

22 March 2012

Mr T Blaney
Lawrence Graham LLP Solicitors
4 More London Riverside
London
SE1 2AU

Our Ref: APP/H3510/A/10/2142030

Your Ref: F/2009/0713/ESO

Dear Mr Blaney,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY THE EARL OF DERBY
AT LAND AT HATCHFIELD FARM, FORDHAM ROAD, NEWMARKET, CB8 7XL
APPLICATION: REF F/2009/0713/ESO**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr J I McPherson, JP BSc CEng CEnv CWEM MICE MCIWEM MCMI, who held a public local inquiry, which opened on 12 July 2011, into your client's appeal against the decision of Forest Heath District Council to refuse permission for a comprehensive mixed-use development, comprising up to 1,200 dwellings; up to 36,000 m² of B1 employment floorspace of which not more than 10,000m² will be office floorspace (B1(a)); community facilities (up to 1,000m²) of D1 uses; retail and food and drink use (up to 300m² of A1, A3, A4 and A5 uses); park and ride (up to 100 spaces); primary school reservation (2 form entry); two vehicular accesses to provide a fourth (east facing) arm and a new roundabout access on the A142 north of the A142/Studlands Park Avenue roundabout and the realignment of the A142; a pedestrian/cycle access on to Snailwell Road; internal footpaths, cycle routes and estate roads; playing fields and pavilion, children's play space, informal open space, allotments and landscaping; foul and surface water drainage infrastructure at Hatchfield Farm, Fordham Road, Newmarket, CB8 7XL in accordance with application Ref F/2009/0713/ESO, dated 30 November 2009.
2. On 8 December 2010 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because it relates to proposals for development of major importance having more than local significance.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. The Secretary of State has carefully considered the Inspector's report and for the reasons given below, he agrees with the Inspector's conclusions and his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The proposal is in outline with all matters reserved other than access onto Fordham Road. Since the original application for planning permission was submitted, the scheme has been amended as set out in IR1.1.5 and 1.1.7. The Secretary of State has determined the appeal on the basis of the description set out at IR1.1.8 and the amended plans listed at IR1.1.9. He is satisfied that no prejudice has been caused to any party by this course of action.
5. In reaching his decision, the Secretary of State has taken into account the Environmental Information, as referred to at IR1.2.1 – 1.2.3, which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State reaches a view on the adequacy of this information at paragraph 12 below.

Matters arising after the close of the inquiry

6. Since the close of the inquiry the Secretary of State has received six representations, as listed at Annex A of this letter. He has taken account of these representations but, as they did not raise any new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Copies of these representations can be made available upon written request.

Policy considerations

7. In deciding the appeal, 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 comprises the 2008 East of England Plan (EEP), the 2010 Forest Heath Core Strategy (CS) and those saved policies of the Forest Heath Local Plan that have not been superseded. The Secretary of State notes that a successful High Court challenge to the CS, referred to at IR3.1.2, resulted in the quashing of policies relating to the spatial distribution of housing. He further notes that the Council intends to undertake a Single Issue Review of the housing growth targets and strategic land allocations in the Core strategy (IR3.1.3). He considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR3.1.5 – 3.1.7.
9. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; PPS3: *Housing*; PPS4: *Planning for Sustainable Economic*

Growth; PPS5: Planning for the Historic Environment; PPS7: Sustainable Development in Rural Areas; PPS9: Biodiversity and Geological Conservation; Planning Policy Guidance (PPG)13: Transport; PPG17: Planning for Open Space and Recreation; PPG24: Planning and Noise; PPS25: Development and Flood Risk; Circular 05/05: Planning Obligations; Circular 06/05: Biodiversity and Geological Conservation; Circular 11/95: The Use of Conditions in Planning Permission; The Conservation of Habitats and Species Regulations 2010; The Community Infrastructure Levy (CIL) Regulations 2010; and Planning for Growth Ministerial Statement (2011).

10. The Secretary of State has taken into account the Draft National Planning Policy Framework document, issued for consultation on 25 July 2011. However, as this document is still in draft form and subject to change, he has accorded its policies little weight.

Main issues

11. The Secretary of State considers that the main issues in this case are those listed by the Inspector at IR12.2.1 and the adequacy of the environmental information.

Adequacy of the Environmental Information

12. The Secretary of State has carefully considered all the evidence and submissions on whether there is adequate environmental information to assess the likely significant impacts of the proposed development in terms of the EIA Directive and Regulations and also whether the proposal meets the legal test set out in section 61 of the Habitats Regulations 2010. The Secretary of State agrees with the Inspector's reasoning and conclusions on these matters, as set out at IR12.1.1 – 12.1.22. He shares the Inspector's view that there is some doubt whether there would be a significant effect on the ecology of the Chippenham Fen SSSI and that accordingly an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2010 must be carried out before the grant of permission. He agrees that the information necessary for him to carry out an Appropriate Assessment was not before the Inquiry and considers that, if he were minded to allow the appeal, there is no legal reason why he could not call for the requisite information for an Appropriate Assessment (IR12.1.20 – 12.1.21).

Highways

13. The Secretary of State agrees with the Inspector's reasoning and conclusions, at IR12.3.1 – 12.3.46, with regard to the ability of the highway network to safely accommodate the traffic from the proposed development. He does not doubt that there is already considerable traffic congestion in Newmarket on many days and that the additional traffic from the development can only add to the congestion (IR12.3.45). However, he agrees that, when assessed in the usual way, the road safety impact of the proposals would not amount to a reason to dismiss the appeal and that even if the generated traffic did turn out to be a little higher than allowed for in the Transport Assessment, it is clear that the normally assessed highway safety impacts would still not amount to a sound reason for refusal (IR12.3.46).

Impact on the Horseracing Industry in Newmarket

14. With regard to the impact of the development on the horseracing industry in Newmarket and any consequential effects on the local economy or the historic environment, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR12.4.1 – 12.4.40. The Secretary of State has had regard to Newmarket's role as the centre of horseracing in the UK and a very important equine centre on the world stage (IR12.3.38). He agrees that the appeal proposals would result in some more traffic on the roads which are used or crossed by horses but that the overall effect would be adequately mitigated in highway safety terms (IR12.4.39). When weighed against the advantages of Newmarket, he agrees that the actual traffic conditions are most unlikely to make owners send their horses for training elsewhere and that, if there is no reduction in the number of horses in the town, there would be no effect upon the local economy or upon the historic character of Newmarket (IR12.4.40).

Ecology

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on the ecological effects of the proposed development at IR12.5.1 – 12.5.8. He agrees that the presence of badgers should not preclude the proposed development, subject to the implementation of an agreed mitigation strategy (IR12.5.3), and that there is sufficient evidence to show that there would be no undue impact on the bat population on this site (IR12.5.6). He agrees that the overall biodiversity interest of the site should be maintained (IR12.5.8).

Housing Need and Distribution

16. For the reasons given at IR12.6.1 – 12.6.5, the Secretary of State agrees with the Inspector's conclusions, at IR12.6.6, on the need for and location of new housing in the District. He agrees that there is clearly a need for more general and affordable housing provision in the District which could be met by the appeal proposals (IR12.6.6). He considers the absence of a 5-year housing land supply and distribution matters at paragraphs 22-24 below.

Employment Provision

17. For the reasons given at IR12.7.1 – 12.7.5, the Secretary of State agrees with the Inspector that whilst the appeal scheme would bring some employment benefits to the town, they would not be specific to the appeal site (IR12.7.5).

Countryside

18. The Secretary of State agrees with the Inspector's conclusions on the impact of the proposal on the countryside at IR12.8.1 – 12.8.2. He agrees that the loss of best and most versatile agricultural land weighs against the proposals (IR12.8.2).

Design Assurance

19. For the reasons given by the Inspector at IR12.9.1 – 12.9.8, the Secretary of State agrees that the Design and Access Statement does not provide the degree of certainty of the high quality design advised in the DCLG guidance (IR12.9.8).

Air Quality

20. The Secretary of State agrees with the Inspector at IR12.10.1 that there is no reason to conclude that there would be any undue effects upon the air quality in the town.

Compliance with the Development Plan

21. The Secretary of State agrees with the Inspector's reasoning and conclusions on the compliance of the proposed development with the development plan, as set out at IR12.13.1 – 12.13.36. He agrees that the proposals would not fully comply with the development plan in respect of design, countryside or agricultural land policies, though the latter two considerations need to be considered in relation to the sustainable distribution of housing.

Other Material Considerations

Housing Distribution

22. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR12.14.1 – 12.14.5. He notes that following the High Court judgment, the Core Strategy has no spatial distribution for the housing provision of 10,100 dwellings in the District for the period from 2001 to 2031 (IR12.14.1) but considers that the EEP and CS do generally seek to direct developments to the market towns, of which Newmarket is the largest and most sustainable (IR12.14.2). He agrees that, as things stand, even if there were a need for some additional dwellings to the north-east of Newmarket there is no presently identified requirement for 1,200 or any other particular number of dwellings (IR12.14.5).

Justification in the Countryside

23. The Secretary of State agrees with the Inspector that LP Policy 9.1 requires justification for developments in the countryside, such as the appeal proposals, and that justification would be made out if it were shown that there was no alternative to the proposed development but that is not the case (IR12.14.6 – 12.14.7). He agrees that the same can be said about the loss of agricultural land (IR12.14.8).

National Planning Policy – Housing Land Supply

24. For the reasons given at IR12.14.9 – 12.14.12, the Secretary of State agrees that the inadequacy in the 5-year housing land supply provides little support to the appeal proposals in this case (IR12.14.12).

Prematurity

25. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to the matter of prematurity, as set out at IR12.14.13 – 12.14.21. He considers that the completion of between 100 and 200 dwellings in the five year period would help to rectify the existing shortfall of 483 dwellings against the target (IR12.14.18 – 12.14.19) but agrees that, set against these short term benefits, the Single Issue Review would properly compare the long term sustainable alternative locations for housing developments in a way that simply cannot be carried out in determining a planning appeal (IR12.14.20). He further agrees that it would also give local residents an opportunity to influence the planning of their own communities (IR12.14.20). Even though the Single Issue Review has a long way to go before adoption, to allow such a large development, of which the housing element alone would amount to some 16% of the residual requirement for the whole District, would pre-empt the proper operation of the Development Plan process, as referred to at paragraph 17 of The Planning System: General Principles (IR12.14.21).

Ministerial Statement – Planning for Growth

26. For the reasons given at IR12.14.22 – 12.14.23, the Secretary of State agrees with the Inspector that the Ministerial Statement provides little support for the appeal proposals (IR12.14.24).

Planning Obligations and Conditions

27. The Secretary of State has considered the completed planning obligations, the Inspector's assessment of these at IR12.11.1 – 12.11.23, the provisions of the CIL Regulations 2010 and the guidance in Circular 05/2005. He agrees with the Inspector that the provisions of both the obligations are compliant with the CIL Regulations 2010 (IR12.11.8) and considers that they comply with the guidance in Circular 05/2005. However, he does not consider that, either individually or cumulatively, they would overcome his reasons for dismissing the appeal.

28. The Secretary of State has considered the proposed planning conditions set out at Annex A of the IR, the Inspector's assessment of these at IR11.1.1 – 11.1.25 and IR12.12.1 – 12.12.7, and national policy as set out in Circular 11/95. He considers that the conditions are necessary and that they comply with the provisions of Circular 11/95 but he does not consider that, either individually or cumulatively, they would overcome his reasons for dismissing the appeal.

Overall Conclusions

29. The Secretary of State agrees with the Inspector's overall conclusions at IR12.15.1 – 12.15.5. He agrees that excluding consideration of the sustainable distribution of housing, the appeal proposals would generally comply with the policies of the Development Plan apart from the design, countryside and agricultural land policies. He also recognises the contribution that the appeal proposals will make to meet a need for general and affordable housing. However, the Secretary of State agrees that in the absence of a spatial distribution and no clear requirement for 1,200 dwellings in this location in the development plan, it

would be premature to permit this strategic scheme on a site which may or may not be chosen when properly evaluated through the democratic development plan process (IR12.15.5). This process will ensure that the decisions are made in light of the requirements of the SEA and Habitats Directive. Given these conclusions, the Secretary of State does not consider it necessary to request further information under the EIA Regulations or to make an Appropriate Assessment before coming to a final decision on this appeal.

Formal Decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a comprehensive mixed use development of Hatchfield Farm, comprising:

- up to 1,200 dwellings,
- up to 36,000m² of B1 employment floorspace of which not more than 10,000m² will be office floorspace(B1(a),
- community facilities (up to 500m²) of D1 uses,
- retail and food and drink uses (up to 300m²) of A1, A3, A4 and A5 uses),
- park and ride (up to 100 spaces),
- primary school reservation (2 form entry),
- two vehicular accesses into the site,
- improvement of the A142 / Willie Snaith roundabout to provide a fourth (east facing) arm,
- a new traffic light controlled access from the A142 north of the A142 /Studlands Park Avenue roundabout and realignment of the A142,
- a pedestrian / cycle access onto Snailwell Road,
- internal footpaths, cycle routes and estate roads,
- playing fields and pavilion, children's play space, informal open space, allotments and landscaping, and
- foul and surface water drainage infrastructure

at land at Hatchfield Farm, Fordham Road, Newmarket, CB8 7XL, in accordance application Ref F/2009/0713/ESO, dated 30 November 2009.

Right to challenge the decision

31. 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 date of this letter.

32. A copy of this letter has been sent to Forest Heath District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours sincerely,

Pamela Roberts

Authorised by Secretary of State to sign in that behalf

ANNEX A – LIST OF REPRESENTATIONS

<u>Name</u>	<u>Date</u>
P Leech & C Elbrow	4 February 2011
N Lynn	17 September 2011
Lawson Planning Partnership	19 September 2011
Lawrence Graham LLP	11 October 2011
D Notley	21 October 2011
F Scott	30 November 2011



The Planning
Inspectorate

Report to the Secretary of State for Communities and Local Government

by J I McPherson JP BSc CEng CEnv CWEM MICE MCIWEM MCMI

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

Date: 22 December 2011

TOWN AND COUNTRY PLANNING ACT 1990

FOREST HEATH DISTRICT COUNCIL

REFUSAL OF AN OUTLINE APPLICATION

BY

THE EARL OF DERBY

FOR

A COMPREHENSIVE MIXED USE DEVELOPMENT

AT

HATCHFIELD FARM, NEWMARKET, SUFFOLK

File Ref: APP/H3510/A/10/2142030

Hatchfield Farm, Fordham Road, Newmarket, CB87XL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by The Earl of Derby against the decision of Forest Heath District Council.
- The application Ref F/2009/0713/ESO, dated 30 November 2009, was refused by notice dated 4 June 2010.
- As considered by the Council, the proposed development was for a comprehensive mixed use development at Hatchfield Farm, comprising up to 1,200 dwellings; up to 36,000m² of B1 employment floorspace of which not more than 10,000m² will be office floorspace (B1(a)); Community facilities (up to 1,000m²) of D1 uses; Retail and food and drink use (up to 300m² of A1, A3, A4 and A5 uses); Park and Ride (up to 100 spaces); Primary School reservation (2 form entry); Two vehicular accesses to provide a fourth (east facing) arm and a new roundabout access on the A142 north of the A142/Studlands Park Avenue roundabout and the realignment of the A142; a pedestrian/cycle access on to Snailwell Road; internal footpaths, cycle routes and estate roads; playing fields and pavilion, children's play space, informal open space, allotments and landscaping; foul and surface water drainage infrastructure.
- At the Pre-Inquiry Meeting on 20 April 2011 the Inspector accepted an amendment to change the proposed northern access to the site to a signal controlled junction.

Summary of Recommendation:

1. I conclude that the appeal should be dismissed.
 2. If however, the Secretary of State considers allowing the appeal, an appropriate assessment should be made under the Habitats Regulations.
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- 12.4.38 Summary of HRI Conclusions
- 12.5 Ecology
 - 12.5.1 Badgers
 - 12.5.4 Bats
 - 12.5.7 Other Protected Species
 - 12.5.8 Biodiversity Gain
- 12.6 Housing Need and Distribution
- 12.7 Employment Provision
- 12.8 Countryside
- 12.9 Design Assurance
- 12.10 Air Quality
- 12.11 Section 106 Planning Obligations
 - 12.11.1 CIL Compliance
 - 12.11.9 Enforceability of Obligations
 - 12.11.23 Details of Obligations
- 12.12 Suggested Planning Conditions
- 12.13 Compliance with the Development Plan
 - 12.13.3 Highways
 - 12.13.6 Horseracing Industry
 - 12.13.9 Ecology
 - 12.13.12 Housing
 - 12.13.15 Employment
 - 12.13.18 Countryside
 - 12.13.20 Agricultural Land
 - 12.13.21 Heritage
 - 12.13.24 High Quality Design
 - 12.13.27 Air Quality
 - 12.13.28 Sustainability
 - 12.13.31 Infrastructure
 - 12.13.35 Summary of Compliance with the Development Plan
- 12.14 Other Material Considerations
 - 12.14.1 Housing Distribution
 - 12.14.6 Justification in the Countryside
 - 12.14.9 National Planning Policy
 - 12.14.9 Housing Supply

- 12.14.13 Prematurity
- 12.14.22 Ministerial Statement
- 12.14.25 Draft National Planning Policy Framework

12.15 Overall Conclusions

13. Recommendations

Annex A – Recommended Planning Conditions

Annex B – Abbreviations used in the Report

Appearances

Documents

1. Procedural Matters

1.1. The Appeal Proposals

- 1.1.1. The application was in outline form with all matters reserved, other than the accesses onto Fordham Road¹.
- 1.1.2. The original description of the development is set out in the Statement of Common Ground between the Appellant and the Council².
- 1.1.3. The application was accompanied by: -
- a set of Parameter Plans,
 - Plans of the proposed accesses off Fordham Road, and
 - a Development Specification (amended 26 February 2010).

All of the above were stated to be for approval at the application stage³ (but see 1.1.7 below for the revised access proposals).

- 1.1.4. In addition, the following documents were also submitted, but were stated to be 'not for approval' at this stage⁴: -
- a Design and Access Statement ,
 - an Environmental Impact Assessment and Non-Technical Summary,
 - a Transport Assessment, as amended, and a draft Travel Plan,
 - a Flood Risk Assessment,
 - a Planning Policy Statement,
 - a Horseracing Impact Assessment,
 - a Statement of Community Involvement and
 - a Tree Survey.
- 1.1.5. Prior to the Council's determination, the application was amended by the deletion of the proposed hotel and cinema, with consequential amendments to some of the parameter plans and other matters⁵. The description of the development was therefore amended⁶ prior to the Council's refusal of the application.
- 1.1.6. In summary, the Council's reasons for refusal related to,
- (1) highway safety,
 - (2) impact on the horseracing industry,
 - (3) inadequate information on bats,
 - (4) the absence of a Section 106 agreement to secure infrastructure improvements, and
 - (5) prematurity in advance of a review of the Council's housing figures⁷.

¹ CD 104/1/1

² SOCG1, para 3.4

³ CD104/1/1

⁴ CD104/1/1

⁵ SOCG1, para 3.6

⁶ SOCG1, para 3.8

⁷ SOCG1, para 3.14

1.1.7. After the Council's decision the Appellant sought to amend the northern access to the site to a signal controlled junction and the Inspector accepted this amendment at the Pre-Inquiry Meeting⁸.

1.1.8. The description of the Appeal Proposals that are for determination now is: -

"A comprehensive mixed use development of Hatchfield Farm, comprising: -

- up to 1,200 dwellings,
- up to 36,000m² of B1 employment floorspace of which not more than 10,000m² will be office floorspace(B1(a),
- Community facilities (up to 500m²) of D1 uses,
- Retail and food and drink uses (up to 300m²) of A1, A3, A4 and A5 uses),
- Park and Ride (up to 100 spaces),
- Primary school reservation (2 form entry),
- Two vehicular accesses into the site,
- Improvement of the A142 / Willie Snaith roundabout to provide a fourth (east facing) arm,
- a new traffic light controlled access from the A142 north of the A142 /Studlands Park Avenue roundabout and realignment of the A142⁹,
- a pedestrian / cycle access onto Snailwell Road,
- Internal footpaths, cycle routes and estate roads,
- Playing fields and pavilion, children's play space, informal open space, allotments and landscaping, and
- Foul and surface water drainage infrastructure."

1.1.9. The amended list of plans relating to the Appeal is as follows: -

Description	Drawing Number	Document Number
Application Site Plan	07.183/37b	CD101
Development Framework Plan	07.183/44b	CD101
Movement Plan	07.183/40c	CD101
Building Heights	07.183/41c	CD101
Density	07.183/42d	CD101
Phasing	07.183/39b	CD101
Open Space	07.183/43b	CD101
Northern A142 Access	0719/SK/32	ED/CPS/PA01/2page 17
Southern A142 Access	0719-P-02-D	CD101

1.1.10. In essence the Appeal Proposals are for a phased development of 1,200 residential units and some 10ha of employment uses, together with a park and ride site, a primary school and allotments, a local centre, a community centre/pavilion and several play areas. The vast majority of the trees and

⁸ Doc G1

⁹ ED/RMS/P, para 4.35

shrubs within and around the site would be retained as part of the landscape planting scheme¹⁰.

1.1.11. The areas to be developed in the individual phases are shown on Plan 07.183/39b¹¹. In general, the Appellant expects development to commence in 2013 with phasing of the residential element as follows: -

- 2010-2015 – approximately 200 units
- 2015-2020 – approximately 400 units
- 2020-2025 – approximately 400 units
- 2025-2030 – approximately 200 units¹².

1.1.12. One of the Appellant's two Unilateral Undertakings sets out the details of the housing mix and the proportion of affordable housing for each phase¹³.

1.1.13. The employment land would be available for development at the same time as the Phase 1 housing land¹⁴.

1.1.14. The local areas of play (LAPs), neighbourhood equipped play area (NEAP), local equipped area for play (LEAP), multi use games area (MUGA), public open spaces, sports pitches, community centre/pavilion would all be made available at times related to the number of dwellings sold¹⁵.

1.1.15. The primary school site would be offered for transfer to the County Council before 200 dwellings were completed and various sums would be payable in stages for pre-school, temporary primary school, the construction of a permanent primary school and for secondary school provision¹⁶.

1.1.16. Before the first occupation of the development, sums would be paid for improvements to the Newmarket Bus Station and for real time passenger information (RTPI). A bus service would also be provided from the site through part of the town to the railway station and back again¹⁷. The park and ride facility would be provided before the completion of 200 dwellings¹⁸.

1.1.17. Contributions would be paid to improve the horse awareness signage at the entrances to the town and for improvements to certain specified horse crossings¹⁹.

1.1.18. Certain sums would also be paid for automatic number plate recognition surveys on Snailwell Road and, if found necessary, traffic calming measures on that road, as well as a contribution towards a review of the speed limit on Fordham Road to the north of Snailwell Road²⁰.

¹⁰ CD101, Plan 07.183/44b

¹¹ CD101

¹² ED/CPS/P01, para 2.8.1

¹³ ED30

¹⁴ CD101, Plan 07.183/39b

¹⁵ ED30 & ED 31

¹⁶ ED30

¹⁷ ED/CPS/PA01, App 3

¹⁸ ED30

¹⁹ ED30

²⁰ ED30

- 1.1.19. Further contributions would be made to improvements to The Avenue junction with the High Street²¹ and urban traffic management and control (UTMC) measures on Fred Archer Way between Fordham Road and Exeter Road²².
- 1.1.20. In addition, payments would be made for a pedestrian crossing on Fordham Road to the south of the site, the improvement of certain public rights of way within 2 km of the site and cycle parking improvements in the town centre. It was envisaged that a combined cycleway/footway would also be provided along Fordham Road as part of the reserved matters²³.
- 1.1.21. Contributions would also be made to the County Council to meet the increased library demand in Newmarket, to the Health Authority for new/improved general practice facilities, and to the Police for the provision of policing during the construction period. A police drop in facility would be provided in the Community Building and an IT and communications contribution made²⁴.
- 1.1.22. A travel plan, with a coordinator and funding for monitoring by the County Council, would be provided before first occupation of the site²⁵.
- 1.1.23. All the above payments are included within the Appellant's Section 106 Unilateral Obligation, which he considers to comply with the Community Infrastructure Levy Regulations²⁶.
- 1.1.24. The Appellant has also provided a further unilateral undertaking for matters which he considers do not comply with the CIL Regulations²⁷. These are for a horse crossing at Pegasus Stable on Snailwell Road and a horsewalk along that road to Fordham Road as well as for improvements to the Lord Derby's Gap horse crossing on Bury Road.
- 1.1.25. The proposed highway works include the signalisation of the A14/A142 junction, a new signalised northern access and a southern access from the Willie Snaith Road Roundabout, a mini-roundabout at the Exning Road/Studlands Park Avenue junction, a signalised pedestrian crossing of Fordham Road, toucan crossings north of the Studlands Park Roundabout and south of the Willie Snaith Roundabout, the provision of bus stops, widening of the footway across part of the site frontage and south of the site to become shared footways/cycleways, an on-road cycleway along Studlands Park Avenue and a pedestrian and cycle access to Snailwell Road opposite the existing public right of way²⁸.

²¹ ED/CPS/PA01, App 19

²² ED30

²³ ED30

²⁴ ED30

²⁵ ED30 & ED/CPS/PA01/App4

²⁶ ED30

²⁷ ED29

²⁸ ED/CPS/PA01, App2, Page 9

1.2. Environmental Information

- 1.2.1. The application was accompanied by an Environmental Statement with its Non-technical Summary²⁹. The adequacy of the information is considered in the Conclusions (12.1).
- 1.2.2. At the Pre-Inquiry Meeting, the Appellant expressed his intention to update the Environmental Statement and the Inspector made a request for this additional information to be provided under Rule 19(1) of the Town and Country Planning (Environmental Impact Assessment) England and Wales) Regulations 1999 (as amended)³⁰.
- 1.2.3. Following the discovery of badgers on the site during the Inquiry, the Inspector again called for further environmental information and any mitigation proposals under Rule 19(1) of the Town and Country Planning (Environmental Impact Assessment) England and Wales) Regulations 1999 (as amended)³¹.

1.3. Pre-Inquiry Meeting

- 1.3.1. The Inspector held a Pre-Inquiry Meeting on 20 April 2011 and issued notes of the meeting³².

1.4. Inquiry and Site Visit Dates

- 1.4.1. The Inquiry sat on the following days: - 12 & 13, 19-22, 26-29 July and 20-23 September 2011 inclusive. There was an accompanied early morning pre-Inquiry site visit on 30 June 2011 and there were further early morning visits during the Inquiry. There was also an accompanied site visit on 27 September 2011 as well as unaccompanied site visits on 26 and 27 September 2011.

2. Background

2.1. The Site and Surroundings

- 2.1.1. The Appeal Site at Hatchfield Farm is located to the north-east of Newmarket, immediately to the south of the A14 trunk road and to the east of the A142, Fordham Road³³ which, beyond Junction 37 on the A14, continues north to Fordham and Soham.
- 2.1.2. The eastern boundary of the site is formed of a short length of Snailwell Road and a section of the Ipswich to Ely railway line whilst, to the south, it adjoins the paddocks of Stanley House Stud³⁴.
- 2.1.3. Including some highway land on Fordham Road, the site has an area of some 67.67 ha³⁵.

²⁹ CD104 Vol 1/8 to Vol 3

³⁰ CD104A

³¹ CD 170

³² Doc G1

³³ CD97A, Vol 4 Figs 1 & 2

³⁴ CD97A, Vol 4 Figs 1 & 2 & ED/RMS/P, Plan2

³⁵ SOCG1 & CD101

- 2.1.4. There is an existing vehicular access at the south western corner of the site from Fordham Road adjacent to Hatchfield Cottages (which are excluded from the site). This access then runs along the southern boundary to the cluster of stud and farm buildings that are situated part way along this boundary. The stud related buildings to the south are excluded from the site, but the farm buildings are within the site³⁶.
- 2.1.5. The site is generally flat but with a slight rise to the northwest corner, adjacent to the A14/A142 grade separated junction³⁷. It is bounded by trees and hedges and is subdivided into three large arable fields with an internal 'square' of trees and hedges defining the central field. There are also some trees and hedges extending from the central 'square' towards the farm buildings³⁸.
- 2.1.6. A minor road runs from just north of the A14/A142 junction, north-eastwards to the small village of Snailwell, which is set in the generally open countryside to the north of the A14, some of which is studland³⁹. Further north along the A142, there is an alternative route to Newmarket from a roundabout just to the south of Fordham. This route passes through the small settlements of Chipenham and Snailwell and then via Snailwell Road under the A14 and a railway line, past the eastern edge of the Appeal Site, where there would be a pedestrian/cycle access, to join the A142, Fordham Road, about 1km south of the site⁴⁰.
- 2.1.7. Opposite the appeal site on the western side of the A142, Fordham Road, Studlands Park includes a sizeable residential area to the north, with a mixture of business and retail uses to the south. There are two existing roundabouts on this section of Fordham Road; the more southerly one at the junction with Willie Snaith Road gives access to the Tesco Store⁴¹.
- 2.1.8. To the south of Studlands Park, Fordham Road is mostly lined with residential properties but, particularly in the vicinity of Snailwell Road, there are various horseracing training yards⁴². Further south along Fordham Road, a horsewalk runs along the eastern side past mainly residential properties but there is a school on either side of the road immediately to the north of Rayes Lane, which is a major horse crossing point. The road then continues to the Fred Archer Way junction and the Clock Tower Roundabout at the Bury Road/High Street Junction⁴³.
- 2.1.9. The Stanley House Stud is accessed from Snailwell Road, but there are a number of training yards that also use this road to access the public gallops for training their horses on most days. The Godolphin organisation has its own private gallops but still has to take strings of horses to and fro along the northern part of Snailwell Road, under the railway and the A14 and past the British Racing School⁴⁴.

³⁶ CD101, Plan 07183/37b

³⁷ ED/RMS/P Plan 2

³⁸ SOCG1, Section 2 & CD101, plan 07.183/43b

³⁹ TATT/WAG/P, App 1

⁴⁰ CD97A, Vol 4, Fig 1 & ED/RMS/P, Plan 1

⁴¹ CD97A, Vol 4, Fig 2

⁴² TATT/WAG/P, App 7

⁴³ TATT/RE/P, Fig 9 & TATT/WAG/P, App 6

⁴⁴ TATT/WAG/P, App 2

- 2.1.10. Whilst there are some 80 training yards in various locations in and around Newmarket, there are particular concentrations to the east and to the west, with a further group just to the north of the High Street⁴⁵.
- 2.1.11. Normally, apart from the Godolphin organisation, the horses from all these various yards are trained on the public gallops which cover over 1,000ha (2,500 acres)⁴⁶. These are split into two areas; the Bury Road side, to the east of the town, and the Racecourse side, to the west⁴⁷.
- 2.1.12. Whilst some yards may be closer to one set of gallops than the other, the trainers use whichever set is required at the time to train their horses. Therefore racehorses may cross from one side of the town to the other and back again during the morning training period. Many of the yards do not have their own warm-up facilities and therefore use the ring at 'The Severals', which is adjacent to Bury Road near to the Clock Tower junction with Fordham Road. In some cases, the strings of horses walk to the gallops along a road, but there are also a number of especially reserved horsewalks throughout the town which cross the roads at horse crossings. In connection with the Appeal Proposals, the horseracing industry was mostly concerned about the crossings at the junction of Snailwell Road and Fordham Road, St Mary's Square, Rayes Lane, Bury Road and the Lord Derby's Gap⁴⁸.
- 2.1.13. In addition to the numerous training yards, studs and two sets of gallops, Newmarket has two racecourses and there is a whole range of horseracing associated organisations based in and around the town. These include: - the Jockey Club Estates Limited, the Animal Health Trust, the British Racing School, the National Stud, the Newmarket Stud Farmers Association, the Newmarket Equine Hospital and Rosssdales veterinary practice, the Thoroughbred Breeders Association, the Injured Jockeys Fund, Racing Welfare (the Jockey Club's charity), the International Racing Bureau, the National Horseracing Museum, the European Breeders Fund and Tattersalls who are Europe's largest bloodstock auctioneers. In addition, there are many other businesses such as bloodstock agents, bloodstock insurers, national and international transporters, farriers and equine physiotherapists⁴⁹.

2.2. Agreed Matters

2.2.1. The Appellant agreed Statements of Common Ground with: -

- Forest Heath District Council covering planning, design, layout and character, amenity, flood risk, trees, archaeology, renewable energy, noise & vibration, air quality, agricultural land, economic impacts, ground contamination and bats⁵⁰,
- Suffolk County Council on traffic matters⁵¹,
- Save Historic Newmarket on air quality⁵², and
- Save Historic Newmarket on Ecology⁵³.

⁴⁵ ED/CPS/PA01, App9 & TATT/WAG/P, App 7

⁴⁶ TATT/WAG/P, para 1.4.2

⁴⁷ TATT/WAG/P, Apps 2 & 5

⁴⁸ TATT/WAG/P, App 5

⁴⁹ TATT/WAG/P, paras 1.4.1 & 2.1.4

⁵⁰ SOCG1

⁵¹ SOCG2

⁵² SOCG3 - also ED32

- 2.2.2. In addition, the District Council clarified their position relating to highways matters. They accepted that there would be no undue highway safety impacts from the development, but considered that the perception of an impact could materially harm the unique feel, character and attractiveness of Newmarket as the centre for the horseracing industry in the country⁵⁴.

