Management Plan [331].

#### **Conclusions**

451. The Secretary of State in the previous appeal concluded that the need for appropriate assessment could not be ruled out. However this was without the benefit of the substantial amount of hydrological and ecological evidence submitted in connection with the current application. Furthermore it was in the face of objections from both the Environment Agency and Natural England [37; 38; 231].
452. For all of the above reasons it is not considered that there would be a significant impact on nature conservation interests. In terms of European sites it is concluded on the basis of the considerable amount of evidence that has now been presented that there would be no significant impact and that an appropriate assessment would not be required.
453. For the reasons given it is considered that sufficient information is available to satisfy the Secretary of State that any adverse impact on on-site ecology, including badgers could be successfully mitigated and that the provisions of Circular 06/2005 would not be offended. Indeed he reached a similar conclusion in his previous appeal decision and there would be an opportunity to enhance biodiversity in this case. Snailwell Meadows is an SSSI but it has been concluded that its interest features would not be harmed [120].
454. There would thus be no conflict with Spatial Objective ENV 1 or Policy CS 2 in the CS or Policies DM10, DM11 and DM12 in the JDMPD. Furthermore the proposal would comply with Paragraphs 118 and 119 of the Framework [16; 17].

## CONSIDERATION FIVE: WHETHER THE PROPOSED DEVELOPMENT WOULD BE PREMATURE

455. The plan in question is the SIR. This will now be covering the matter of housing requirements as well as housing distribution, which was until recently intended as a separate document on site specific allocations following the Court Order quashing this aspect of the CS. The position with the SIR is that the SA and SEA has not yet been completed. Consultation on the Issues and Options will follow and it is anticipated by the Council that the plan will be submitted for examination in the summer of 2016 with a view to adoption in 2017. However, it is quite possible that matters may be further delayed whilst the implications of the recent announcement that the United States Air Force is to move from its base in Mildenhall are considered by the Council. It was the announcement about Mildenhall which was a main reason for the prematurity objection being advanced at a late stage by NHG [5; 18; 128; 132; 163; 302].
456. Paragraph 216 of the Framework sets out the guidance as to the weight to be given to relevant policies in emerging plans. The first relates to the stage of preparation. In the case of the SIR this is at a very early stage and there is no physical plan yet prepared, even in draft form. The extent of objections is therefore not yet known or how consistent any policies would be with the Framework. The Planning Practice Guidance does not rule out refusing planning permission on prematurity grounds but says that it is unlikely to be justified other than where it is clear that the adverse impacts would significantly and demonstrably outweigh the benefits. Two examples are cited. The first is if the development is so substantial or its cumulative effect would be so significant that the plan-making process would be undermined if permission was granted. The second is if the emerging plan is at an advanced stage. There is no dispute that the latter would not apply here [129; 267].
457. In terms of the scale of development, the Secretary of State considered that the previous proposal, where a large mixed-use development was proposed, would indeed be premature. However, the present scheme would be a third of the size in terms of housing numbers and would not include the employment land that was previously proposed. It is difficult to see how the present scheme would fit into the same category. The Council made clear that the application proposal would not prejudice its plan making process. However, it is noted that Members were not asked to review their decision in the light of the improvement of the Council's housing land supply situation because by that time the application had been called-in and so was no longer within their jurisdiction [130; 164-166; 266; 269; 275].
458. It is of course very important not just to consider numerical comparisons but also to consider the context for the development in question. This is illustrated by the Meddler Stud, Kentford appeal where permission for 102 dwellings was refused on the grounds of prematurity in November 2013. At this time the Council could not demonstrate a five year supply of deliverable housing land and clearly the development would have represented a smaller percentage of the residual requirement than the present application proposal. However, Kentford is relatively low in the settlement hierarchy, being identified as a Primary Village. The Council had identified a poor range of services and the need for infrastructure improvements without which even a small increase in housing would have a significant impact. On this basis the Inspector

considered that the proposal would lead to an adverse community effect and that new housing should be considered through the local plan process alongside the infrastructure needed to support it. This, it should be noted, is the same local plan process that has not progressed much further a year and a half later [166; 275; 302].

459. The present proposal seems to me to be materially different in many respects, most importantly that it relates to development in the main town within the district. Whilst there are some infrastructure constraints, these would be addressed through the planning obligations where necessary. For the reasons given previously, highway and water supply issues are not considered to be barriers to development. The erection of 400 dwellings in Newmarket would be an altogether different prospect in terms of scale relative to the town in comparison with 133 dwellings in a village where the population is just over 1,000 people [130; 166; 275; 286].
460. The PPG indicates that the two examples of scale and the advanced stage of a plan are not exclusive and that there may be other circumstances which warrant a conclusion of prematurity. NHG cited the closure of Mildenhall because it could offer an opportunity for an alternative large housing site and also many of the dwellings within Newmarket occupied by military personnel would become available to the housing market. However, the evidence suggests that the United States Air Force will not be leaving Mildenhall until after 2020 and furthermore there is no knowledge at this stage about what the site will be used for in the future. It may be an issue to be considered by the SIR, in which case it seems likely that this document would be further delayed. However, the Council may decide that it should not be tackled at the moment until a clearer picture emerges, in which case it may be left to a review of the plan at some later date. If Mildenhall is a reason for supporting a prematurity objection it would effectively rule out approving housing development in the district for some years to come. This does not seem to be in the spirit of the Framework and the need to boost significantly the supply of housing [132; 163; 286; 293].
461. The NHG argued that there would be very little benefit in granting planning permission for the development now as opposed to waiting for the SIR to be in place. It was considered that the head start would be about 18 months. However, this of course assumes that the SIR is adopted in May 2017 and that the Secretary of State does not issue his decision until November 2015. Either date may be incorrect, especially the former if delay is caused by the Mildenhall issue. Even assuming NHG is correct in terms of timescale, on its own evidence there would be up to 90 new dwellings provided for families to occupy and these may be sufficient to trigger the start of some affordable homes. Whilst it is appreciated that the housing land supply shortfall is less than in the previous appeal it is not correct to conclude that the Council can be complacent. It is highly relevant that the Council itself considers its housing position is fragile and welcomes the contribution that the application scheme would make towards its future housing provision. Other matters of housing land supply, including windfalls, have been dealt with under Consideration One [149; 150; 272-274].
462. The housing distribution policies in the CS were quashed by reason of the Court Order due to the failure to properly consider alternatives under the SEA



Directive. Clearly in terms of the plan making process the breach in European law was remedied and the Council is currently considering alternative development options to meet the needs of the population in the district. However, this does not prevent a planning application for residential development on unallocated land from being granted permission in advance of the adoption of the SIR. If that were the case there could be serious repercussions for the Council in terms of its housing land supply in the period up to the adoption of that document. Clearly any such project must itself be considered in terms of relevant European legislation as has been done in this case. In any event it is not considered that the proposed development would constrain decisions on the timing, location and amount of development to be allocated in the SIR for the reasons in the preceding paragraphs [133; 275].

463. It was suggested by an objector that no permission should be granted until the Neighbourhood Plan had been made. However, no plan currently exists and as far as I am aware the boundaries of the plan area have yet to be agreed. The *Newmarket Enquiry by Design Workshop Report*, is a collaborative exercise organised by the Princes Foundation and involving local stakeholders as a precursor to the Neighbourhood Plan process. It concluded that the north eastern area of Hatchfield Farm would be the most appropriate place for development if future growth is unavoidable and cannot be accommodated in the town itself [131; 286].
464. The final conclusion on prematurity will be made following the balance of considerations in Consideration Eight and the presumption in favour of sustainable development.

## **CONSIDERATION SIX: OTHER MATTERS**

### **Newmarket Conservation Area**

465. The application site is not within or adjacent to the Newmarket Conservation Area, which is to the south and includes the town centre and the stables and owners' houses adjoining. The historic environment coupled with horse related activities, including the movement of racehorses about the town, are an important feature of its character as noted in the Council's Conservation Area Appraisal. The growing volumes of traffic and congestion are recorded as negative features that cause damage and intrusion.
466. The application proposal would result in a relatively small increase in traffic and the addition to existing traffic queues would be of little significance as already discussed. It has also been concluded that there would be no adverse impact on the horse racing industry. The only physical works would be the alterations to the Rayes Lane crossing. Whether this results in improvements to the existing informal arrangements, or signalisation, it is not considered that any harm would ensue.
467. In the circumstances it is concluded that the character and appearance of Newmarket Conservation Area would be preserved. The Secretary of State reached the same conclusion in the previous appeal. There would be no conflict with development plan policy, including Policy DM17 in the JDMPD.

## Countryside and agricultural land

468. The application proposal would result in the loss of about 20 ha of best and most versatile agricultural land. The site is outside the current settlement boundary and, notwithstanding that this is agreed by the parties to be out of date, the proposal would involve development in the countryside. Policy DM5 in the JDMPD seeks to protect the countryside from unsustainable development and lists a number of purposes which would be acceptable. Policy DM27 addresses housing in the countryside and permits small scale developments. Neither of these policies envisage housing development of the scale being currently proposed. The Framework also recognises the intrinsic character and beauty of the countryside and that the economic and other benefits of best and most versatile agricultural land should be recognised.
469. The site is well screened from public viewpoints by a thick belt of tree planting along the Fordham Road frontage. It is also difficult to see much of it from the A14 due to further green screening. In my judgement there would be an adverse effect although this would be relatively local in terms of its visual impact. Nevertheless the loss of countryside and agricultural land would not accord with the aforementioned local and national policies and would be an adverse factor that weighs against the application proposal [13; 304; 306; 468].