3. Planning Policy

3.1. The Development Plan

- 3.1.1. The Government intends to remove the regional tier of development plans under the Localism Bill but until that time the East of England Plan⁵⁵ remains part of the Development Plan.
- 3.1.2. The Forest Heath Core Strategy is part of the Development Plan. It was adopted in May 2010⁵⁶. Amongst other things, the adopted strategy included an urban extension to the north-east of Newmarket for approximately 1,200 houses as part of a mixed use development⁵⁷. The Core Strategy was the subject of a High Court challenge and the judge concluded that the final Sustainability Appraisal/Strategic Environmental Assessment (SA/SEA) was flawed in that it did not explain what alternatives had been considered and why they had been rejected in selecting the preferred housing option. He therefore quashed the relevant parts of the Core Strategy relating to this matter⁵⁸. This order does not reinstate any of the relevant policies of the Local Plan that was replaced by the Core Strategy.
- 3.1.3. The Council have resolved to undertake a Single Issue Review of the housing growth targets and the resulting strategic land allocations in the Core Strategy with a programmed adoption date of December 2013⁵⁹.
- 3.1.4. The Forest Heath Local Plan was adopted in 1995⁶⁰ and the 'saved policies' remain part of the Development Plan.

East of England Plan

- 3.1.5. In the East of England Plan (EEP)⁶¹ the following policies are relevant: -
- **Policy SS1** advocates the principles of sustainable development and in particular seeks to maximise the potential for people to form sustainable relationships between their homes, workplaces, and other concentrations of regularly used services and facilities, and their means of travel between them. It also seeks to achieve net environmental gains, with the avoidance of harm or at least the minimisation, mitigation and/or compensation for that harm,
 - **Policy SS2** outlines the spatial strategy for the region including prioritising the use of previously developed land and ensuring that new

⁵³ SOCG4 – also ED21

⁵⁴ CD157

⁵⁵ CD31

⁵⁶ CD40

⁵⁷ CD40, Policy CS1

⁵⁸ CD42

⁵⁹ CD140-144 & FH/MS/R, Appendix A1- A7

⁶⁰ CD 26

⁶¹ CD31

development contributes towards the creation of more sustainable communities with appropriate community facilities,

- **Policy SS4** states that Local Development Documents should identify market towns and other settlements with potential to increase their economic and social sustainability, including securing appropriate amounts of new housing and employment,
- **Policy SS8** calls for the enhancement and effective management and appropriate use of land in the urban fringe and says that new development in the urban fringe should contribute to enhancing its character and appearance and its recreational and/or biodiversity value and to avoid harm to sites of European and international importance,
- **Policy H1** sets a housing target of 6,400 dwellings to be provided in Forest Heath District between 2001 and 2021, though paragraph 5.6 of the explanatory text advises that this figure should be projected at the same rate to provide a 15 year supply, but to 2031 (the end date of the Council's Core Strategy) would be 10,100 dwellings,
- **Policy H2** seeks appropriate targets for affordable housing and sets a regional monitoring target of 35%,
- **Policy CRS1** outlines the development strategy for the Cambridge Sub-region which includes Newmarket. This policy aims to protect and enhance the character and setting of the market towns. It sets out the order of preference for new developments, which has land at the periphery of the market towns as the lowest acceptable category,
- **Policy CRS2** envisages employment developments in the market towns where this would improve the local balance of jobs and homes and diversify and strengthen the economies of the towns.
- **Policy E2** seeks to ensure an adequate range of employment sites that would promote more sustainable communities, including at market towns,
- **Policy T1** wishes to see priority given to passenger and freight movement by more sustainable modes,
- **Policy T2** seeks to bring about more sustainable travel behaviour,
- **Policy T3** seeks to manage travel demand,
- **Policy T4** aims to achieve a shift away from the use of the car to public transport, walking and cycling in urban areas,
- **Policy T6** seeks to improve, manage and maintain the strategic and regional road network,
- **Policy ENV1** calls for the areas and networks of green infrastructure to be identified, created, protected, enhanced and maintained,
- **Policy ENV3** seeks to ensure that internationally and nationally designated nature conservation sites are given the strongest level of protection,
- **Policy ENV7** calls for new development to be of high quality and complementary to the distinctive character and the best qualities of the local area, and
- **Policy ENG1** encourages the supply of energy from decentralised sources.

Forest Heath Core Strategy

- 3.1.6. In the Core Strategy (CS)⁶² the following policies and statements remain relevant after the High Court judgement⁶³ (note that paragraph 4.24 of SOCG1 does not fully take into account the effects of the judgement): -
- **Vision 1** says that development will be focused in the towns and key service centres,
 - **Vision 2** relates to Newmarket, and says that the town's position as the international home of horseracing will be preserved and enhanced. It recognises that further development will be required, but also says that this should be balanced by the need to protect the town's unique character and landscape setting,
 - Between them, **Spatial Objectives ECO2, 3, 4, 5 & 7** promote sustainable business and the regeneration of the market towns, encourage inward investment, especially in the equine industry, and the utilisation of Newmarket's international reputation as the headquarters of horseracing in developing tourism, leisure and cultural activities,
 - Explanatory **paragraph 2.5.9** says that the highest proportion of new development should be directed to the three market towns followed by the key service centres.
 - **Policy CS1** says that approximately 5 ha of new employment land will be allocated for new development at Newmarket between 2006 and 2026 and that the importance of the horseracing industry, and Newmarket's associated local heritage and character, will be protected. It also says that land will be allocated for a minimum of 240 dwellings on brownfield land within the development boundary, and that the District Council will work to implement permanent park and ride sites on the edge of Newmarket if they are necessary,
 - **Policy CS2** aims to protect the natural environment,
 - **Policy CS3** seeks to protect and conserve the District's landscape and historic environment,
 - **Policy CS4** covers building sustainability and flood risk,
 - **Policy CS5** calls for all new development to be designed to a high quality and to reinforce local distinctiveness,
 - **Policy CS6** says that provision will be made for a minimum of 16 ha of additional employment land in the period from 2006 and 2026 with approximately 5ha being in Newmarket. The sites are yet to be identified in the Site Allocations Development Document. This policy also says that particular priority will be given to developing and sustaining the equine industry around Newmarket,
 - **Policy CS7** makes provision for a minimum of 6,400 dwellings in the District with their associated infrastructure over the period 2001 – 2021 and a further 3,700 in the period of 2021-2031. Following the High Court judgement there is no spatial distribution for this housing,
 - **Policy CS9** calls for 30% of affordable housing in all larger residential developments,

⁶² CD40

⁶³ CD42

- **Policy CS11** envisages 15,000m² of additional retail floor space in Newmarket,
- **Policy CS12** says that the District Council will work with the County Council, the Highways Agency and developers to secure the regeneration of the market towns and support the local economy. Among other things, this policy specifically identifies improvements to the A14/A142 junction at Newmarket and public rights of way improvements, and
- **Policy CS13** calls for suitable arrangements to be put in place to improve infrastructure, services and community facilities where they are necessary to mitigate the impact of developments.

Forest Heath Local Plan

3.1.7. The relevant 'Saved Policies' of the Forest Heath Local Plan (LP)⁶⁴ include:-

- **Paragraph 1.6** says that the **Proposals Map** illustrates the written statement, identifying those sites allocated for development and defining where special policies apply. It goes on to say that settlements are defined by a development boundary. The Proposals Map was not specifically identified in the saving direction but several of the saved policies rely on its existence. **Inset Map 3** shows the Appeal Site to be outside that boundary for Newmarket,
- **Policy 5.14** promotes the tourist potential of the horseracing industry,
- **Policy 6.10** encourages the protection and/or extension of horsewalks in Newmarket,
- **Policy 9.1** says that there must be justification for development in rural areas, that it would not involve an unacceptable loss of agricultural land, that it would facilitate economic activity, not have a significant adverse impact on the local highway network or significantly harm visual amenity or nature conservation interests,
- **Policy 9.2** calls for a high standard of design for developments in the rural area outside defined settlements,
- **Policy 10.3** seeks outdoor play space as an integral part of developments,
- **Policy 10.4** notes that a site is allocated for recreation and sports facility development to the west of Exning Road, Newmarket and the supporting text says that this would be larger than the current George Lambton Playing Fields which would remain in use until an acceptable alternative is available,
- **Policy 14.1** indicates that developers should contribute substantially to the costs of the necessary infrastructure and community facilities for major new developments,
- **Chapter 12** recognises Newmarket as the national and international capital of the horseracing industry and the resulting unique character of the town and its surroundings. Accordingly, the policies in this chapter aim to protect the racecourses, training grounds, studland and training yards, whilst at the same time recognising that further development may be required to support the industry.

⁶⁴ CD26 & 152

4. The Case for the Appellant (the Earl of Derby)

4.1. Introduction

- 4.1.1. The north-eastern edge of Newmarket has consistently been identified in the Development Plan as a suitable location for strategic development and Newmarket itself is, by some stretch, the most sustainable of the three market towns in Forest Heath District.
- 4.1.2. With the March and June Ministerial Statements⁶⁵ and the tone of the draft National Planning Policy Framework⁶⁶, the Government's emphasis is very clearly on sustainable economic growth and the role of the planning system as a facilitator to such growth. This is a scheme where there is a real imperative to grant, rather than to refuse, permission.

4.2. Main Issues

- 4.2.1. The Council refused planning permission for five reasons which, between them, encompassed the following four main issues:-
 1. **Housing supply**, that is:-
 - there is an agreed supply of only 3.6 years,
 - the question of the distribution of new housing at Newmarket,
 - the suggestion of prematurity in advance of the Core Strategy Review and Sites Allocation Document,
 2. **Traffic impact**, that is:-
 - questions of congestion and highway safety,
 - the impacts on horses, the horseracing industry and the historic character of Newmarket,
 3. **Ecology**, that is:-
 - Bats and other protected species and habitats, and
 4. **Section 106 matters** that is:-
 - highways, police, health, education and library contributions.
- 4.2.2. By the end of the Inquiry, the Council had accepted that the Highways Agency and Suffolk County Council, the Local Highway Authority, had no highways objections and, with advice from their own highways consultant, had withdrawn their highways reason for refusal. The Council also brought no evidence to the Inquiry to support a traffic impact on the horseracing industry, and neither did Suffolk County Council.
- 4.2.3. In respect of bats, English Nature and Suffolk Wildlife Trust raised no objection, and the Council withdrew their Reason for Refusal 3. They raised no other ecological objection to the proposals
- 4.2.4. The Council's concern about the Section 106 matter was an issue of detail and CIL compliance⁶⁷, not an objection in principle. Before the end of the Inquiry, all contributions were agreed with the District Council and/or the County Council as appropriate. In respect of the Police and Health contributions, an agreed position was reached between the Appellant and the Council, as well as with Lawson Planning Partnership who acted on behalf of

⁶⁵ CDs 13, 14, 154 & 155

⁶⁶ CD160

⁶⁷ ie Reg 122 of the CIL Regulations and Circ 05/2005

those bodies⁶⁸. Such issues as remained were on the *form* of the obligation only.

4.3. The Policy Context

- 4.3.1. For the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Development Plan, comprises the East of England RSS (May 2008)⁶⁹, the Forest Heath Core Strategy (May 2010)⁷⁰ and the saved policies of the Forest Heath District Local Plan (1995)⁷¹. Of these, the adopted Core Strategy (CS) is the most up to date and, where relevant, should take precedence over less recent policy⁷².

The East of England Plan

- 4.3.2. The Government intends to revoke Regional Spatial Strategies (RSSs); and therefore the East of England Plan, but the timescale is uncertain. In the meantime, the continued legal status of RSSs has been clarified by recent litigation⁷³. However, in this case, there is limited reliance on the RSS *per se* because the housing figures are the same as those in the adopted Core Strategy (CS).

Local Housing Policy

- 4.3.3. The housing policies in the CS run to 2031 and, between 2001-2031, Policy CS7 gives the district's housing requirement as 10,100 units. Paragraph 2.5.9 makes clear that the CS's spatial strategy is to direct the majority of development to the three market towns in the district, those being the most sustainable settlements, with a smaller amount to other settlements in the rural areas. This had been the subject of a Habitats Regulation Assessment⁷⁴. The Parish Profile and Settlement Hierarchy (CD97), recognises Newmarket as the most sustainable of the three market towns by some margin⁷⁵.
- 4.3.4. Given the rural nature of much of the District, the CS recognises that, of the 10,100 units required, only a limited proportion can be expected on brownfield sites⁷⁶. The balance (some 4,824 in the period 2010-2031) must therefore be delivered on greenfield sites⁷⁷.
- 4.3.5. As originally adopted, the CS provided a strategic indication of where the greenfield housing numbers were to go, in particular 1,200 were identified for north-east Newmarket, as the only suitable location at the most sustainable of the three market towns. This is also consistent with an acknowledgement of the severe constraints around the other major settlements in the District. The Court Order 'pruned' the CS of any identification of where greenfield

⁶⁸ LPP letter 19th September 2011

⁶⁹ CD31

⁷⁰ CD40

⁷¹ CD26

⁷² S. 38(6) of the Planning and Compulsory Purchase Act 2004

⁷³ *R (oao Cala Homes (South) Limited) v. SSCLG* [2011] EWCA 639

⁷⁴ CD130

⁷⁵ CD97 Parish profile and settlement hierarchy (2008); and see Sellwood ED/RMS/P paras 5.3.3 to 5.3.8. The facts set out here were not challenged in xx.

⁷⁶ See CS1 para 6. See also Table 2.3 of the FHDC 5 year supply (March 2011)[CD44] and Table 4 of the Joint SHLAA (2010) [CD45]

⁷⁷ *ibid*

development should go⁷⁸ but it did not affect the strategic housing requirement or (significantly) the spatial strategy for its delivery. The net result being that the adopted Development Plan requires 10,100 units in the period 2001 to 2031 (or 7,343 units from 2010 to 2031) and it recognises that the majority of these (ie approx 4,824 units) will have to be built outside current (ie Local Plan) settlement boundaries. It seeks the most sustainable location for that development, and therefore, directs the majority of it to the three market towns (of which Newmarket is recognised to be the most sustainable). But the CS is silent as to precisely where that greenfield development should go.

- 4.3.6. In this context, the 1995 Local Plan is plainly out of date and should be accorded limited weight. In particular, it makes no (new) provision for allocations of housing land and its restrictive policies in respect of development outside settlement boundaries should be recognised as being in conflict with the more recent CS policy requirement to build nearly 5,000 units outside the 1995 settlement boundaries. Policy 9.1 was cited against the proposal but, if policy 9.1 is applicable at all in the current policy context, it is noteworthy that criterion (a) expressly allows for housing outside the settlement boundaries, where justified.

Local Employment Policy

- 4.3.7. There is also a strategic greenfield employment requirement in the CS at Policy CS6. This says that:-
1. a minimum of 16 ha of *additional* employment land will be allocated between 2006 and 2026, and
 2. that the primary location for strategic employment growth will be Newmarket (approximately 5 ha).
- These extant policies are underpinned by the objective and expert analysis of GVA Grimley in the West Suffolk Employment Land Review⁷⁹ which identified Newmarket's proximity to the strategic road network and existing bio-science cluster as providing opportunities and attractions for new industry⁸⁰.
- 4.3.8. Under the saved policies of the 1995 Local Plan, the 8 ha George Lambton Playing Fields had been allocated as employment land. This land has not come forward for employment purposes and the suggestion during the Inquiry was that it might come forward as a retail-led development. Indeed, there is nothing to suggest that George Lambton Playing Fields will ever come forward as employment land: everything points the other way. The approximately 5 ha of employment land for Newmarket in Policy CS6 is *additional* to the provision at George Lambton Playing Fields. If the full quantum of employment land envisaged by the CS (i.e. an additional 16 ha of which approximately 5 ha will be at Newmarket) is to be provided then land other than the George Lambton Playing Fields will be needed.
- 4.3.9. In any event, the CS's identification of Newmarket as the location for 5 ha of additional employment land (over and above that already allocated) is consistent with, and supports the conclusion that, the CS requires significant

⁷⁸ *R (Oao SHNL) v. FHDC* [2011] EWHC (Admin) [CD42]

⁷⁹ CD50

⁸⁰ CD 50 see e.g. paras 4.105-4.106; 7.53-7.56

new housing development at Newmarket: without which there would be an unsustainable misalignment between employment provision and housing⁸¹.

Constraints around Newmarket

- 4.3.10. The CS recognises that Newmarket is, by some margin, the most sustainable settlement of the three market towns in the District. The saved Policies of the Local Plan also recognise that the horseracing industry is of singular importance within Newmarket. For example, Policy 12.1 of the 1995 Local Plan specifically seeks to protect the racecourse and training grounds and Policy 12.2 protects the 'studland' from development⁸². This significantly constrains the potential locations for strategic development at Newmarket to that land which is adjacent to the settlement but outside the 'studland' itself. Realistically, north-east Newmarket is the only location for such development⁸³.
- 4.3.11. The conclusion must be that in principle, ie without considering site-specific or scheme-specific objections, the development of a mixed-use development for 1,200 residential units and up to 36,000 square metres of employment use on a greenfield site, adjacent to Newmarket, but outside the studland designation, accords with all relevant Development Plan policies. Accordingly, Section 38(6) of the 2004 Act would direct, subject to other material considerations indicating otherwise, that permission should be granted.

National Planning Policies

- 4.3.12. PPS1 sets the overall context for seeking sustainable development but PPS3 gives the most pertinent context for the delivery of housing, together with PPS4 on delivering sustainable economic growth.
- 4.3.13. PPS3 sets out the need for a step change in the delivery of housing. This continued, key requirement of the planning system is fully supported by the Coalition Government's stance. Critical to its delivery is the concept of an adequate supply of housing land and hence the favourable presumption in paragraph 71 of PPS3 where the Local Planning Authority cannot demonstrate a 5 year supply.
- 4.3.14. In this case, the Council has agreed that its 'best' case is that it has only a 3.6 year supply. As such, paragraph 71 of PPS3 is engaged and residential schemes such as this should be considered favourably, having regard to the policies in PPS3 and in particular with regard to paragraph 69. This is enough to indicate that the Local Plan designation of 'countryside' cannot (if it ever could) be raised as an objection to this proposal. The failure to be able to demonstrate a 5 year supply means that this must be set aside. Furthermore, paragraph 72 indicates that prematurity may not be raised as the sole reason to reject schemes.
- 4.3.15. In addition, the Government has made clear its intention to support a significant alteration to the operation of the planning system, away from controlling and limiting, to facilitating and encouraging. Ministerial statements since March 2011, culminating in, but not limited to, the draft

⁸¹ See Sellwood, ED/RMS/R paras 6.1 to 6.5.

⁸² For a discussion of the origin of, extent of and policies applicable to 'studland', see Sellwood at 6.4.13-6.4.22 [ED/RMS/P]

⁸³ A point eloquently made by Mr Boyd's Constraints Plan [SHN/JB/PA, Appx JB3]

NPPF, are consistent in their emphasis on the need to encourage growth and for Local Planning Authorities to meet (not duck) the objectively based needs of their areas⁸⁴. While the precise terms of the NPPF remain the subject of debate, the so-called 'direction of travel' is clear and can be expected to be followed by the Secretary of State, as a matter of approach.

4.3.16. Thus there are three messages from the overall policy context to the principle of strategic scale residential/mixed-use development: -

1. to place such development on greenfield land at Newmarket outside 'studland' would deliver housing which is required by the Development Plan, and would do so in accordance with the spatial strategy of the Development Plan, and
2. even in the absence of Development Plan support, where (as here) there is not a 5-year housing land supply, such schemes should be given favourable consideration, subject to the criteria in paragraph 69 of PPS3, and
3. where (as here), the development plan is 'absent, silent, indeterminate or where the relevant policies are out of date'⁸⁵, permission should be granted.

4.3.17. Each and all of the above policy considerations support approval of this scheme. Indeed, they underline the urgency with which proposals such as this, which deliver much needed housing and economic growth, need to be approved in the public interest.

4.4. Benefits of the Scheme

Housing

- 4.4.1. The first and most significant planning benefit of the scheme would be the provision of 1,200 much needed houses, with a 30% affordable housing contribution and this should be viewed in the context of a pressing need for general housing and a worsening position on affordability. This development would form a significant part of the 10,100 units which have been recognised by the forward planning process as being necessary and desirable in the public interest and the good planning of Forest Heath District.
- 4.4.2. By placing them at the most sustainable settlement in the district, namely Newmarket, the delivery of those houses would be precisely in the location best calculated to provide a sustainable solution to additional housing provision for the District. As well as the on-site provision, the residents would have access to the retail, employment and community facilities of the District's largest urban centre.

Employment

- 4.4.3. Secondly, there is significant planning benefit in the provision of up to 36,000 square metres of new employment floorspace in the context of an identified requirement for an additional 5 ha of new employment land⁸⁶. The delivery

⁸⁴ See CDs 14, 15, 154, 155 and 160(1)-(3)

⁸⁵ Draft NPPF para 14. [CD160[1]]

⁸⁶ As part of a minimum of 16ha; Policy CS1(2) [CD40]

of this employment land is, again, a necessary and desirable out-working of the forward planning process and a planning 'good' in its own right.

- 4.4.4. Similarly, the placing of this employment floorspace at the most sustainable settlement in the District, with the largest concentration of potential workforce, adjacent to and as part of the proposed residential area, represents the optimal solution for the delivery of this much needed employment provision.
- 4.4.5. Specifically, placing the employment provision at Newmarket also allows the delivery of opportunities to develop the aspirations for enhanced 'clusters' of equine-related development, particularly, but not limited to, research and development. These could benefit from the proximity to Cambridge, as well as the particular equine *cachet* of a Newmarket address. This is something which was identified in the detailed studies produced by GVA Grimley that underpinned the adopted CS employment policies⁸⁷.
- 4.4.6. At the same time, the location of the employment uses on the north-eastern edge of Newmarket means that there would be easy access onto the strategic highways network without traversing the town centre, but with the provision, shared with the proposed residential development, of the existing and enhanced public transport provision along the A142.

Local Economy

- 4.4.7. The provision of both residential development and additional employment floorspace at Newmarket would enhance the town which, while famous for, and undoubtedly benefitting from, its horseracing industry, is not a settlement which has fared well economically, when compared with the equivalent towns in the region⁸⁸. There was no issue about the data set out in the Bone Wells Urbecon report. The issue raised by the opponents related to whether the other towns in the region were in fact useful "comparators" from the point of view of an economist. However for a planning judgment on where development might most usefully be directed, it is relevant to consider how a town performs in comparison with nearby towns in an area.
- 4.4.8. Affordable housing is a key, and worsening, need⁸⁹. It is a need recognised to be facing even the horseracing industry⁹⁰. Even on SHNL's case, some two thirds of jobs in the area have no direct involvement in the racing industry⁹¹, and those who are indirectly involved will be exposed to the fluctuating fortunes of that industry. The social and economic health of Newmarket itself, and by extension Forest Heath District, needs additional development both in housing and business⁹².
- 4.4.9. With regard to more narrowly focussed matters, the scheme offers benefits in terms of transport, education, health provision and community space⁹³.

⁸⁷ See WSELR, CD 50; see generally and e.g. 4.105-106, 7.52-56.

⁸⁸ See Bone Wells Urbecon Report [ED/RMS/A/2.].

⁸⁹ Beighton, FH/DRB/P paras 5.3 to 5.14.

⁹⁰ Smiths Gore report for FHDC at p. 11 [ED/JDM/PA01; Appx 4]

⁹¹ CD48; relied on by Volterra para 2.3; Boyd SHN/JB/PR appx JB 18

⁹² The refusal by Bridget Roswell to accept in answer to questions from the Inspector that greater economic diversity might benefit Newmarket does not stand scrutiny.

⁹³ See s. 106 obligation [ED30]

- 4.4.10. It would provide a site for a Park and Ride facility, fulfilling a long-held aspiration of the District Council and the County Council, as Local Highway Authority, to replace the underused temporary facility on the other side of the A142.
- 4.4.11. It would provide enhanced bus provision along one of the main arterial routes into Newmarket and improved cycling and pedestrian facilities serving north-east Newmarket.
- 4.4.12. It would make improvements to junction capacity to accommodate its own peak hour flows and improve day-long flows to and around the town centre and through the local highway network.
- 4.4.13. It would improve safety at horse crossings where additional traffic is expected.
- 4.4.14. It would make its due contributions to education provision, including the establishment of a nursery ('early years') provision, a new primary school site serving north-east Newmarket and appropriate financial support for secondary schooling.
- 4.4.15. It would provide a local centre, incorporating some retail facilities and a separate community hall/pavilion, a police drop-in facility and health provision.
- 4.4.16. It would provide informal and formal open space and sports areas accessible to the residents of Newmarket.
- 4.4.17. Taken together, these benefits would amount to a significant package and they would provide the necessary social and physical infrastructure for the community to be established at Hatchfield Farm. But it would also be available for the larger community of Newmarket, ensuring that the one would be a proper and integrated part of the other.
- 4.4.18. Chiefly, however, there would be the plain planning benefit of the 1,200 houses and the 36,000 square metres of employment space at Hatchfield Farm. This would further the Government's very clear aspirations for the planning system to act as an enabler in forwarding the national economic recovery and in meeting our more local economic and social needs.
- 4.4.19. Nevertheless, objections have been raised to the development and need to be considered.

4.5. Housing Need and Distribution

- 4.5.1. As set out above, the Development Plan requires 7,343 additional houses to be delivered between 2010 and 2031, of which approximately 4,824 will need to be on greenfield sites. Although the Council indicated⁹⁴ that its 'Single Issue Review' would include consideration of reducing the Plan Period⁹⁵, there was no suggestion that there would be any other preferred strategic housing

⁹⁴ Smith Rebuttal [ED/CPS/PR1] para. 3.2

⁹⁵ As to which see MSxxJK [Day 1] and RSx and RSxxMB [Day 9]

requirement figure⁹⁶, or that houses would not need to be provided at the rate suggested by the adopted CS.

- 4.5.2. Against this, there is an identified supply (absent Hatchfield Farm) of only 1,332 unimplemented dwellings in the District⁹⁷, and a shortfall of 483 dwellings against the target. There is therefore a pressing need for the 1,200 units which this development would provide. Even limiting the view to the 5 year period, there was agreed to be a shortfall, with a supply (absent Hatchfield Farm) of only 3.6 years⁹⁸. Within this same time period, the development would be expected to produce 200 units to assist in meeting this requirement⁹⁹.
- 4.5.3. In addition, there is the issue of affordable housing need; the two, of course, being connected. By consistently delivering less than is required in general, additional pressure is being placed on the level of affordable need, both by virtue of supply and demand and because it is principally through the building of market housing that affordable housing is delivered. The Strategic Housing Market Assessment (SHMA) update shows that there is a predicted net need of 608 dwellings per year for affordable housing over the next five years in the District as a whole¹⁰⁰. In Newmarket itself, there was a 19.9% increase in the number of applicants to the Newmarket Housing Register between August 2010 and May 2011, all of whom were judged by the Council to be in genuine need of affordable housing¹⁰¹. No evidence was produced by the objectors to the scheme to show how the need for affordable housing could be met otherwise. However the Hatchfield Farm proposals would make a significant contribution towards meeting this pressing need. 50 of the first 200 dwellings would be affordable houses¹⁰².
- 4.5.4. As noted above (4.3.5), Newmarket is the most sustainable market town in the District and the obvious place for new development. However that development would need to be outside the development boundary to the north-east of the town because of the various constraints such as the studlands. Unsurprisingly, this has been the consistent conclusion of the local development planning process up to and including the adoption of the CS. It was also the conclusion in the various officers' reports, recommendations and evidence¹⁰³ produced and presented throughout that process, all of which was overseen and endorsed by the Council's Planning Witness.
- 4.5.5. Despite the court judgement, the underlying facts and judgments in producing the CS cannot be altered. Indeed, the Council did not suggest otherwise. The furthest their witness went was to say that she 'didn't know' until the Single Issue Review had been conducted whether her previously-stated opinion of the suitability of the site would be altered but she did

⁹⁶ In particular, regard must be had to the Cala Homes 2 litigation, the fact that the task of identifying housing requirements has not altered from PPS3 para. 33 and the unchallenged evidence of R Sellwood that the information from the Office for National Statistics [CD22] indicates a comparable (or greater) household rise in Forest Heath.

⁹⁷ FHDC 'Assessment of 5 year supply of housing land as at March 2011' [CD44]

⁹⁸ Marie Smith proof para. 4.11 [FH/MS/P]

⁹⁹ Sellwood Rebuttal para. 2.2 [ED/RMS/R]

¹⁰⁰ Beighton FH/DRB/P para 5.5

¹⁰¹ Beighton, FH/DRB/P para 5.13

¹⁰² ED38

¹⁰³ See eg ED2 at para's 4.6 and 4.7; CD69 Appx A; CD97; CD36 at 3.4.4

acknowledge that no underlying facts or other relevant planning circumstances had changed since reaching that opinion¹⁰⁴.

- 4.5.6. Whilst the above conclusions are the ineluctable outcome of an orderly approach to the question of 'where best' to identify the location for new housing in Forest Heath District, that is not the test on an appeal under Section 78 of the Town and Country Planning Act 1990. Planning permission may only rationally be refused where there is identified planning harm that outweighs the planning benefits.
- 4.5.7. In this case there is: -
 1. pressing housing need, both in terms of the strategic requirement and in terms of affordable housing need, and
 2. a location which *per se* is acceptable and has been judged by the Local Planning Authority as a suitable site in principle for such development.Unless there are some site, or scheme-specific, objections to the proposals, there can be no reason to withhold permission.
- 4.5.8. On 9th February 2011, the Council's only remaining Reason for Refusal was re-written¹⁰⁵. As amended, it amounts to a prematurity point alone (albeit presented in three different ways)¹⁰⁶. In effect, the Council's objection amounts to simply: *we don't know yet whether we have an objection*. This will not do to justify refusal and, in the specific context of housing delivery governed by PPS3, it cannot withstand the policy stated at paragraphs 69 & 72. In the light of the absence of a five year land supply and the Government's imperative for delivery, the scheme should be approved.
- 4.5.9. With regard to the paragraph 69 criteria: -
 1. there was no objection to the DAS by the Council that the nature of the scheme would be incapable of producing high quality housing, or that, the reserved matters stage of this outline application would produce anything other than high quality housing¹⁰⁷,
 2. the mix of housing is agreed,
 3. the site has been identified as suitable in principle for housing, both by the Council as the Local Planning Authority, and as a matter of professional judgement by the only Officer to give evidence on its behalf,
 4. the density is not disputed as being either too little or too great, and
 5. delivery of these units (including 30% affordable housing) would assist in meeting the Council's housing objectives (see paragraph 10 of PPS3); it reflects the acknowledged need and demand for housing in Newmarket and the spatial vision in the CS.
- 4.5.10. As regards Criteria 3 and 5, ultimately the Council did not seek to lead evidence of *any* 'unsuitability' of the site for housing (Criterion 3) or any 'wider policy objectives' alleged to be harmed (Criterion 5). There was a

¹⁰⁴ MSxxJK [Day 1]; the suggestion made in the SHNL Closing [SHN23] at para. 64 that the Single Issue Review might come up with lower housing requirement is in direct conflict with the evidence of acute and increasing housing need, the undisputed evidence of Mr Sellwood that the ONS projections showed higher household growth than provided for in the CS/RSS and the NPPF 'direction of travel' that objectively judged needs must be met; this is all in contrast to the circumstances behind the Ipswich decision, cited at paras 67-68 of SHN 23. Mr Sellwood did *not* accept that the Single Issue Review could be found sound without a significant allocation in Newmarket as asserted on behalf of FHDC [Closing, para 62] : our note does not support this assertion.

¹⁰⁵ CD68(iii)

¹⁰⁶ See FHDC Statement of Case [CD129(iv)]

¹⁰⁷ See SOCG1

suggestion of conflict with countryside designation but, given the favourable presumption in paragraph 71 of PPS3, this is not a proper objection to take against a site promoted in the context of a failure to provide a 5 year land supply.

- 4.5.11. Contrary to Officers' recommendation, the Council sought to maintain an objection of harm to the horseracing industry through a retained Reason 2, But that reason for refusal stemmed from a highways safety objection which itself had been abandoned¹⁰⁸. Further, Reason 2 did not amount to an assertion that there would be harm, just that the Council did not know whether there would or would not. In any event they made no attempt to produce any evidence that there would be harm.

4.6. Prematurity

- 4.6.1. Even as re-written, the Council's only remaining substantive reason for refusal (No 5) was not made out. There is no part of the adopted Development Plan which indicates, in principle, that this scheme should be refused; indeed, the development positively accords with and delivers significant policy imperatives within the CS. Further, there is an absence of a 5 year supply, the paragraph 69 criteria are complied with and prematurity alone may not defeat the positive presumption in paragraph 71 of PPS3.
- 4.6.2. In an attempt to elevate what is a straightforward, but inadmissible, prematurity argument into a European legal point, SHNL cited the "principle of sincere co-operation [of] full mutual respect" between member states. They did so by misunderstanding, or misrepresenting, the effect of the judgment of Collins J¹⁰⁹. For example, at para 53(2) ff of their Closing¹¹⁰, it was said that the evidence base for the plan is "tainted and cannot be relied upon" and thus that the Appellant was seeking to pre-empt a SEA process. It is quite true that the material specifically and expressly identifying locations for housing in the CS (i.e. the parts of the CS which were quashed) no longer forms part of the CS's evidence base (see exchange between DE and Collins J¹¹¹). On the other hand, it is wholly wrong to conflate the deficiencies in the forward planning process with the judgments which must now be made under this Section 78 appeal. It would also be wrong to confuse the criticisms in respect of the SEA with the facts and judgments contained in the evidence base which are still relevant (as a matter of law) for the determination of a given planning appeal.
- 4.6.3. The High Court judgment did not quash the whole CS. There are extant policies underpinned by a SEA and a lawful evidence base which includes: -
1. the requirement for 10,100 houses, and 16 ha of new employment land,
 2. considerable greenfield development, and
 3. a spatial strategy which directs such additional development to the principal market towns, of which Newmarket is unarguably the most sustainable.