## CONSIDERATION SEVEN: WHETHER ANY CONDITIONS AND OBLIGATIONS ARE NECESSARY TO MAKE THE DEVELOPMENT ACCEPTABLE

### Conditions

470. The planning conditions are set out in Annex Three. Justification has been provided in **Paragraphs 319-340** and there are also references to specific conditions, where relevant, in my Conclusions. The NHG is concerned about the timing of the improvement to the Rayes Lane crossing. The contribution of £60,000 is covenanted through the Section 106 Agreement. There is no reason to believe that Suffolk Council, as Highway Authority and a publicly accountable body, would act irresponsibly in bringing forward the improvements promptly, especially as they are in its Local Transport Plan. In any event the impact would relate to traffic generated by the development and this would not precede occupation. Condition 23 requires the mitigation to be in place before any of the dwellings are occupied and is important to ensure that the works in question are carried out expeditiously [205].
471. It is considered that the conditions are reasonable, necessary and otherwise comply with the provisions of Paragraph 206 of the Framework and the Planning Practice Guidance for the reasons given. I recommend that they are imposed if the Secretary of State decides to grant planning permission.

### Planning obligations

472. There is a Section 106 Agreement, which includes a variety of provisions as set out in **Paragraphs 342-354** above. Some have been referred to in the previous sections of my Conclusions and are put forward to mitigate adverse impacts, meet the needs of the development and enable the scheme to go ahead. The Section 106 Agreement was discussed in detail at the Inquiry. The Secretary of State can be satisfied that the document is legally correct and fit for purpose.

473. The policy context is provided by the CS and the JDMPD. Spatial Objective ENV 7 seeks to achieve more sustainable communities by ensuring that infrastructure is commensurate with development. Policy CS 13 addresses infrastructure requirements and developer contributions. In addition, Policy CS 9 deals with affordable housing provision and Policy CS 12 concerns strategic transport improvement and sustainable transport. Policy DM41 requires developers to address impacts on community facilities and services through means including financial contributions [16; 17].
474. There are also supplementary documents on infrastructure contributions and open space<sup>46</sup>. It is necessary to consider whether the obligations meet the statutory requirements in Paragraph 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in Paragraph 204 of the Framework in order to determine whether or not they can be taken into account in any grant of planning permission. The requirements are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question. It is noted that all of the obligations contain a clause that they are conditional on the Secretary of State's finding that they comply with the CIL Regulations [354].
475. As the Council has not adopted a CIL Charging Schedule it is also necessary under Regulation 123 to consider whether the obligations would go towards funding a type of infrastructure or infrastructure project for which 5 contributions have already been made. This was discussed at the Inquiry and the Council provided information so that the Secretary of State can be satisfied that the requirement regarding pooled contributions would not be breached by any of the obligations put forward in the Section 106 Agreement<sup>47</sup>.
476. The need for affordable housing is not disputed and no viability issue has been raised. The application proposal would provide a policy compliant level of affordable housing as noted in Paragraph 362 above. The various triggers, which are linked to disposal of market dwellings would ensure that the affordable homes would be provided expeditiously and that all of these dwellings would be available well in advance of the completion of the overall scheme.
477. There is sufficient capacity at Newmarket College to meet the needs of secondary school pupils from the application development. However there would be insufficient primary and pre-school capacity. The Section 106 Agreement includes provision for a 1.51 ha area of land adjacent to the application site for a new primary school, which would also include pre-school facilities. It is not known at present whether Suffolk County Council as Education Authority will wish to take up this offer or whether it will provide the new school on other land within Newmarket. There would also be a financial contribution which would depend on where the school was to be built. The contribution is based on the cost of providing a new 315 pupil place school and would hence need contributions from other sources [308].

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<sup>46</sup> The S106 Developers Guide to Infrastructure Contributions is at **Document CD/P/4**. Forest Heath Supplementary Planning Document on Open Space, Sport and Recreation is at **Document CD/LP/9**.

<sup>47</sup> The Council produced a useful CIL Compliance Schedule which includes this information as well as how the costings for the contributions has been worked out (**Document ID/40**).

478. I did have some concern that the education requirement may not be able to be met until enough money had been raised from other sources. This could mean that the primary and pre-school education needs of the development would not be met. However, it was pointed out that the County Council has a statutory duty to provide school places and if necessary temporary classrooms in existing schools would be provided until the new school opened. Furthermore, the County Council would construct a 210 place school initially, which could be increased in size at a later date [308].
479. Travel Plans are important in encouraging more sustainable modal choices. Travel Plan monitoring, the car share contribution and the Bond are all considered reasonable and necessary in order to ensure that the Travel Plan would be adequately administered and remain effective. The Yellow Brick Road is the name for the footway and cycle route that runs into the town centre to the west of Fordham Road. The improvements have been costed and include local widening of the footway, improvements to the surfacing and new lighting. They are part of the package of measures that would reduce reliance on the private car as set out in the Transport Assessment and in accordance with Spatial Objective T 1 in the CS.
480. The Rights of Way Contribution would be used for surfacing part of Newmarket Bridleway 2, which provides a route to the leisure centre amongst other places. This accords with Policy DM44, which makes provision for improvements to rights of way to enable improved links to the countryside. There would also be signage on the wider rights of way network to encourage occupiers to use footpath routes for recreation rather than the more sensitive sites with nature conservation designations. The works have been costed accordingly [308].
481. Open space provision would be made in accordance with Policy DM42. There is a covenant that relates to the future management and maintenance of these spaces, which is necessary in order to ensure they continue to meet the needs of the development during its lifetime. A commuted sum would be available for this purpose and this would be in accordance with the calculation in the Supplementary Planning Document: *Open Space, Sport and Recreation Facilities*.
482. A sum of £60,000 is included for the improvement to the Rayes Lane horse crossing. This sum was based on the cost of providing the WSP Scheme, which was considered acceptable mitigation by the Secretary of State in the previous appeal. The justification for the mitigation has been dealt with under Consideration Three [52].
483. Several objectors have raised the issue of the adequacy of infrastructure to support further development. Education has already been addressed above. However, there are also infrastructure contributions to Newmarket library and local GP surgeries. These would be justified because of capacity issues. The contributions have been worked out by the service providers so that the necessary facilities can be improved to meet the needs of the development. The healthcare contribution relates to the capital costs of the additional healthcare services, whilst the library contribution relates to the cost of refurbishment and improved facilities [304; 306].

484. In conclusion it is considered that the obligations provided in the various legal agreements are in accordance with Regulation 122 of the CIL Regulations and Paragraph 204 of the Framework. Furthermore the provisions of Regulation 123 would not be offended.

**CONSIDERATION EIGHT: OVERALL CONCLUSIONS AND PLANNING BALANCE TO DETERMINE WHETHER THE PROPOSAL WOULD BE A SUSTAINABLE FORM OF DEVELOPMENT TAKING ACCOUNT OF THE THREE DIMENSIONS IN THE FRAMEWORK**

485. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision-taking. The district has a short term deficit of deliverable housing sites. Although this may be relatively small at the present time, the Council itself considers its situation in terms of housing land supply as "fragile". Paragraph 49 of the Framework does not make a distinction in terms of the size of the shortfall and indicates that relevant policies for the supply of housing should not be considered up to date in such circumstances. The Framework requires that housing applications should be considered in the context of the presumption in favour of sustainable development as set out in Paragraph 14 of that document. Policy DM1 in the JDMPD has a similar objective.
486. Not only are the relevant policies for the supply of housing out of date but also the development plan is silent about housing distribution by virtue of the Court Order quashing this aspect of the CS. In such circumstances Paragraph 14 indicates how the presumption should be applied to a development proposal, unless there are specific policies to indicate development should be restricted. The relevant policy in this case relates to sites protected by European legislation. However it has been concluded that this is not development requiring appropriate assessment and therefore the exclusion under Paragraph 119 of the Framework would not apply. Paragraph 118 of the Framework has also been raised as a restrictive policy. Insofar as this is the case it has been concluded that there would be no harm to biodiversity or an SSSI.
487. If the Secretary of State agrees with my conclusions on these matters, the presumption in favour of sustainable development would apply. Paragraph 14 of the Framework makes clear what this means and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
488. In considering this matter it is important to have in mind the three interdependent dimensions to sustainable development set out in Paragraph 7 of the Framework. I have already highlighted the important contribution that the scheme would make to the Council's housing land supply position. Whilst the deficit may be relatively small at the moment, time does not stand still and there is an ongoing requirement for housing delivery. Whilst the 400 dwellings would not be built out in the next 5 years a number of them are likely to be. The scheme would provide a mix of house types and sizes as well as making a significant, and policy compliant, contribution to affordable housing. The mix of affordable rent and shared ownership homes would be in accordance with identified needs. These matters are, in my judgement, of substantial weight in favour of the application scheme.