¹⁰⁸ On independent expert advice from Mayer Brown, as well as SCC.

¹⁰⁹ A more succinct submission to similar effect is made by Mr Bird QC in TG's "Legal Submissions". The answer, however, is the same.

¹¹⁰ SHN23

¹¹¹ Boyd, SHN/JB/PR Appx JB 15 page 14: attention is drawn to the entire exchange and not the selective quotation from the transcript at footnote 93 of SHN's closing submissions, SHN 23.

It was these policies on which the Appellant relied.

- 4.6.4. The High Court had power to remit the quashed policies to the Council for re-determination, but it did not do so. The Court imposed no obligation on the Council to take any further steps in respect of the procedures which had been found to be defective, or in respect of the quashed policies. The CS therefore remained, and remains, a complete and adopted core strategy and there is nothing flowing from the High Court judgment which means that this application should be treated as premature as a matter of European or domestic law. As it emerged from the High Court challenge, the CS is a complete document with no spatial strategy policies that would be offended by these Proposals. Prematurity only arises on the back of the Council's own subsequent decision to review the CS as referred to above.
- 4.6.5. Further, it is important to recognize, as the Council did, that Collins J made no criticism in his judgment of the underlying facts or planning assessments which had led to the identification of north-east Newmarket as being suitable for 1,200 dwellings. The challenge which he upheld was founded on the recording of the reasoning and consideration of alternatives for that decision, and the opportunity for public participation in that decision. Consequently, the "deficient" SEA may be "inextricably linked" to the CS's identification of Hatchfield Farm¹¹² but it does not affect the underlying facts that led to that identification. These remain unchanged. It is these which justify allowing this Section 78 appeal and the grant of planning permission.
- 4.6.6. The case of Wells and the reliance on the principle of "sincere co-operation in good faith and full and mutual respect" is an irrelevant obfuscation of what is in fact a very straightforward point. The planning considerations that led inevitably to the identification of north-east Newmarket as the only realistic opportunity for strategic housing development at the most sustainable settlement in Forest Heath District remain entirely unaltered by the High Court judgement.
- 4.6.7. Despite this inevitability of the confirmation of the Hatchfield Farm site for an urban extension, if the appeal were dismissed, it is possible that the Appellant would be reluctant to incur any significant expense in preparing for a further application until the Review was adopted. This could therefore delay the completion of the first houses for much longer than the two years suggested by the Council.
- 4.6.8. Largely leaving behind the views of the democratically elected Local Planning Authority, it is however necessary to consider the variously formulated objections of what amounts to a special interest group¹¹³.

4.7. Traffic Impact and Horses

- 4.7.1. The Highways Agency and Suffolk County Council, as the Local Highway Authority, had no traffic objections to the scheme and did not support Reason

¹¹² SHN Closing para 58

¹¹³ The "Tattersalls group" was a collection of parties who shared the same interest; the inquiry never did get an answer as to who or what SHNL really represented; its director and only witness were a husband and wife team; there was no membership or supporter list provided. See SHN19 and ED26.

for Refusal 1. It appears that neither ever had any intention of supporting Reason for Refusal 2 relating to the horseracing industry.

- 4.7.2. The Council commissioned their own independent highways advice from Mayer Brown¹¹⁴, whose highways consultant had experience as a rider and a racehorse owner. Their advice was that, with the package of mitigation measures proposed by the Appellant, there was no justified highways objection, either generally (Reason 1), or as regards the impact on the horseracing industry (Reason 2). He declined to support the Council's case and they abandoned Reason 1 and any allegation that there would be objectionable highways impacts from the scheme. But, contrary to Officers' advice, the Members retained Reason 2, though they led no evidence to substantiate it.
- 4.7.3. Tattersalls' witness was the only highways expert to conclude that there would be harm from the Appeal Proposals, but he accepted that the contrary views of the Highways Agency, the Local Highway Authority, the Local Planning Authority and the Appellant's Highways Witness were all within the realm of professional expert opinion¹¹⁵. The weight of the evidence and the professional judgments all clearly pointed one way.
- 4.7.4. The components of the scheme most relevant to an assessment of its implications for the highway network and sustainability in transportation terms are the off-site mitigation measures, the facilities for pedestrians and cyclists, the provision of the bus services and Real Time Passenger Information for both the existing and the proposed services, the Travel Plan, the Park and Ride Facility, and the proposed safety improvements relating to horses.

Traffic Assessment Procedure

- 4.7.5. The Appeal Proposals would generate additional vehicle trips on the highway network and, to assess the impact of this additional traffic, it was necessary to: -
 1. assess the traffic conditions in a baseline year,
 2. agree a year of assessment with the relevant highway authorities in accordance with Guidance for Transport Assessment,
 3. forecast traffic growth between the baseline year and the year of assessment in order to establish the traffic conditions in the year of assessment,
 4. assess the number of trips generated by the proposed development;
 5. assess the likely trip distribution and assignment of such traffic, and
 6. produce a model of the effect of the development and compare it with a 'do nothing' model.

Baseline Traffic

- 4.7.6. Baseline levels of traffic growth were assessed by looking at data taken from both Suffolk County Council's and the Appellant's own traffic counts and considering whether there was likely to be any difference between the years

¹¹⁴ FH12

¹¹⁵ RExxJK [Day 4]

in which the data were collated and the baseline year of 2008¹¹⁶. There had been a slight fall over recent years¹¹⁷.

Year of Assessment

- 4.7.7. In accordance with policy, a year of assessment was agreed with the highways authorities. This was agreed as 2018, being 10 years from the baseline year of 2008. The assessment, however, assumed that the development at Hatchfield Farm was fully built out by that date, despite the proposed phasing which anticipates that development would not then be complete¹¹⁸.

Growth Factors.

- 4.7.8. Traffic growth was calculated using DfT software TEMPRO¹¹⁹ using data sets from the National Trip End Model (NTEM). The Appellant's Highways Witness selected the appropriate area for assessing growth in Newmarket. However, in accordance with usual practice, it was necessary to adjust the NTEM data sets.
- 4.7.9. The housing predicted for Newmarket through the Development Plan process is taken into account in the model and therefore the Hatchfield Farm development was already allowed for. Therefore, in order to ascertain the traffic growth *without* Hatchfield Farm, it was necessary to adjust the NTEM data¹²⁰. TEMPRO assumed growth based on the provision of 1,201 dwellings in Newmarket in the 10 year assessment period.
- 4.7.10. Given the limited number of brownfield sites identified in Policy CS1 up to 2031 as available for housing and, given the absence of greenfield sites without Hatchfield Farm coming forward, it was reasonable to assume that within the 10 year assessment period the number of dwellings in the Newmarket (Main) area that was assessed would grow by only 200.
- 4.7.11. Thus, it was necessary to adjust TEMPRO by removing 1,001 dwellings from TEMPRO to reflect the number of houses that could be provided without Hatchfield Farm. Tattersalls' Highways Witness accepted in cross-examination that these were judgments that the Appellant was entitled to make¹²¹.
- 4.7.12. A further adjustment was also made to allow for the fact that there was no reasonable prospect of the George Lambton Playing Fields coming forward for employment use¹²². This approach was accepted by the relevant highways authorities, as well as by Dr Ford having regard to the 'practical reality'¹²³.
- 4.7.13. Using NTEM v6.2, the growth figures for the period 2009-2019 are 1.049 in the am peak and 1.056¹²⁴ in the pm peak. These figures are *lower* than the

¹¹⁶ ED/CPS/P01 Section 6 & Apps 13 & 24

¹¹⁷ CD71, Fig2

¹¹⁸ See Proof ED/CPS/P01 section 6,6 and Rebuttal ED/CPS/PR1 para 2.3.2

¹¹⁹ See CD61

¹²⁰ See in particular Proof ED/CPS/P01 para 6.2.5 and Rebuttal ED/CPS/PR1 section 2.4 and ED7.

¹²¹ RExxJK [Day 4]

¹²² Proof ED/CPS/P01 para 6.2.11

¹²³ See Mayer Brown report, Smith Rebuttal Appendix ED/CPS/PRA1 paras 32-33

¹²⁴ Rebuttal ED/CPS/PR1 para 6.2.8

figures used in the Transport Assessment using NTEM v5.3 which were 1.092 and 1.091 for the am and pm peaks respectively.

- 4.7.14. For the purposes of the assessment, the A14 traffic growth figures were taken directly from the National Road Traffic Forecast (NRTF 97) after scoping discussions with the Highways Agency because strategic traffic is not as sensitive to local conditions. The factors used for the purposes of this assessment were 1.161 in the am peak and 1.161 in the pm peak. The A14 growth would include the traffic from Felixstowe.
- 4.7.15. Accordingly, it can be concluded that the growth factors used in the assessment were robust and they were accepted by the relevant highway authorities. They were also significantly higher than the 1.049 (am) and 1.056¹²⁵(pm) growth figures generated using NTEM v6.2.
- 4.7.16. Significant development is planned in the Soham and Fordham areas to the north of the A14 junction but this is outside the Newmarket (Main) NTEM area which includes the site. Accordingly no further adjustments are required to the traffic growth predictions because that is covered by the regional growth forecast.

Trip Generation

- 4.7.17. The TRICS database average trip generation of comparable developments was used to estimate the number of trips in the am and pm peak periods and these were reduced to allow for internalisation and the application of travel plans¹²⁶. Travel Plans may be expected to reduce the numbers by 13% for employment and 10% for residential trips. For residential trips the journey to work would account for 24% in the am peak and 35% in the pm peak hour. Internalisation would reduce these by 10%¹²⁷. Following review the trips generated would be in the order of:-

	Land Use	Appellant's trips (following review)
am		
	Residential	549
	Employment	281
	Total	830
pm		
	Residential	630
	Employment	222
	Total	852

These figures are comparable to those used for the purposes of the Traffic Assessment which was accepted by the relevant highway authorities¹²⁸ and, accordingly, the assessment should be regarded as robust.

¹²⁵ Rebuttal ED/CPS/PR1 para 6.2.8

¹²⁶ ED/CPS/PA01, App14

¹²⁷ ED/CPS/PA01, App14, paras 1.3.3 & 1.4.6

¹²⁸ See Smith Proof ED/CPS/P01 para 6.4.2 table compare April 2010 TA with CPS revised.

Trip Distribution

4.7.18. For modelling trip distribution and assignment, a cluster of census output areas on the western side of the A142 was used to represent a proxy for the Appeal Site. The location of these areas plainly makes them comparable. The data showed that of the traffic turning onto the A142 in the am Peak, 54% heads northbound to the A142 and 46% heads south and west towards Newmarket. However, because of the decision to house most of the Mildenhall and Lakenheath airbase personnel 'on base' between the collation of the census data and the assessment date, it was appropriate to cross-check the appropriateness of the distribution. So, a survey was conducted in February 2010 from which the results were consistent with the census data. In the survey, 56% of the am peak traffic turned onto the A142 and headed north to the A14 and 44% headed south. Given the similarity of these figures to those compiled from the census data, the Appellant's witness was right to conclude that the distribution established from the census data provided an appropriate basis for assessing the distribution and assignment¹²⁹. The south and westbound traffic flow was then allocated to Willie Snaith Road and Fordham Road, the latter being some 20% of the total for the site¹³⁰. This figure was accepted by SCC, the Local Highway Authority.

Modelling

- 4.7.19. The effect of these additional vehicle trips was assessed by a micro-simulation model over an area agreed with the Local Highway Authority. The S-Paramics model produced a 2018 'do-nothing' development model, which was compared with a 2018 'with-development' model¹³¹. The 'with-development' model showed that there would be no detriment when compared with the 'do-nothing' model. The 'with-development' model indicated a lower average journey time through the model area, even with the addition of the appeal site traffic because the proposed mitigation/improvement measures would provide additional capacity. This has been audited independently by Aecom on behalf of the Highways Agency and Suffolk County Council and the conclusions should be regarded as robust¹³².
- 4.7.20. The micro-simulation model provided the basis for analysing the road network and junctions close to the site. A number of junctions further afield were also analysed. The results of these analyses were: -
1. a mini-roundabout was agreed with SCC to provide sufficient mitigation at the Studlands Park Avenue/Exning Road junction,¹³³
 2. an ARCADY assessment of the Tesco access roundabout at Willie Snaith Road shows that the Hatchfield Farm development could be satisfactorily accommodated and that no mitigation would be required,¹³⁴
 3. a LINSIG model was produced of the Fred Archer Way/ Fordham Road/ Waitrose/Rookery Access linked signal junction in the town centre. The

¹²⁹ See ED/CPS/P01 section 6..5

¹³⁰ CD97A, Vol 5 App H , Traffic flow diagram am peak

¹³¹ CD114

¹³² ED/CPS/P01 section 6.,6 and note para 6.6.11

¹³³ ED/CPS/P01 para 6.7.2. See CD 103 and Plan 0719-P-08 at Smith Appendix 2.

¹³⁴ ED/CPS/P01 para 6.7.2; CD 103

model indicated that the junction is currently close to capacity but in the 'with-development' scenario: -

- the am peak showed a small increase in delay of approximately 3 seconds per Passenger Car Unit,
- the pm peak showed an increase in delay of approximately 8 seconds per Passenger Car Unit (though if NTEM v6.2 is used, the increase in delay is approximately 6 seconds).

However this did not allow for the impact of the Microprocessor Optimised Vehicle Attenuation (MOVA) installed at the junction. SCC has agreed that sufficient mitigation can be provided by a financial contribution to Urban Traffic Management and Control and in the promotion of alternative modes to minimise the town centre bound traffic which would otherwise be generated by the Appeal Proposals,¹³⁵

4. a LINSIG model was prepared of the High Street/the Avenue Junction where an improvement scheme had already been prepared by SCC to address existing capacity concerns. The model indicated that the improvement scheme would provide additional capacity that would cater for the additional traffic expected from the Hatchfield Farm development and adequately mitigate the impact of the proposals,¹³⁶ and
5. the Clocktower roundabout was assessed using ARCADY and showed that no improvements would be required.¹³⁷

Sustainability

4.7.21. It can safely be concluded that, with the proposed improvements and mitigation measures, there would be no material adverse impact on the traffic in and around Newmarket and that, from a transport perspective, the Appeal Proposals would be sustainable development.

4.7.22. More specifically, the site is sustainably located because: -

1. Newmarket is the largest town in the District with a good range of facilities all of which are located within a town and it is less than 5 km across. Its topography is flat, providing excellent opportunities for increased walking and cycling, and there is a good network of bus routes covering the majority of existing residential areas¹³⁸,
2. Many day to day facilities would be provided on site or are within easy walking distance of the site (i.e. within the 2 km suggested by PPG 13). Hatchfield Farm would provide a community centre, playing fields/amenity area, small retail/food and drink uses, a primary school and employment on site. There is a Tesco Superstore on the edge of the site and there are off-site employment areas no more than 800 m from the centre of the site. Other facilities are just beyond 2 km from the site and easily within the 5 km cycling distance recommended by PPG 13 e.g. Newmarket College, Newmarket Community Hospital, Newmarket Leisure Centre. The town centre itself is approximately 2.5 km from the centre of the site and would be served by the existing bus routes. The town centre has a wide range of facilities¹³⁹,

¹³⁵ ED/CPS/P01 paras 6.7.4-6.7.8

¹³⁶ ED/CPS/P01 para 6.7.9-6.7.11

¹³⁷ ED/CPS/P01 para 6.7.12

¹³⁸ ED/CPS/P01 paras 3.1.1 -3.1.4

¹³⁹ ED/CPS/P01 section 3.2 and FHDC/Appellant SoCG para. 2.2

3. Together with the package of mitigation measures, these factors make the Appeal Scheme a sustainable one and it would provide the necessary infrastructure consistent with the Transport White Paper and PPG 13¹⁴⁰ as well as local policy contained in the Suffolk County Council's Local Transport Plan LPT2¹⁴¹, draft Local Transport Plan LPT3¹⁴², and the Council's Core Strategy¹⁴³, and
4. None of these points were disputed by the relevant highways or planning authorities.

Horse Crossings

- 4.7.23. The Highway Code treats horse riders very much like any other road user. They do not get any particular priority. It does however recognise horse crossings¹⁴⁴ and there is a DfT advisory leaflet on the design of Equestrian Crossings¹⁴⁵. Nevertheless, such crossings are rare and a specific assessment of the interaction between the traffic and the horses was undertaken in this case. This was for the Rayes Lane/Fordham Road crossing, on which the Hatchfield Farm development could be expected to have the most impact. This was done by starting with the collation of data showing how the crossing was actually used¹⁴⁶. In order to analyse the impact of the development the Appellant's witness used LINSIG. This is software which is designed to assess signal controlled junctions, but the judgment of the consultants was that this served as a useful proxy for the operation of the horse crossings on the basis that the traffic stops when the horses cross.
- 4.7.24. The assertion by SHNL's Counsel (unsupported by any SHNL evidence) that use of LINSIG for these purposes was "absurd" (or worse) misunderstood what was done and ignored the fact that SCC and Aecom had accepted the modelling. The suggestion was¹⁴⁷ that the Appellant had assumed a "default (though wholly imaginary) green phase" misunderstood or misstated the evidence. As explained, the model was prepared and calibrated using data of actual observed horse crossing movements. The results were accepted by the relevant Highway Authority and its auditors and showed that, in comparing the 'with-development' model with the 'no-development' model, the former showed an increase in delay at the crossing during the morning peak of between 5-13 seconds per PCU in all but one case where it increased by 18 seconds per PCU¹⁴⁸. SCC accepted this and found no reason to object. Indeed, in the context of the morning peak, such delays would in practice be imperceptible. With significantly less traffic from the development, the effects at St Mary's Square, Bury Road and the Lord Derby's Gap crossings would be even less.

¹⁴⁰ ED/CPS/P01 paras 3.3.1 and 3.3.7

¹⁴¹ CD 53 see ED/CPS/P01 paras 3.3.9 to 3.3.13

¹⁴² ED/CPS/P01 paras 3.3.14-3.3.10 and Appendix 23

¹⁴³ CD 40 see Spatial Objectives T1, T2, T3, T4, H1 and Policies CS12 and CS13. ED/CPS/P01 paras 3.3.10-3.3.12

¹⁴⁴ CD25, pages 9 & 14

¹⁴⁵ CD65

¹⁴⁶ ED/CPS/P01 section 7.2

¹⁴⁷ Closing Submissions, p 17

¹⁴⁸ See ED/CPS/P01 section 7.4. 31 seconds if the sensitivity test is applied.

4.8. Tattersalls' Criticisms

A14 Junction 37

- 4.8.1. Tattersalls' Highways witness provided no useful assessment of his own. He provided no further comparison between the 'with-development' position and the 'no-development' position but what he did was to make a number of criticisms each of which did not stand scrutiny.
- 4.8.2. Tattersalls sought to cast doubt upon the baseline traffic conditions which the Appellant had used¹⁴⁹. They made five points, each of which on examination was groundless.
- 4.8.3. Firstly, they asserted that the averaging of traffic flows at the A14/A142 junction from surveys undertaken over a year apart, i.e. 2007 and 2008, without first applying traffic growth to the 2007 survey to represent 2008 was mistaken. There was, however, a *reduction* in traffic over this period, so there can be no need to apply growth factors and actual data anyhow provide a more accurate picture than predictive software¹⁵⁰.
- 4.8.4. Secondly, they pointed out that the model used was based on single day surveys and that there were no weekly validation counts on all arms of the A14/A142 junction to verify that the single day was representative. However, as the Appellant's witness pointed out, the traffic flow on the A142 to the south of the junction on the day of survey was comparable to the SCC weekday average for 2007 from the long term monitoring point, the use of single day surveys is not uncommon, and the Highways Agency and SCC agreed that the survey data should be treated as sufficient and robust¹⁵¹.
- 4.8.5. Thirdly, they argued that there was an over-reliance by the Appellant on the observed decline in traffic at the A142 monitoring site which they said was subject to an imbalance in traffic flows caused by the operation of the junction and the queuing currently observed on the A142 southbound approach to the A14. However, as the Appellant's witness pointed out, the observed decline reflects regional and national trends so it does not appear to be the result of a localised problem¹⁵². Indeed, the Highways Agency and SCC who have the keenest interest in the road network at this point raised no question about taking into account the decline in traffic at the A142 monitoring site.
- 4.8.6. Fourthly, Tattersalls argued that traffic flows were recovering to earlier levels and that the A142 had experienced significant growth. However, both SCC and Mayer Brown, acknowledged that the difference in growth levels would not have a material impact on the assessment of this junction¹⁵³.
- 4.8.7. Fifthly, as pointed out on behalf of the Appellant, the 2007 data remain a robust means of assessment since the flows in that year were higher than for any year save 2010, with the am and pm peak flows showing 2007 as greater than, or comparable to, the following years. That the model was accepted by

¹⁴⁹ Evans TAT/RE/P paras 4.4-4.13

¹⁵⁰ Smith Rebuttal ED/CPS/PR para 2.2.2

¹⁵¹ Smith Rebuttal ED/CPS/PR para 2.2.3

¹⁵² Smith Rebuttal ED/CPS/PR1 para 2.2.4

¹⁵³ Smith Rebuttal ED/CPS/PR1 para 2.2.5

the Highways Agency and SCC following audit by independent consultants, Aecom, means that the baseline conditions used for modelling should be considered sound¹⁵⁴.

Assessment Year and Growth

4.8.8. Tattersalls suggested that 2018 was not the appropriate year for assessment and thus argued that there had been an underestimate of traffic growth in the Appellant's assessment. On this basis their Counsel suggested in closing that the Appellant was guilty of a "slight of hand" (submissions para 68). This misunderstood policy and good practice. The policy, Guidance for Transport Assessment, is clear. The year of assessment is a matter for agreement with the appropriate highway authority, as was done in conjunction with both the Highways Agency, for the A14, and Suffolk County Council, for the local highway network¹⁵⁵. Good practice was explained by the Appellant's witness in oral evidence and 10 years is considered to be a robust period for assessment purposes, given the difficulties of predicting beyond that time. What is more, if the NTEM v6.2 growth figures are used, even if Tattersalls' preferred 15 year period for assessment were used, then the growth over a 15 year period would in fact be equivalent to the growth assumed in the 10 year assessment period using NTEM v5.3¹⁵⁶. Tattersalls produced alternative graphs attempting to use TEMPRO to cast doubt upon this conclusion but they fundamentally misunderstood and misapplied TEMPRO.

4.8.9. Tattersalls suggested that the Appellant had made the wrong planning assumption adjustments in the application of TEMPRO but: -

1. Tattersalls failed to understand the exercise which TEMPRO required. Contrary to what they said, the Appellant's consultant selected the appropriate TEMPRO area and made adjustments which were reasonable having regard to the amount of housing land available in Newmarket without the Hatchfield Farm development; (which Tattersalls' witness accepted in cross-examination as a reasonable approach¹⁵⁷), on the other hand,
2. Tattersalls chose the wrong TEMPRO area for their assessment instead of the (Newmarket Main) area in which the junction was situated,
3. In any event, they failed properly to investigate and make appropriate adjustments for the developments in the areas which they did use (Rural East Cambridgeshire, Soham)¹⁵⁸, and
4. even if Rural East Cambridgeshire were an appropriate area to use, and if the correct traffic growth figures were applied, then the difference between using Rural East Cambridgeshire (correctly applied) as the TEMPRO Area and the Newmarket (Main) was insignificant¹⁵⁹.

¹⁵⁴ Smith Rebuttal ED/CPS/PR1 paras 2.2.6-2.2.10

¹⁵⁵ Smith Rebuttal ED/CPS/PR1 section 2.3.2 and CD24 para 4.46

¹⁵⁶ Smith Rebuttal ED/CPS/PR1 paras 2.3.3-2.3.7

¹⁵⁷ RExxJk [Day 4]

¹⁵⁸ See xx

¹⁵⁹ Smith Rebuttal ED/CPS/PR1 section 2.5; Smith in chief and XX by Bird QC.

Trip Generation

4.8.10. Tattersalls also sought to cast doubt on the robustness of the Appellant's trip generation assessment¹⁶⁰ :-

1. They suggested that 85th percentile trip rates should have been used rather than average trip rates¹⁶¹. Both the Highways Agency and SCC were however consulted and both relevant bodies considered that it was appropriate to use average trip rates. Dr Ford of Mayer Brown took no issue with this and Tattersalls' witness accepted in cross-examination that Aecom and Mayer Brown were well within the realms of professional judgment to accept the use of average trip rates¹⁶², and
2. Tattersalls took issue with the assessment of Hatchfield Farm as a sustainable site and used this to justify their preference for use of the 85th percentile¹⁶³.

4.8.11. These points did not stand scrutiny when taking into account: -

1. The location of Hatchfield Farm in relation to the various community facilities and employment opportunities both within and outside the development, as well as its suitability for pedestrian and improved cycle and bus provision,
2. Unlike Studlands Park, the road layout would easily accommodate the bus services for which they did not even have details of the number that already pass the site. These, and the new half hourly service, would serve the new Park and Ride facility, and the new Real Time Passenger Information (RTPI) facility would provide beneficial information for all the services¹⁶⁴. Further, it was mistakenly asserted that "Only 50% of the proposed employment would be available at a point at which 75% of the residential has been occupied"¹⁶⁵. That is not correct because no more than 900 dwellings would be disposed of until at least 50% of the employment land had been occupied (secured by condition). Despite this, for the purposes of assessment, the Appellant assumed that the full scheme was built. If, however, less than 50% of the employment space were to be occupied, then only 900 residential units could be disposed of¹⁶⁶, although by this stage all the mitigation works would be in place. In such a situation, the traffic impact would obviously be proportionately less and the assessment on the basis of a full build out should be treated as robust. This was accepted by Tattersalls' witness in cross examination¹⁶⁷,
3. What is more, as was put to Tattersalls' witness in cross-examination, the signalization of the northern access would allow the highways authority to regulate vehicular use of the site as a 'stick' to encourage modal shift¹⁶⁸, and

¹⁶⁰ see Evans, Proof paras 4.48-4.63

¹⁶¹ Evans, Proof, TAT/RE/P para 4.48

¹⁶² RExxJK [Day 4]

¹⁶³ TAT/RE/PR

¹⁶⁴ See Evans, XX.

¹⁶⁵ paragraph 5.1

¹⁶⁶ See s. 106 obligation [ED....]

¹⁶⁷ RExxJK [Day 4]

¹⁶⁸ RExxJK [Day 4]; it was clear from his response to the point that Mr. Evans had not considered this ability when criticising the trip rates agreed between the Appellant and the statutory bodies.

4. Overall, there was no justification for Tattersalls' suggestion that 85th percentile trip generation figures should be used (contrary to the approach adopted by the Appellant, Aecom, the Highways Agency, SCC and Mayer Brown).

Rat Running

- 4.8.12. Tattersalls suggested that the assessment of rat-running along Snailwell Road to avoid the A142 was wrong. Again, this did not stand scrutiny: -
 1. The impact of the development on Snailwell Road was analysed in the modelling. If the development and agreed mitigation were in place, there would be a 35 second reduction over a 7 minute period in the journey times travelling on the A142 from north to south¹⁶⁹. Accordingly, the attractiveness of Snailwell Road for rat-running would actually be reduced. This modelling was accepted by SCC and its conclusions were not criticised by Dr Ford. Tattersalls produced no model of their own to set against this, and
 2. Even if the modelling turned out to be wrong, a package of monitoring measures and a financial contribution for mitigation measures to reduce the attractiveness of Snailwell Road for rat-running (if there were any) was agreed with the highway authority. Tattersalls' witness accepted in cross-examination that, in principle, measures could be provided¹⁷⁰. Accordingly, this really could provide no serious ground for objecting to the development.

Horse Crossings

- 4.8.13. Tattersalls criticised the use of LINSIG modelling software to assess the horse crossings. However: -
 1. LINSIG provides a useful proxy model (when horses start to cross, this is effectively a "red light" to traffic¹⁷¹) and the model was calibrated using data of *actual* horse crossings. What is more, a sensitivity test¹⁷² was conducted in which traffic growth was added at 9.2% as well as the predicted traffic from the development. This was accepted by SCC as an appropriate test, and
 2. In contrast, at the 11th hour, Tattersalls sought to introduce the "PV²" standard as an appropriate way of assessing the working of the horse crossings. This approach has no application in United Kingdom mainland and is merely an arithmetic formula used to set a threshold for when a pedestrian crossing that does not yet exist might be considered appropriate. It has nothing to do with the assessment of existing crossings and the impact which they have on traffic or how traffic behaves. Contrary to the implication of Tattersalls' Counsel in closing (Para 113) PV² is *not* a "standard formula for the measurement of pedestrian/vehicle conflict". It provided no assistance in this case.

Increased Number of Horses

- 4.8.14. The suggestion that the Appellant had failed to take into account a "growth in horse numbers" did not stand objective scrutiny. It was not correct to look at

¹⁶⁹ CD114, table 7

¹⁷⁰ RExxJK [Day 4]

¹⁷¹ See Evans Proof TAT/RE/P para 5.17

¹⁷² See Smith Proof. ED/CPS/P01 para 7.4.4 ff

the number of empty horse boxes and unimplemented planning permissions, imagine them filled, and then extrapolate the numbers as Tattersalls did in producing their 39% growth in horse numbers. This did not take account of the extent to which yards actually operate with empty boxes, and it was clear that many do so. Also the evidence showed that trainers do not share yards.

4.8.15. In cross-examination, The Jockey Club witness (who was perhaps best placed to give an overview of the anticipated prospects for growth) made it quite clear that growth in Newmarket was simply aspirational and that he “did not expect to see” the levels assumed by their Highways Witness. What is more, the Smith’s Gore Survey in which some trainers predicted growth in their businesses (though some predicted contraction)¹⁷³ was underpinned by a “vox pop” sample questionnaire rather than by any detailed analysis of the economics of the horseracing industry. This can be set against the information collated on behalf of the Appellant from a number of sources within and outside the industry¹⁷⁴ which made it clear that, rather than facing the prospect of growth, the horseracing industry is facing economic difficulties pointing to contraction.

4.8.16. What can be said with some confidence is that there was no evidence from which to conclude that there would be any significant increase in the number of horses in training in Newmarket, above those assessed by the Appellant’s highways witness. Nevertheless the Appellant did conduct a sensitivity test that *did* take account of the possibility of 10% growth. The conclusion must be that the Appellant’s approach was robust.

Mitigation

4.8.17. There are already arrangements for the lead rider of a string to activate warning lights at the horse crossings but the Appellant proposed more measures based on a package that itself was suggested by the Jockey Club. They would provide improved horse awareness signage on the entrance to Newmarket and horse awareness welcome packs for new residents, as well as traffic calming and visibility improvements on the approach to the town centre horse crossings¹⁷⁵.

4.8.18. At Rayes Lane, the proposed measures would include Thermotor LED warning signs, building out the kerb line on the western side of Fordham Road to achieve better visibility for horse riders (providing a 3 m ‘x’ distance), replacing the block paving of the crossing and new road markings¹⁷⁶. Similar improvements would be made at the St Mary’s Square crossing¹⁷⁷ and the Bury Road (Severals) Crossing¹⁷⁸. At the latter site, provision would be made for widening the carriageway crossing to permit the two-way flow of horses. At the Fordham Road/Snailwell Road junction horse crossing¹⁷⁹ there would again be comparable improvements, together with the prospect of a reduced speed limit on the road to the north.

¹⁷³ ED/JDM/PA01 page

¹⁷⁴ ED/RMS/R2

¹⁷⁵ See ED/CPS/P01 Appx 21 Dwgs HC/02, HC/03, HC/04 and ED18

¹⁷⁶ ED/18 Plan HC/01 Revision A

¹⁷⁷ ED /CPS/PA01 App21, Plan HC/04

¹⁷⁸ ED /CPS/PA01 App21, Plan HC/03

¹⁷⁹ ED /CPS/PA01 App21, Plan HC/02

- 4.8.19. Tattersalls misguidedly considered that these measures should be considered against the standards of the DMRB, despite the fact that the horse crossings are not associated with a trunk road. It is plain that the package would be practicable and would enhance the crossings both for riders and vehicular traffic and make the crossing, safer for both by alerting drivers of the presence of horses and providing improved surfacing.

Traffic Impacts of Development Elsewhere

- 4.8.20. Tattersalls' witness considered what would happen if housing were located elsewhere in the District than at Newmarket. This provided no serious criticism of the Hatchfield Farm development because: -
1. Newmarket has the best range of facilities in the District,
 2. the CS provides that new employment and retail development will also be provided in Newmarket, so
 3. it is inevitable that if housing could be provided elsewhere in the District there would be an increase in journeys to Newmarket.
- 4.8.21. Tattersalls failed to take these matters properly into account. The fact is that to locate housing at Brandon, Mildenhall or Red Lodge would be significantly less sustainable than locating it at Hatchfield Farm. The inhabitants of Hatchfield Farm would be far more likely to access destinations in Newmarket sustainably than the inhabitants of Brandon, Mildenhall or Red Lodge¹⁸⁰.

4.9. Implications for the Horseracing Industry (HRI)

- 4.9.1. It was said that the scheme would imperil the horseracing industry in two ways: -
1. it would do so by endangering horses crossing the roads, and
 2. it would do so by affecting the perception of owners.
- But, in the end, neither could be convincingly evidenced.

Owners' Perception

- 4.9.2. Taking the second point first, the Inquiry did not hear from a single owner of race horses, nor did it receive a single representation from an owner that he or she would be removing their horses from Newmarket if the Hatchfield Farm proposals went ahead.
- 4.9.3. The nearest the Inquiry got to hearing from an owner was the evidence of the Chief Operating Officer and Director of Godolphin, the racing team of the Al Maktoum family. He made it perfectly clear that his employer had no current intention to withdraw from training and racing at Newmarket and that such a decision would only be made after the most careful consideration of the objective facts as they turned out to be¹⁸¹, if the scheme was built.

¹⁸⁰ In his evidence Mr Evans alleged that Mr Smith and WSP were or (in cross-examination) might be intentionally manipulating figures to achieve a result. It is telling that this allegation was *not* put to Mr Smith whose professional standing is set out in his witness statement in curriculum vitae. This allegation must, therefore, be dismissed. That this allegation was made at all, however, does reflect on Mr Evans who, unlike the experts from the Highways Agency, SCC, Mayer Brown and WSP, is not a member of any professional organization and not bound by their standards. As was put to Mr Evans in cross-examination there is material to suggest that Cannon Consulting was itself collating material with a view to "making a case" rather than taking an objective, professional assessment and his evidence can be viewed in that light.

¹⁸¹ HAXxCB [Day 3] NB the 15 year build-out programme – ie to 2028

- 4.9.4. In contrast, what the Inquiry did hear was consistently from all those who are involved in the racing industry, that Newmarket is the best place to train flat race horses in the world with a unique and unrivalled set of facilities and circumstances¹⁸². These combine to make Newmarket pre-eminent in the World, and they co-exist with the extant traffic conditions.

Actual Traffic Conditions

- 4.9.5. The 'perception of owners' point must, therefore, be seen in this context. What much of the 'horseracing industry' witnesses' concerns appeared to arise from were the existing conditions. Incidentally conditions where Newmarket is, and remains, a 'world-beater' for the training of race horses. What was singularly lacking was any attempt to grasp what the difference would be 'with development' and 'without development'. That is the test for a planning application, and was the exercise undertaken by the Appellant's highways witness, but not that of Tattersalls.
- 4.9.6. When the impact of additional traffic from the development was looked at, properly, in this way, it was immediately apparent why Suffolk County Council and Mayer Brown agreed with the Appellant that no objection could be maintained on this matter.
- 4.9.7. The trainers argued that their owners would be delayed in travelling to and from the gallops. But the highways evidence was that as a result of the development the longest increase in delay, in one queue, in one 15 minute period, in the peak morning rush hour, at one crossing (Rayes Lane/Fordham Road), would be 31 seconds. At all other times, it would be less than 10-15 seconds¹⁸³. At all other crossings any additional delay would be less still. In the High Street, the junction improvements would actually improve traffic flows and journey times¹⁸⁴.
- 4.9.8. It was simply unsustainable to suggest that an owner faced with all the very well-evidenced advantages of having his horses trained at the best location in the world would decide to remove his horses from training at Newmarket because of a (maximum) 31 second delay to his car journey. It may be doubted if he would even notice it.

Safety of Horses and Riders

- 4.9.9. The other point argued by trainers was that their owners would perceive Newmarket as a less safe place for their horses to be trained. Again, if one applied the correct test of 'as a result of this development', the evidence did not bear this out.
- 4.9.10. There was no evidence of a measurable alteration in horse/traffic incidents in response to the significant traffic growth spoken of by many. Nor was there any evidence of an alteration in the number of horses being trained in Newmarket as a result of adverse perceptions of safety. It follows with even more force, that there was no evidence to suggest there would be an adverse perception as a result of the traffic from the proposed development.

¹⁸² Examples being: Anderson [TG/HA/P] at 3.1; Gittus [TG/WAG/P] at 2.1.2, 2.1.4, 2.2.1, 2.2.3, 3.2.1 'unsurpassed in the world', 3.2.4; Wall [TG/CFW/P] at 2.1; Palmer [TG/HP/P] at 1.2; Gosden [SHN/JG/P] at 8-16 and [SHN/JG/R] at 14-15.

¹⁸³ Smith ED/CPS/P01 para 7.4.5

¹⁸⁴ Smith ED/CPS/P01 para 6.7.10

- 4.9.11. Again, the figures were sufficiently small, whether taken as absolute numbers, as percentage flows, or as additional delays at crossings and junctions¹⁸⁵ that it would be doubtful whether they would, in practice, even be noticeable. Certainly, there was no evidence correlating the alteration in traffic levels as a result of the scheme to any altered 'perception' on behalf of horseracing owners¹⁸⁶.
- 4.9.12. What might alter perceptions would be ill-informed assertions of forthcoming 'grid-lock' or that, as a result of Hatchfield Farm traffic, horses would be materially more in danger than before. However, those who gave evidence¹⁸⁷ were careful to indicate that they had not been suggesting such things to their owners. In the light of this, there was nothing to indicate that either the actual development of Hatchfield Farm, or the prospect of it as a future development, would adversely affect the experience or perception of owners such as to harm the racing industry.
- 4.9.13. The other traffic aspect for the racing industry was the potential impact on the horses themselves. Again, although there was much, no doubt genuine, concern, this appeared focussed on the current conditions, rather than considering the correct question for a planning decision of 'what would the result of the development be'?
- 4.9.14. There was no attempt by objectors to correlate accidents, whether officially reported, or unreported but privately observed, with traffic levels, or to undertake that exercise considering the 'with' development traffic against the 'without' situation.
- 4.9.15. Although none of it was quantified, there were two suggested ways in which additional traffic was said to be able to increase danger to horses: -
1. by the mere fact of increased vehicles creating an increase in the opportunities for 'spooking' horses directly, and
 2. by creating delays on the highway network such that drivers would grow more frustrated and would behave with less courtesy, thereby spooking horses.

Spooking

- 4.9.16. Whilst the most skittish horses can be placed in the middle of strings, it was recognised¹⁸⁸ that any horses, especially racehorses, are easily spooked. It was also recognised that they can be spooked by vehicles, whether or not driven badly. But it was also recognised by all parties that these animals can be, and are, spooked by any number of visual and aural stimuli. Examples were given of prams and pedestrians, light reflecting off windows, birds, bags by the road and even twigs.
- 4.9.17. All of these, including significant traffic flows on the main roads, will continue, with or without the development, at Hatchfield Farm. The question is whether the additional vehicles generated by Hatchfield Farm would

¹⁸⁵ see para 94 above

¹⁸⁶ Not least, perhaps, because, as noted above, the inquiry heard from none.

¹⁸⁷ Gittus for the Jockey Club, Wall, Palmer and Gosden [Day 3 day 5]

¹⁸⁸ Michaels [ED/JDPM/P] and eg HPxxCB; Day 3

materially increase the danger of 'spooking' and, whether, that would materially increase the number of accidents.

Recorded Accidents

- 4.9.18. When the current situation was considered, it was notable how few actual accidents there are as a result of traffic, compared with the number of traffic movements and the number of horses crossing the roads of Newmarket.
- 4.9.19. It was estimated that there would be many thousands of crossing events during the period over which the accident data was compiled¹⁸⁹ and with one witness they were estimated at about 33 million¹⁹⁰.
- 4.9.20. In contrast, the number of accidents where horses had been affected by traffic was a handful. The number of recorded accidents where driver frustration, leading to driver ill-behaviour, had been the cause was zero.
- 4.9.21. One response to this¹⁹¹ was to note that not all horse accidents are recorded by the Highway Authority because they do not all involve personal injury or damage to vehicles and that in contrast 'incidents' of one form or another happened on an almost daily basis.
- 4.9.22. This is to conflate 'incidents' with injuries, which the evidence plainly showed cannot be done. Incidents, in the sense of horses reacting adversely to external stimuli, can be observed at any time and all over Newmarket when horses are out. As noted above, they are not limited to adverse reactions to vehicles or driver behaviour, nor do they translate into injuries. Thus while 'incidents' concerning vehicles, ie, where horses react adversely to the presence or behaviour of vehicles may happen 'almost daily' they do not translate into accidents or injuries to horses or people.
- 4.9.23. While it was accepted that highway records might not capture all injuries that are sustained, the yards do record these, both to staff and to horses¹⁹². In addition, injuries requiring veterinary treatment are recorded by both the vet and the client, while application of medicine by staff must still go into the medicines book¹⁹³.
- 4.9.24. The record of injuries to horses, whether from official sources or from witnesses at the Inquiry substantiated the views of the authors of the EAS Report, commissioned by the Jockey Club, who said *'it is possible that additional horse injuries occurred. However, any further horse injury accidents are likely to be low in number'*¹⁹⁴.
- 4.9.25. With regard to the change in that situation from traffic generated by the proposed development, it should be recalled that not only would the

¹⁸⁹ WGxxCB; Day 3

¹⁹⁰ JGxxCB; Day 5

¹⁹¹ ie the SHNL case

¹⁹² Suggestions to the contrary by and through Mr. Gosden [Day 5] were contradicted by the documentary evidence of Mr. Wall and Mr. Palmer [Day 3] and SHNL13 and the oral evidence of Mr. Tomkins, Cllr Berry and Mrs Fanshaw [Day 7]; Mr Gosden's intimation in RX [Day 5] that trainers suppressed injury records was – given the other racing witnesses and the documentary evidence – neither credible, nor very creditable.

¹⁹³ See eg of Palmer Appx and FanshawxxCB [Day 7]

¹⁹⁴ ED4, para. 4.7; conclusions notably not demurred from by Mr. Gittus for the Jockey Club WG xx CB [Day 3]

additional traffic be comparatively small, but also that these are already well-trafficked roads.

- 4.9.26. As put to one witness¹⁹⁵, a horse at a crossing that might be spooked by a vehicle, will be concerned with (or potentially spooked by) the nearby vehicles, whether stopped or moving, and not by those at the far end of the queue. The proposed development does not introduce vehicles for the first time to these situations. If the proposed development were to make the queue a few vehicles longer, that would not affect the situation from the perspective of the horse, or therefore its propensity to be spooked¹⁹⁶.
- 4.9.27. Similarly, the ES and the Appellant's Highways¹⁹⁷ and Equine Witnesses¹⁹⁸ did not seek to analyse the effect of traffic on horsewalks (as opposed to crossings) because the road down which the horsewalks run are the same well-trafficked roads. The additional flow of vehicles from the development, compared to the existing situation, would not alter the character of the traffic to which horses using the horsewalks would be exposed¹⁹⁹ and the highest additional hourly increase to any road would only be 82 vehicles per hour i.e. about 13% or a little less than one every 45 seconds²⁰⁰.
- 4.9.28. There was no reason, therefore, whether one looks at the crossings or the horsewalks, to conclude that horses would be any more likely to be spooked or otherwise react adversely to the traffic flows with the development, compared to the traffic flows without the development. Whereas 'spooking' incidents might be 'almost daily', they do not, as we have seen, translate into horse injuries, other than in very 'low' numbers.

Drivers' Behaviour

- 4.9.29. The Jockey Club has a Code of Conduct for riders²⁰¹, which helps to ensure the very high level of courtesy seen around Newmarket between drivers and riders. As to the evidential record, there was one example of a horse injury as a result of bad driver behaviour²⁰², but there was no suggestion that this had anything to do with frustration at being held up by traffic congestion²⁰³. Indeed, there are no records which indicate horse accidents have been caused by drivers behaving badly due to their frustration at delays.
- 4.9.30. Further, even if this were a factor in horse injuries, the scheme would not materially exacerbate the delays, or therefore the frustration levels of drivers. It can safely be concluded that the largely imperceptible additional delays set out above would not be expected to bring about a different mode of conduct in drivers.
- 4.9.31. Taken together therefore, the various strands or permutations by which the traffic impact on the horseracing industry was sought to be articulated have been shown to be unsupported by evidence. While no doubt often genuine,

¹⁹⁵ PalmerxxCB [Day 3]

¹⁹⁶ Michaels x [Day 9]

¹⁹⁷ CSxxDE [Day 8]

¹⁹⁸ MichaelsxxSB [Day 9]

¹⁹⁹ Michaels x [Day 9]

²⁰⁰ Smith, ED/CPA/P01 para 7.6.15

²⁰¹ CD70

²⁰² The December 2006 event recorded in a number of places (eg Michaels Appx and ED4 Appx)

²⁰³ Indeed, quite the reverse, the driver had just left a garage and some records suggest alcohol was a factor

these concerns by third parties were not objectively justified and did not amount to a reason for refusal.

4.10. Ecology

- 4.10.1. The Council initially raised an objection based on the protection of bats. Following discussions with Natural England and the Appellants, they withdrew that reason for refusal and Natural England have no objections with regard to bats or any other protected species or habitats and this would be the correct conclusion to reach in this appeal.
- 4.10.2. However SHNL raised objections in respect of Great Crested Newts, Bats, Arable Weeds, Nesting Birds, Reptiles, Brown Hare, Badgers and over-all net bio-diversity gain.
- 4.10.3. The Appellant's ecology witness addressed each of the issues raised²⁰⁴. Additional work was done to address the concerns of SHNL; not the statutory consultees. The survey methodology and the data produced from those surveys have been agreed between the ecology witnesses and no one else conducted any alternative surveys²⁰⁵.
- 4.10.4. By the end of the evidence, it had been established that, although there might be differences of professional assessment, there was no longer a sustainable objection in respect of Great Crested Newts, Reptiles, Brown Hare, Nesting Birds or Arable Weeds²⁰⁶. Either these weren't present²⁰⁷ or any impact could be adequately mitigated through mitigation secured by conditions²⁰⁸, as accepted by Natural England²⁰⁹.

Bats

- 4.10.5. As far as Bats were concerned, although there was a forensic trawl through the methodology, 'best practice' and the protocols for recording and writing-up²¹⁰, there was no substantiation of any prospective harm to the bat populations in question. The objection was purely one of process and methodology. In the light of the Natural England letter, which followed the additional bat information, this was an unsustainable objection.
- 4.10.6. On the basis of the work done by a series of experienced teams from 2007 to 2011 it was established that the site was used by one or more Common Pipistrelle, Soprano Pipistrelle, Noctule, Leisler's, Serotine, Brown Long-eared and possibly a Myotis²¹¹. Some of the buildings were used as bat roosts and particularly the tree lines in the centre of the site were used for foraging or commuting. There was therefore sufficient information on bat species, numbers and usage to devise a mitigation strategy²¹², and Natural England, the Secretary of State's statutory advisors, were satisfied that the

²⁰⁴ ED/RNH/SP

²⁰⁵ Despite access being offered by the Appellant at the PIM.

²⁰⁶ DWxxJK [Day 12]

²⁰⁷ Great crested newts

²⁰⁸ The rest

²⁰⁹ CD181

²¹⁰ NHxxDE

²¹¹ ED/RNH/PSR, App B6 and ED23

²¹² ED/RNH/PSR, App B6

conservation status of bats could and would therefore be maintained²¹³. In their letter they specifically refer to the proposal to 'minimise lighting around the central tree belts'.

Badgers

- 4.10.7. The same might be said for Badgers. Badgers were found on the site during the course of the Inquiry but the programmed adjournment over the summer allowed for badger surveys to be undertaken.
- 4.10.8. These surveys were expressly agreed with SHNL's expert witness²¹⁴ so it was particularly regrettable that she should later argue that autumn 'bait-marking' surveys were required²¹⁵.
- 4.10.9. On the basis of the work undertaken in the summer of 2011, badgers could be adequately accommodated alongside the proposed development and this was fully supported by the response from the Secretary of State's statutory advisors²¹⁶. SHNL, alone, sought to raise continued objections on this matter but this was not justified on the evidence.

Biodiversity Net Gain

- 4.10.10. The proposals would result in the loss of approximately 67 ha of agricultural land, some 58 ha of which is considered to be best and most versatile. This is an isolated area of farmland and, following consultation, there are no adverse comments from Defra²¹⁷.
- 4.10.11. The Appellant produced a table showing the net bio-diversity changes²¹⁸. This demonstrated that the loss of some 59ha of relatively low biodiversity arable land would be more than made up for by the additional woodland, scrub, grassland and residential gardens of the proposed development. Similarly, there would be considerable increases in the areas likely to be used by bats, reptiles and some birds²¹⁹.
- 4.10.12. There was no challenge to the areas in the table, though the quality assessment was disputed. Nevertheless, it was undoubtedly a useful exercise to see what could be achieved not only through mitigation, but also as a result of the intrinsic benefits of this sort of development. It is difficult to measure equivalence but, taken overall, the result would be a net gain and certainly not a loss²²⁰.
- 4.10.13. Once again the SHNL case amounted to nothing, and it conflicted with the considered position of both the Local Planning Authority and the responsible statutory bodies.
- 4.10.14. It can be concluded that the policies and, where relevant EU duties, in respect of the protection of species and habitats have been, or would be,

²¹³ CD181

²¹⁴ CD169 & CD170

²¹⁵ It will be recalled that SHNL, TG and FHDC all opposed an adjournment through the autumn on the basis that autumn surveys were *not* necessary.

²¹⁶ CD181

²¹⁷ SOCG1 paras 5.23 & 5.26

²¹⁸ Prof. Humphries table at ED/RNH/PR at RHN 14 I and ED37

²¹⁹ ED 37

²²⁰ Humphries proof [ED/RNH/PR] para. 85 and aide memoire at RNH 14i (see also para 86 of ED/RNH/PSR)

complied with, and that there is therefore no ecological reason to withhold planning permission.

4.11. EIA and Habitats Regulations

4.11.1. During the Inquiry, SHNL argued that the ES was defective or insufficient and there was also a suggestion that there was a breach of the Habitats Regulations²²¹.

Adequacy of the EIA

4.11.2. As to the EIA point, there are two salient authorities: Carnwath LJ in *Jones v. Mansfield*²²² and Sullivan J in *Davies v SSCLG*²²³. Both have been provided to the Inquiry²²⁴.

4.11.3. In the *Mansfield* case, Carnwath LJ at page 14 made the telling observation: 'the EIA process is intended to be an aid to efficient and inclusive decision-making in special cases, not an obstacle race' and puts the case of *Berkeley*²²⁵ (relied on by SHNL) in its context; a very proper warning to those, such as SHNL, who seek to use EIA as a tactical route to oppose permission, focussing on form and process rather than substance and merits.

4.11.4. In *Davies*, Sullivan J²²⁶ also puts the case of *Berkeley* (with its emphasis on the imperative to comply with EU obligations and its objection to a 'paper-chase'), in its proper context. He points out that in *Berkeley* there was no ES at all. What the Secretary of State had there sought to do was claim 'substantial' compliance with the requirement for an ES by pointing to an assemblage of documents which, taken together, could be said to have covered all the topics that would have been covered by an ES, had one been done.

4.11.5. Here, in contrast, there is an ES and the criticism is the adequacy of its contents and judgments – albeit not criticisms endorsed either by the Local Planning Authority or the statutory consultees, such as the County Council or English Nature.

4.11.6. Sullivan J contrasts the circumstances in *Berkeley* with those before him²²⁷. He emphasises the public nature of the Inquiry process and the ability of the decision-maker to be informed and the public to have their say in respect of material produced at, and for, the Inquiry, as well as in the published ES and any Regulation 19 Addenda. This case falls into the latter category.

4.11.7. Through the additional Regulation 19 work, through the other information provided to the Inquiry, through the evidence of the witnesses, and through the ability of parties to participate in leading and cross-examining that evidence, the public had access to, and the opportunity to comment on the relevant material. The Secretary of State has all the necessary

²²¹ Ward supplementary [SHN/DEW/PS] at section 4

²²² *R (oao Jones) v. Mansfield DC* [2003] EWCA Civ 1408

²²³ *R (oao Davies) v SSCLG* [2008] EWHC 2223 (Admin)

²²⁴ Doc G6/4 & 8

²²⁵ *Berkeley v SSE* [2001] 2AC 603

²²⁶ At 38

²²⁷ *ibid*

environmental information in order to comply with the obligations imposed by the EIA Directive.

The Habitats Directive

4.11.8. The Habitats Directive point seemed to gain in emphasis as SHNL's Counsel warmed to the documents, but in truth it was defeated by those self-same documents²²⁸.

4.11.9. Reg 61(1) imposes a two stage process on the decision-maker. This provides: -

"A competent authority, before deciding to undertake, or give any consent, permission or authorisation for a plan or project which: -

(a) is likely to have a significant effect on a European site or a European off-shore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site

must make an appropriate assessment of the implications for that in view of that site's conservation objectives"

4.11.10. In essence, this requires the decision-maker (1) to consider whether the development (alone or in combination) is likely to have a significant effect on the integrity of the European site and, if that cannot be excluded²²⁹, (2) to undertake an appropriate assessment of implications of the development for the European site in view of the site's conservation objectives. However, one does not get to the second stage, unless at the first stage the likelihood of significant effects cannot be excluded. Plainly, where there is no prospect of adverse effects, the likelihood of *significant* environmental effects can be excluded with no further assessment required.

4.11.11. It must be emphasised that the terms of Regulation 61 of the Habitat Regulations do not apply to the Appellant, or any Applicant, they apply to the decision-maker, or rather the 'competent authority'.

4.11.12. In this case, there were two alleged potential aspects of harm to European sites (1) hydrology (2) recreational use. SHNL concentrated on Chippenham Fen as being the closest European site to the development. Although there was also mention of Breckland SPA and Devil's Dyke SAC which are considerably further away.

Recreational Activities

4.11.13. With regard to recreational use, the following points defeat the SHNL objection: -

1. The Secretary of State has before him the full Habitats Regulation Assessment which was undertaken and which underpins the extant policies of the Core Strategy²³⁰. This material makes clear that housing development of the scale envisaged by the extant policies of the Core Strategy i.e. 10,100 dwellings to be provided in accordance with the

²²⁸ The ES [CD104] the HRA [CD130] and Mrs Ward's Appendices, but including those he had trawled from the internet such as the data sheets SHN24.

²²⁹ Waddenzee

²³⁰ CD130

extant spatial strategy has been assessed for its impact on European sites. This is particularly covered in pages 55-58. The conclusion of this assessment was that beyond limited amendment to the wording of the Core Strategy (which has no bearing on the Appeal Proposals), no further action was required. On this basis alone, the Secretary of State can exclude the likelihood of significant adverse effects on European sites as a result of recreation use generated by 10,100 dwellings. The assessment has taken into account the combination of the component dwellings to be provided within Forest Heath in accordance with the extant spatial strategy including the 1,200 dwellings at Hatchfield Farm that comprised a component part of that provision at that time,

2. Indirect harm by virtue of recreational use by residents of the new dwellings is not in any event a potential harm for Chippenham Fen RAMSAR site as its designation is justified on its *flora and invertebrate* interest²³¹. This is quite different from the Thames Basin Heath SPA and the Dorset Heaths SPA which, as SPAs, are of course designated for their *bird* interest, which is susceptible to disturbance from visitors. Furthermore, pages 55 and 56 of the Council's HRA give different zones around their sites, the greatest distance being 1.5 km. In this case Hatchfield Farm is some 2.6 km away in a direct line and more like 6 km by road,
3. In any event, where there is no prospect of harm, there is nothing to 'combine' with other plans and projects; and so it is sufficient simply to record that the development would not cause any harm and one can effectively 'scope it out', and
4. As such, the 'disturbance' point is misplaced and the Secretary of State can confidently exclude the likelihood of a significant effect.

Hydrology

4.11.14. The alleged hydrological risk was said to arise from water abstraction and again, two points arise:-

1. Firstly, again the Secretary of State has before him the full Habitats Regulation Assessment which was undertaken and which underpins the extant policies of the Core Strategy²³². This expressly considered the impact of water abstraction on European sites resulting from additional housing to the tune of 10,100 dwellings to be provided in accordance with the spatial strategy within the plan period (i.e. to 2031). In particular pages 46-49 and 61 are relevant ("Current supply ... appropriate for proposed new development"; "existing abstraction ... not believed to be causing problems"; "there is appropriate water supply to meet demand of new development without having an adverse effect on European sites"). The provision of the houses under this application would be provided in accordance with the extant policies of the CS which were so assessed, and
2. Secondly, there is further evidence that there will be no increase in abstraction in order to serve the development. Therefore, again, the complaint is misplaced as the potential for harm does not arise and so the likelihood of significant adverse effects can be excluded. This was

²³¹ SHN 23, see data sheets.

²³² CD130

confirmed in a letter and report of Anglian Water²³³ which made clear that Hatchfield Farm could be served from existing resources within Anglian Water's current abstraction licences. It said that there was "sufficient water resource capacity" within the water resource zone (para 2.1). The Habitats Regulations Assessment (HRA) confirmed this as the conclusion to be drawn from the material before the Inquiry. In any case, it concluded "The Environment Agency's abstraction licensing system should serve to protect European sites from the negative effects of over-abstraction. Although it is important to ensure that new water supply solutions, such as water transfer schemes, do not have a negative effect on any European sites" (page 49).

- 4.11.15. Once again, there was no prospect of harm because there would be no additional abstraction in order to serve the development at Hatchfield Farm. With nothing 'to combine' with other projects, this matter could be 'scoped out'.
- 4.11.16. This was precisely the approach taken in the ES: Chapter 10²³⁴. Although the potential for hydrological impact by virtue of abstraction had been initially scoped in, when Anglian Water confirmed that no new abstraction would be required (paragraph 12.4.7), the authors of the ES were able to scope it out from the document itself (paragraph 10.4.77).
- 4.11.17. What is more, as in the conclusions of the HRA²³⁵ at page 49, any increased abstraction by Anglian Water would itself be a project within the scope of the Habitats Regulations and would require to be assessed under those regulations by the Environment Agency.
- 4.11.18. When the proposition was put to the Appellant's witness in cross-examination that where "even licensed water abstraction is causing environmental damage one can't rule out the creation of risk to European sites", he responded that "in concrete terms" he could "not rule that out". But he had already raised the qualification that "this depends on Anglian Water conforming to their [European] obligations". Further, in re-examination, he confirmed that one should assume that both Anglian Water and the Environment Agency would comply with the European obligations and that there was a sufficiency of information before the Secretary of State for him to be able to exclude the impact of water abstraction.
- 4.11.19. This sufficiency of information is reflected in the entire absence of objection from the statutory consultees, Natural England²³⁶ and the Environment Agency. Although NE had identified the need for the Local Planning Authority to satisfy itself that there was no significant impact, we have to assume that they diligently considered the matter and then raised no issue. Given their HRA, this is, perhaps, unsurprising.

²³³ Mrs Ward App DW19

²³⁴ CD104

²³⁵ CD130

²³⁶ A 2011 response to a later screening opinion request for an abortive scheme [DW....] has no relevance; the inquiry does not have the screening report referred to and cannot judge its adequacy; what we do know is that the ES for the scheme before the Secretary of State did not excite a similar observation – we have to assume that NE found it satisfactory, as, they were entitled and as, indeed, it is.

A further Process Point

- 4.11.20. Sight must not be lost of the fact that neither the complaints in respect of the ES nor the praying in aid of the Habitats Regulations are substantive objections to the scheme; they do not go beyond process.
- 4.11.21. Whilst the Appellant is satisfied that there is sufficient information before the decision-maker and the public, if the Secretary of State did not agree, he could still call for such information as he considered necessary.
- 4.11.22. Thus, on the ES points, prior to making a decision, if he considered additional material to be required, he could use his Regulation 19 powers. Similarly, on the Habitats Regulations point, it is for him to undertake the appropriate assessment, if he considers that it was needed and if he needed more information in order to decide, again he could ask for it.
- 4.11.23. In neither case therefore, would the SHNL objections, even if they were valid, lead to a refusal; merely a delay in the process of reaching a decision. Any SHNL argument to the contrary signified nothing.
- 4.11.24. In fact, SHNL's position²³⁷ was nothing more than an unfounded assertion that "it would not be appropriate for the Secretary of State to seek further information if he considered it necessary". SHNL did not, indeed could not, say that it would be unlawful for him to do so. In truth, it would be both perfectly lawful and consistent with policy for him to seek this information rather than allow this part of the planning system to operate as a block in pure process terms to the grant of a beneficial planning permission. This view is fully supported by the emerging NPPF with its emphasis on the planning system facilitating economic growth in the public interest.

4.12. The Historic Environment

- 4.12.1. With the distance away from the historic core and the intervening land uses, the Council did not raise any objection to the effect of the proposed development on the historic environment or the character and appearance of Newmarket or its Conservation Area. Tattersalls appeared to do so, through their Planning Witness but during his cross-examination, he accepted that, in the absence of harm to the horseracing industry, there were no planning objections relating to the historic environment. He was able to say that having seen the proposals for horse crossing improvements, he did not contend that they would harm the Conservation Area²³⁸. This is, perhaps, not surprising as the proposed improvements closely mirror those of the Jockey Club in the EAS report²³⁹.
- 4.12.2. However, SHNL did seek to assert harm to the historic environment, and in particular to the Conservation Area. This was through the indirect impact of a reduced horse population in the town and a direct impact in improving horse crossings²⁴⁰.

²³⁷ SHN 23 para 107 (Closing Submissions)

²³⁸ JH xx JK [Day 5]

²³⁹ ED4

²⁴⁰ RMxxCEB [Day 11]

- 4.12.3. As to the first, this must fall with SHNL's failure to establish that there would be a material reduction in the horse population of Newmarket, but further, there was no suggestion beyond a 'potential' of harm, and absolutely no suggestion of quantification from SHNL. As a matter which must always turn on fact and degree, these failings in the SHNL case were fatal to their point.
- 4.12.4. As to the second, it would appear startling for SHNL to suggest²⁴¹, that they opposed improvements of the horse crossings. Certainly, nothing submitted to the Inquiry by the HRI showed the Jockey Club's proposals to be objectionable in Conservation Area terms and so should not be implemented.
- 4.12.5. In fact, some improvements²⁴², in line with the Jockey Club's EAS report, have already been undertaken, both underscoring the acceptability of these in the eyes of the District Council's Conservation Area officer, and demonstrating their 'impact', or lack of it, for the Inspector's site visit.
- 4.12.6. For their own part, SHNL had undertaken no historic analysis of the Conservation Area, its significance, the factors which contribute positively or negatively to its significance or how the development would affect those factors²⁴³. In the light of that failure, they could not mount a proper PPS5 case in respect of the impact the proposals would have on the Conservation Area or the wider historic character and appearance of Newmarket²⁴⁴.
- 4.12.7. On the evidence, the conclusion must be that, as acknowledged by the Local Planning Authority, there would be no material harm to the historic environment of Newmarket, its Conservation Area or otherwise, that should weigh against the proposals, let alone warrant their refusal.

4.13. Design Quality

- 4.13.1. As the Local Planning Authority, the Council accepted both the sufficiency, and the contents, of the Design and Access Statement. Indeed, they accepted, through the Statement of Common Ground that high quality housing could be expected, and as such the first bullet point of paragraph 69 of PPS3 is satisfied.
- 4.13.2. SHNL sought to challenge the Appellant's planning witness on the contents of the DAS²⁴⁵ but that attack was misplaced. The SHNL case did not amount to an objection of actual *harm*, ie a design objection to what the scheme proposed. Rather, it was an objection to the nature or quality of a document in support of the scheme. A quick glance through the extensive conditions, as well as the DAS itself, amply justifies the Local Planning Authority's confidence that it could expect this outline application to deliver high quality design, as required by policy.

4.14. Air Quality

- 4.14.1. SHNL was the only party to raise an air quality objection but with no support from the District Council's Environmental Health Officer. In the end however,

²⁴¹ RMxxCEB and in Closing [SHN23]

²⁴² Notably the introduction of renewed buff-coloured anti-slip surfacing [RMx]

²⁴³ JBxxJK

²⁴⁴ indeed it might be recalled – as elsewhere in the SHNL case (notably highways) – that much of the cross-examination of the Appellant's witness stemmed from the assertions of Counsel than from any propositions supported by the SHNL evidence

²⁴⁵ BSxxCEB [Day 10]; see also 4 pages of the SHNL Closing devoted to it [SHN23]

SHNL's air quality expert agreed²⁴⁶ that there was no objection to the scheme in air quality terms.

4.15. Section 106 Obligations

- 4.15.1. After negotiations during the Inquiry, there would be no reason to withhold planning permission because of non-provision of the necessary physical or social infrastructure because there is an adequate and appropriate package of measures necessary and proportionate to overcome any planning harm that might arise through the increased demands placed by the development on the physical and social infrastructure of the area. Reason for Refusal 4 has therefore been overcome (See also Section 10).

4.16. Conclusions and the Planning Balance

- 4.16.1. This scheme has the support of the up-to-date Development Plan. It would deliver residential and employment development pursuant to the imperatives of the Development Plan and at a location and in a manner that is not in conflict with any part of that Plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 would indicate that permission should therefore be granted.
- 4.16.2. To the extent to which the Development Plan is 'silent, indeterminate or missing' in its identification of which greenfield parcels it wishes to see developed in order to meet the 10,100 house and 5ha employment requirements contained in the policy, that is not a 'conflict' with the Development Plan. Moreover, the draft NPPF would indicate that, in such circumstances, permission should be granted.
- 4.16.3. To the extent that there was said to be conflict with the old 1995 Local Plan settlement boundary policy, that policy is plainly 'out of date', understandably making no allowances for the delivery of 10,100 houses or 5ha of employment land by 2031. In any event, the first criterion of that policy²⁴⁷ allows development where a justification is shown. That applies in this case with the acknowledged and planned need to deliver housing and employment on greenfield sites. Furthermore, this is the only realistic opportunity for such development at the District's most sustainable settlement.
- 4.16.4. Also, the Council cannot demonstrate a 5 year supply of deliverable housing land as paragraph 71 of PPS3 requires, therefore this scheme should be considered 'favourably' in accordance with paragraph 69.
- 4.16.5. The Council have been unable to point to any site- or scheme-specific harm arising from these proposals which would justify a conclusion that those criteria have not been met. The most they could say was 'we don't know yet if the site is suitable, and we won't know until we have done our 'Single Issue Review'.'
- 4.16.6. This is not an objection based on harm; it is an admission (or assertion) of current uncertainty. It is flatly contradictory to the planning judgments made by Officers and Members throughout the forward planning process

²⁴⁶ See ED32

²⁴⁷ 1995 LP policy 9.1(a) [CD26]

and, as an attempted prematurity argument, directly falls foul of PPS3 paragraph 72 of PPS3²⁴⁸.