489. There is no reason why the development should not provide a high quality built environment. Although this is an outline application, the DAS establishes the design strategy and these principles would be carried forward through a detailed Design Code for the whole site. Conditions and planning obligations would also control the provision and future management of open spaces and green infrastructure to provide an attractive residential environment for those who live there. Whilst many of the biodiversity measures provide mitigation for ecological impacts, there is the potential for enhancement through the creation of new habitats. The translocation of the fine leaved fumitory to a safer area of land not subject to damage through deleterious farming regimes, is just one example.
490. The economic advantages of the application scheme were subject to dispute. There would undoubtedly be benefits during the construction phase, through the provision of employment and increased spending in the local economy. The extent to which employment would be generated in the longer term to counter a reduction in the working age population was not agreed. This was because the Applicant's analysis is based on Newmarket and the NCG contended this was too small an area for statistical reliability. It also considered that many of the new occupiers would travel out to the Cambridge area, where there is a high level of employment growth. Whilst the extent of this benefit is not agreed I have no doubt that some new residents would contribute to the local workforce and perhaps as importantly they would spend money within the town thus supporting local shops and services. In the circumstances the matter can be afforded some weight [114; 115; 117; 261-265].
491. Whilst the consideration of this application should make no judgements about how houses are to be distributed across the district, it is proper to note the settlement hierarchy has not been quashed and that the site is adjacent to the largest town in the district with its array of shops, facilities and services. There are thus opportunities for travel by modes other than the car and it can be concluded that this is a sustainable location. Furthermore the scheme would offer benefits to the wider population. These include the improvements to the Yellow Brick Road, which is a popular and attractive route for walking and cycling. The improvements to the signage of the footpath network and to the surfacing of Bridleway 2 would help reduce recreational pressure on local sites of importance for nature conservation. Perhaps most importantly, the contribution to the Rayes Lane horse crossing would result in a significant improvement that would not only mitigate the impact of the development but also be likely to result in a material safety benefit to horses and riders cross Fordham Road at this point. This has significant weight in view of the importance of the horse racing industry to Newmarket and its economy.
492. The application proposal would provide the opportunity for Suffolk County Council to obtain land for a new primary school. This benefit is however reduced to the extent that it has not yet been decided whether the school would be built here or on another site in the town.
493. The appeal scheme would result in the loss of good quality agricultural land and an area of countryside. It is appreciated that the site is valued by existing local residents but it has no protective designation and there are few open views due to the wide band of tree planting along the Fordham Road boundary.

The Council relies on greenfield land for its housing supply and the settlement boundaries were drawn up many years ago to accommodate a completely different housing requirement. In the circumstances this environmental disbenefit should therefore be given limited weight, in my opinion.

494. There is no dispute about the importance of the horse racing industry and its strengths and weaknesses have been dealt with under Consideration Three. However, it has been concluded that the proposal would not be contrary to development plan policy in this respect and that there would be no threat to its long term viability.
495. There would be additional traffic generation arising from the development scheme and this would lead to a small increase in queuing in peak periods. Nevertheless, with the mitigation proposed the scheme would not adversely impact on the safety of either the local or strategic highway network. Congestion is already an issue in the town and the application proposal would not result in this becoming materially worse. Conversely the improvements to the A14/ A142 junction would result in wider benefits to those travelling on this part of the road network in peak periods. There would be a significant improvement to southbound queues along this part of Fordham Road and also a reduction in rat running along Snailwell Road. These matters are also of significant weight in favour of the application development.
496. Drawing all of the above points together it is concluded that the application scheme would accord with the economic, social and environmental dimensions of sustainable development. The adverse impacts of granting planning permission would not significantly and demonstrably outweigh the many benefits of the proposal, when assessed against the policies of the Framework as a whole. The presumption in favour of sustainable development would apply and, in accordance with Policy DM1 in the JDMPD and Paragraph 14 of the Framework, in my judgement planning permission should be granted. In the circumstances it is not considered that an objection on the grounds of prematurity could be sustained.
497. If, however, the Secretary of State disagrees with my conclusions regarding the impact on European designations but agrees with my finding in Paragraph 496 above, he would have to undertake an appropriate assessment. He would need to consult with Natural England and other parties as he considered necessary. Whilst it is considered that there is sufficient information available to undertake the appropriate assessment, the Secretary of State may not agree and he may have to consider calling for more information and maybe reopening the Inquiry [35; 39; 103; 109].
498. If the Secretary of State does decide an appropriate assessment is required and carries it out, there are two alternative outcomes. If the scheme does not pass and a significant impact is found then permission must be refused. However, if such impact is not found, taking a precautionary approach and including other plans and projects, then permission can be granted. Bearing in mind Paragraph 119 of the Framework the presumption in favour of sustainable development would not apply in such circumstances. A normal balancing exercise would be required but in my opinion the considerable benefits of the scheme would still outweigh the very small disadvantages that would ensue.

499. If an appropriate assessment were to be required the Secretary of State will wish to consider whether to reconsider his Screening Direction regarding the need for Environmental Impact Assessment [251].

**RECOMMENDATION**

500. That the planning permission be granted, subject to the conditions in the Schedule to Annex Three.

*Christina Downes*

INSPECTOR



**ANNEX ONE: APPERANCES****FOR THE LOCAL PLANNING AUTHORITY: FOREST HEATH BOROUGH COUNCIL**

Mr David Whipps	Solicitor with Holmes and Hills LLP
<i>He called:</i>	
Mrs P Kelly BSc(Hons) MSc DipTP MRTPI	Principal Planning Officer, Major Projects with Forest Heath District Council
*Mr J Horner BEng (Hons)	Flood and Water Manager at Suffolk County Council
*Ms S Buck BEng(Hons) MSc DIC	Transport Policy Specialist at Suffolk County Council
*Mr J Cutting BA(Hons) BTP PG CertED MRTPI	Planning Strategy Manager at Suffolk County Council

**FOR THE APPLICANT: LORD DERBY**

Mr Christopher Boyle	Of Queen's Counsel
Assisted by Mr Andrew Parkinson	Of Counsel, both instructed by Trevor Blaney Planning
<i>He called:</i>	
Mr R Sellwood BA DipTP MRTPI FRICS	Managing Director of Sellwood Planning Ltd
Mr B Plumb BSc(Hons) CEng MICE MCIHT	Director of WSP UK Ltd
Mr M Spry BSc DipTP MRTPI MIED	Senior Director of Nathaniel Lichfield & Partners
Mr S Foster MSc CGeol MCIWEM CSci CEnv FGS FIQ	Proprietor of SM Foster Associates Ltd
Ms S Rogers BSc(Hons)	Managing Director of Penny Anderson Associates Ltd
*Mr I Dimbylow MEng CEng MICE MCIHT	WSP UK Ltd

*\* Contributed to the conditions and obligations round table sessions*

**FOR THE RULE 6 PARTY: NEWMARKET HORSEMEN'S GROUP**

Mr David Elvin	Of Queen's Counsel
Assisted by Mr Charles Banner	Of Counsel, both instructed by Bracher Rawlins LLP
<i>They called:</i>	
Ms N Parsons BA(Hons) DipUP MRTPI	Director of Pegasus Planning Group Ltd
Mr M Cottee BSc(Hons) TPP FCIHT CMILT MTPS	Managing Director of COTTEE Transport Planning

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Mr B Wicksteed BSc(Hons)	Consultant to SQW Consulting
Mr A Forbes BSc(Hons) MSc CGeol FGS AIEMA AIEExpE	Senior Hydrogeologist of Halfren Water Ltd
Mrs D Ward BSc(Hons) MSc CBiol MSB MCIEEM	Director of Ward Associates
Prof N Waran BSc(Hons) PhD	Professor of Animal Welfare Education and Director of the Jeanne Marchig International Centre for Animal Welfare Education, University of Edinburgh's Royal (Dick) School of Veterinary Studies
Mr W Gittus BSc(Hons) DipSurv MRICS	Managing Director of the Jockey Club Estates Ltd & Group Property Director for the Jockey Club Group
Mr N Byrne	Chief Executive of Review Hotels Ltd t/a Bedford Lodge Hotel & Spa
Mr A Wiles	Global Corporate Director of Godolphin and Darley
Mr H Anderson	UK Managing Director of Darley and Godolphin & Finance Director of Godolphin and Darley in the UK
Mr W Jarvis	Trainer and Proprietor of Phantom House Stables
Mr J Gosden	Trainer and Proprietor of Clarehaven Stables

#### **INTERESTED PERSONS:**

Mr W Hirst	District Councillor for the Severals Ward*, Town Councillor for the Severals Ward and local resident
Mr A Drummond	District Councillor and Chairman of Forest Heath District Council
Ms R Hood	District Councillor for the Severals Ward* Town Councillor for the Severals Ward, Mayor of Newmarket
Ms S Beckett	Local resident
Mr J Crowhurst MA VetMB MVCVS	Vet at the Equine Veterinary Hospital
Mz Y Zellen	Local resident
Mr A Appleby	Local resident**
Mr B Rampling	Chairman of Moulton Parish Council and representative of the Rural Parish Alliance
Mr W Gredley	Stud owner and local resident

*\*Ms Hood and Mr Hirst were not re-elected as District Councillors in the District Council Elections on 7 May 2015*