- 4.16.7. Third parties have raised the issue of endangering the horseracing industry through endangering horses and by inconveniencing owners. While many of those expressing such concerns are no doubt genuine they, and their concerns, are unsupported by the statutory Highway Authority, the Local Planning Authority or any objective evidence of harm. To a large extent, those who are genuinely concerned appear to have listened too intently to the siren cries and over-stated claims of 'gridlock' and 'disaster'. Those claims have not been made out.
- 4.16.8. While objections have been taken to the reporting process of ecological matters, no substantive ecological harm has been identified on the evidence, and there is no objection from the responsible statutory body, Natural England, from the Environment Agency or the local Wildlife Trust.
- 4.16.9. No other planning objections to the scheme have been pursued or established that would justify overturning the clear Development Plan and national planning imperatives of granting permission.
- 4.16.10. For all of these reasons, therefore the Secretary of State is urged to accept that this appeal should be allowed and that planning permission should be granted for what would be a highly desirable contribution to the social and economic needs of Forest Heath District and to the town of Newmarket.

5. The Case for the Local Planning Authority (Forest Heath District Council)

5.1. Introduction

- 5.1.1. The decision to be made in this case is about the relative importance of the short term and the long term when making planning decisions. The short term is obviously important, particularly in the current economic circumstances that the country as a whole is facing. It is also tangible and readily grasped in terms of identifying immediate problems, and the understandable desire to do something about them. Deferring decisions is never an easy choice because it looks like problems are being avoided or ducked. There is always a great temptation to get on with it. After all, as John Maynard Keynes said (in a different context): "*In the long run we are all dead.*"
- 5.1.2. However, some decisions are too important to be decided by reference only to the short term and require a longer term perspective. Decisions with long term consequences cannot always be made as quickly as we might wish, and this is especially the case where strategic choices have to be made. This is all the more the case where a short term decision is likely to have adverse consequences over the longer term. In those circumstances, the priority must be to ensure not that a decision is made, but that the right decision is made and that the decision will stand the test of time. This may

²⁴⁸ CD3

require the substantive decision to be deferred until it is demonstrably clear what would be the right decision. In the present context, this is a necessary step to deliver the essential purpose of good planning, ensuring that “we get the right development, in the right place, and at the right time”²⁴⁹.

- 5.1.3. This is also at the heart of the objective of sustainable development, which PPS1 states underpins the planning system²⁵⁰. It says that this means “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Development which cannot do this, and which focuses on meeting short term needs without adequate regard to long term consequences, leaves future generations to fend for themselves and has no place in the modern planning system.
- 5.1.4. This appeal also concerns the public interest which demands community involvement in those decisions that will affect their communities. Community involvement, as we are reminded by PPS1, is “an essential element in delivering sustainable development”²⁵¹. Community involvement means influencing the very framework in which such proposals come forward, and influencing the choices that have to be made at a strategic level when that framework is set.
- 5.1.5. This appeal brings these issues of short term/long term and the assessment of the public interest into sharp focus. It does so in the context of what all agree is a unique place and a unique British success story. Given what is at stake, this is not a case where anything other than the right decision will be acceptable. That decision requires valuing the long term interests and future of Newmarket above the short term contribution of a modest number of dwellings to the Council’s five year housing land supply. It requires that the local community, which will be affected by the decision and would have to live with its consequences, should be given a real opportunity to be involved in the process of determining how they want their area to develop before specific proposals come forward. This is so that those proposals better reflect community aspirations and address all the relevant issues²⁵².

5.2. Scale and Nature of the Proposals

Large Development

- 5.2.1. In overall terms, the Appeal Proposals are on a substantial scale, both in the context of Newmarket and in the context of Forest Heath District but, in sharp contrast, these proposals would make only a very modest contribution to meeting the short term housing needs of the District and an even more modest contribution before the time when it would be possible to make a proper long term plan-led decision. It is very clear that any benefit derived from this modest contribution would be quite disproportionate to the scale of the overall Appeal Proposals.

²⁴⁹ PPS1 para 1 (CD1).

²⁵⁰ PPS1 para 3.

²⁵¹ PPS1 para 13(vi).

²⁵² The approach to community involvement advocated in paras 11 and 12 of PPS1.

- 5.2.2. The proposals relate to 67.67 ha of land,²⁵³ the overwhelming bulk of which (67 ha) is agricultural land, farmed in hand.²⁵⁴ The Appellant's Planning Witness agreed that the site is part of the countryside²⁵⁵ with an existing rural land use rather than an urban use.²⁵⁶ He accepted that *"in the context of Forest Heath, a development site of some 67 hectares is a large site"* and that when the size of the site was compared to the wide range of sites considered in the draft Issues & Options for the Site Specific Policies and Allocations DPD²⁵⁷ and in the SHLAA 2010²⁵⁸ *"most sites in both documents are considerably smaller"*.²⁵⁹ Thus, in the context of Forest Heath, the Appeal Development would be one of the very largest, and would affect a very large area of countryside.
- 5.2.3. With about 1,200 dwellings and up to 36,000 m² of Class B1 employment floor space on a site of some 67 ha, the Appeal Proposals would amount to a large scale urban extension and a fundamental expansion of the town.
- 5.2.4. The residential element would comprise about 12% of the total number of dwellings (10,100) expected to be built across the District as a whole throughout the whole of the Core Strategy's 30 year plan period from 2001 to 2031²⁶⁰. Taking into account those already built up to March 2011²⁶¹, it would also represent about a sixth (16.3%) of the current residual requirement still to be provided in the period up to 2031.
- 5.2.5. The build programme for the residential element of the Proposals would be expected to take some 15 years, between 2013/14 and 2028/29²⁶², and the employment floor space *"is likely to be still being built out well into the 2030s"*²⁶³. The Appellant's Planning Witness accepted that it was *"fair to describe the development as a long term proposal since it could be some 20 or so years before it is fully built out"*.²⁶⁴ He added that this was an *"inevitable consequence of a strategic site"* as if this in some way lessened the scale of what was being proposed, but in fact it only served to underscore it. There can be no doubt that proposals on this scale are of a strategic nature and that, if approved, a strategic decision would have been made about the shape and future growth of Newmarket over the next two decades.
- 5.2.6. These were undisputed facts and it was immediately apparent that, whether the scheme should be endorsed, and whether so much countryside in this location should be transferred to urban land uses, was a decision of a type and nature that would be expected to be plan-led. This must be so if the plan-led system is to serve any real purpose in the context of Forest Heath District. If big decisions like this are not made through the plan-led system,

²⁵³ ED/RMS/P, para 3.3.1

²⁵⁴ CD104, ES Vol 1 p14-7.

²⁵⁵ Sellwood in XX to MB

²⁵⁶ Sellwood in XX to MB

²⁵⁷ CD37.

²⁵⁸ CD45.

²⁵⁹ In XX to MB

²⁶⁰ CD40, Policy CS7 sets the requirement and the period; the 12% was accepted by Mr Sellwood in XX to MB.

²⁶¹ CD44 para 2.3 provides the completions to March 2011 (2757) and so the residual requirement is 7343; the 16.3% was accepted by Mr Sellwood in XX to MB.

²⁶² Sellwood in XX to MB

²⁶³ Sellwood in XX to MB

²⁶⁴ Sellwood in XX to MB

then an obvious question arises as to what the plan-led system is for, and how local communities can have confidence that they will be able to use it to shape the places where they live.

Contribution to Housing Supply

- 5.2.7. At the same time, the scheme would make only a limited contribution to the short term housing needs of the District.
- 5.2.8. National policy expects a continuous supply of housing land and, to this end, requires a 5 year supply to be maintained at any one time. The Council only has a 3.6 year supply²⁶⁵ and so there is clearly a case for more provision to be made.
- 5.2.9. That said, there remains a need to keep a sense of perspective. National policy is not that the imperative to achieve a 5 year land supply over-rides all other considerations. Where there is a shortfall, "favourable" consideration should be given to housing proposals but other material considerations still have to be assessed and weighed in the balance. One obviously relevant factor is the extent of the shortfall. In Forest Heath the available supply of 3.6 years (from a base date of 31 March 2011) is still able to meet the annual rate of provision (as derived from the overall requirement) over the period up to November 2014²⁶⁶. Thus, housing can still be built, at the required rate, over at least the next 3 years, even if not a single extra housing permission were granted in the mean time.
- 5.2.10. Unlike some districts, the Council's supply comprises only sites that already have planning permission²⁶⁷ and there is no reliance on allocations that have yet to secure planning permission. There is also no reliance on urban capacity sites, or SHLAA sites, or windfall sites and the Council's supply can not be criticised as being suspect or over-optimistic. It is common ground that the identified supply is a 3.6 year supply²⁶⁸ and this represents over 70% of the 5 year requirement.
- 5.2.11. Strategic sites can be unwieldy in their response to short term land supply shortages. They take time to get underway, and once underway they cannot be readily turned off. The Appeal Proposals are expected by the Appellant to contribute no more than 200 dwellings (out of the total of 1,200) as a "best case" in the 5 year period to 2015/16²⁶⁹. That assumes 40 dwellings are achieved in 2013/14, 80 dwellings in 2014/15, and 80 dwellings in 2015/16²⁷⁰. For this to happen, the land would need to be sold, the reserved matters approvals obtained, and the various pre-commencement and pre-occupation conditions satisfactorily discharged in the period between the grant of planning permission (possibly in early 2012) and the summer of 2013. Whilst this is not an impossible timescale it is certainly a tight one, and the expected contribution from the Appeal Site could therefore be less than 200 dwellings. The Inquiry heard scepticism on

²⁶⁵ FH/MS/P, para 4.18.

²⁶⁶ 3.6 years equates to just over 43 months, and if Month 1 is April 2011, Month 43 will be October 2014.

²⁶⁷ CD44, para 2.9.

²⁶⁸ ED/RMS/R, para 2.1.

²⁶⁹ ED/RMS/R para 2.2; Sellwood in XX.

²⁷⁰ Sellwood in XX to CB.

this point from the planning witnesses for Tattersalls and SHNL, both of whom have development experience.

- 5.2.12. Even accepting the best case of 200 dwellings by 31 March 2016, the build rate of 80 units per annum would suggest that, in any 2 year period, no more than 160 dwellings would be provided. The Council expects its Single Issue Review of the Core Strategy to be adopted by December 2013. If in that process the Appeal Site was identified as a strategic location for housing growth, it would be reasonable to expect completions on the site to come on stream in 2015/16²⁷¹, about 2 years later than under the Appeal Proposals.
- 5.2.13. Provided that the Appellant undertook careful and thorough assessment work, complementing the Strategic Environmental Assessment work that will be needed to underpin the Single Issue Review, there is no reason why the need for EIA should delay this process. Thus, the difference in the short term housing supply between settling the future of the site (and the longer term strategy for the growth of Newmarket) in the context of this Appeal, or via the Single Issue Review, would be about 160 dwellings. Those dwellings would simply be delayed and not lost if the Appellant is correct that the Appeal Site is the inevitable location for housing growth, and the proper plan-led system would have been followed. As the Appellant's planning witness conceded, that delay "has to be seen in the context of the long term and irreversible nature of the decision" ²⁷².
- 5.2.14. Stripped to its essentials, the Appellant is asking for the future of this 67 ha site, and the 1,200 dwellings it will provide, to be settled now, outside of the plan-led system, for the sake of about 160 dwellings. Given that the 160 units represent only some 13% of the total residential development, to say nothing of the employment floor space and the associated ancillary development, this is a wholly disproportionate weighing of short term benefits against longer term objectives. It is the antithesis of sustainable development to allow the short term need to remedy the shortfall in the housing land supply to 2016 to be used as the decisive factor to settle the future of a site that would then carry on being built out over the next 20 years.

Single Issue Review

- 5.2.15. Even this number of 160 units somewhat exaggerates the position. Waiting for the outcome of the Single Issue Review, which has already started, would no doubt delay the delivery of dwellings on large strategic sites because of the likely substantial pre-commencement works and matters to be resolved, but once the review was completed, smaller sites could be expected to deliver completions within 12 months from the adoption of the Review²⁷³.
- 5.2.16. There can be no argument about the programme for the Single Issue Review. The Council has set aside a period of 30 months (from July 2011) to complete the Single Issue Review²⁷⁴. The programme allows 20 months

²⁷¹ Ms Smith in evidence in chief.

²⁷² Sellwood in XX to MB

²⁷³ Ms Smith, evidence in chief.

²⁷⁴ FH/MS/R, Appendix C (Option B) to LDF Working Group report of 20 June 2011.

before the Single Issue Review would be submitted to the Secretary of State in April 2013. That time allows lengthy periods to update the evidence base, and to undertake successive rounds of public consultation covering the Regulation 25 and Regulation 27 stages. The Single Issue Review is not a full review of the Core Strategy but is only focused on the issues of housing provision and housing distribution, so necessarily it will have a tighter focus. The previous timetable for the production of the Core Strategy is an unreliable guide to the time needed to carry out a Single Issue Review. Not only is the scope very different, but the earlier Core Strategy suffered from changes, and absences, of personnel²⁷⁵. The Council's Planning Witness explained that after she joined the Council the Core Strategy was adopted a month ahead of the revised timetable²⁷⁶. The proposed Single Issue Review timetable has generous provision for uncertainties and no specific criticism was levelled at it during the Inquiry. It can therefore be considered a reliable prediction of adoption by December 2013.

- 5.2.17. The Appellant's argument that the site would inevitably be chosen for development is simply not supported by the available evidence. It also involves the arrogant assumption that without going through a proper process of plan-preparation, public engagement, and consideration of reasonable alternatives, the inevitable outcome of that process can be confidently predicted to such an extent that it is not necessary to allow this process to take place.

5.3. The History of the Proposals

- 5.3.1. The history of the proposals is relevant because that sheds light on the magnitude of the decision that the Appellant is now asking the Secretary of State to make.
- 5.3.2. The adopted Local Plan had a very different vision for the future of Newmarket to that which would follow from allowing the Appeal. Newmarket was expected to experience only modest growth, in recognition of its constraints, and the strategy adopted was to deflect much of Newmarket's growth to the expanded settlement of Red Lodge²⁷⁷. Whilst the Appellant's Planning Witness sought to paint this as an *"alien philosophy"* compared to current concepts of sustainability, on further consideration of the contents of the Local Plan²⁷⁸ and the fact that it had undergone independent scrutiny through the local plan process, he recognised that *"the fair conclusion is that the Local Plan's strategy was objectively assessed as one way of achieving the aims of sustainable development, at that time"*²⁷⁹.
- 5.3.3. The spatial strategy of the adopted Local Plan derived from the recognition of the constraints that affected Newmarket, and resulted in the largest settlement in the District accommodating only a modest level of growth. A fundamental change to that strategy, altering the balance between the constraints and the level of growth and increasing Newmarket's share

²⁷⁵ M Smith in XX to JK

²⁷⁶ M Smith in XX to JK

²⁷⁷ CD26, paras 2.9-2.11, para 3.17.

²⁷⁸ In particular, paras 2.8, 3.3, and 3.4. NB para 2.8 uses the same definition of sustainable development as is now found in PPS1.

²⁷⁹ In XX to MB

relative to the rest of the District, is exactly the type of strategic decision that should be addressed through the development plan process.

- 5.3.4. This is what was intended through the preparation of the Core Strategy. Under the Local Plan the new housing allocations were distributed so that only about 12% were to be accommodated at Newmarket²⁸⁰. Under the Core Strategy, in its final iteration prior to the intervention of the High Court, Newmarket was to accommodate over 20% of the new housing allocations²⁸¹. This was a marked change in the spatial distribution which the Council set about introducing through the DPD process, so allowing all those interested in the appropriate levels of growth for Newmarket and those interested in the levels of growth elsewhere in the District to participate fully in the decisions.
- 5.3.5. Arithmetically, even under the Core Strategy's proposed distribution, Newmarket would still accommodate less of the District's growth than would follow from a simple distribution based on population size. Whilst this reflected Newmarket's sensitivities and constraints, the sustainable distribution of growth calls for rather more sophisticated consideration than just simply comparing with the population levels. A full evaluation of the alternative options is required and this was the issue on which the High Court found the Core Strategy to fall down. Thus, the Core Strategy embarked on a marked change in the previously adopted strategy, but then failed to complete that process in terms of providing a sound alternative spatial distribution.
- 5.3.6. The Appellant's original approach was to promote the site through the plan-making process. As part of that process, the Appellant argued that what is now the Appeal Site should be treated as a "*strategic site*" for the purposes of the advice in PPS12²⁸². The Appellant's Planning Witness frankly argued in both his case then and his case now, that the Core Strategy's approach could not realistically be delivered without Hatchfield Farm²⁸³. However, as is manifestly apparent from this appeal and the subsequent Inquiry, the Appellant does not want to put that proposition to the test by going through the Single Issue Review.
- 5.3.7. When the Appellant decided to submit the Appeal Application, at an advanced stage of the Core Strategy preparation process, it was made explicit that this was not intended to pre-empt the DPD process²⁸⁴. The adopted Core Strategy (as amended by the High Court) does not, of course, provide the endorsement of the Appeal Site that the Appellant had expected and yet he considers there to be no need to await the Single Issue Review to complete the process.
- 5.3.8. The Appellant's witness frankly conceded that, by not persevering with the plan-making promotion of the site, and arguing instead for immediate release via this appeal, "*it side steps the DPD process*" and that "*the grant of permission will clearly pre-empt that process by predetermining in*

²⁸⁰ CD26, pp30-32, Newmarket allocations were 4 ha out of a total of 28.6ha.

²⁸¹ CD40, Policy CS7 in its unamended form, Newmarket allocations were 1640 units out of a total of 7970 new allocations.

²⁸² FH/3 and FH/4.

²⁸³ Sellwood in XX to MB

²⁸⁴ CD99, letter of 30 November 2009, pp8-9.

*advance that Newmarket is to have an urban extension of the scale of Hatchfield Farm*²⁸⁵.

- 5.3.9. The rationale for this remarkable volte face is essentially that there is no need to wait for the DPD process to settle the spatial strategy because, in the Appellant's view, the outcome is already known. As the witness said, after conceding that he was side-stepping the plan-led system, *"I would have a different view if there was a range of competitor sites in Newmarket"*²⁸⁶. This answer illuminates, quite graphically, the erroneous assumption that the only issue outstanding for the DPD process is how to accommodate a set level of growth at Newmarket. The deficiencies of this approach are best addressed in the context of the need to consider reasonable alternatives.

5.4. The Need to Consider Reasonable Alternatives

Sustainability

- 5.4.1. The Appellant claimed that the Appeal Proposals represented sustainable development (indeed, at times the claim was that the proposal was *"very sustainable"*²⁸⁷ or *"highly sustainable"*²⁸⁸ or even *"the most sustainable location"*²⁸⁹). However, given the scale of what is proposed, and the planning history of both the site and the DPD process, that claim could only be made good if the site was included in a development plan that had successfully undergone Strategic Environmental Assessment ("SEA").
- 5.4.2. The Planning System: General Principles, Sustainability Appraisal says that SEA *"is intended to test the performance of a plan against the objectives of sustainable development"*²⁹⁰. SA/SEA is therefore a tool to tell us whether the proposals in a plan amount to sustainable development and PPS12 reinforces that message with its advice that SA/SEA provides a *"powerful means of proving to decision makers and the public that the plan is the most appropriate given reasonable alternatives"*²⁹¹.
- 5.4.3. The SA/SEA process is a specific feature of the DPD system and this means that that system is particularly equipped to address the question of whether the options being promoted are the most appropriate within a range of reasonable alternatives. The Appellant's Planning Witness recognised the limits of an appeal inquiry, in comparison to the DPD process: *"It should also be recalled that this is not an Inquiry into an emerging Core Strategy where a distribution of development will be tested for its soundness"*²⁹². He also accepted that *"this Inquiry is not equipped to grapple with how to divide the cake"*. In other words, the appeal process could not set the requirement or set out a distribution pattern, and nor could it consider the respective merits of different options and identify which was the most appropriate.

²⁸⁵ In XX to MB

²⁸⁶ In XX to MB

²⁸⁷ ED1, para 13.

²⁸⁸ ED/RMS/P, para 7.8.6.

²⁸⁹ ED1, para 19.

²⁹⁰ CD134, para 8.

²⁹¹ PPS12, para 4.43

²⁹² ED/RMS/P, para 7.6.38.

Development Distribution

- 5.4.4. To overcome the problem, the Appellant's Witness argued, that there was no real room for manoeuvre on the requirement, that there was really only one plausible distribution pattern, and also that the scale of development at Newmarket would inevitably need the development of the site, broadly as in the Appeal Proposals. However, these arguments each lacked substance when looked at in the light of all the evidence at the Inquiry.

Housing Need and the Plan Period

- 5.4.5. The total overall dwelling requirement is a function of both the needs to be addressed and the chosen plan period. For the time being, the level of housing need for the period to 2021 remains as set in the East of England Plan (EEP), with an expectation that the same annual rate will be provided thereafter for a period at least 15 years after the adoption of the relevant DPD²⁹³. This is expressed as a minimum provision and (as matters stand) the Single Issue Review will need to be in general conformity with the EEP. Whether that position will change before the Single Issue Review completes its process to adoption, in view of the reforms being advanced in the Localism Bill, is not a matter the Council relied on. The Court of Appeal judgment in Cala No.2²⁹⁴ would suggest that in a plan-making exercise, an authority should not anticipate a world where the general conformity requirement might not apply. Whilst the Secretary of State may speculate on this matter when making the decision in this case, the Council did not do so²⁹⁵. The current regional tier of the Development Plan therefore requires the provision of 370 dwellings per annum up to 2021 and for at least 15 years from the date of adoption of the relevant DPD. In terms of the Core Strategy (adopted in May 2010), general conformity with the EEP would be achieved by a plan period ending in 2026 or any period thereafter.
- 5.4.6. However, the chosen plan period for the Single Issue Review is a matter for the Council's decision. The previous plan period for housing in the adopted Core Strategy (to 2031) was set by reference to an expected review of the EEP which, in the event, is not proceeding²⁹⁶. There is therefore no logic in continuing with it as a plan period. There is no national policy or development plan requirement to produce a plan extending to 2031. A period of 17 years from an expected adoption date of 2013/14 has no special value. The main plan period for the rest of the Core Strategy runs only to 2026. This is also so for the employment provision (Policy CS6). The retail provision has a shorter time frame to 2021 (Policy CS11). PPS3 expects housing provision to cover a period for 15 years from adoption of the DPD and the EEP takes the same approach. With a planned adoption date for the Single Issue Review of December 2013, this would allow the housing provision period to be reduced from 2031 to 2029. This two year reduction would reduce the requirement by 740 dwellings (at an annual rate of 370 dwellings). In the context of a constrained District, where most

²⁹³ CD31, Policy H1.

²⁹⁴ CD139.

²⁹⁵ The Council reserves the right to make further representations to the Secretary of State in the event that the Localism Bill secures Royal Assent and/or a SEA is completed for the abolition of the EEP.

²⁹⁶ FH/MS/R, Appendix A, report LDF11/079 Addendum 20 June 2011, para 4.

options are likely to have some disadvantages, there may be merits in not making more provision at any one time than is strictly necessary.

- 5.4.7. This would not be a recipe for avoiding difficult decisions but simply a sensible recognition that circumstances do change, particularly in relation to living and working patterns, and opportunities do become available which may not be contemplated today. For example, looking back 15 years from today (to 1996), would we have anticipated the role of the internet or mobile phones in today's working, shopping, and leisure activities? This change in the way people are able to conduct everyday activities has had a variety of land use consequences, from the growth of home working to the proliferation of new forms of e-tailing. Would we have foreseen in 1996 that a typical first time buyer today would be well into their 30s? Would we have considered in 1996 that petrol filling stations might become viable housing sites? Realistically, these matters would not have been in contemplation then and we have no idea what might come to the fore more than 15 years on. Matters we take for granted today in terms of the way that people need or use accommodation may become entirely redundant. Hence, it would be quite appropriate for the Council to consider the reduction of the plan period as one of the options to be explored in the Single Issue Review. This one change alone would have a material impact on the scale of housing provision required.

Sustainable Distribution

- 5.4.8. Without assessment, it would be irrational to suppose that the most sustainable distribution pattern for a housing requirement which would be over 10% less than the previous requirement (6,603 instead of 7,343 if 740 dwellings are removed from the residual requirement) would necessarily remain unchanged. The balancing of factors that would inform an assessment of a sustainable development pattern, including the extent of the need to use greenfield land beyond any present settlement limits, would necessarily be affected by the scale of the requirement to be met. That irrationality becomes even greater once it is recognised that there are real and legitimate concerns about the ability of Newmarket's horseracing industry to accommodate the previously identified level of growth without undue detriment.
- 5.4.9. Even if the plan period remains unchanged, and the housing requirement continues at its current level of 10,100 dwellings to 2031 (with the residual requirement of 7,343), it is untenable to contend that the previous pattern is bound to be replicated when the distribution is reassessed. This Inquiry was simply not equipped with the necessary evidential material to support such a conclusion.
- 5.4.10. In the first place, it is not appropriate to rely on the evidence base that was produced to support the original distribution, as set out in the Core Strategy. The High Court found serious flaws in the SEA of the Core Strategy, in particular with regard to that distribution and the choice then made to allocate so much of the development to north-east Newmarket. These flaws were sufficient to amount to non-compliance with the SEA Directive. The acceptability of the housing distribution in the Core Strategy cannot be divorced from the need, pursuant to the SEA Directive, to consider reasonable alternatives because the distribution is the result of the spatial choices made in the light of the assessment of alternatives

undertaken by the Council in the preparation of the Core Strategy. That is the process that should have been explained and consulted on as part of the SEA. A key aspect of SEA is to provide a means of demonstrating, in a transparent manner, that the relevant DPD's proposals are the most appropriate compared to reasonable alternatives.

- 5.4.11. With the High Court ruling that the SEA was flawed, this necessarily affected the validity of the distribution. As Mr Justice Collins found: *"It was not possible for the consultees to know from it [i.e. the final SEA environmental report] what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development [at north-east Newmarket] made no difference."*²⁹⁷ The result of this defect was that Mr Justice Collins then quashed the distribution in the Core Strategy, not only in relation to north-east Newmarket but across the District as a whole.
- 5.4.12. The Appellant sought to argue that it was possible to resurrect the distribution in the Core Strategy, at least in so far as it relates to a 1,200 dwelling greenfield release at Newmarket, by simply revisiting the evidence base and regurgitating its main elements. This seeks to side-step the High Court decision. The High Court found that a DPD promoting a major release of housing land was deficient because of the failure of the SEA to adequately address reasonable alternatives to that release. It would be a remarkable response if the appropriate answer of the planning system was not to undertake a proper SEA of a revised DPD to remedy the previous error, but instead to simply do away with the need for a DPD to support the release and simply grant planning permission for the same scale of development in the same location on an ad-hoc basis.
- 5.4.13. In any event, the evidence base alone is not sufficient to demonstrate that the most sustainable pattern of development would have to include some 1,200 dwellings at north-east Newmarket. The strands that the Appellant relied on²⁹⁸ were the Parish Profile,²⁹⁹ the IECA study,³⁰⁰ and the SHLAA.³⁰¹

Parish Profile

- 5.4.14. The Parish Profile does no more than suggest that the three market towns are the most sustainable settlements in the District in view of their accessibility and range of facilities. This does not assist in identifying how much of the overall housing requirement should be distributed to the three market towns, or how that proportion should be divided between them.

Infrastructure and Environmental Capacity Appraisal (IECA)

- 5.4.15. The IECA study identifies a range for the upper limit of the capacity that could potentially be accommodated at each of those market towns, and the previous distribution of the Core Strategy sat below those upper limits. However, it is quite clear from the breadth of those limits that other distribution patterns between those settlements would also fit within their

²⁹⁷ CD42(i), para 40.

²⁹⁸ ED/RMS/P, para 5.3.3.

²⁹⁹ CD97

³⁰⁰ CD33

³⁰¹ CD45

identified environmental capacity³⁰². The same is also true for the next tier of settlements, including the Key Service Centre of Lakenheath³⁰³.

- 5.4.16. Thus, the IECA study does not provide a basis for suggesting that the only possible distribution is that in the Core Strategy. Furthermore, the data in the IECA study (published in May 2009) is part of the evidence base that will be reviewed in the preparation of the Single Issue Review, particularly to identify any changes to the infrastructure capacity since 2009³⁰⁴. This update could therefore alter the upper limits of the settlements in the IECA study.

Strategic Housing Land Availability Assessment (SHLAA)

- 5.4.17. The current SHLAA post-dates the adoption of the Core Strategy and includes new material on sites compared to that which was considered when the Core Strategy was produced. This new material includes the removal of some sites that were previously relied on and the addition of other new sites not previously identified³⁰⁵.
- 5.4.18. The current SHLAA assesses the sites against the “*suitable, available, achievable*” criteria of PPS3. Table 5 of the SHLAA presents the results in terms of the sites that are expected to be achievable within a 15 year period (and so would fall within the plan period of the Single Issue Review). The overall capacity in Table 5 is 8,058 dwellings, of which 1,200 are anticipated from Site FHDC/N/14 (which in effect is the Appeal Site). Thus the net SHLAA capacity, excluding the appeal site, is 6,858 dwellings against the residual housing requirement (assuming a plan period continuing to 2031) is 7,343 (to 2031) or 6,603 if the plan period is reduced to 2029. There is therefore a broad correlation between the overall capacity revealed by the current SHLAA (without reliance on the Appeal Site) and the residual housing requirement. Depending on the plan period that is ultimately selected there is either a slight surplus of about 250 dwellings or a modest shortfall of about 500 dwellings. Neither is a position that would require a release of a site for 1,200 dwellings.
- 5.4.19. In addition it should be noted that the SHLAA capacity exercise limits its expected yield by reference to both site assessment and the size of settlement (as explained in Table 3) so is a cautious assessment of the potential yield that might be achievable³⁰⁶. The SHLAA capacity also excludes over 100 sites, where there were reasons for deferring the sites beyond the 15 year period³⁰⁷. These reasons relate to constraints, some of which may be surmountable within the 15 year period. In that case, they could be added to the pool of potentially available sites. This is particularly the case in relation to the larger sites at Mildenhall and Brandon that were

³⁰² CD33, p11, Mildenhall upper limit of 3,340-5,860 (compared to CS7 provision of 1330); Brandon upper limit of 630-1000 (compared to CS7 provision of 790 excluding relief road); Newmarket upper limit of 1740-3050 (compared to CS7 provision of 1640).

³⁰³ CD33, p11, Lakenheath upper limit of 2,660-4,660 (compared to CS7 provision of 670).

³⁰⁴ FH/MS/R, para 3.5.

³⁰⁵ CD45, pp4-5; FH/MS/P, para 4.4.

³⁰⁶ CD45, pp9-10, as an illustration of the effect that the capacity limit by site assessment and settlement size has reduced the potential capacity, the estimated capacity in Table 4 is 8,065, whereas at 20 dpha the capacity would be 10,332, and at 30 dpha the capacity would be 15,498. For Newmarket itself, the estimated capacity of the greenfield sites in Table 4 is 1,336 dwellings, whereas at 30 dpha the capacity would be 2,239.

³⁰⁷ CD45, p7, Table 2; pp18-21, Appendix 3.

deferred on nature conservation grounds and where further work on mitigation (that is already in hand)³⁰⁸ may allow a review (and reduction) of the SPA buffer zones³⁰⁹. Thus, the SHLAA capacity could in fact be greater than currently identified.

- 5.4.20. Of course, it would not be realistic to plan on the basis that every single SHLAA site will come forward³¹⁰ and it is therefore likely that other sites and opportunities will need to be considered if the housing requirement remains unchanged. However, the scale of what may be required, in addition to the capacity that can be realistically expected from the SHLAA sites, is a matter that will require further detailed assessment, in terms of both the requirement and the options for satisfying that requirement. Because this will involve looking at needs and the circumstances and development potential of a wide range of sites across the District as a whole over a 15 year period, it is pre-eminently a task suited to the Single Issue Review, both because that process will enable a comparative assessment to be undertaken and because that process will involve full consultation and community engagement.

Single Issue Review

- 5.4.21. The Appellant's Planning Witness also sought to argue that the outcome of the Single Issue Review *"will again lead to north-east Newmarket/Hatchfield Farm being identified as a mixed use urban extension"*³¹¹. However, his evidence on this contains two distinct flaws.
- 5.4.22. Firstly, the highest he could put his case, even on his own terms, was that the current evidence base would suggest that a *"significant proportion"* of the required housing will need to be accommodated at Newmarket³¹². Even if this was assumed to be correct, it would not lead to the conclusion that the amount involved would necessarily be 1,200 dwellings, or any amount of similar magnitude. Given the sensitivities of Newmarket to growth (particularly because of the implications for the horseracing industry) it is not good enough to simply claim that a major share of the required housing will need to be located at Newmarket. If permission is to be granted for 1,200 dwellings it is necessary to have a clear evidence base showing that that scale of development is required and that this is the only realistic location to accommodate all of that development. The evidence does not show this. The only document that directly supports the provision of 1,200 dwellings in this location (and even then as a broad location rather than specifically at the Appeal Site) is the Core Strategy prior to the intervention of the High Court, but that document has been found to be legally flawed.
- 5.4.23. Secondly, the Appellant's approach is mistaken in the belief that in order to address the fact that the Core Strategy has been found to have failed to properly consider reasonable alternatives to north-east Newmarket, it was only necessary to look at alternative sites for accommodating development at Newmarket³¹³.

³⁰⁸ Ms Smith in evidence in chief.

³⁰⁹ Ms Smith in evidence in chief and in XX to JK.

³¹⁰ FH/MS/P, para 4.10.

³¹¹ ED/RMS/P, para 2.2.8.

³¹² ED/RMS/P, paras 5.4.1 and 5.5.2; ED/RMS/R, para 4.2.

³¹³ ED/RMS/P, section 5.4.0.

- 5.4.24. In the original Environmental Statement that supported the application, alternative sites were not addressed at all because reliance was placed on the work that informed the Core Strategy and its identification of north-east Newmarket as a location for an urban extension³¹⁴. In the wake of the High Court decision, the Appellant recognised that more needed to be done on the question of alternative sites because the Core Strategy could no longer be relied on to validate the choice of the site location. The ES Addendum sets out the results of this further work³¹⁵. However, it is clear from the Addendum that there was in reality no more than a superficial consideration of options outside Newmarket. No specific sites were considered because the view was taken that the other settlements were more constrained than Newmarket. Thus, the only alternative sites that were considered were areas of land on the outskirts of Newmarket. The Appellant's evidence takes the same superficial approach to constraints at the other settlements³¹⁶. This was an inadequate assessment of the potential sites in and around the other two market towns and the two key service centres to accommodate a greater level of development than had been set out in the Core Strategy. That potential will be properly looked at as part of the Single Issue Review.
- 5.4.25. The Council's Planning Witness made it clear in her evidence that the three market towns are the most sustainable settlements in the District, and accordingly that the bulk of the development would be focused there and at the key service centres³¹⁷. She accepted that Newmarket is the most sustainable settlement in the District and had the most facilities³¹⁸. It would be reasonable to conclude from this that Newmarket will inevitably need to accommodate some of the growth and that, given the limited amounts of brownfield land that is not safeguarded for horseracing industry use, that is likely to involve some greenfield land being released. However, it is not reasonable to conclude from this that therefore it will be necessary to release any, most, or all, of this particular 67 hectare site over whatever plan period is selected to meet the housing requirements.
- 5.4.26. The proper way to assess whether, and the extent to which, there may be any need to release any part of the Hatchfield Farm to meet those needs over the longer term is via the Single Issue Review. This will have to involve SEA as a matter of legal obligation and a proper consideration of reasonable alternatives. Nothing that has happened to date, either in the preparation of the Core Strategy or in the evidence presented to this Inquiry, could be considered an effective substitute for that. Only by carrying out that SEA exercise will the flawed process involved in the production of the Core Strategy be adequately and properly corrected.

5.5. Relationship with the Development Plan

- 5.5.1. At the time of the Inquiry, the Development Plan comprised the East of England Plan (EEP),³¹⁹ the Core Strategy (CS),³²⁰ and the saved Policies of the adopted Forest Heath Local Plan (LP)³²¹.

³¹⁴ CD104, Vol.1, section 4, p4-1, paras 4.3.1-4.3.7.

³¹⁵ CD104A, section 2.2, p2-3, paras 2.2.13-2.2.19.

³¹⁶ ED/RMS/P, paras 5.3.7-5.3.8.

³¹⁷ M Smith in XX to JK.

³¹⁸ M Smith in XX to JK.

³¹⁹ CD31

³²⁰ CD40 but as revised by the High Court.

East of England Plan

- 5.5.2. As noted in Policy SS1, the main aim of the EEP is to bring about sustainable development and higher growth is expected to be achieved in *"sustainable ways"*³²². Policy SS4 is applicable to Newmarket and it seeks to secure *"appropriate amounts of new housing"*. The housing provision of Policy H1 is a district-wide requirement. Unsurprisingly, the EEP seeks a balance between meeting needs and respecting environmental and other constraints. It does not set an imperative to provide the required growth in unsustainable ways. In the context of the present appeal, the development of Hatchfield Farm can only claim support from the EEP if it constitutes sustainable development, and given its scale, that depends on whether it is the most appropriate option having regard to reasonable alternatives. Since that judgment cannot be formed on the material available to this Inquiry the proposal cannot claim support from the EEP.

Forest Heath Core Strategy

- 5.5.3. The Core Strategy provides no locational support for the Appeal Proposals. This is in marked contrast to the position when the Core Strategy was in preparation (and at its adoption) and to the position when the Appeal Application was initially submitted for determination. At those earlier stages the Core Strategy had given express support to the broad location of north-east Newmarket for development on the scale of the Appeal Proposals. That was obviously a material factor in favour of the proposals, having regard to the terms of Section 38(6) of the Planning & Compulsory Purchase Act 2004. The Appellant sought to argue that the removal of this Development Plan support, by order of the High Court, was a mere detail and that the Core Strategy could still be seen to endorse the Proposals. This was wishful thinking and in essence sought to subvert the effect of the judgment.
- 5.5.4. The Appellant drew attention³²³ to the overall spatial strategy's supporting text that the *"highest proportion of new development should be directed to the three market towns followed by the key service centres"*³²⁴ as if that would assist in determining the proportion to be accommodated at Newmarket or, more specifically, at the Appeal Site. Plainly, it does not and it cannot be read as an indirect endorsement of north-east Newmarket that somehow survived the pruning of the High Court.
- 5.5.5. The Appellant also drew attention to the retail³²⁵ and employment³²⁶ provision that remains in the Core Strategy to support an argument that substantial housing development is required at Newmarket or the settlement will experience unsustainable growth³²⁷. Indeed, in his evidence in chief the Appellant's Planning Witness claimed that unless there was *"a commensurate amount of housing there will be an imbalance"*. His rebuttal

³²¹ CD26

³²² CD31, para 3.3.

³²³ ED/RMS/P, para 6.5.5.

³²⁴ CD40, para 2.5.9.

³²⁵ CD40, Policy CS11 proposes 17,200 sq. m of additional retail floorspace to 2011, of which 15,000 sq. m is to be at Newmarket.

³²⁶ CD40, Policy CS6 proposes 16 hectares of additional employment land to 2026, of which approximately 5 hectares are to be at Newmarket.

³²⁷ ED/RMS/P, para 6.5.11 and Mr Sellwood's evidence in chief which extended the claimed *"imbalance"* to include the 15,000 sq.m retail provision.

evidence described the absence of a significant urban extension to accompany the 5 ha of employment provision as *“an unsustainable misalignment”* and that if this was proposed the Single Issue Review *“would not be found sound by an Inspector”*³²⁸. However, when the evidence is examined this argument falls.

- 5.5.6. In relation to employment provision, it was accepted that the relationship between housing and employment is *“not a precise science”*³²⁹. The derivation of the 5 ha for Newmarket in Policy CS6 illustrates this.
- 5.5.7. The evidence base for the employment provision in the Core Strategy is the West Suffolk Employment Land Review (WSELR)³³⁰. In the Proposed Submission version of the Core Strategy (March 2009) it was proposed that there should be 1,200 dwellings at north-east Newmarket and 11 ha of new employment land at Newmarket³³¹. It was then realised that the Council had misinterpreted the ELR and the 11 ha was reduced to 5 ha, without any change in the level of housing provision³³². In addition, the Appellant’s own proposals are for some 10 ha of employment land and yet it is not suggested that this requires a doubling of the housing provision to retain some kind of balance. It can also be noted that the application was amended after its submission to increase the B1 floorspace from 27,000 m² to 36,000 m², again without any change in the amount of dwellings being proposed³³³.
- 5.5.8. Similarly, in relation to the retail provision, the Core Strategy proposals derive from a 2006 retail study³³⁴ at a time when the overall housing provision was 5,431 dwellings (with 500 in an urban extension at Newmarket)³³⁵. Since then, the urban extension was increased to 1,000 dwellings³³⁶ and then to 1,200 dwellings, but no material change was made to the retail provision (other than rounding up).
- 5.5.9. Whilst the employment and retail provision of the Core Strategy might support an argument for some additional housing provision to be made at Newmarket, there is no credible basis for asserting that these elements require the provision of 1,200 dwellings in order to ensure a sustainable pattern of development. Possibly in recognition that he could not substantiate his claims the Appellant’s Planning Witness withdrew the contention in his rebuttal that the Single Issue Review would not be found sound without a significant allocation at Newmarket³³⁷.

³²⁸ ED/RMS/R, para 6.5.

³²⁹ Sellwood in XX to MB.

³³⁰ CD50.

³³¹ CD39, Policy CS1, p35.

³³² ED/RMS/R, Appendix 2, Topic Paper 2: “Employment”, para 41. Whilst a broad ratio between new housing and new employment was envisaged, as explained at paras 36 and 37 of the same document, the distribution (para 38) was very broad brush (taking the 3 market towns together rather than as individual settlements). Also when the distribution is looked at on a settlement by settlement basis it is clear that there is no direct correlation between housing and employment. For example, by comparing Policies CS6 and CS7 (as adopted), Mildenhall was proposed to accommodate 950 dwellings to 2025 and provide 4.5 ha of employment land to 2026 (a ratio of 1 ha of employment land to about 200 dwellings) whereas Brandon was proposed to accommodate 640 dwellings to 2 ha of employment land (a ratio of 1 ha of employment land to over 300 dwellings).

³³³ ED/RMS/P, paras 4.2.7 and 4.2.11.

³³⁴ CD36, p29, para 3.3.36..

³³⁵ CD36, Preferred Policy 22, p36

³³⁶ CD38, Final Policy Option CS7, p64, and Final Policy Option CS9, p69.

³³⁷ Sellwood in XX to MB.

- 5.5.10. Two parts of the Core Strategy that do have particular relevance for the appeal are Policies CS1 and CS13. Policy CS1 specifically requires the horseracing industry (HRI) to be *“protected and conserved throughout the plan period”* and promotes the role of Newmarket as *“the living heart of British horseracing”*. Policy CS13 also requires new development to *“demonstrate”* that it will not harm a number of features in the District, including accessibility to jobs and the well-being of its communities. Given the importance of the HRI to Newmarket, both as a source of local employment and because of its contribution to its character and heritage, it is clear therefore that Policy CS13 requires an absence of harm to the HRI to be demonstrated before development proposals can claim to be in accordance with the Core Strategy. It will be noted that the Appellant’s witness conceded: *“I agree, if there is a material impact on the HRI, it (i.e. the appeal) should not be approved”*.³³⁸

Forest Heath Local Plan

- 5.5.11. The remaining element of the Development Plan is the saved policies of the Local Plan. It was accepted on behalf of the Appellant that this was the only part of the Development Plan that was *“locationally specific”*³³⁹. Its extant policies make it clear that the Appeal Site *“is presently countryside and part of the Rural Area under Policy 9.1”*³⁴⁰. The Appellant argued firstly that the policy designation of the site as countryside was out of date³⁴¹ and, secondly that there was a *“justification”* which meant that, in any event, the Appeal Proposals complied with the policy³⁴².
- 5.5.12. The identification of land as countryside and safeguarding it accordingly remains an objective of national policy, as set out in Policy EC6.1 of PPS4³⁴³. Paragraph 2.5.12 of the Core Strategy³⁴⁴ says that all land in the District outside development boundaries *“is classified as countryside.”* The development boundaries relied on by the Core Strategy (both generally to delineate the countryside and specifically at Figure 3) are those shown on the Proposals Map that accompanied the adopted Local Plan³⁴⁵. Thus the most up to date element of the Development Plan continues to rely on the development boundaries of the Local Plan and the consequent identification of the Appeal Site as part of the countryside.
- 5.5.13. The Appellant suggested that because there will need to be some greenfield releases to accommodate the housing requirement of the Core Strategy, it is inevitable that some land which is presently designated as countryside will have to be developed for housing. This may be correct at a district-wide level, but the general proposition was then relied on to claim that the specific designation of the Appeal Site as countryside should be seen to be out of date. This further step begs the question of what will be the outcome of the Single Issue Review, and its assessment of reasonable alternatives. To treat the saved policy designation in the Local Plan of all of the

³³⁸ Sellwood in XX to SB.

³³⁹ Sellwood in XX to MB.

³⁴⁰ Sellwood in XX to MB.

³⁴¹ ED/RMS/P, para 7.6.24(b).

³⁴² ED/RMS/P, para 7.6.24(c).

³⁴³ CD4.

³⁴⁴ CD40.

³⁴⁵ As explained by M Smith in FH/MS/R, paras 2.9 to 2.16.

countryside in the District as being out of date just because some elements of it may need to be released to accommodate development needs is an obvious non-sequitur. One of the factors that will need to be considered in the identification of any potential sites for release will be the role of those sites as countryside and their relationship to the existing settlement edge. Until that exercise has been carried out, and carried out on a comparative basis between the alternative options, it is not possible to conclude that any individual site should not be retained as countryside.

- 5.5.14. On the second argument, that there is compliance with Policy 9.1 of the Local Plan, it was conceded on behalf of the Appellant that the *"justification"* referred to in the policy *"should be for development consistent with the policies for the Rural Areas"*³⁴⁶. A mixed use urban extension of 1,200 dwellings and associated development on an area of 67 ha cannot conceivably be regarded as a form of development that is consistent with the policy approach for the Rural Area. Necessarily, the nature and scale of the proposed development means that there is a conflict with Policy 9.1. Equally, given the urban form of the development, whatever the quality of the design that might ultimately be achieved, there would be an inevitable conflict with Local Plan Policy 9.2.

Assessment against Development Plan Policies

- 5.5.15. When the Appeal Proposals are assessed against the policies of the Development Plan, as required by Section 38(6) of the PCPA 2004, the conclusion must be that the grant of permission would not be in accordance with the Development Plan. The proposals are directly in conflict with the only policies of the Development Plan that are locationally specific. They make it clear that the site is designated as countryside, and is therefore restricted to appropriate forms of rural development. The other elements of the Development Plan, namely the East of England Plan and the Core Strategy, do not provide a basis for over-riding the countryside designation of the Appeal Site.

5.6. The Relationship with Current and Emerging National Policy

Current Policies

- 5.6.1. The principal current guidance which is relevant is contained in PPS1, PPS3, PPS4, PPS12, and The Planning System: General Principles.
- 5.6.2. **PPS1** emphasises the importance of sustainable development and says that development plans are a component part of the plan-led system, which is seen as providing *"the framework for planning for sustainable development"* and plays *"the key role in integrating sustainable development objectives"*³⁴⁷. PPS1 also emphasises the need for community involvement in that process. Obviously, not all development proposals need to come through the plan-led system in order to constitute sustainable development, but development of the present substantial scale, in the context of both the District and Newmarket, and in the particular circumstances relating to the quashing of the housing distribution in the Core Strategy, should, on any common sense view, do so. Otherwise, the plan-led system will have no

³⁴⁶ Sellwood in XX to MB.

³⁴⁷ CD1, PPS1, paras 7 and 8.

real role in resolving the distribution of new housing for Forest Heath in relation to its largest settlement and where past history has shown there are considerable constraints that need to be accommodated. The most contentious issue would have already been settled outside of that process.

- 5.6.3. **In PPS3** there are three key paragraphs to consider; paragraphs 69, 71, and 72. The operation of paragraph 71 is dependent on the outcome of the assessment of the factors highlighted in paragraph 69. In relation to three of those five factors, the Appeal Proposals cannot show compliance³⁴⁸. In the absence of a comparative assessment of the site against reasonable alternatives, the *"suitability"* and *"environmental sustainability"* of the site cannot be demonstrated. Similarly, without that exercise having been undertaken, it cannot be claimed that the use of so much greenfield land, 58 ha of which is best & most versatile agricultural land³⁴⁹, is an *"effective"* use of land. Nor, given the use of 67 ha of designated countryside, contrary to the only locationally specific part of the Development Plan and in the wake of the High Court decision, can it be claimed that the Proposals are *"in line with the spatial vision for the area"*.
- 5.6.4. Potentially, the development of the site can satisfy the other two factors in paragraph 69 of PPS3 (housing quality and housing mix) but there was no evidence that it would do so to a greater extent than any other urban extension. Policy CS9 of the Core Strategy requires most housing sites to provide 30% affordable housing. Thus, the Appeal Proposals can claim no special suitability in relation to these two factors.
- 5.6.5. Paragraph 72 of PPS3 is not applicable to the circumstances of this case. Whilst it refers to *"prematurity"*, this is not a reference to prematurity or prejudice to an emerging development plan. It is a reference to prematurity in the context of allocated sites which have been phased coming forward at an earlier time than planned. This is made clear by the terms of paragraph 70, and also ties in with (and to an extent updates) the last sentence of paragraph 17 of General Principles. The simple point is that where a site has already come through the plan-led system, so that it is an allocation and there is no issue about its suitability for development, then the mere fact that a planning application is made for its release ahead of time in terms of the planned land supply, is not a good enough reason for refusing planning permission without other objections. That is the context in which *"prematurity"* should not be a sole reason for refusal.
- 5.6.6. The Appellant's Planning Witness placed no particular reliance on the advice in paragraph 72 of PPS3 and considered that its advice was *"odd"*³⁵⁰. If it was intended to apply to prematurity to an emerging development plan, it would be more than odd. It would be quite arbitrary. There is no planning rationale for a prematurity objection to non-housing development but not to housing development, or to apply where it is coupled with a non-prematurity objection but not as an objection in its own right³⁵¹. In any event, the Council does have a separate non-prematurity objection in relation to the

³⁴⁸ FH/MS/P, paras 3.5 to 3.10.

³⁴⁹ Planning Statement of Common Ground, paras 5.23 to 5.25.

³⁵⁰ Sellwood in XX to MB.

³⁵¹ FH/MS/P, paras 3.15 to 3.17.

effect of the development on the HRI so, whatever paragraph 72 of PPS3 means, it does not apply in these circumstances.

- 5.6.7. **PPS4** does not apply to housing development, which is the main component of the Appeal Proposals³⁵². However, to the extent that the development includes economic development, paragraph 9 of PPS4 highlights that the Government's *"overarching objective is sustainable economic growth"* and this is then defined as *"Growth that can be sustained and is within environmental limits, but also enhances environmental and social well-being and avoids greater extremes in future economic cycles"*³⁵³. The economic development elements of the proposals were not being advanced as a stand alone facility but as part of the overall mixed use development. The sustainability of those elements therefore stands or falls with the sustainability of the development as a whole. As already discussed above, unless and until the development has been tested against reasonable alternatives it is not possible to assert that it represents sustainable development. Thus, the development (including the employment floor space) cannot claim support from the economic policies of PPS4. Indeed, to the extent that the proposals would cause detriment to the HRI, which is an important generator of existing economic activity, the proposals would serve to undermine the objectives of PPS4.
- 5.6.8. **PPS12**³⁵⁴ echoes the advice in PPS1 on the importance of spatial planning in securing the objectives of sustainable development. It also gives specific advice on the role of sustainability appraisal (including SEA) in the plan-making process. As noted above, it highlights the importance of evaluating alternatives in order to demonstrate that *"the plan is the most appropriate given reasonable alternatives"*³⁵⁵.
- 5.6.9. **General Principles** gives the current advice on prematurity. The Appellant's Planning Witness accepted that the Appeal Proposals fell within paragraph 17 of General Principles and that the grant of permission would be *"pre-empting"* the Single Issue Review in relation to the scale and location of housing development³⁵⁶. He argued that this would be partly justified because of the evidence base pointing to only one realistic conclusion, in part because of the immediate need to address the housing supply shortfall, and in part because of the delay that would result if the proposals were to await the outcome of the Single Issue Review. All of these points have been addressed above.
- 5.6.10. The fact that the Single Issue Review will take some time to produce is a function of the relevant legislative requirements that must be satisfied in order to produce a DPD, including the necessary stages of consultation and community involvement, and proper testing through the SEA process. These stages cannot be avoided or omitted. It can hardly be a ground of criticism that it will take the Council some time to complete those processes because they are a necessary requirement of any DPD. It has not been suggested that the Council could produce the Single Issue Review in a

³⁵² CD4, para 5.

³⁵³ CD4, footnote 7.

³⁵⁴ FH/4 has relevant extracts.

³⁵⁵ FH/4, para 4.43.

³⁵⁶ Sellwood in XX to MB.

shorter timescale than is proposed. The Council has to address the consequences of the High Court decision and is acting promptly to do so. The final High Court order was produced in April 2011³⁵⁷. Local elections (as required by other legislation) then followed in May 2011 and the Council then embarked on the process of authorising the preparation of the Single Issue Review in June 2011³⁵⁸. It is now progressing that Review in line with its published timetable.

- 5.6.11. The issue of prematurity is not an issue about whether a decision should be made in one forum or another simply as a matter of procedural nicety. There are two substantive reasons why, in this case, the appropriate forum for settling the future of the site should be via the plan-making process.
- 5.6.12. The first relates to the scale of the proposals and the need for the proposals to be properly tested against reasonable alternatives, as would be the case if they were considered in the context of the Single Issue Review and a legally compliant SEA.
- 5.6.13. The second relates to the need for community involvement in establishing the framework for the future growth of the District and allow a proper opportunity for residents to shape the area where they live and work. The opportunity to object to an individual planning application or appeal is not a substitute for that fully participatory process.
- 5.6.14. Whether the advice in paragraph 18 of General Principles is intended to cover cases falling within paragraph 17 or not³⁵⁹, the fact remains that none of the examples given in paragraph 18 is apposite to address the present appeal. That is that the Core Strategy was adopted, but the High Court quashed a key element of that document because of a breach of European law in relation to environmental protection, and the Local Planning Authority is in the process of remedying that breach. Furthermore, the Appeal Site in question lies at the heart of that legal challenge. If the grant of permission in such a case should not await the outcome of the development plan process and a legally compliant SEA, it is hard to see in what circumstances a prematurity objection would be justified.
- 5.6.15. Thus, when the proposals are considered in the light of current national guidance, there is nothing to suggest that the development plan policy objections should be over-ridden.

Emerging National Policy

- 5.6.16. It is then necessary to turn to the emerging policy guidance in the National Planning Policy Framework (PPF)³⁶⁰, and the Written Ministerial Statement (WMS) "Planning for Growth"³⁶¹. Any support from the latter would depend on it being shown that what is proposed in this appeal is "*sustainable development*", as set out in national policy. That cannot be shown in relation to the Appeal Proposals, for the reasons already stated. The WMS

³⁵⁷ CD42(ii).

³⁵⁸ FH/MS/R, Appendix A, LDF Working Group report, 20 June 2011 and minutes, as ratified by FH/8, the Planning Committee minute of 27 July 2011

³⁵⁹ CD134, para 18 begins "*Otherwise*", i.e. otherwise than the cases falling within para 17.

³⁶⁰ CD160.1.

³⁶¹ CD14.

also urges Local Planning Authorities *“to press ahead without delay in preparing up-to-date development plans, and should use that opportunity to be proactive in driving and supporting the growth that this country needs”*. The Council is pressing ahead with the preparation of the Single Issue Review in order to ensure that there is an up to date development plan in place. That will provide the opportunity to support the necessary sustainable growth. The WMS does not suggest that local authorities should no longer pursue the plan making process and simply deal with matters through the development control system on the basis that it would enable quicker decision making. The WMS does not therefore lend support to the Appeal Proposals.

- 5.6.17. The NPPF is similar in its lack of relevance because it too is focused on securing *“sustainable development”*³⁶². It recognises the plan-led system³⁶³, the importance of inclusive community decision making³⁶⁴, and the importance of sustainability appraisal³⁶⁵. In addition, the NPPF can carry only limited weight at this stage of its evolution. It is subject not only to the normal processes of consultation but also to scrutiny by a Select Committee and debate by both Houses of Parliament.
- 5.6.18. Many of the messages in the NPPF are familiar from the existing policy framework. There are however two particular new elements. One is the presumption in favour of sustainable development³⁶⁶. Since it cannot be demonstrated that the Appeal Proposals would be sustainable development, this would not apply in this case, even were it to be operative at present. The other new element is the absence of reference to prematurity as a planning objection. Instead, there is a suggestion, in elaboration of the presumption in favour of sustainable development, that national policy should be used to assess development wherever the development plan is *“absent, silent, indeterminate, or where relevant policies are out of date”*, and that permission should be granted unless the adverse impacts significantly outweigh the benefits³⁶⁷. In his evidence in chief, the Appellant’s Planning Witness described the absence of reference to prematurity as *“a significant change from the current position”*³⁶⁸. That reinforces the reasons why such a shift in policy should be given minimal weight, given its obviously draft status, and the consultation that is being undertaken before the policy is finalised.
- 5.6.19. The Secretary of State has elected to give only *“limited weight”* in making planning decisions to the proposed reforms of the Localism Bill, because they are subject to Parliamentary approval³⁶⁹. Given that the NPPF will also be subject to Parliamentary scrutiny, and it must be presumed that the Secretary of State will also wish to reflect on the views of Parliament before finalising the NPPF. As matters stand it is an emerging policy document that should carry very little weight.

³⁶² CD160.1, para 9.

³⁶³ CD160.1, paras 19, 25, and 62; also CD160.3, paras 29 and 37.

³⁶⁴ CD160.1, paras 25 and 50.

³⁶⁵ CD160.1, paras 10 and 34.

³⁶⁶ CD160.1, para 14.

³⁶⁷ CD160.1, para 14.

³⁶⁸ Sellwood in evidence in chief.

³⁶⁹ SHN/JB/PA, Appendix JB10, para 9, pp52-53.

- 5.6.20. In any event, even if the NPPF was applied in its current form, and it was assumed that prematurity as expressed in General Principles is no longer a valid ground of objection, the NPPF would not support the grant of permission. The development plan is not absent. Nor is it silent or indeterminate. The only possible argument could be that the specific countryside policies which apply to the appeal site are “*out of date*”. However, they cannot be said to be out of date until the outcome of the Single Issue Review is known. Only then will it be possible to say whether particular areas of land should, or should not, continue to be safeguarded as countryside. Furthermore, even if the Appeal Proposals are simply judged against national policy objectives, the fact that the proposals cannot be shown to represent sustainable development would provide a very clear reason for setting aside any presumption that might flow from the NPPF.

Assessment against National Policy

- 5.6.21. Accordingly, neither current nor emerging national policy guidance provides an adequate basis to support the grant of permission for the Appeal Proposals.

5.7. Impact on the Horseracing Industry (HRI)

- 5.7.1. The Core Strategy’s position on protecting the HRI and the need to demonstrate that development would not cause adverse effects thereon has already been set out above. Policy CS13 plainly places the responsibility on the person proposing development to show that it would not cause harm to the HRI.

Traffic Impact

- 5.7.2. Through the withdrawal of Reason for Refusal 1, the Council accepted that the direct impacts of the development on the highway network, and on the safety of equine movements using that network, are capable of mitigation. The Council reached this conclusion having regard to its own expert highways/equine advice³⁷⁰, which made it clear that the original assessment work carried out by the Appellant was inadequate and that more mitigation was required.

Perceived Traffic Impacts

- 5.7.3. However, the Council was not satisfied that, even if the identified mitigation was secured, there would, as a result, be no adverse effects on the HRI, and so maintained Reason for Refusal 2, as refined by the Planning Committee’s decision on 22 June 2011³⁷¹. The reasons for this are set out in the Council’s Position Statement³⁷².
- 5.7.4. The Position Statement identified the distinction between the technical or objective assessment of highways matters by those with professional expertise and the perception by the HRI. The Position Statement also explains why the Council presented no direct evidence of its own in relation

³⁷⁰ The 2 Mayer Brown reports, May 2011 (ED/CPS/PA01, Appendix 14, pp125-164; June 2011 (ED/CPS/PRA1, Appendix 1, pp3-25.

³⁷¹ CD158.

³⁷² CD157.

to the perception of harm that the HRI genuinely considers would result from the Appeal Proposals.

- 5.7.5. The perception by those involved in the HRI that the increases in traffic and so increases in conflicting movements between vehicles and equine activities would adversely affect the HRI is a material planning consideration because it is directly concerned with the way in which the land use consequences of the development (i.e. its traffic) would impact on the use and enjoyment of other land that is occupied and used by the HRI.
- 5.7.6. A real perception of harm is capable of being a material consideration: West Midlands Probation Committee v SoSE (1997) 76 P&CR 589 at 596-597. That case concerned the expansion of a bail hostel with a past history of anti-social activity. Pill LJ said *"In considering the evidence in this case, I do not consider that the "disturbing incidents" and "occurrences" found by the Inspector to have occurred can be divorced or treated as a separate consideration from the concerns and fears of residents which he also found to be present. The fears arise from the disturbances and the Inspector was entitled to link them in the way he did in his conclusions. It is the impact of the occurrences upon the use of neighbouring land which is said to be relevant"*. In the present case, those who spoke for the HRI have provided substantial evidence of *"disturbing incidents"* and *"occurrences"* as a result of the interaction of vehicular traffic and equine movements. They also fully explained their *"concerns and fears"* for the future of the HRI, particularly with regard to the responses of racehorse owners to increased vehicular/equine conflicts. These concerns and fears plainly arise from experience of disturbing incidents and events. Thus it is permissible to link the two together in planning terms.
- 5.7.7. Later in the judgment (also at 597) Pill LJ said *"Fear and concern felt by occupants of neighbouring land is as real in this case as in one involving polluting discharges and as relevant to their reasonable use of the land."*
- 5.7.8. The HRI is patently making a reasonable use of the various training stables and the Jockey Club's land immediately adjoining the highways that would experience traffic growth as a result of the development. Those involved in the HRI expressed real fears and concerns, based on their past experiences of operating in Newmarket and of equestrian/vehicular conflicts that increases in traffic would exacerbate conditions for equestrian movements around the town. They were also concerned about the movements of trainers and owners who need to see the various horses during their exercises. Those concerns relate to a perception by those closely involved in the HRI as to how the actual conditions necessary to support the successful continuation of a valuable economic activity would be adversely affected by the development. They are therefore a proper material consideration.
- 5.7.9. Given the importance of the HRI to both the local economy and the environmental character and heritage of Newmarket, this material consideration deserves considerable weight and is a significant adverse factor to weigh against the Appeal Proposals.

Mitigation of Impacts

- 5.7.10. The Council did not consider that it was possible to mitigate all of the equine impacts to avoid the perception of harm. If properly secured, the proposed mitigation package would be capable of mitigating the direct effects of the development on the safety of the horse crossings, but would not resolve the wider concern of perception by the HRI.
- 5.7.11. Most of the mitigation measures would need to be the subject of planning conditions in order to secure the delivery of the improvements³⁷³ and the Council has provided appropriate wording for these matters³⁷⁴.
- 5.7.12. In relation to non-equine impacts, by the end of the Inquiry, a package of measures had been agreed, covering the social and community impacts of the development and also the highways mitigation. The Council's evidence³⁷⁵, which should be treated as written evidence since it became unnecessary to call the respective witnesses, explained why the measures are necessary and that they may be considered to satisfy the requirements of Regulation 122 of the CIL Regulations 2010.
- 5.7.13. However, there remained an issue of the delivery of the agreed package of measures because of the Appellant's decision to provide only a unilateral undertaking rather than a bilateral agreement (See 10.2).

5.8. Conclusions

- 5.8.1. Newmarket is a special place. Planning its future is both a challenge and a great responsibility. The Appeal Proposals have not risen to that challenge. They place the short term above the long term and would not be in the public interest. For all the reasons set out above the Appeal should be dismissed.

6. The Case for the Tattersalls Group (TG)

6.1. The Tattersalls Group

- 6.1.1. For the purposes of the Inquiry, the Tattersalls Group comprised Tattersalls Ltd, Darley Stud Management Co Ltd, Godolphin Management Ltd, Jockey Club Estates Ltd, Newmarket Trainers Federation and the Newmarket Stud Farmers Association. This Group claimed to represent all the key interests of the Horseracing Industry (HRI) in Newmarket and their very real concerns about the effects of the Appeal Proposals.

6.2. Development in Newmarket

- 6.2.1. The need for development to be truly sustainable is at the heart of this appeal decision. Sustainability is not properly judged simply by reference to

³⁷³ FH/6 Position Statement of 5 September 2011, and in the Conditions session of the Inquiry.

³⁷⁴ FH/7 List of Conditions

³⁷⁵ Proofs FH/DB/P and FH/DB/R (health, police, monitoring, and policy), FH/JP/P (open space and community facilities), FH/MP/P (affordable housing), and FH/NM/P (education and libraries).

transportation sustainability benefits or the contribution of any given development to meeting some competing growth needs. A broader balance³⁷⁶ is required, founded on a process of rigorous assessment with a robust and sound evidence base.