*\*\* Mr Appleby was elected as a District Councillor in the District Council Elections on 7 May 2015 and is now a Town Councillor also*

## ANNEX TWO: DOCUMENTS

### CD: CORE DOCUMENTS

#### Original Planning Application Submission Documents

CD/OP/1	Planning Application Form and Certificate
CD/OP/2	Covering letter
CD/OP/3	Drawing No. SS060854_6 Rev A, Location Plan
CD/OP/4	Drawing No. SS060854_PP1, Land Use Plan (See CD/AP/6 for update)
CD/OP/5	Drawing No. 0719-GA-03 Rev A, Northern Development Access, (See CD/AP/2 for update)
CD/OP/6	Drawing No. 0719-GA-05 Rev A, A142/Willie Snaith Road/Southern Development Access Roundabout Improvements (See CD/AP/3 for update)
CD/OP/7	Planning Statement
CD/OP/8	Design and Access Statement (See CD/AP/7 for update)
CD/OP/9	Horse Racing Impact Statement
CD/OP/10	Transport Assessment
CD/OP/11	Statement of Community Involvement
CD/OP/12	Flood Risk Assessment
CD/OP/13	Environmental Report (Volume 1 Text)
CD/OP/14	Environmental Report (Volume 2 Drawings and Appendices) (NB B2.1 Landmark Envirocheck Report and B7.6 Confidential Badger Report comprise separate documents)
CD/OP/15	Non-Technical Summary

#### Amendments to Planning Application

CD/AP/1	Letter dated 9 January 2014 enclosing amendments to submission documents. See CD/AP/2 and CD/AP/3 for enclosures
CD/AP/2	Revised Drawing No. 0719-GA-03 Rev B, Northern Development Access
CD/AP/3	Revised Drawing No. 0719-GA-05 Rev B, A142/Willie Snaith Road/Southern Development Access Roundabout Improvements
CD/AP/4	Letter dated 11 April 2014 regarding open space calculation, enclosing CD/AP/5, CD/AP/6, CD/AP/7 and CD/AP/8
CD/AP/5	Completed open space calculator
CD/AP/6	Revised Drawing No. SS060854_PP1 Rev B, Land Use Plan
CD/AP/7	Design and Access Statement (updated)
CD/AP/8	Drawing No. SS060854_10, Open Space Measures Plan
CD/AP/9	Letter dated 12 May 2014 amending the description of development
CD/AP/10	Email from FHDC dated 17th April 2014 confirming receipt of CD/AP/4 and CD/AP/5

### Correspondence relating to the Original Planning Application

CD/COP/1	Email from FHDC dated 13 January 2014 formally accepting drawings submitted 9 January 2014 and providing link to news article dated 12 January 2014 (see CD/COP/2)
CD/COP/2	EADT news article dated 12 January 2014 as referred to in CD/COP/1
CD/COP/3	Letter dated 21 February 2014 providing a response to the ecology representations received (see CD/COP/5, part D)
CD/COP/4	Email from FHDC dated 21 May 2014 confirming the description of the development proposal has been changed
CD/COP/5	EIA screening correspondence
CD/COP/6	Secretary of State's EIA Screening Direction, dated 20 December 2013
CD/COP/7	WSP Departure Application, dated 22 January 2014
CD/COP/8	WSP Working Paper 2, Response to AECOM TA and TP Review
CD/COP/9	WSP Working Paper 3, Response to AECOM Paramics Model Review (Technical Note 2)
CD/COP/10	WSP Working Paper 4, Response to AECOM Technical Note for Suffolk County Council
CD/COP/11	WSP Working Paper 5, Response to Suffolk County Council comments on Travel Plan
CD/COP/12	WSP Working Paper 7 Response to Cllr Hirst Comments on TA
CD/COP/13	WSP Working Paper 8, Response to AECOM Technical Note 3
CD/COP/14	Letter from WSP to FHDC dated 27 June 2014
CD/COP/15	Report to Development Control Committee 2nd July 2014
CD/COP/16	Representations submitted to FHDC relating to the application, including appendices, 31 <sup>st</sup> January 2014 and 14 <sup>th</sup> November 2014

### National Guidance

CD/NG/1	National Planning Policy Framework, 2012
CD/NG/2	Extracts from the Planning Practice Guidance
CD/NG/3	Circular 06/2005, Biological and Geological Conservation, Statutory Obligations and their Impact within the Planning System
CD/NG/4	The Community Infrastructure Levy Regulations 2010

### Local Policy

CD/LP/1	Extracts from the Forest Heath Local Plan (1995)
CD/LP/2	Extracts from the Forest Heath Core Strategy (2010)
CD/LP/3	Single Issue Review, Proposed Submission Committee draft (November 2014)
CD/LP/4	Extracts from the Site Allocations Local Plan, Proposed Issues and Options (November 2013)
CD/LP/5	5 Year Housing Land Supply Report (16 October 2014)

CD/LP/6	Single Issue Review and Site Allocations Local Plan update (16 October 2014)
CD/LP/7	Core Strategy Inspectors Report (March 2010)
CD/LP/8	Joint Affordable Housing Supplementary Planning Document (2013)
CD/LP/9	Forest Heath Supplementary Planning Document Open Space, Sport and Recreation (2011)
CD/LP/10	Joint Development Management Policies Document (JDMPD) (February 2015)
CD/LP/11	JDMPD Inspectors Report and appendices, File Ref PINS/H3510/429/5, 21 January 2015
CD/LP/12	JDMPD Sustainability Appraisal and appendices, February 2015
CD/LP/13	JDMPD Habitats Regulations Assessment Stage 1 – Screening, February 2015
CD/LP/14	JDMPD Adoption Statement
CD/LP/15	JDMPD SEA Adoption Statement
CD/LP/16	Forest Heath Local Plan Policies Map February 2015
CD/LP/17	Forest Heath Five Year Housing Land Supply Assessment (February 2015)
CD/LP/18	Western Suffolk Employment Land Review, GVA Grimley, May 2009
CD/LP/19	Forest Heath Retail and Town Centres Study 2011

## Planning

CD/P/1	Newmarket Conservation Area Appraisal (June 2009)
CD/P/2	West Suffolk Housing Strategy 2015 – 2018
CD/P/3	Blank Document
CD/P/4	S106 Developers Guide to Infrastructure Contributions in Suffolk (Suffolk County Council)
CD/P/5	Forest Heath Annual Monitoring Report 2012/2013
CD/P/6	Forest Heath Infrastructure and Environmental Capacity Assessment (2009)
CD/P/7	Cambridge sub region SHMA Update (June 2013)
CD/P/8	Blank Document
CD/P/9	Forest Heath Single Issue Review Issues and Options Consultation (July 2012)
CD/P/10	Draft Section 106 Planning Obligation by Agreement
CD/P/11	Draft list of conditions
CD/P/12	Memorandum of Co-operation
CD/P/13	CIL Compliance Statement

## Transport

CD/T/1	Circular 02/2013: Strategic road network and the delivery of sustainable development (Department for Transport)
CD/T/2	Rules to be observed when using the Jockey Club Estates Limited Training Grounds at Newmarket (Jockey Club Estates)
CD/T/3	Local Transport Plan 3 2011–2031 (Suffolk County Council)
CD/T/4	Guidelines for Providing for Journeys on Foot (Chartered Institution of Highways and Transportation, 2000)
CD/T/5	Circular 02/2007: Planning and the Strategic Road Network (Department for Transport)
CD/T/6	Guidance on Transport Assessment (Department for Transport, March 2007)
CD/T/7	Manual for Streets (2007)
CD/T/8	Manual for Streets 2: Wider Application of the Principles (2010)
CD/T/9	Design Manual for Roads and Bridges, including: TA91/05 Provision for Non-Motorised Users; TD 9/93 Highway Link Design; TD 50/04 The Geometric Layout of Signal Controlled Junctions and Signalised Roundabouts; TA 90/05 The Geometric Design of Pedestrian, Cycle and Equestrian Routes; TA 57/87 Roadside Features
CD/T/10	LTN 1/12: Shared Use Routes for Pedestrians and Cyclists (Department for Transport)
CD/T/11	LTN 2/08: Cycle Infrastructure Design (Department of Transport)
CD/T/12	Traffic Advisory Leaflet 03: Equestrian Crossing (Department for Transport)
CD/T/13	The Highway Code
CD/T/14	LTN 1/04: Policy Planning and Design for Walking and Cycling (Department for Transport)
CD/T/15	LTN 2/95: The Design of Pedestrian Crossings (Department for Transport)
CD/T/16	LTN 1/95: The Assessment of Pedestrian Crossings (Department for Transport)
CD/T/17	Advice on Specification and Standards for Equestrian Routes (British Horse Society)
CD/T/18	Proof of Evidence of Mr Colin Smith of WSP for the 2011 public inquiry for appeal reference APP/H3510/A/10/2142030

## Economic

CD/E/1	Newmarket's Equine Cluster, The Economic Impact of the Horseracing Industry Centred on Newmarket (SQW, January 2014)
CD/E/2	The Economic Impact of British Racing (Deloitte, 2013)
CD/E/3	Register of Horseracing Establishments at Newmarket and Map (Smiths Gore, 2009)

CD/E/4	Industrial Revolutions, Capturing the Growth Potential (Centre for Cities and McKinsey & Company, July 2014)
CD/E/5	Economic Implications of Development at Hatchfield Farm, Newmarket (Volterra Partners, July 2011)
CD/E/6	British Racing Statistics (British Horseracing Authority, 2012)
CD/E/7	International Federation of Horseracing Authorities 2013 Annual Report (2013)
CD/E/8	Annual Review and Outlook, 2011 – 2014 (The Jockey Club Estates)
CD/E/9	Memorandum of Agreement between the National Trainers Federation and the National Association of Stable Staff (National Joint Council for Stable Staff, October 2014)
CD/E/10	Directory of the Turf/ Thoroughbred Business Guide (Thoroughbred Advertising Limited, 2014)
CD/E/11	The British Thoroughbred Industry: Economic Contribution and Opportunities Volume 2 (PWC)
CD/E/12	Accelerating local economic growth – clusters and deals (SQW July 2014)
CD/E/13	Extracts from The Cambridge Phenomenon Re-visited (SQW)
CD/E/14	Deconstructing Clusters: Chaotic or Policy Panacea (Martin, R. and Sunley, P., (2002)
CD/E/15	Blank Document
CD/E/16	Suffolk Growth Strategy (Suffolk County Council, 2013)
CD/E/17	The Plan for Growth (BIS, March 2011)
CD/E/18	New Anglia Strategic Economic Plan (New Anglia Local Enterprise Partnership for Norfolk and Suffolk, 2014)
CD/E/19	Newmarket Socio-economic Appraisal (Bone Wells Urbecon)
CD/E/20	Comments on John Boyd Rebuttal Proof of Evidence (Bone Wells Urbecon)

## Ecology

CD/EC/1	Information Sheet on Ramsar Wetlands (RIS), Chippenham Fen, Ref UK11014, Version 3.0 (JNCC, 13 June 2008)
CD/EC/2	British Standard 42020 (2013)
CD/EC/3	Natural England Standing Advice
CD/EC/4	Habitat Regulations Assessment, Forest Heath District Council Core Strategy Development Plan Document (2009)
CD/EC/5	Habitats Regulation Assessment for the Core Strategy Single Issue Review (July 2012)
CD/EC/6	Suffolk Biodiversity Plan (Suffolk Biodiversity Partnership, 2012)
CD/EC/7	Conservation of Habitats and Species Regulations (2010)
CD/EC/8	Habitats Directive 92/43/EEC

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CD/EC/9	Natural Environment and Rural Communities Act (2006)
CD/EC/10	Protection of Badgers Act (1992)
CD/EC/11	Badger Assessment Report (URS, August 2011)
CD/EC/12	Technical Report to inform Habitat Regulations Assessment and appendices (Wardall Armstrong, February 2015)
CD/EC/13	Revision of the 2013 Environmental Report (Wardall Armstrong, February 2015)
CD/EC/14	Assessment of the combined effects of the Hatchfield Farm proposed development and the potential off site primary school (Wardall Armstrong, February 2015)
CD/EC/15	Wildlife and Countryside Act (1981)
CD/EC/16	Assessment of plans and projects significantly affecting Natura 2000 sites, methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive (92/43/EEC)
CD/EC/17	Managing Natura 2000 Sites, The provisions of Article 6 of the 'Habitats' Directive (92/43/EEC)
CD/EC/18	Guidelines for Ecological Impact Assessment in the UK (Institute of Ecology and Environmental Management, 2006)
CD/EC/19	Guidelines for Ecological Report Writing (Chartered Institute of Ecology and Environmental Management, 2014)
CD/EC/20	Extracts from Bat Surveys–Good Practice Guidelines (Bat Conservation Trust, 2011)
CD/EC/21	Appendix 4: Confidential Badger Annex (Wardell Armstrong, 2015)
CD/EC/22	Badgers And Development: A Guide to Best Practice and Licensing (Natural England)
CD/EC/23	Response to Core Strategy Policy CS7 Single Issue Review Issues and Options (Regulation 18) Consultation (Save Historic Newmarket)
CD/EC/24	Response to Core Strategy Policy CS7 Single Issue Review Issues and Options (Regulation 18) Consultation (Natural England)
CD/EC/25	Lodes Granta Groundwater Scheme (National Rivers Authority)
CD/EC/26	Extracts from Chippenham Fen. Water Level Management Guidance, For the Environment Agency (Tucker, G and Gowing D, 2000)
CD/EC/27	Fenland SAC Standard Data Form (JNCC)
CD/EC/28	Site Improvement Plan-Fenland SAC (Natural England, October 2014)
CD/EC/29	Breckland SAC Standard Data Form (JNCC)
CD/EC/30	Habitat Regulations Assessment: Breckland Council Submission Core Strategy and Development Control Policies Document (D Liley, R Hoskin, J Underhill-Day & D Tyldesley, 2008)
CD/EC/31	Snailwell Meadows SSSI Citation (Natural England)
CD/EC/32	2015 Water Resource Management Plan Habitats Regulations Assessment: Task 1 & 2 (Anglian Water, December 2013)

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CD/EC/33	Breckland SPA Standard Data Form (JNCC)
CD/EC/34	Tree Survey Report – Hatchfield Farm (CBA Trees, 2009)

### Hydrology

CD/H/1	Extracts from Water Resources Management Plan (Anglian Water, 2015)
CD/H/2	Pre-Planning Assessment Report: Fordham Road, Newmarket (Anglian Water, 2015)
CD/H/3	Cam and Ely Ouse Abstraction Licensing Strategy (Environment Agency, 2013)
CD/H/4	Soakaway Investigation Report Hatchfield Farm Newmarket (WSP, April 2008)
CD/H/5	Chippenham Fen NNR Monitoring 1991-1995 Appendix 1 Hydrological Assessment (White P et al, 1996)
CD/H/6	Habitat Directive Review of Consents Stage 4 Options Appraisal Final: Chippenham and Snailwell Poor's Fen SSSI (Atkins, 2010) ("The Atkins Report")
CD/H/7	Chippenham Fen NNR Management Plan April 2009-(Natural England, March 2014)
CD/H/8	Hydrogeological Map of Southern East Anglia, 1:125,000 (Institute of Geological Sciences and Anglian Water Authority, 1981)
CD/H/9	Blank Document
CD/H/10	Letter from Mott Macdonald to Ward Ecology Ltd (June 18 2014). Comments on response to Mott Macdonald letter dated December 16 2013 (CD/COP/5, Part D)
CD/H/11	Letter from Wardall Armstrong to Pegasus Group regarding aspects of the water supply and abstraction licensing assessment (January 29 2015)
CD/H/12	Groundwater Source Protection Zones – Review of Methods. Science Report SC070004/SR1 (Environment Agency, 2009)
CD/H/13	Letter from the Environment Agency to Wardell Armstrong regarding water supply and ground water abstraction impacts (14 May 2013)
CD/H/14	Groundwater protection: Principles and Practice (Environment Agency, 2013)
CD/H/15	The Great Ouse Chalk Aquifer, East Anglia, baseline Report Series 13 (British Geological Survey, 2003)
CD/H/16	Email from Anglian Water to Stephen Foster (9 April 2015)
CD/H/17	Email from Stephen Foster to Anglian Water (30 March 2015)

### Equine Behaviour

CD/EB/1	Object habituation in horses: The effect of voluntary vs. negatively reinforced approach to frightening stimuli (Christensen, J.W., 2013)
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CD/EB/2	Training methods for horses: habituation to a frightening stimulus (Christensen, Janne Winther; Rundgren, M; Olsson, K, 2006)
CD/EB/3	Do horses generalise between objects during habituation? (Christensen, J.W., Zharkikh, T, Ladewig, J. 2008)
CD/EB/4	Object recognition and generalisation during habituation in horses (Christensen, J.W., Zharkikh, T., Chovaux, E. 2011)
CD/EB/5	Effects of different forms of exercise on post inhibitory rebound and unwanted behaviour in stabled horses (Freire R, Cooper J and Buckley P. 2009)
CD/EB/6	Horse personality: Variation between breeds (Lloyd AS, Martin JE, Barnett-Gauci, HLI and Wilkinson RG 2008)
CD/EB/7	Horse-riding accidents: when the human-animal relationship goes wrong (Keeling, L.J., Blomberg, A. and Ladewig, J. (1999)
CD/EB/8	Spinal injuries resulting from horse riding accidents (Silver J R 2002)
CD/EB/9	Non-fatal horse related injuries treated in emergency departments in the United States, 2001-2003 (Thomas, K.E., Annest, J.L., Gilchrist, J., Bixby-Hammett, D.M. 2006)
CD/EB/10	Quantifying aspects of young horses' temperament: consistency of behavioural variables (Visser, E.K., van Reenen, C.G., Hopster, H., Schilder, M.B.H., Knaap, J.H., Barneveld, A. and Blokhuis, H.J. 2001)
CD/EB/11	Experimental tests to assess emotionality in horses (Wolff, A., Hausberger, M. and Le Sclan, N. 1997)
CD/EB/12	Equestrian injuries: incidence, injury patterns, and risk factors for 10 years of major traumatic injuries (Ball, C.G. et al, 2007)
CD/EB/13	The Genetics of the Horse (Albro Houpt, K and Kusunose, R)
CD/EB/14	Horse-related injuries in a thoroughbred stabling area in Japan (Iba, K. et al, 2001)
CD/EB/15	Ecological, Ethological, and Ethically Sound Environments for Animals: Toward Symbiosis (Kiley-Worthington, M, 1989)
CD/EB/16	Horse personality: Variation between breeds (Lloyd, A.S. et al, 2008)
CD/EB/17	Do vendors value safety in Thoroughbred horses in the Australian recreational riding horse market? (McGreevy, P. D. et al, 2014)
CD/EB/18	The influence of challenging objects and horse-rider matching on heart rate, heart rate variability and behavioural score in riding horses (Munsters, C. et al, 2012)
CD/EB/19	What Horses and Humans See: A Comparative Review (Murphy, J., Hall, C. and Arkins, S, 2009)
CD/EB/20	Behavioural and physiological responses of horses to initial training: the comparison between pastured versus stalled horses Rivera, E. et al, 2002)
CD/EB/21	Effects of different forms of exercise on post inhibitory rebound and unwanted behaviour in stabled horses (Freire, R., Buckley, P and Cooper, J.J., 2009)