Unique Nature of Newmarket

- 6.2.2. The need for that robustness is of particular significance in this case where all parties agree the unique features of Newmarket are at stake namely; (a) its national and international importance as the “Headquarters” of racing; (b) the way it functions; and (c) its special character and appearance derived from its HRI role.
- 6.2.3. What is right for both the District and the town is a matter which, under both current and proposed statutory development plan arrangements should properly be addressed through the development plan process³⁷⁷. During the Inquiry, more and more weaknesses became apparent in both the Council’s Core Strategy evidence base and in the Appellant’s own assessments. It became even more obvious that critically important issues had not been addressed and that it would be quite inappropriate to grant planning permission for the Appeal Proposals at this juncture.
- 6.2.4. The Tattersalls Group (TG) saw the issue as less one of prematurity or prejudice to the plan making process³⁷⁸ and more of avoiding permanent and irremediable harm to the proper planning of this important settlement and to the industry upon which its success is based. The TG was not opposed in principle to growth at Newmarket. It recognised and balanced the competing growth pressures and sought a comprehensive and cumulative consideration of the capacity of the town to accept growth leading to a balanced solution.
- 6.2.5. Clearly the TG sought to protect the HRI and properly informed itself of the likely effects of the Appeal Proposals and the proposed mitigation.

Cumulative Effects

- 6.2.6. Alone at the Inquiry, TG had regard to the likely cumulative effects of the Appeal Proposals in combination with other commitments, allocations and proposals both within Forest Heath District and East Cambridgeshire District, in so far as these are likely to impact on the HRI. Also alone, it sought to identify how growth in the HRI would bear on the capacity of the town to accommodate other growth pressures. The Secretary of State should have an informed view on the extent to which the Appeal Proposals, if permitted in conjunction with other proposed developments in the town, would operate to frustrate growth in the town’s essential industry. The failure of the Appellant even to address this issue was a fundamental weakness.

³⁷⁶ Para.10 of The draft NPPF defines sustainable development as meaning planning for prosperity, planning for people and planning for places – CD160.1. The appropriate balance is intended to be struck by the plan making process within which the presumption in favour of sustainable development will then operate – see CD160.2 draft NPPF Impact Assessment p. 93.

³⁷⁷ The draft NPPF Impact Assessment stresses that the increase in growth advocated by the Government is at an aggregate level; at a local council level other factors such as environment and infrastructure factors deemed of national significance, will continue to moderate what is provided – see CD160.2 p.26

³⁷⁸ Although it is difficult to conceive of a clearer example of a textbook prematurity case having regard to the advice in paragraph 17 of The Planning System: General Principles CD134

Single Issue Review

- 6.2.7. Within this context, the Appellant's repeated refrain that a greenfield urban expansion of Newmarket is an inevitable product of the Council's Core Strategy Single Issue Review was more than a little feeble. There are a host of big issues which will need to be visited for the purposes of that Review and which do not admit of only one answer. It is therefore not inevitable that re-consideration of the most sustainable distribution of growth will lead to a 1,200 dwelling urban extension of Newmarket, as opposed to development of a different scale accommodated differently. Nor is it inevitable that, upon reconsideration of the impacts on the HRI, the *laissez faire* approach to assessing and addressing the many development constraints at Newmarket, an approach which inexplicably survived the previous Core Strategy process, will survive re-appraisal in favour of a properly integrated approach, as required by both existing and emerging national policy.

Comparative Evidence

- 6.2.8. There is also a complete answer to the Appellant's contention that a Section 78 appeal is a more effective forum to plan the future of important settlements than a Core Strategy independent examination. Whilst the opportunity to scrutinise and probe the available evidence may be greater at a Section 78 appeal, where evidence which would be essential to a sound Core Strategy is simply absent, as here, the appeal process is self-evidently no more effective or rigorous a test of the overall adequacy of the evidence base than a DPD preparation process.
- 6.2.9. In reality the Appeal Proposals should be seen for what they are; a classic example of a development which seeks to jump the gun; to take advantage of extremely limited finite capacity without any regard to whether or not there would be adverse implications for other growth requirements. The *"I'm all right Jack"* approach to settlement expansion was a woefully inadequate response to the proper planning of any settlement, let alone one of the importance of Newmarket. It would be unsound when considered against the principles of sustainable development.

6.3. Importance of the Horseracing Industry (HRI) and Newmarket

Economic Importance

- 6.3.1. There was no dispute about the importance of the HRI to the UK economy, or of the pivotal role which Newmarket plays in what is a global industry. It was accepted on behalf of the Appellant that the Secretary of State should not permit the Appeal Proposals unless satisfied that they would cause no material harm to the industry³⁷⁹.
- 6.3.2. Newmarket is recognised by Defra as the national centre for thoroughbred breeding and training³⁸⁰ and provides the Headquarters for a global industry which makes a substantial contribution to the UK's GDP. British Racing generated an estimated £3.39 billion in direct, indirect and induced

³⁷⁹ Accepted by Mr Sellwood in XX by TG
³⁸⁰ TG/WAG/P para.2.1.6 p.8

expenditure in 2008³⁸¹ putting it on a par with the UK film industry in terms of economic importance³⁸². The core industry employs some 18,600 full time equivalents and tax revenues from the income generated by its activities contribute some £325M to the exchequer³⁸³. The importance of Newmarket is demonstrated by the fact that 19% of all horses in training in the UK are trained in Newmarket, 15% of all trainers have chosen to locate in the town and it is surrounded by studs which together represent some 20% of the UK bloodstock industry³⁸⁴.

Employment

- 6.3.3. The most recent study of the economic importance of the HRI in Newmarket³⁸⁵ concluded that 33% of jobs in Newmarket are directly related to the HRI with a direct local spend (excluding racecourse and betting revenues and turnover) of £150m. Of that, some £78m is spent on horses in training each year. In addition, the industry's local indirect spend is estimated at some £100m. Unsurprisingly, this labour intensive industry generates a large number of jobs for the town, estimated to be some 3,300 of the town's 11,000 jobs³⁸⁶. The wider economic and employment benefits are greater still.
- 6.3.4. Those jobs range from those directly involved with the training of horses, to those dealing with their health and welfare, acquisition and sale, as well as the international promotion of British Racing³⁸⁷. This is a true cluster of economic activity with synergy between firms operating across a range of disciplines, with excellence as the minimum standard.

Newmarket's Facilities

- 6.3.5. The quantity, quality and variety of facilities and services available to trainers in Newmarket are unsurpassed anywhere in the world on either private or public training grounds. These include some 80 km (50 miles) of turf gallops including about 11 km (7 miles) of peat gallops, a 1.6 km (1 mile) long irrigated gallop and approximately 22 km (14 miles) of artificial gallops, the majority of which are Polytrack surfaces³⁸⁸. The training grounds are maintained to the highest standards by Jockey Club Estates at an annual revenue cost of some £2.5m³⁸⁹. Because of the recent success of Newmarket in attracting growing horse numbers, the town's facilities remain competitive within the UK.
- 6.3.6. As a public training ground, Newmarket's facilities are available to all licensed trainers, however large or small their establishments, at exactly the

³⁸¹ CD47 Executive Summary p.4

³⁸² See SHN/JB/PR Appx 18 Voterra Partners Report para 3.1 p.6

³⁸³ CD47 p.1

³⁸⁴ SHN/JB/PR Appx 18 para. 3.2 p.6

³⁸⁵ CD48 Response of the Newmarket Horseracing and Breeders Group to the NATS TCN North Consultation

³⁸⁶ SHN/JB/PR Appx 18 Volterra Report para.3.3 p.7

³⁸⁷ TG/WAG/P para 2.1.4 p.5 Important employers include the Animal Health Trust, the British Racing School, the National Stud, the International Racing Bureau and Tattersalls.

³⁸⁸ Costing £75000-£100,000 per furlong to create

³⁸⁹ TG/WAG/P para 3.2.3. These costs are recouped by the Heath Tax payable in respect of each horse accessing the training the grounds and for health, safety and welfare reasons are incurred whether the number of horses in training is 2500 or 2000 .

same cost per horse. The town therefore provides the ideal place to train for trainers of all levels within the sport, from the champion trainer or ones just embarking on their careers as trainers. As at May 2011, there were 80 trainers within the town using the facilities on a daily basis.

International Investment

- 6.3.7. It is because Newmarket can attract top talent that it maintains centres of excellence across a number of skills areas. This in turn creates the conditions for vital international investment and it is this international investment which has allowed Newmarket to flourish at a global level and to weather the recession, in marked contrast to the performance of other UK training centres³⁹⁰. Many of the world's largest and most successful breeding and training operations are based at Newmarket.

Character of Newmarket

- 6.3.8. The HRI's contribution to Newmarket is far broader than just its economic contribution. The spirit and character of Newmarket are each derived from the interplay between the historic environment and the operation of the horseracing industry on a daily basis. This is reflected in the Newmarket Conservation Area Appraisal Consultation Draft³⁹¹ and also in the Council's Core Strategy³⁹² which identifies the industry as one of the District's distinctive characteristics³⁹³ and requires its importance and the associated local heritage and character to be protected and conserved throughout the plan period.³⁹⁴
- 6.3.9. Newmarket is nearly surrounded by East Cambridgeshire District³⁹⁵ and the importance of the HRI spreads across the local administrative boundary. The East Cambridgeshire District Council Core Strategy³⁹⁶ recognises that – *"The horseracing industry provides a major contribution to the local economy in the south of the district and provides an alternative use for farm holdings falling out of agricultural use. It also makes a considerable contribution to the landscape, particularly in terms of tree planting. Given the industry's importance to the district, the Council considers it is appropriate to support its continued development and success"*³⁹⁷.

Policy Support

- 6.3.10. There is therefore strong local policy support both for the protection of the Horseracing Industry and for its future growth.

³⁹⁰ Examples of this international investment include the Maktoum family's Godolphin racing stables and the Darley Stud and also the international breeding operations of Juddmonte Farms

³⁹¹ CD46 which states that *"the special character of Newmarket derives from the overlay of the horse breeding, training and racing activities and the associated Royal patronage, upon a traditional market town and its medieval layout....the sight and smell of racehorses is an ever present phenomenon in Newmarket and makes a significant contribution to its character."*

³⁹² CD40

³⁹³ Ibid para 2.1.4

³⁹⁴ Ibid Policy CS1 p.29

³⁹⁵ See Sellwood Apps Plan 1

³⁹⁶ CD51

³⁹⁷ Ibid para 3.3.7.1

6.4. Operation of the HRI in Newmarket

Horse Numbers and Movements in the Town

- 6.4.1. The training industry in Newmarket is characterised by the training yards embedded throughout the town.³⁹⁸ At the peak of the season over 3,000 horses will be in training, generating many thousands of horse movements to and from the training grounds. Some yards are capable of accommodating in excess of 150 horses and there is existing capacity within the town for 4,000 horses³⁹⁹.
- 6.4.2. The number of horses in training within the town's yards is seasonal, reducing over the winter when racing in the UK is limited to all weather tracks at a small number of racecourses. A number of the larger stables also actively move their horses abroad during this period. Surveys show that there is a variation of approximately 37.5% between the quieter (winter) and the peak (May-July) training periods in terms of the number of horses in training within the town⁴⁰⁰. Notwithstanding the effects of the recession, the peak numbers during the summer months are consistently in excess of 3,000 horses in training⁴⁰¹, with growth having been experienced in 2011⁴⁰², therefore bucking the national trend.
- 6.4.3. The training yards generate the mass movement of horses every day to and from the gallops at the edge of the town. These movements occur from early in the morning until 13.00hrs but with the overwhelming majority occurring in the period 06.00hrs to 11.00hrs. These movements involve moving horses across the town via the roads, horsewalks and uncontrolled crossings to the relevant gallops⁴⁰³. The movements are controlled by the available daylight which governs when the gallops can open and, in consequence, the timing of the movement of horses to and from them. As the daylight hours reduce, the movements occur later in the morning period⁴⁰⁴, although horses will in some cases commence their journey to the gallops up to an hour in advance of the opening time. Yards send out horses in lots, with the lot size depending on the size of the yard. Lots are broken down into strings, which are then directed to the most appropriate training ground for the horses in question. When a lot returns from the gallops, the same riders will then take out a second and a third lot, with the larger yards having a fourth or even fifth lot.
- 6.4.4. Whilst some trainers are able to avoid moving some of their horses during the peak traffic rush hour, the number of horses and the need for attendance at race meetings⁴⁰⁵ means that, of necessity, many of the horse

³⁹⁸ See TAT/RE/P Fig.1

³⁹⁹ Ibid para.2.6 p.3

⁴⁰⁰ TAT/RE/P para.2.14 p.8

⁴⁰¹ Ibid

⁴⁰² Gittus evidence in chief – 2% growth in the year to date.

⁴⁰³ See TAT/RE/P Figure 1 for the extent of the training areas available to trainers across a calendar year.

⁴⁰⁴ In winter months, the gallops do not open until 0700 for health and safety reasons which concentrates the training into a shorter period and with winter routines requiring greater use of Warren Hill, the horse movement activities have a particular focus on the horsewalks and crossings around the Severals particularly the Rayes Lane and Bury Road crossings.

⁴⁰⁵ The business of training racehorses has to be carried out in the early part of the morning for a variety of reasons. Trainers have to attend race meetings, the majority of which take place in the afternoons (starting around midday to

movements coincide with the morning peak hour period for traffic movements. There is little predictability about those horse movements. General activity on any particular day is determined by many different factors including the time of year, which gallops are open, which race meetings are approaching, the weather on the day and rainfall in previous weeks and the day of the week⁴⁰⁶. Different trainers have different "work days" i.e. the days on which their horses carry out fast gallops (Wednesday/Saturday or Tuesday/Friday) as opposed to interval training i.e. lighter exercise (everyday save Sundays).

- 6.4.5. Use of the training facilities is also affected by trainers' preferences, the age, stage of training and ability of each horse, which race the horse is being aimed at and what is achievable with the staff available. On any one day, a trainer with a large lot will have horses exercising in maybe six different locations on the Heath requiring safe and quick movement for both horses and trainers⁴⁰⁷.

Observation of Training

- 6.4.6. It is essential for trainers to be present to see their strings of horses warm up before undertaking strenuous exercise on the gallops⁴⁰⁸ in order to ensure that they are sound and well in themselves. They then need to be able to position themselves expeditiously to view the subsequent work on the gallops⁴⁰⁹.
- 6.4.7. However, it is not just the trainers and their horses which have to be moved around this increasingly trafficked, small market town. Owners expect, as part of the experience of racehorse ownership, to be able to visit Newmarket to observe their horses working on the gallops. Without owners, there would be no HRI. The Deloitte's Report "The Economic Impact of British Racing" notes that "*Racehorse owners are the single biggest contributors to the funding of British Racing*"⁴¹⁰ and many of the key players with large strings and the greatest investment in the UK are overseas nationals who, by this route inject substantial funds into the UK economy. It is the commitment of owners to Newmarket, and particularly the larger international owners which, to date, have protected the town from the worst of the recession⁴¹¹.
- 6.4.8. It is therefore essential that the town is able to offer an owning experience commensurate with the excellence of its facilities and comparable with other competing training centres. The importance of ease of movement to owners was outlined in the HRI evidence and, whether the owner is the largest racehorse owner in the world or a member of a syndicate with just an

2pm) and which take place all over the country; the same applies to jockeys who ride out for trainers in the mornings and need to get to the races to ride; the horses themselves also need to travel to the races. In the summer months, horses need to train in the earlier, cooler part of the day to avoid the risk of de-hydration and the gallops themselves require daily maintenance which can only be carried during horse free periods.

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TG/WAG/P section 3.3 pp.11-13

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See e.g. Gosden evidence in chief

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Such warming up takes place for the majority of trainers at one of the warm up areas provided by JCE e.g. at the Severals although some such as Godolphin have their own private warm up facilities.

409

As Mr Gosden explained "time is everything".

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CD47 p.27

411

See ED/RMS/R Appx 4 Document 3 "Horseracing and Equine Annual Review 2011. See also evidence in chief of Mr Gosden; 75% of his owners are international i.e. not UK based.

interest in a single horse, it is essential that they can and do see their horse being worked when they have arranged to do so. This is a huge part of the return from the ownership of a horse. The owner's spending may by its nature be discretionary, but it cannot be taken for granted. As one of the trainers explained the risk is that disquieted or displeased owners might decide not to put new horses into training in Newmarket, leading ultimately to a slow process of decline, rather than a mass withdrawal of existing horses.

Emergencies

- 6.4.9. Emergency and support services also need to be able to move around the town with as little delay as possible. The health and safety implications both to horse and rider from delays to emergency treatment are obvious and were unchallenged. The Appellant accepted that requests for urgent veterinary assistance from yards with large numbers of horses are frequent⁴¹². There was no challenge to the HRI's evidence that there are already delays in treatment being given to horses due to traffic hold ups⁴¹³, or to the general effects of traffic on the economic and efficient operation of the training businesses within the town.

6.5. Existing Traffic Problems in Newmarket

- 6.5.1. Whilst the facilities available to trainers at Newmarket are second to none and the cluster of supporting businesses and expertise is world class, there is a fragility which stems from the increasing pressures of operating an industry from the heart of an increasingly busy and congested market town that would ideally be operated in a quiet rural environment. Traffic is the principal problem within the town, particularly along Fordham Road and around the Clock Tower junction. Whilst Newmarket is not unusual in having traffic congestion, no other town in the country, or indeed the world, has the thousands of horse movements across its centre and roads on a daily basis, many of those movements coinciding with the peak traffic flows.
- 6.5.2. The traffic impacts on the industry firstly by impairing the safe operation of the HRI within the town. Secondly, it impairs the efficiency of the training process and thirdly, it lessens the attraction of the town to owners.

Safety

- 6.5.3. There was no dispute between the Appellant and the HRI as to the temperament of thoroughbred horses. They are by their nature highly strung and skittish and when spooked they are a danger both to themselves and others. Uniquely amongst equestrian sports, flat racing thoroughbred racehorses enter training at the age of just two years old, having just been backed⁴¹⁴. Their racing career is typically short and, as a result, during the winter and spring months, nearly 40% of all horses criss-crossing the town will be young and inexperienced two year olds. These are even more skittish, easily frightened and difficult to control than their more mature

⁴¹² ED/JDM/PR1 para. 4.1 p.5 *"From my experience of working in yards with large numbers of horses, if there was an emergency, which **invariably there was at least once a week where urgent veterinary attention was required.....**"*

⁴¹³ See TG/HP/P para. 2.2 p.4 and TG/JSC/P paras. 5.1-5.3 pp6-7

⁴¹⁴ i.e. broken in so as to accept bridle and saddle.

colleagues. As the Appellant's witness accepted⁴¹⁵, these are horses which will have had almost no exposure to traffic or other urban stimuli before entering training.

- 6.5.4. Contrary to the picture which the Appellant sought to portray, training of racehorses in Newmarket is not a safe activity. It is one in which the inherent risks are managed to a just acceptable level, but the interaction between highly strung horses and traffic, whether that interaction occurs at the horse crossings or on the horsewalks besides the heavily trafficked roads of the town is an increasingly unsafe one. All horses are unpredictable, but thoroughbreds are more unpredictable than other breeds. Additional traffic, be it in the form of cars, vans, lorries, motorcycles, bicycles or pedestrians would simply offer yet more opportunities for skittish unpredictable reactions and increased risks.
- 6.5.5. Whilst it is true that the reported accident record discloses few particular safety issues, the obligation to report only personal injury accidents arising from accidents involving vehicles inevitably masks the true position. As said by the industry, the principal issues in relation to traffic and the safety of horse and rider relate to (a) injuries resulting from the adverse reactions of horses to vehicles and (b) the significant numbers of near misses which, but for pure chance, have not been converted into more serious incidents.
- 6.5.6. Whilst understandably reluctant to broadcast the safety issues of training horses in Newmarket, the HRI has provided a number of recent examples of typical problems experienced as a result of the effect of traffic on racehorses. These include spooking and injuries to horses⁴¹⁶, spooking and injuries to riders⁴¹⁷, and spooking and injuries to both horse and rider⁴¹⁸. The Appellant did not dispute that these incidents occur, or that they are typical of regular incidents⁴¹⁹. As was also obvious from the evidence, near misses are also frequent⁴²⁰. These include those which are the result of driver conduct and/or the result of horse reactions.

Congestion

- 6.5.7. Whether an injury results from an adverse horse reaction to traffic or inappropriate driver behaviour, or whether it results from a collision with a vehicle or some consequence of the adverse reaction (e.g. running into an obstruction) is entirely beside the point⁴²¹. The cause and effect which matters is that traffic stimulates racehorses to react adversely and the more traffic there is, the greater the risk of such a reaction.
- 6.5.8. It is therefore unsurprising that objective research undertaken on behalf of the Council in the form of the Smiths Gore "2009 register of horseracing

⁴¹⁵ Michaels XX TG

⁴¹⁶ TG/WAG/P para 4.3 p.13 and Gosden evidence in chief – recent example of an incident at the Moulton Road crossing leading to horse injury.

⁴¹⁷ TG/CFW/P para 10.1 p.10 & TG/HP/P

⁴¹⁸ 3P4 Councillor Berry's one week snapshot of incidents.

⁴¹⁹ Michaels XX TG and see ED/JDM/PR1 2.3 p.3. Mr Michaels stated in XX by TG that with the extent of horse movements in the town he was sure that there would be a lot of such incidents occurring.

⁴²⁰ See TG/WAG/PR para 2.3.3.6 p.8, TG/CFW/P para 10.1 p.10, TG/HP/P para 3.5 p.7 and see TG/RE/P Appx A results of a 2009 survey of trainers including incidents and accidents at crossings.

⁴²¹ Given that some racehorses may run only 2 or 3 times in a year, any inability to race due even to a minor injury is a serious issue for both owner and trainer.

establishments at Newmarket"⁴²² concluded that "*Planning policy and decisions, and the effect they have on the activity of Newmarket due to new development and traffic is one of the most influential factors on the industry; over half of the businesses cited too much development and traffic as a key issue facing the industry*"⁴²³. This report noted that "*The overwhelming response was to improve the traffic situation for horses, manage the increasing volumes and keep any increase due to development to a minimum*".

- 6.5.9. Most worryingly in this context, the report advised that the issues identified in their survey might justify review of the Council's policy of long term protection of land in HRI use, posing the question "*....are town centre yards still "fit-for-purpose" given the increased "busyness" of the town and increasing possibility of conflict between horses and traffic, or should policy allow these yards to relocate to less central locations?*" As the Appellant's equestrian expert conceded, the mere fact that this question is already being posed, should be a matter of deep concern for the Secretary of State. It signals that the HRI is not being alarmist in identifying that the tipping point is at hand⁴²⁴.
- 6.5.10. Putting this concern in a more tangible context, the traffic data demonstrates just how busy the roads of principal relevance to this Inquiry are during the daily training period. Whilst a standard transport assessment would look at the peak hour traffic impacts, Newmarket is not standard and requires consideration of the effect of traffic over the period 05.00hrs to 13.00hrs when horses will be making their way in large numbers to and from the gallops. Whilst this information is entirely absent from the Appellant's Transport Assessment, it may be derived from the horse crossing surveys. In 2009, the two way flow on Fordham Road at the Rayes Lane crossing was 6,194 vehicles⁴²⁵ and in 2011 it was 5,888 vehicles⁴²⁶. Whilst the trainers' early lots have the benefit of being able to make use of less trafficked hours up to 08.00, the later lots (between the hours of 08.00 and 13.00) have to make use of crossings on consistently heavily trafficked roads, typically carrying of the order of 900-1,000 vehicles per hour.

Race Days

- 6.5.11. This is the situation on a "normal" day. However, Newmarket traffic is regularly affected by additional events. These include the 38 race days a year and closures of one or both of the A14 carriageways. The Appellant's assessment of race day traffic impacts showed that the effect of a race day⁴²⁷ is to increase traffic volumes throughout the middle of the day and particularly between 10.00 and 12.00hrs⁴²⁸. Effectively, race day traffic has

⁴²² ED/JDM/PA01 Appx 4

⁴²³ Ibid p.25 Section entitled "Planning"

⁴²⁴ It is of no conceivable advantage to the HRI to raise such concerns given that their businesses depend on no harm being caused to the reputation of the town. The contention that the problems have been "talked up" by a few to encourage some kind of unjustified mass opposition to the appeal proposal is misjudged and misguided.

⁴²⁵ ED/CPS/P01 para 7.2.4 total of 2-way flow column in the table

⁴²⁶ Ibid para 7.2.6

⁴²⁷ The evidence shows that the town experiences increased traffic in the days preceding a race meeting as owners and racegoers and others involved in race meetings arrive and not just on the race days themselves.

⁴²⁸ ED/CPS/P01 para. 6.3.2 p.43 and Appx 8. Race day traffic is signed off the A14 and via Fordham Road to the racecourses.

the effect of spreading the peak further into the training period, thus increasing conflict and extending congestion during the sensitive periods. Whilst a big race meeting elsewhere in the country may lead to a dip in the numbers on the gallops during the post 08.00hrs period because trainers need to complete work early in order to travel, there is no such need with a Newmarket race day. These peak events thus coincide with normal training activity.

A14 Closures

- 6.5.12. A14 closures are also a significant problem. Traffic diverted through the town brings gridlock on a regular basis, as was demonstrated by the Maintenance Area Contractor's data⁴²⁹, which shows that in 2010 alone there were 19 closures of A14 lanes of which 8 gave rise to moderate or severe delays. The evidence before the Inquiry was that a number of these resulted in traffic being diverted through the town. Traffic on the A14 is forecast to increase⁴³⁰ and there are no proposals for improvements between Junctions 36 and 38, between which any incidents lead to traffic diverting through the town. The likelihood is that such diversions will increase in the coming years, adding yet further to the problems for the HRI.

Business Efficiency and Competition

- 6.5.13. The training programme is a business process like any other. It is a process that involves a high level of technical skill, well-honed animal husbandry, acute adherence to health and safety, relatively serious danger to life and limb and a financial imperative to get the daily process for each horse completed as quickly as practicable, so that it can start all over again with another horse. Anything that halts, impedes or threatens that process or impairs efficiency, will impact on the bottom line and potentially jeopardise the key aim of all trainers, which is to produce horses at the peak of fitness to win races.
- 6.5.14. The efficient and economic training of racehorses requires ease of movement around the town for the trainers, owners and vets in particular. On any given morning, a trainer may need to travel from the Bury side to the Racecourse side in order to watch horses on the gallops. Congestion already frustrates this and adversely affects the training businesses⁴³¹. Delay also impairs the efficient operation of the training establishments who rely on the ability to schedule their operations for their economy. Delay results in more cost as staffing levels increase with the reduced ability to rely on the same rider to ride out on several horses during the training period. Margins are tight, and as the Appellant was keen to point out, the recession and low prize money is having (a hopefully) short term effect on the industry which simply cannot afford external pressures that would materially worsen its economic performance.
- 6.5.15. Owners have already been affected by the traffic issues. Since the 1990s the town's environment has got much busier. This is lessening the

⁴²⁹

ED7

⁴³⁰

By 16.1% to 2018 alone – see ED/CPS/P01 para 6.2.6 p.42

⁴³¹

See e.g. TG/CFW/P para.11.1 & 11.3 pp.12-13

attraction of the town and unsurprisingly, owners⁴³² are concerned that their high value horses are exposed on a daily basis to the risks inherent in moving across an increasingly busy town. Equally, their enjoyment of ownership is already being diminished by the congestion within the town. The undisputed evidence was that owners are already missing their horses' training sessions because of the congestion on Fordham Road and in the town generally⁴³³. This can only serve to weaken the commitment to Newmarket which, notwithstanding its many advantages, is not without competition, particularly from France⁴³⁴ with its higher levels of prize money. A number of the key big players in Newmarket operate on a global basis and history shows that their investment is footloose.

Appellant's Engagement

- 6.5.16. Policy places the onus squarely on the Appellant to demonstrate that sufficient capacity exists to accommodate the development, and importantly that it would not harm the well-being of the town⁴³⁵. However, he did not engage in any meaningful way with the existing problems faced by the HRI within the town in order to properly establish the baseline for the assessment of the development's impacts. There was no input into the application or supporting documentation from the HRI and, such assessment of impact as there was⁴³⁶, did not begin to address the range of HRI impacts which would result. Rather, the Inquiry was treated to a series of jury points put in cross-examination of the industry's witnesses which then unravelled as the Appellant's case was tested in cross-examination.

Equestrian Evidence

- 6.5.17. This resulted from a failure to undertake any adequate research into the HRI prior to advancing the Appeal Proposals and a failed attempt to rectify that weakness by introducing an equestrian expert to the process only months before the Inquiry opened. Whilst that expert had expertise in the temperament of thoroughbred horses, he had no expertise in dealing with young thoroughbreds or expertise in the operation of a racehorse training yard. He had no expertise in the mass movement of horses across a town or the attitude of owners towards the town and the factors likely to influence their decisions in where to train their horses. The research that he undertook was limited to six visits to Newmarket, one of which was simply a 'drive through', with observations at the horse crossings being simply brief snapshots, save for a single longer period of observation. Beyond this, he had conversations with the trainer at the yard he rode out from who, he told the Inquiry, expressed views consistent with those given by the HRI.
- 6.5.18. It would have been obvious from those conversations that there are many unreported incidents within the town resulting in injuries to horses and riders, and also near misses. Yet no research was undertaken on behalf of the Appellant to assess the extent of the problems. It would have been equally obvious to a person who had managed yards in different equestrian

⁴³² Contrary to the implication of a number of questions put in cross examination, the evidence includes direct evidence of the views of owners including those of Godolphin, the racing arm of the largest and most successful owner in the world.

⁴³³ See e.g. TG/CFW/P para 11.4 p.13 and letter from Mark Weinfeld Third Party letters bundle Document 86

⁴³⁴ E.g. Chantilly the attractions of which were attested to by Mr Gosden

⁴³⁵ Core Strategy Policy CS13 CD40 p.79

⁴³⁶ CD108 and scant consideration in the Transport Assessment

spheres that the HRI is not anxious to widely publicise such matters and that further investigation was required. Furthermore, even the most cursory acquaintance with the HRI should highlight that it operates completely differently to yards involved in other competitive fields. In particular, no other equestrian sport uses horses of such a young age and no other industry has a 40% turnover of horses at the end of each season when the young stock enters and the older horses are sold on or retire⁴³⁷. At the very least, this should have alerted the Appellant to the need to ensure that any expert instructed on his behalf undertook many visits to Newmarket to ensure a proper understanding of the industry, the way that it operates and the problems it faces.

- 6.5.19. Whilst the Appellant's witness rode out once, that was limited to a ride from a Fordham Road (east) yard and bizarrely involved no crossing of Fordham Road at Rayes Lane, or indeed use of any other crossing, other than the Bury Road crossing. This was notwithstanding his concession that a proper understanding of the vulnerability of horses within the town could only be obtained by riding through the town. Further, riding a hack at the rear of a string does not allow for the proper appreciation of the issues when approaching the crossings as a lead race horse.
- 6.5.20. In the circumstances, little weight can be accorded to the evidence of the Appellant's equestrian expert save insofar (a) as it recognised the volatility of young thoroughbreds and (b) lent support to the Jockey Club Estates' longstanding position, that more needs to be done to make the town safer for horses just to cope with the existing problems.

Highways Evidence

- 6.5.21. The Appellant's highways evidence was equally deficient⁴³⁸. Other than looking at reported accidents, there was no consideration of the existing traffic problems faced by the HRI within the town. The adopted baseline was the 2018 'no development' scenario, with the implicit assumption that that represented an acceptable balance between traffic and the safe and efficient operation of the HRI. That is dangerously complacent, given the evidence, including that of the Smiths Gore report, which universally concludes that the present position is only just manageable.
- 6.5.22. The Appellant sought to rely on certain jury points which, by their very nature, were unconvincing: -
1. If the problems experienced at the crossings are so great, the industry should have provided marshals, improved surfacing and signage etc to mitigate them;
 2. The administering of prescription drugs to horses should be recorded yet the industry provided no such records relating to incidents attributable to traffic, and few examples of accident book entries; and
 3. Having reviewed the reported accidents, the Newmarket Horse Crossings Safety Review⁴³⁹ concluded that the study area "*must be considered*

⁴³⁷ Mr Gosden explained that 90% of his horses will have moved on by the age of 3.

⁴³⁸ Whilst WSP's Mr Smith had been to Newmarket 12 times, his observations of the horse crossings were plainly limited with a maximum observation of 2-3 hours on one occasion.

⁴³⁹ ED4

*comparatively safe*⁴⁴⁰ and that any further unreported incidents “are likely to be low in number, as there would otherwise be an outcry from the local industry”.

- 6.5.23. As the Jockey Club Estates (JCE) emphasised⁴⁴¹, they have consistently pressured Suffolk County Council to put in place enhanced safety measures including revised speed limits, improved signage and improved surfacing. Some of those measures have been put in place with the assistance of funding from JCE; others remain outstanding, but progress is being made⁴⁴². Marshalling at crossings has however been rejected by Suffolk County Council as involving an unlawful obstruction of the highway and on cost grounds. This limits the intervention of trainers to measures such as those currently employed, which accord with the JCE guidance⁴⁴³. The surfacing issue is not straightforward given the heavy horse usage. Standard solutions have been tried but do not withstand the wear and tear of thousands of shod feet passing over them day in and day out. A solution is in the process of being investigated by Suffolk County Council but has taken time to come forward⁴⁴⁴. All this serves to demonstrate that solutions to the unique problems faced by the HRI in Newmarket are not readily found and they are not insignificant.
- 6.5.24. As to records of unreported incidents leading to injury and the administration of prescription drugs, the HRI is hugely sensitive to such information being publicised. The approach it took was to ask two trainers to give representative examples of the problems which they routinely and regularly face training in Newmarket. These included accidents which led to injury to horse and rider and which were recorded. It was obvious from all of the evidence that their experiences are typical. It was not suggested by the Appellant that the evidence was exaggerated, untruthful or atypical and there is therefore no proper foundation for any challenge to it. It is noteworthy that the Appellant’s witnesses fairly conceded⁴⁴⁵ that none of them had any evidence to dispute the evidence given by the industry’s witnesses.