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CD/EB/22	Hazards of horse-riding as a popular sport (Silver, J.R. and Lloyd Parry, J.M., 1991)
CD/EB/23	Non-fatal horse related injuries treated in emergency departments in the United States 2001–2003 (Thomas, K.E. et al 2006)
CD/EB/24	Causes of horse-related injuries in a rural western community (Von Hollen, B and Thompson, J.M., 1996)
CD/EB/25	Equine road user safety: Public attitudes, understandings and beliefs from a qualitative study in the United Kingdom (Chapman, C. and Musselwhite, C. B. A. 2011)
CD/EB/26	Key facts from the Road Safety Observatory website
CD/EB/27	Horse sense document
CD/EB/28	Career-ending injuries to professional jockeys in British horse racing (1991-2005) (Balendra, G., Turner, M., McCrory, P., 2008)
CD/EB/29	Accidents with horses: what has changed in 20 years? (Chitnavis, C. Gibbons, M. Hirigoyen, et al, 1996)
CD/EB/30	Injury During Contact with Horses: Recent Experience with 75 Patients at a Level I Trauma Center (Griffen, M., Boulanger, B.R., Kearney, P.A., Tseui, B., Ochoa, J., 2002)
CD/EB/31	Equine behaviour - A guide for veterinarians and equine scientists (McGreevy P D, 2012)
CD/EB/32	Estimation of heritability and genetic correlation for behavioural responses by Gibbs sampling in the Thoroughbred racehorse (Oki, H. et al, 2007)
CD/EB/33	Rider injury rates and emergency medical services at equestrian events (Paix, B.R., 1999)
CD/EB/34	The Nation Jockey Injury Study: An Analysis of Injuries to Professional Horse-Racing Jockeys (Press, J.M., Davis, P.D., Wiesner, S.L., Heinemann, A., Semik, P., Addison, R.G., 1995)
CD/EB/35	Equestrian Injuries: a five year review of hospital admissions in British Columbia, Canada. Injury Prevention, Sorli, J.M., 2000)
CD/EB/36	Jockey Injuries in the United States (Waller AE, Daniels JL, Weaver NL, Robinson P)
CD/EB/37	Equestrian Sport-Related Injuries: A Review of Current Literature. Current Sports Medicine Reports (Havlick, H.S., 2010)
CD/EB/38	) Managing Growth to Produce a Sound, Athletic Horse. Advances in Equine Nutrition (Pagan, J.D. and Nash, D., 2009)

#### Other

CD/O/1	Planning appeal decision APP/H3510/A/10/2142030 (22/3/12)
CD/O/2	Inspector report APP/H3510/A/10/2142030
CD/O/3	Planning appeal decision APP/H3510/A/13/2197077 regarding a residential scheme at Meddler Stud, Kentford (22/11/13)
CD/O/4	Planning appeal decision APP/N0410/A/13/2199037 regarding

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	Pinewood Studios (18/06/14)
CD/O/5	The Newmarket Charter (1966)
CD/O/6	Save Historic Newmarket Ltd v Forest Heath DC, Case CO/6882/2010
CD/O/7	Sweetman v. An Bord Pleanala, Case C-258/11, 3 C.M.L.R 16 (2013)
CD/O/8	Landelijke Vereniging tot Behoud van de Waddenzee v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij, Case C-127/02, Env. L.R. 14 (2004)
CD/O/9	Inspector's Report to Ribble Valley Core Strategy on the examination into the Ribble Valley Core Strategy (25 November 2014)
CD/O/10	Objectively Assessed Housing Need and Housing Targets Technical Advice Note (Planning Advisory Service, June 2014)
CD/O/11	Letter calling in the application (11 July 2014)
CD/O/12	Pre-Inquiry Meeting (PIM) Note (10 December 2014)
CD/O/13	The Highways Agency TR110 Response confirming no objection subject to conditions
CD/O/14	The SCC letter confirming no objection (13 June 2014)
CD/O/15	Appeal Decision APP/X1735/A/13/2192777 at North of Goldring Close and south of Beech Grove, Hayling Island
CD/O/16	Appeal Decision APP/D0840/A/13/2209757 at Land north of Upper Chapel, Launceston
CD/O/17	Hunston Properties Appeal Court Case (12 December 2013)
CD/O/18	Gallagher Homes and Lioncourt Homes HC Case (30 April 2014)
CD/O/19	Gallagher Homes and Lioncourt Homes High Court Case, Appeal Court Judgement (17 December 2014)
CD/O/20	Bloor Homes East Midlands Ltd vs Secretary of State for CLG and Hinckley & Bosworth BC, Appeal Court Judgement (19h March 2014)
CD/O/21	Appeal Decision APP/R0660/A/13/2209335 at Gretsby Lane
CD/O/22	Design Guide for Residential Areas, Suffolk County Council
CD/O/23	Construction in the UK Economy: The Benefits of Investment (UK Contractors Group, May 2012)
CD/O/24	Proof of Evidence of John Gosden on behalf of Save Historic Newmarket Limited Site at Hatchfield Farm
CD/O/25	Proof of Evidence, Hatchfield Farm Inquiry, William Gittus on behalf of Tattersalls Group
CD/O/26	Newmarket Vision: Enquiry by Design Workshop Report (The Princes Trust, 2014)
CD/O/27	Email correspondence between Robert Feakes and Bob Sellwood in relation to the Education and Libraries Statement of Common Ground (10 and 12 March 2015)
CD/O/28	Letter from PINS to FHDC relating to the adoption of the new Local Plan (25 March 2015)

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## Statements of Case

CD/SOC/1	Statement of Case on behalf of The Newmarket Horsemen's Group (September 2014)
CD/SOC/2	Statement of Case on behalf of Forest Heath District Council (September 2014)
CD/SOC/3	Statement of Case on behalf of The Earl of Derby (September 2014)
CD/SOC/4	Addendum to Statement of Case on behalf of The Newmarket Horsemen's Group (February 2015)

## Statements of Common Ground

CD/SCG/1	Statement of Common Ground between The Earl of Derby and Forest Heath District Council (September 2014)
CD/SCG/2	Supplementary Statement of Common Ground between the Earl of Derby and Forest Heath Council (27 November 2014)
CD/SCG/3	Statement of Common Ground between Newmarket Horsemen's Group and Forest Heath District Council
CD/SCG/4	Statement of Common Ground between the Highways Agency and the Earl of Derby
CD/SCG/5	Statement of Common Ground between the Earl of Derby and Suffolk County Council – Non Transportation Matters (February 2015)
CD/SCG/6	Statement of Common Ground between applicant and Newmarket Horsemen's Group – Hydrological Evidence
CD/SCG/7	Updated Statement of Common Ground between the Earl of Derby and Suffolk County Council – Non Transportation Matters (April 2015)

## INQUIRY DOCUMENTS

### Proofs of Evidence: Council

FHDC/1	Proof of evidence of Mrs Kelly
FHDC/2	Appendices of Mrs Kelly

### Proofs of Evidence: Applicant

APP/1/1	Summary Proof of evidence of Mr Spry
APP/1/2	Proof of evidence of Mr Spry
APP/1/3	Appendices of Mr Spry
APP/2/1	Summary Proof of evidence of Mr Plumb
APP/2/2	Proof of evidence of Mr Plumb
APP/2/3	Appendices of Mr Plumb
APP/2/4	Rebuttal proof of evidence and appendices of Mr Plumb
APP/3/1	Summary proof of evidence of Mr Foster
APP/3/2	Proof of evidence of Mr Foster
APP/3/3	Appendices of Mr Foster
APP/3/4	Drawings of Mr Foster

APP/3/5	Rebuttal proof of evidence and appendices of Mr Foster
APP/4/1	Summary proof of evidence of Ms Rogers
APP/4/2	Proof of evidence of Ms Rogers
APP/4/3	Appendices of Ms Rogers
APP/4/4	Rebuttal proof of evidence of Ms Rogers
APP/5/1	Summary proof of evidence of Mr Sellwood
APP/5/1	Proof of evidence of Mr Sellwood
APP/5/3	Appendices of Mr Sellwood

### **Proofs of Evidence: Rule 6 Party**

NHG/1/1	Summary proof of evidence of Mr Wicksteed
NHG/1/2	Proof of evidence of Mr Wicksteed
NHG/1/3	Rebuttal proof of evidence of Mr Wicksteed
NHG/2/1	Proof of evidence of Mr Cottee
NHG/2/2	Appendices (Vol 1) of Mr Cottee
NHG/2/3	Appendices (Vol 2) of Mr Cottee
NHG/2/4	Rebuttal proof of evidence of Mr Cottee
NHG/2/5	Appendices to rebuttal of Mr Cottee
NHG/3/1	Proof of evidence of Mr Forbes
NHG/3/2	Appendix of Mr Forbes
NHG/3/3	Rebuttal proof of evidence of Mr Forbes
NHG/4/1	Proof of evidence of Mrs Ward
NHG/4/2	Rebuttal proof of evidence and appendices of Mrs Ward
NHG/5/1	Summary proof of evidence of Ms Parsons
NHG/5/2	Proof of evidence of Ms Parsons
NHG/5/3	Appendices of Ms Parsons
NHG/5/4	Rebuttal proof of evidence and appendix of Ms Parsons
NHG/6/1	Proof of evidence of Mr Gittus
NHG/6/2	Appendices of Mr Gittus
NHG/7	Proof of evidence of Professor Waran
NHG/8	Proof of evidence and appendix of Mr Jarvis
NHG/9	Proof of evidence and appendix of Mr Anderson
NHG/10	Proof of evidence and appendices of Mr Wiles
NHG/11	Proof of evidence of Mr Byrne
NHG/12	Proof of evidence and appendix of Mr Gosden

### **Written representations to the application after the call-in**

WR/1	Email from Mr K Mitchell
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WR/2	Letters from Mz Y Zellen
WR/3	Email from Ms V Fairbairn
WR/4	Emails from Mr A Shipton
WR/5	Correspondence and attachments from Mr A Appleby
WR/6	Letter from Miss J D Curtis
WR/7	Email from Ms S Leoni-Smith
WR/8	Email from Mr M McStay
WR/9	Letter from J B Wilson

#### **Documents Submitted at the Inquiry**

ID/1	Council's letters of notification of the Inquiry and list of persons notified
ID/2	Statement of Common Ground between FHDC and the NHG
ID/3	Plan showing locations of habitats and Red Data List species at Chippenham Fen ( <i>submitted by Mr Boyle</i> )
ID/4	Abstraction Charges Scheme 2014/15 (Environment Agency) ( <i>submitted by Mr Boyle</i> )
ID/5	Screen Print from Natural England website of Breckland, including a plan ( <i>submitted by Mr Boyle</i> )
ID/6	Condition summary report on Chippenham Fen (Natural England) ( <i>submitted by Mr Boyle</i> )
ID/7	Horse crossing incident table put together by Mr Plumb ( <i>submitted by Mr Boyle</i> )
ID/7A	Updated horse crossing incident table put together by Mr Plumb ( <i>submitted by Mr Boyle</i> )
ID/8	Graphs showing water levels at Chippenham Fen (from the Atkins Report) ( <i>submitted by Mr Banner</i> )
ID/9	Standing advice for LPAs on badgers (Natural England) ( <i>submitted by Mr Banner</i> )
ID/10	Site hazards map of Chippenham Fen (Natural England) ( <i>submitted by Mr Banner</i> )
ID/11	Surface water flow directions and features map (from the Atkins Report) ( <i>submitted by Mr Banner</i> )
ID/12	Incident clips presented as evidence by Mr Cottee and map of walking routes ( <i>submitted by Mr Elvin</i> )
ID/13	Assessment of traffic and horses at the Rayes Lane crossing ( <i>submitted by Mr Boyle</i> )
ID/14	Article on the Hunter Valley, Australia (7 April 2015) submitted by Mr Wiles ( <i>submitted by Mr Elvin</i> )
ID/15	Article on the Hunter Valley, Australia (8 April 2015) submitted by Mr Wiles ( <i>submitted by Mr Elvin</i> )

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ID/16	Newmarket's success story (EQLife, 18 September 2014)
ID/17	Securing the future: delivering UK sustainable development strategy (HM Government, March 2005) ( <i>submitted by Mr Banner</i> )
ID/18	Progress report on the Further Issues and Options for the Single Issue Review and Site Specific Allocations (Forest Heath Local Plan Working Group, 17 April 2015) ( <i>submitted by Mr Banner</i> )
ID/19	Note on the housing figures in Table 6.5 of Mr Forbes's proof and his Appendix ( <i>submitted by Mr Banner</i> )
ID/20	Second Review of the Strategic Housing Land Availability Assessment (October 2012) ( <i>submitted by Mr Boyle</i> )
ID/21	Note by Mrs Ward on Snailwell Meadows ( <i>submitted by Mr Banner</i> )
ID/22	Extracts from Applicant's notes on Mr Cottee's evidence ( <i>submitted by Mr Boyle</i> )
ID/23	Extracts from the Order of the High Court quashing parts of the Forest Heath Core Strategy ( <i>submitted by Mr Whipps</i> )
ID/24	CV of Ms J Fisher, Ecology and Landscape Officer, West Suffolk ( <i>submitted by Mr Whipps</i> )
ID/25	Hatchfield Farm – ecology chronology ( <i>submitted by Mr Whipps</i> )
ID/26	Additional information to support the demographic modelling by Mr Spry ( <i>submitted by Mr Boyle</i> )
ID/27	Additional information about the discharge point for the Lodes Granta Scheme at Snailwell serving Snailwell Meadows ( <i>submitted by Mr Boyle</i> )
ID/28	Land ownership plan relating to the horse underpass at Rayes Lane proposed by the Rule 6 Party ( <i>submitted by Mr Elvin</i> )
ID/29	Statement read to the Inquiry by Mr A Drummond
ID/30	Statement read to the Inquiry by Mr A Appleby
ID/31	Statement read to the Inquiry by Mr B Rampling
ID/32	Documentation referred to in Ms Hood's spoken statement to the Inquiry
ID/33	Plan of Snailwell Meadows ( <i>submitted by Mr Banner</i> )
ID/34	Plan showing ground and surface water licenced abstractions (from the Atkins Report) ( <i>submitted by Mr Banner</i> )
ID/35	Email note with a further revision to Table 6.5 and updated information on the source of the housing figures ( <i>submitted by Mr Banner</i> )
ID/36	Information about RAF Mildenhall and the adoption of the East Cambridgeshire Local Plan ( <i>submitted by Mr Banner</i> )
ID/37	Further supplementary statement of common ground between the Applicant and the Council (March 2015)
ID/38	Note provided by Mr Spry in answer to Inspector's question on economic activity rates ( <i>submitted by Mr Boyle</i> )



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ID/39	Note provided by Mr Plumb in answer to Inspector's questions about the Rayes Lane contribution, visibility splays and horse warning signs ( <i>submitted by Mr Boyle</i> )
ID/40	CIL compliance statement ( <i>submitted by Mr Whipps</i> )
ID/41	Suffolk County Council's preferred scheme for the Rayes Lane crossing ( <i>submitted by Mr Boyle</i> )
ID/42	Information about the operation of the Lodes Granta Support to Snailwell Meadows provided by Mrs Ward ( <i>submitted by Mr Banner</i> )
ID/43	Statement read to the Inquiry by Ms S Beckett
ID/44	Section 106 Planning Obligation by Agreement (dated 30 April 2015)
ID/45	Draft Planning Conditions and supporting information
ID/46	Response by Mr Cottee to Mr Plumb's Note about the Rayes Lane contribution and visibility splays (ID/39) ( <i>submitted by Mr Elvin</i> )
ID/47	Selection of incident clips and CD Rom relating to evidence by Mr Cottee and Professor Waran ( <i>submitted by Mr Elvin</i> )
ID/48	Written submission by Lakenheath Parish Council
ID/49	A Vision for Newmarket Town Centre (Unex Group, September 2009) ( <i>submitted by Mr Gredley in support of his spoken statement to the Inquiry</i> )
ID/50	Response by Mr Wicksteed to Mr Spry's Note on economic activity rates (ID/38) ( <i>submitted by Mr Elvin</i> )
ID/51	Satnam Millennium Ltd v Warrington Borough Council (High Court decision, 19 February 2015) ( <i>submitted by Mr Boyle</i> )
ID/52	Suffolk Guidance for Parking (November 2014) ( <i>submitted by Mr Whipps</i> )
ID/53	Information about Breckland SPA, Chippenham Fen SAC and Snailwell Meadows SSSI, including maps, provided by Mrs Ward for the site visit
ID/54	Maps showing Breckland SPA and the appeal site provided by Ms Rogers for the site visit
ID/55	Opening and Closing Submissions on behalf of the Newmarket Horsemen's Group
ID/56	Opening and Closing Submissions on behalf of Forest Heath District Council
ID/57	Opening and Closing Submissions on behalf of Lord Derby

## PLANS

A/1-A/4	Application Plans
B/1-B/8	Plans relating to the A14/ A142 junction improvement and the other highway improvements, including footway provision

## **ANNEX THREE: SCHEDULE OF CONDITIONS**

### **Prior to reserved matters**

- 1) Prior to the submission of any reserved matters application, a detailed Design Code for the development shall be submitted to and approved in writing by the local planning authority. The detailed Design Code shall demonstrate how the objectives of the Design and Access Statement will be met. Subsequent reserved matters shall conform to the principles of the approved Design Code.
- 2) Prior to the submission of any reserved matters application, and notwithstanding the particulars shown on the Land Use Plan (SS060854\_PP1B), details of the types of new and existing open and green spaces within the site, their connectivity and a timetable for implementation shall be submitted to and approved in writing by the local planning authority. Subsequent reserved matters shall conform to the approved Land Use Plan and its timetable.
- 3) Prior to the submission of any reserved matters application, a Lighting Strategy shall be submitted to and approved in writing by the local planning authority. This shall identify which parts of the site are sensitive for the commuting, foraging or resting of bats and how external lighting will prevent disturbance in such areas. Subsequent reserved matters applications shall conform to the Lighting Strategy.

### **Phasing, reserved matters and implementation**

*If the development is to be built in several phases, Conditions 4-7 apply:*

- 4) Prior to the submission of the first reserved matters application, details of the phasing of the development hereby permitted shall be submitted to the local planning authority. Development shall be carried out in accordance with the phasing details, which shall first have been approved in writing by the local planning authority.
- 5) Details of the appearance, landscaping, layout, and scale (the reserved matters) within each phase of the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins within that phase. The development shall be carried out in accordance with the approved details.
- 6) Application for approval of the reserved matters for Phase 1 of the development hereby permitted shall be made to the local planning authority before the expiry of 3 years from the date of this permission. Phase 1 shall be begun either before the expiration of 4 years from the date of this permission or before the expiration of 1 year from the date of the approval of the last reserved matter for Phase 1, whichever is the later.
- 7) Application for approval of the reserved matters for the Final Phase of the development hereby permitted shall be made to the local planning authority before the expiration of 5 years from the date of this permission. The Final Phase shall be begun either before the expiration of 7 years from the date of this permission or before the expiration of 1 year from the date of the approval of the last reserved matter for the Final Phase, whichever is the later.

*If the development is to be built in a single phase, Conditions 8-10 apply:*

- 8) Details of the appearance, landscaping, layout, and scale (the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 9) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 10) The development hereby permitted shall begin not later than the expiration of 5 years from the date of this permission or before the expiration of 1 year from the date of approval of the last of the reserved matters, whichever is the later.

#### **Scope of the planning permission**

- 11) The development hereby permitted shall be carried out in accordance with the following approved plans: SS060854\_6A; SS060854\_PP1B; 0719-GA-03B; 0719-GA-05B.
- 12) The development hereby permitted shall be for no more than 400 dwellings.

#### **Pre-commencement conditions**

- 13) No development shall take place until details of a scheme for the provision and implementation of surface water drainage for the site, based on sustainable drainage principles in accordance with the SuDS Manual (CIRIA C697), has been submitted to and approved in writing by the local planning authority. The drainage scheme should demonstrate the surface water run-off generated up to and including the 100 year event. Critical storm run-off, with an allowance for climate change, shall not exceed the run-off from the undeveloped site following the corresponding rainfall event and shall demonstrate the exceedance flow paths. The details shall include:

- Provisions to be made for the management and maintenance of the scheme for the lifetime of the development.
- A timetable for implementation to take account of any phasing of the construction of development.

The approved SuDS scheme shall be implemented, managed and maintained in accordance with the approved details and timetable.

- 14) No development shall take place until a scheme for improvements to the A14 Junction 37 has been submitted to and approved in writing by the local planning authority. This shall be in general conformity with the signalised arrangements shown on Drawing Nos: 07-SK-39; 0719-GA-01B; 0719-GA-02B; 0719-GA-03B. The approved junction improvements shall be carried out before the first dwelling is occupied.
- 15) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - a. The parking of vehicles of site operatives and visitors.
  - b. Loading and unloading of plant and materials.
  - c. Storage of plant and materials used in constructing the development and the provision of temporary offices.

- d. Wheel washing facilities.
  - e. Measures to control the emission of dust and dirt during construction.
  - f. Access and protection measures around the site for pedestrians, cyclists and other road users, including arrangements for diversions and the provision of associated directional signage.
  - g. Measures to be taken to prevent pollution of the received ground and surface water.
  - h. Hours that construction will take place.
  - i. Details of the routes to be taken by construction traffic.
- 16) No development shall take place until an Ecological Mitigation Statement (EMS) has been submitted to and approved in writing by the local planning authority. The EMS shall set out details of the mitigation, conservation and enhancement measures for habitats, fine leaved fumitory, reptiles, bats, badgers and birds based on Wardell Armstrong's Environmental Report (September 2013), Badger Report (September 2013) and Ecology Surveys (March 2015). The EMS shall include the following:
- a. Purpose and conservation objectives of the proposed works.
  - b. Detailed designs and/ or working methods necessary to achieve stated objectives.
  - c. Extent and location of proposed works shown on appropriate scale maps and plans.
  - d. Timetable for implementation, demonstrating that works are aligned with any phasing of construction.
  - e. Persons responsible for implementing the works.
  - f. Details of initial aftercare and long-term maintenance.
  - g. Details of the disposal of any wastes arising from the works.
  - h. Details of monitoring and remedial measures.
- The EMS shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.
- 17) No development shall take place until details, which show how the existing trees and hedgerows that are to be retained will be protected during the course of construction, have been submitted to and approved in writing by the local planning authority. The details shall accord with BS 5837: *Trees in Relation to Construction*. All approved tree and hedge protection measures shall be in place prior to the commencement of construction and shall be retained thereafter until construction has been completed.
- 18) No development shall take place until the applicant, or their agents or successors in title, has secured and implemented a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 19) No other development shall take place until the proposed access from Fordham Road has been provided in accordance with either Drawing No 0719-GA-03B or Drawing No 0719-GA-05B. The first 20 metres of the access road from

Fordham Road shall be finished to surface level and retained in that condition until and unless the road is adopted as highway maintainable at public expense.

- 20) No development shall take place until details of how construction waste will be recovered and re-used on the application site or elsewhere, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details for the duration of the construction period.
- 21) No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include the following:
- a. Description and evaluation of features to be managed.
  - b. Ecological trends and constraints on site that might influence management.
  - c. Aims and objectives of management.
  - d. Appropriate management options for achieving aims and objectives.
  - e. Prescriptions for management actions.
  - f. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g. Details of the body or organisation responsible for implementation of the plan.
  - h. Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism by which the long term implementation of the plan will be secured by the developer and the management body responsible for its delivery.

The LEMP shall also set out how contingencies or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The LEMP shall be implemented in accordance with the approved details.

Details of the areas and features to be managed, both on and off the site; the aims and objectives of the management regime and how they will be achieved; the arrangements for monitoring and any necessary remedial action; the funding mechanism for the long term implementation of the LEMP and who will be responsible for its delivery and ongoing operation. The LEMP shall include an implementation programme and shall be carried out in accordance with the approved details and its features shall be retained thereafter.

- 22) No development shall take place until details of the layout, levels, gradients, surfacing and drainage of the estate roads and footpaths have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 23) No development shall take place until a scheme for the improvement of the Rayes Lane/ Fordham Road horse crossing has been submitted to and approved in writing by the local planning authority. This shall be in general accordance

with the arrangements shown on either Drawing No HC/01A (the WSP Scheme) or Drawing No SCC/01 (the SCC Scheme) or Drawing No 13115/18G (the signalised scheme by NHG in NHG/2/2, Appendix 8). The improvement works shall be completed and fully operational prior to the occupation of the first dwelling.

- 24) No development shall take place until a Travel Plan, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented as approved.

**Pre-occupation conditions**

- 25) No dwelling shall be occupied until details of the provision of fire hydrants served by mains water supply, including a timetable for their provision, have been submitted to and approved in writing by the local planning authority. The fire hydrants shall be provided in accordance with the approved details and timetable.
- 26) No dwelling shall be occupied until the Puffin and Toucan crossings on Fordham Road have been provided in general accordance with Drawing Nos 0719-GA-04B and 0719-GA-05B.
- 27) No dwelling shall be occupied until pedestrian and cycle improvements to provide better links between the site and the Yellow Brick Road have been provided in general accordance with Drawing Nos 0719-GA-05B and 0719-GA-06B.
- 28) No dwelling shall be occupied until the carriageways and footways between that dwelling and Fordham Road have been constructed to binder course or surface course level.

**Conditions prior to occupation of 150 dwellings**

- 29) No more than 150 dwellings shall be occupied until the Studlands Park Avenue junction with Exning Road has been converted into a mini-roundabout in general accordance with Drawing No 0719-GA-07B.
- 30) No more than 150 dwellings shall be occupied until both vehicular accesses and associated crossing works between the site and Fordham Road have been laid out, completed and made available for use in accordance with Drawing Nos 0719-GA-03B and 0719-GA-05B. These works shall include the signalised crossing on the development site approach to the Willie Snaith roundabout.

*End of conditions*



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.