Overall Traffic Situation

- 6.5.25. On the evidence, the Secretary of State can reach only one conclusion. The HRI in Newmarket is genuinely struggling to cope with the effects of traffic on its essential activities. This is already impairing its safe, efficient and economic operation and the risks are such that the Council’s own objective advisers have indicated that the busyness of the town may prevent the retention of the town centre yards. There is a genuine fragility here in this critically important industry which, unless recognised and responded to, could lead to the decline of the town as the world’s foremost centre of excellence. This is the proper baseline against which to assess the effects of the Appeal Proposals.

⁴⁴⁰ Ibid 4.15 p.11

⁴⁴¹ Evidence of Mr Gittus see in particular TG/WAG/PR section 3p.10 et seq

⁴⁴² It is anticipated that the recommended measures will be completed in the next 4-5 years.

⁴⁴³ E.g. use of a member of staff accompanying strings on a hack to stop traffic so as to allow crossing

⁴⁴⁴ Evidence of Mr Gittus in chief

⁴⁴⁵ Smith and Michaels in XX by TG

6.6. Traffic Assessment of the Proposals

- 6.6.1. The key concern of the HRI was the impact of the additional traffic from the proposed development. These effects are not capable of being assessed in the standard way by use of standard methodologies, assessment tools or modelling. The unique environment of Newmarket requires a non-standard approach, properly reflective of those factors which make it unique. This inevitably involves matters beyond just the normal expertise of highways and transportation experts who nevertheless should contribute to the assessment. Given the importance of Newmarket and its sensitivity, not least in terms of health and safety, a robust, soundly based cumulative assessment of the effects of the development is required and, where there is uncertainty over any results, a precautionary approach should be adopted.
- 6.6.2. At the end of the Inquiry, the following principal issues on the technical assessment ⁴⁴⁶ remained between TG and the Appellant: -
1. the appropriate baseline,
 2. the appropriate horizon assessment year,
 3. the appropriate growth factors to apply,
 4. trip generation,
 5. the effect of the development on congestion, on driver behaviour and on the safe and efficient operation of the HRI,
 6. the effect of the Appeal Proposals on Junction 37 of the A14 with particular reference to the likely rat running on Snailwell Road, and
 7. the cumulative effect of the Appeal Proposals, together with other allocated or committed development within the town.

The Appropriate Baseline Year

- 6.6.3. The Appellant and Suffolk County Council had agreed an assessment year of 2018⁴⁴⁷. Both the TA⁴⁴⁸ and the Appellant's highways evidence thereafter proceeded upon the assumption that the 2018 situation represented a happy equilibrium between the HRI and traffic volumes within the town, and that it was only the difference between the 2018 – 'no development' and 2018 – 'with development' scenarios that was material to the assessment.
- 6.6.4. However, that was a flawed approach. Given the evidence of the existing problems facing the industry in traffic terms, it cannot safely be assumed that the harm which would result, irrespective of the development, could be added to without further and unacceptable harm. Sensibly, the Appellant's Highways Witness accepted⁴⁴⁹ that it is material for the Secretary of State to have regard to the absolute change that would be experienced over and above the existing position⁴⁵⁰, in order to inform the judgment about the acceptability of the effects in the Newmarket context. However, despite

⁴⁴⁶ These are not the only issues which are disputed but the HRI focuses on those matters which have a material bearing on the analysis whether individually or cumulatively.

⁴⁴⁷ Highways SOCG 28 June 2011 para 1.1.6 (a)

⁴⁴⁸ CD105 as amended and updated

⁴⁴⁹ XX TG

⁴⁵⁰ The TA uses a 2008 base

that acceptance, neither the TA nor his evidence enabled that comparison to be readily made.

- 6.6.5. When the figures were distilled from the TA appendices, it was seen that in 2009, observed flows on Fordham Road at the Rayes Lane crossing were 1,079 vehicles (two way) in the am peak⁴⁵¹ with a two way flow of 6,194 between 05.00 and 13.00hrs ('the training period'). On race days⁴⁵², which are known to be busier and to cause additional congestion in the town, the two way flow was 7,127 vehicles⁴⁵³, a difference of approximately an additional 1,000 vehicles during the training period.
- 6.6.6. Leaving aside the other disputes with the Appellant's highways case, if the Appellant's 2018 – 'with development' trip generation and distribution are accepted, the two way flows at the Rayes Lane crossing would be 1,333 vehicles in the am peak⁴⁵⁴, that is an increase of 254 vehicles in the am peak over the base, i.e. a 23.5% increase. Whilst background growth would contribute to that increase (an increase of 99 vehicles 2 way)⁴⁵⁵, it would be the development that would add most.
- 6.6.7. The Appellant provided no figures that enabled a similar comparison to be made for the entirety of the 2018 training period, but did accept⁴⁵⁶ that the analysis of this issue undertaken by Mayer Brown was reasonable⁴⁵⁷. This concluded that the development would generate a total of over 4,250 trips in the training period, of which some 20% would route via Fordham Road⁴⁵⁸. Allowing for uncertainty in accurately predicting trip distribution, Mayer Brown's assessment was that the proposed development would generate in excess of 950 additional vehicle movements through the Rayes Lane crossing between 06.00 and 13.00hrs. If that increment is added to the 2009 baseline flows, it can be seen that in 2018 every day would in effect become a race day, compared with the existing situation. This effect was unaddressed by the Appellant. Understandably, the TG was deeply concerned about the impact of this additional traffic, which the Appellant's TA had simply airbrushed out of consideration. Even on the Appellant's own analysis the impact would be a significant one and it would remain significant⁴⁵⁹ even on a comparison between the 2018 'with' and 'without development' scenarios.
- 6.6.8. The Appellant accepted that Newmarket is a constrained town both in terms of the land available for development and in terms of its infrastructure⁴⁶⁰. It was also accepted that the scope for material capacity increases at Junction 37 of the A14, beyond the limited capacity improvement proposed as part of the current scheme, would probably require major re-modelling of the junction.

⁴⁵¹ See ED/CPS/P01 p.61 Table and TAT/RE/P Appx N Column 3 - WSP 2009 count information

⁴⁵² The effects of race days are experienced over the week with the race day

⁴⁵³ Ibid Appx 8

⁴⁵⁴ TG/RE/PR Table 4.4 p.13 Link Flow 9

⁴⁵⁵ TG/RE/PR p.13 Table 4.4 2018 with development flow of 1333 less the 2018 Baseline Link flow of 1178

⁴⁵⁶ Smith XX TG

⁴⁵⁷ See ED/CPS/PR1 Appx 1 - Mayer Brown Assessment Report 16 June 2011 para.66 p.20

⁴⁵⁸ Note that Mr Smith in response to questions from the inspector incorrectly stated that the figure was 13%. The TA shows the figure to be 20%.

⁴⁵⁹ 13% i.e. 1333 – 1178 =155

⁴⁶⁰ Accepted by Smith and Sellwood in their respective cross examinations by TG

- 6.6.9. There was also no dispute that the Core Strategy, even with its reduced content following the High Court quashing, proposes significant growth at Newmarket in the form of housing on brownfield sites, 15,000 sqm of retail development and the Home of Horseracing project⁴⁶¹.
- 6.6.10. It was also common ground that, whatever the start date of the development might be, the development itself would not be complete until post 2025 with up to 1,000 units completed in the period up to 2025, perhaps 480 or so of them by 2018⁴⁶². If so, by 2018 just 24% of the development would be complete. There would be no finished primary school and the employment and retail provision would be dependent on market demand with their rate of delivery inherently unpredictable (not least because there is no convincing evidence of the likely demand for the proposed employment floorspace in this location).
- 6.6.11. Within this context, there was no rational basis for selecting 2018 as the future horizon assessment year. Loading all of the development traffic onto the 2018 growthed flows was an entirely artificial approach. It also flew in the face of the very clear guidance contained in the Guidance on Transport Assessment (GTA)⁴⁶³. That advises that the assessment year, or years, should be consistent with the *completion schedule* of the proposed development and that of other major developments in the vicinity of the site⁴⁶⁴. It also advises that *in addition* to the opening year, one or two further assessment years should be considered and that:-
- "For the local transport network, a development should be assessed with regard to the LDF, and for a period of no less than five years after the date of registration of a planning application. **Should the development take place over a longer period, it would be appropriate to extend the length of the assessment period**"*⁴⁶⁵.
- 6.6.12. That advice in relation to the need for a longer period of assessment, is repeated in the context of proposals affecting the Strategic Road Network, where it is recognised that an horizon longer than 10 years will need to be agreed where appropriate⁴⁶⁶.
- 6.6.13. The GTA advises that the year of assessment should be agreed with the relevant authorities and that happened, but no reasoned analysis was provided either by the Highways Agency or Suffolk County Council as to why they accepted 2018 as the assessment year. This is incomprehensible as the clear expectation of the GTA is that it should be agreed in accordance with the terms of the guidance and not randomly. This is not a case in which the constraints to development are insensitive to traffic or where the effects, however great they may prove to be in practice, would be readily capable of mitigation. Nor is it a case in which the cumulative highway impacts of growth at Newmarket have been assessed so as to provide

⁴⁶¹ CD40 policy CS1 (4) and (5)

⁴⁶² See ED/CPS/P01 para 2.8.1 p.13 Phasing. The 480 assumes 200 by 2015 and 80 dpa in the period up to and including 2018.

⁴⁶³ CD/24

⁴⁶⁴ Ibid para 4.45

⁴⁶⁵ Ibid para 4.47

⁴⁶⁶ Ibid para 4.48

comfort that, irrespective of the selected horizon year, there would be sufficient capacity for all necessary development.

- 6.6.14. The benefit to the Appellant in having persuaded the Authorities to accept 2018 was that it avoided the need for them to address the implications of forecast traffic growth throughout the remainder of the development period, leaving the problem of inadequate headroom for any further development in the town to subsequent developers and others to struggle with.
- 6.6.15. There is no valid answer to the criticism of this sleight of hand. In rebuttal, the attempt was made to persuade the Secretary of State that the growth factors relied upon in the TA were such that, using the revised TEMPRO 6.2 growth factors, the resulting traffic levels assessed would not be reached until 2025 and that therefore the assessment complied with the GTA guidance⁴⁶⁷. That argument was flawed but, along with a number of their witnesses' other responses served to emphasise that he did not understand the operation of, and relationship between, the NTEM and TEMPRO.
- 6.6.16. As TG demonstrated,⁴⁶⁸ TEMPRO rear end loads growth in the period 2009-2025 to reflect, inter alia, delayed economic recovery and fuel prices. Whilst the am peak growth for the period 2009-2018 is taken as 8.5%, for the period 2009-2025 it is 22.3%. That compares with the 9.2% allowed for in the Appellant's TA to 2018. This was graphically demonstrated⁴⁶⁹ showing application of the revised TEMPRO growth rates results in the baseline traffic levels assessed in the TA being achieved at the end of 2019. It therefore remained an inadequate assessment. The Appellant's alternative Figure 1⁴⁷⁰ was simply wrong. It made the erroneous assumption that the 2009-2018 growth rate could be extrapolated to 2025 without adjustment, but it cannot.
- 6.6.17. That left the Appellant grasping at the straw that long term forecasting brings with it uncertainty and a shorter horizon year might have advantages. That was nonsense. The GTA advises that an horizon beyond 10 years may be required and both the NTEM and TEMPRO provide the tools for longer periods. DPD's are required to provide for a minimum of 15 years post adoption and the transportation effects of such proposals require assessment in order to be sound. The advice would be quite different were there any genuine doubt as to the reliability of forecasting up to 15 years ahead. It can be no justification for the selection of an aberrant year of assessment that forecasting brings with it a margin of error.

Appropriate Growth Factors

- 6.6.18. The issues here were: -
 1. Whether the growth factor had been appropriately adjusted by removing the correct number of dwellings from the underlying planning assumptions within TEMPRO, in order to avoid double counting, and

⁴⁶⁷ ED/CPS/PR1 section 2.3 pp.6-7

⁴⁶⁸ TAT/RE/PR Para 2.6 & Table 2.1 p.5

⁴⁶⁹ TG3

⁴⁷⁰ ED/CPS/PR1 p.7

2. Whether the growth factor used appropriately reflected the likely growth in traffic in East Cambridgeshire, which in turn would bear on the traffic predicted to use the A142 north arm of the A14/A142 junction. This would influence the propensity to rat run down Snailwell Road.
- 6.6.19. For the period 2007-2018, TEMPRO forecasted that an estimated additional 1,201 households would be accommodated within Newmarket. The Appellant removed all growth in the Newmarket Main area of TEMPRO, save that related to 196 dwellings, claiming this to be necessary to avoid double counting. This adjustment was based on the 2006 Core Strategy Preferred Options which identified capacity for 696 dwellings on new allocations to the town, of which 196 were not attributable to a location north-east of Newmarket⁴⁷¹. However, rather than confining the adjustment to this 500 on the Appeal Site, they chose to remove an additional 500 units which had nothing to do with Hatchfield Farm and which therefore should not have been removed in the interests of avoiding double counting. This was clear from the Appellant's own evidence⁴⁷².
 - 6.6.20. As at September 2006, there were 559 committed dwellings and 696 on "*possible allocations*". That totals 1,235 which is reflected in the TEMPRO planning assumptions. What the Appellant did was effectively to ignore the development of the 559 committed dwellings in the period to 2018 which therefore had the effect of suppressing the growth factor within the Newmarket Main area⁴⁷³. That was unjustified⁴⁷⁴.
 - 6.6.21. Whilst this is only an issue if the 2018 year of assessment is accepted⁴⁷⁵, it serves to demonstrate an endemic absence of robustness in the Appellant's Transport Assessment and in the consideration of it by Suffolk County Council.
 - 6.6.22. A similarly inadequate approach was taken towards the likely effect of committed development in East Cambridgeshire on the future operation of the A14/A142 junction. This appeared to be a result of Suffolk County Council's "*current practice of not requiring future development to be accounted for, beyond its inclusion in TEMPRO, unless it has planning permission*"⁴⁷⁶. That practice conflicts with the GTA which advises that: -

"When assessing the development of individual sites (as proposed in the relevant allocations/action area documents), trip generation estimates should, where possible, be derived using similar methodologies and assumptions as are applied in the planning application stage. The fundamental issue is the

⁴⁷¹ TAT/RE/P para 4.21-4.22 p.23

⁴⁷² ED/RMS/P para 5.4.8 p.47

⁴⁷³ See TAT/RE/PR Appendix A. The effect is to reduce the growth from 6.6% down to 2.07% if 2018 were to be accepted as the year of assessment.

⁴⁷⁴ Mr Smith sought to maintain that his adjustment was "plausible" notwithstanding the overwhelming evidence that it was entirely implausible.

⁴⁷⁵ Because the TEMPRO planning assumption for the period 2007-2025 includes 1000 dwellings to the north of Newmarket which should be removed to avoid double counting, as Mr Evans has done (see TAT/RE/P Appx A) to give a growth rate of 18.4%.

⁴⁷⁶ See CD161 para 5.4 p.7

need to establish the amount of trips and/or residual traffic that would be generated by the development proposals".⁴⁷⁷

- 6.6.23. Both the dangers and weaknesses of the County Council's approach were demonstrated by Mayer Brown's assessment of the trip generation potential of the George Lambton Playing Fields if they were to be developed for their allocated B1 use on a comparison with relying simply on TEMPRO growth⁴⁷⁸. The Appellant accepted that Mayer Brown's analysis was reasonable. Its conclusion was that using TRICS, the allocated employment land could give rise to 554 trips in the am peak onto the A142/Willie Snaith Roundabout compared to just 150 from the application of TEMPRO growth⁴⁷⁹. The effect of the Appellant's approach once again would significantly suppress potential growth, which itself would impact on the operations of the HRI.
- 6.6.24. This issue is compounded because at no stage did the Appellant, the Highways Agency or Suffolk County Council give any consideration to the likely traffic impacts of the other development proposed in the Core Strategy for Newmarket, other than insofar as it is reflected in the TEMPRO growth rates. That much is clear from the very limited transportation input into the Core Strategy in the form of the AECOM report⁴⁸⁰. It concerned itself exclusively with the broad locations for housing and, in capacity terms, it focussed solely on the connections to the strategic road network⁴⁸¹. Everything else was ignored, and the ability of Newmarket to accommodate all of the growth proposed for it by the Core Strategy and the implications of that growth was unaddressed then, and it remains unaddressed.

Junction 37 of the A14

- 6.6.25. The weakness in the TA in relation to the A14 Junction 37 relates to the arms that are currently operating over capacity. The Appellant recognised that the junction currently experiences very significant queuing problems in peak hours. There can be queues of 1 km or more for right turning movements in the am peak from the north along the A142 to the A14 westbound. The return movement is apparent in the evening peak hour⁴⁸². The source of this traffic is East Cambridgeshire District because there is no realistic alternative to the use of this junction to travel towards Cambridge or Bury St Edmunds⁴⁸³. Using growth rates based on Newmarket to create a baseline position having already adjusted inappropriately for double counting within the Newmarket Main TEMPRO Zone was obviously inadequate in order to provide a robust assessment of the likely effects of the development on this critical junction. There will be other growth in traffic related to development within the A142 north corridor which has not been reflected in the adjusted growth rate.

⁴⁷⁷ CD24 para.5.15

⁴⁷⁸ See Mayer Brown Technical Note May 2011 section 4.5-4.11 which appears at ED/CPS/PA01 App1

⁴⁷⁹ Ibid Tables 4.1 and 4.2 p.139

⁴⁸⁰ CD59

⁴⁸¹ Ibid paras 1.2 p.3 and 1.8 p.5

⁴⁸² ED/CPS/P01 paras 4.7.1 and 4.7.2 p.29

⁴⁸³ CD59 recognises that any traffic between Ely and Soham accessing the A14 to travel east is largely constrained to the J37 of the A142, since the alternatives are longer minor county routes and the only alternative for those travelling west is the A1123 which already queues to Cambridge from north of this junction with the A10 as accepted by Mr Smith (XX TG).

- 6.6.26. What should have been done to comply with the GTA, was to have applied committed development traffic directly onto the baseline conditions; failing that, at the very least, the appropriate Rural East Cambridgeshire growth rate should have been applied to this arm of the junction.
- 6.6.27. The effect of these adjustments would be as follows: -
1. Applying the Rural East Cambridgeshire TEMPRO 6.2 growth rate to the A142N would lead to an additional 144 vehicles on this link in the am peak in 2018 and an additional 363 in 2025⁴⁸⁴, or
 2. Alternatively, applying committed development traffic having made appropriate allowances for development of allocated sites at Soham and Fordham would result in an additional 270 vehicles in the am peak in 2018 and an additional 423 in 2025⁴⁸⁵.
- 6.6.28. Whilst the Appellant's proposed improvements might result in some enhanced capacity on some arms of the junction, even on the Appellant's own figures, there would remain a substantial queue of traffic on the A142N in the am peak. Any additional traffic over and above that assumed within the TA would simply be added to the back of that queue, a queue that would be longer than the existing queues⁴⁸⁶, and which surveys have shown already leads to significant rat running down the Snailwell Road into Newmarket⁴⁸⁷.
- 6.6.29. The Appellant's response to this issue failed to address the criticisms. Firstly, it was said that the reduction in expected growth in traffic below that assessed in the TA on the A142 south of the A14, would more than compensate for any potential increase in traffic within East Cambridgeshire District above that assessed in the TA⁴⁸⁸. Secondly, it was maintained that the Newmarket Main growth rates already account for growth in East Cambridgeshire and that it was therefore inappropriate to adjust for committed development as the TG did. Both contentions were misconceived.
- 6.6.30. The Appellant's comparison of the effect of the growth factors adjusted for Rural East Cambridgeshire Growth⁴⁸⁹ did not reflect flows immediately to the north of J37 on the A142N and TG's analysis showed that the additional burden on the A142N arm was not outweighed by the reduction on the A142S which would result from the revised Newmarket Main growth factor⁴⁹⁰. Furthermore, the Appellant's analysis assumed a 2018 baseline and not the appropriate 2025 baseline which would require the application of 17% growth to the A142S flows.

⁴⁸⁴ See TG6 Revised Table 4.7

⁴⁸⁵ Ibid

⁴⁸⁶ Queues of in excess of 1km were observed by WSP in their 2008 baseline modelling of J37. In their 2018 baseline modelling they predict a queue of 2.5km which would reduce to 1.4km on the Appellant's assessment with the improvements to the junction – see TG/RE/P para 4.64 p.34

⁴⁸⁷ See TG/RE/P paras 4.65-4.73 pp.35-36 Of the Snailwell Road traffic recorded at the junction with Fordham Road some 64% (131 vehicles) was from the A142N in the AM peak.

⁴⁸⁸ WSP rely on ED9 Technical Note dated 18 July 2011

⁴⁸⁹ ED 9 Table 1

⁴⁹⁰ WSP assume an additional two way flow on the A142N of 53 but CCE demonstrate that the increase would be 144 vehicles (see TG6).

- 6.6.31. As to the criticism directed at the application of traffic likely to be generated by committed development at Soham and Fordham to the baseline traffic, that complaint was symptomatic of the Appellant's inability to understand the relationship between NTM and TEMPRO. The NTM provides a high level regional forecast which must be tailored by TEMPRO factors to local circumstances. That results in a simple approximation which may or may not be appropriate to the particular location. It was wholly unrealistic to contend that the Newmarket Main growth already accounts, in any meaningful development control way, for growth in Rural East Cambridgeshire. If it did, and the 1,169 dwellings committed at Soham were allocated on land just to the north of the A14 within ECDC's area, on the Appellant's, approach there would be no need for a TA to assess the likely traffic generation of the proposal on Junction 37 because reliance on TEMPRO growth would be a sufficient proxy. That proposition only has to be stated to see just how absurd it is. There is nothing in the TEMPRO guidance to support that interpretation.
- 6.6.32. It was indicative of just how little capacity there would be in the A14 junction, even with the Appellant's improvements, that they felt compelled to take such an extreme position, and with the complete absence of any sensitivity modelling of the junction to demonstrate that the junction would perform adequately. It was no answer to argue that the Highways Agency and Suffolk County Council were content where their approach did not accord with guidance, and there had been a marked failure to assess the cumulative effects of planned developments likely to impact on the operation of this critical junction.

Trip Generation

- 6.6.33. The TG had been consistent in its criticism of the Appellant's trip generation estimates throughout the planning process, including at the Core Strategy independent examination. These criticisms fell on deaf ears as far as the Highway Authorities were concerned, they having bought into the notion that the use of average trip rates, without any deduction for internalisation or for the effect of travel plan measures, rendered the estimates robust. However, in preparing for the Inquiry, the Appellant's consultants were compelled to acknowledge the serial weaknesses in the trip generation estimates pointed out by both TG's Consulting Engineers and Mayer Brown⁴⁹¹. This led to revised average trip generation rates, to which deductions to allow for internalisation and the effects of the travel plan measures were made. It was only by making these deductions that the revised trip generation came close to the trip generation estimated by the TA. On any analysis, the TA was well out.
- 6.6.34. The Appellant's Consultant's revised analysis was no more reliable and, to be accepted, would again require a departure from the GTA guidance which clearly states that *"the use of average trip rates with deductions for sustainability measures could result in overly optimistic trip rates for the proposed development"*⁴⁹².

⁴⁹¹ See May 2011 Technical Note section 2 at ED/CPS/P01 Appx14 p.125
⁴⁹² CD24 para 4.62 (ii)

6.6.35. Especially in the absence of identified users, such a departure is simply not warranted on the evidence. The difference between the parties was as follows: -

	WSP Revised Average AM Peak Trip Generation ⁴⁹³	CCE Estimate of WSP Revised 85 th Percentile Trip Generation ⁴⁹⁴	CCE adjustment of WSP 85 th %ile Trip Generation to allow for internalisation and travel plan (-20%) ⁴⁹⁵	CCE Logic Check of Employment Trip Generation ⁴⁹⁶
Residential	549	848	678	-
Employment	281	653	522	365 (arrivals only)
Total	830	1,501	1,200	-

6.6.36. The key area of dispute was the trip generation of the 36,000 m² of employment floorspace. The Appellant's estimate remained unreasonably low given that 10,000 m² would be B1 office floorspace. There was no evidence that their Consultant's interrogation of the TRICS site resulted in the selection of sites with comparable locations to the Appeal Site in terms of sustainability⁴⁹⁷ and the reliance on average trip rates in such circumstances was unreliable. The difference between the Appellant's average and 85th percentile employment trip rates demonstrated that there is a large variation in trip profiles across the TRICS surveys, upon which the trip rates were based and that travel plan measures would have to be unusually successful to reduce the trip generation down to average rates.

6.6.37. Reliance on average trip rates with deductions was doubly unreliable in the context of a site which is located immediately adjacent to a junction on a major trunk road and where 41% of the development traffic was assigned to that route. The significance of the location adjacent to the A14 in the context of the employment development was a matter upon which the Appellant placed significant stress in the cross examination of SHNL's economist. It is inherently improbable that any traffic accessing the employment development from the A14 would do so other than by car, van or lorry, given the available public transport routes.

6.6.38. On the Appellant's assumption of 7.3% internalisation of employment trips, 92.7% of such trips would come from external locations and commute to the site. Only a small part of the population of Newmarket is within 2 km of the proposed employment land, and therefore within reasonable walking distance⁴⁹⁸. Cycling would be more feasible, but the Travel Plan identifies that the census proxy area relied upon by the Appellant for transport comparison achieved a mode share of 7.6% (itself likely to be heavily reliant on the connection with employment in the horseracing industry) and the cycle mode share target for the development is just 8.2%. This would be

⁴⁹³ ED/CPS/P01 Appx14 p.89 para 1.4.8

⁴⁹⁴ TAT/RE/PR Table 4.1 p.9

⁴⁹⁵ Ibid

⁴⁹⁶ See TAT/RE/PR AppxC

⁴⁹⁷ Accepted by Smith in XX by TG

⁴⁹⁸ ED/CPS/P01 Appx 5

nowhere near sufficient to deliver the low employment trip rate relied upon by the Appellant.

- 6.6.39. The issue therefore narrows down to whether the proposed enhancement to the bus service would justify the optimism, but it does not. The Appellant accepted⁴⁹⁹ that the enhanced bus service would be unlikely to prove attractive to anyone other than Newmarket residents. That was sensible because the A142N and Exning services would remain unimproved and offer only an hourly service. The proposed improvement would be the addition of a new local route on Exning Road which, combined with existing services would offer a half hourly service. However, as was clear from the Bus Routes plan⁵⁰⁰, the improvement would benefit principally those who live on or within 400m of Exning Road. Those served by routes 10 and 10A would remain served by an hourly service and on a route which the Appellant described as tortuous⁵⁰¹. Even if the target bus mode share of 4% were achieved⁵⁰², which appears unlikely on this analysis, the Appellant's reductions applied to the average trip rates were wildly optimistic. They remained so even with the potential to 'throttle' traffic at the site access junctions. Whilst that might have some effect in relation to traffic leaving the site, it would have little potential to address those commuting in and, even if it could, the effect would simply be peak spreading, which would further reduce the valuable respite from peak traffic levels enjoyed by the HRI either side of the 08.00-09.00 hrs morning peak.
- 6.6.40. In the context of a scheme where the proposed employment development is entirely speculative and there had been no consideration of the likely range of potential occupiers, the Appellant's assessment was simply not robust. The more likely trip generation lies within the range 365-522 of which 20%⁵⁰³ would approach from the south using Fordham Road. This would be likely to include a range of vehicle types including HGVs and vans, all capable of impacting on the operations of the HRI.

Summary of Highways Issues

- 6.6.41. If the appropriate horizon year were adopted and appropriate growth⁵⁰⁴ and trip generation factors allowed for within the analysis, the effect on the relevant links in comparison with those assumed by the Appellant (WSP) in the TA would be as follows: -

⁴⁹⁹ Smith XX TG

⁵⁰⁰ ED/CPS/P01 Appx 3

⁵⁰¹ See ED/CPS/P01 para 7.1.2 p.59

⁵⁰² Travel Plan Table 8 p.15

⁵⁰³ CD105 App I – 20.7%

⁵⁰⁴ For ease of comparison no allowance is made in the CCE figures for committed development traffic in East Cambridgeshire.

	Link Flow in the am Peak ⁵⁰⁵								
	1	2	3	4	5	6	7	8	9
WSP (2018) TA with development	1343	331	1612	1885	1848	1962	1856	2023	1333
CCE 2025 with development	1529	376	1829	2099	2060	2132	2020	2207	1451
Difference ⁵⁰⁶	186	45	217	212	212	170	164	184	119

6.6.42. The 2025 am peak figure at Fordham Road (link 9) may be compared with the 2009 observed two way flow of 1,079. The effect of the development and growth would be to add an additional 372 vehicles to Fordham Road in the vicinity of the Fordham Road horse crossings i.e. another 6 vehicles per minute. Of that, 189 would be related to the development of Hatchfield Farm ⁵⁰⁷. These would be loaded onto a road with which the HRI is already struggling to cope.

6.7. Growth in Horse Numbers

- 6.7.1. In the unique context of Newmarket, where vehicular traffic and horse movements interact and conflict day in and day out, the Appellant and the County Council should have considered the potential for growth of horse numbers, and the likely effect on the operation of the highway network in conjunction with both forecast traffic growth and the development traffic. Such an assessment is all the more important given the Appellant's concession that growth in horse numbers in accordance with past rates of growth would constrain any other significant development within the town ⁵⁰⁸. It follows inexorably that development would constrain the ability of the HRI to grow and it is therefore critical that the appropriate balance should be properly investigated and established before large scale developments with potential long term adverse consequences are permitted.
- 6.7.2. No consideration was given to this important issue in the preparation of the Core Strategy. The scale of development at Newmarket was fixed before any highways input was made ⁵⁰⁹ and, such environmental consideration as there was, did not address the impact of growth at Newmarket on the HRI, save in relation to the possible loss of land in HRI use ⁵¹⁰. The only highways

⁵⁰⁵ For the relevant links see TG/RE/P Appx J Note Link 4 is on the A142 immediately north of J37 of the A14 and Link 9 is Fordham Road just north of the Rayes Lane crossing

⁵⁰⁶ Note that no allowance has been made in this comparison for the effect of committed growth in the A142 corridor north of Newmarket at Soham and Fordham. It is therefore a best case assessment.

⁵⁰⁷ See TG/RE/PR Tables 4.5 and 4.6 pp13-14 Link 9 1451 (with development)-1262 (2025 baseline) = 189

⁵⁰⁸ Smith XX TG and ED/CPS/PR1 para 1.2.3 p2

⁵⁰⁹ Accepted by Sellwood XX TG and see CD97 The Parish Profile and Settlement Hierarchy Evidence Base which is exclusively concerned with services and facilities and which did not address environmental considerations but nevertheless determined the distribution of housing.

⁵¹⁰ See CD33 The Infrastructure and Environmental Capacity Appraisal Final Report May 2009 p.71 produced after the content of the Core Strategy was effectively settled and which was not informed by any highways input (see Table 3 p.8) or any evidence on the potential effects on the HRI of the scale of development proposed for Newmarket in the Core Strategy.

input into the Core Strategy process was the belatedly produced AECOM report⁵¹¹. This was produced after the independent examination had commenced and which, other than claiming erroneously that *"there are a number of Pegasus crossings⁵¹²"*, and referring to the existence of the horsewalks does not address the effects of traffic on the HRI at all.

- 6.7.3. Given this deficiency in the background evidence base, the responsibility to address the issue of future growth in the industry fell to the Appellant to address as part of his TA. However, the issue was ignored. It was equally ignored in the Appellant's exchanged proofs of evidence save that a sensitivity test for the LINSIG analysis of the Rayes Lane Horse Crossing was run with an entirely arbitrary 10% increase in the length of the modelled horse strings to account for possible future growth. The flaws in the use of LINSIG will be considered below, but it is important to note that the 10% figure did not result from any objective assessment of the likely growth in horse numbers in the town. Rather, it was derived from Mayer Brown who suggested that growth of 10% by 2018 *"may provide an initial sensitivity test⁵¹³"*. This figure was not robust but simply an uninformed guesstimate and even then, only of growth to 2018, i.e. less than 7 years.
- 6.7.4. In terms of existing and permitted capacity for horses in training, there is scope for some 1,198 additional horses within the town⁵¹⁴, which would equate to an increase of 39.7% over the present numbers in training. Of this capacity, 878 boxes are located in the Fordham Road and Snailwell Road area⁵¹⁵ which are the training yards that would be likely to experience the greatest impact from the traffic generated by the Appeal Proposals. There is therefore no capacity constraint on future growth in the industry and, the evidence was that growth over the last 12 years, including the recession years, had averaged 2.6%⁵¹⁶. If this level of growth was sustained over the Core Strategy period to 2025/6, then the industry would have grown by approximately 36%; taking up much of the available capacity⁵¹⁷.
- 6.7.5. Whilst, as with many other industries, the HRI is presently affected by the recession, the training industry in Newmarket has shown resilience and has delivered growth so far in 2011⁵¹⁸. The Appellant acknowledged⁵¹⁹ that there was no better means to assess the future growth prospects in the industry than to extrapolate past long term growth.
- 6.7.6. The evidence before the Inquiry was that the industry operates within a sector likely to experience growth⁵²⁰, and growth is foreseen at all levels in the industry from the global operations that are less affected by recessionary pressures⁵²¹ to the new trainers just embarking on their

⁵¹¹ CD59

⁵¹² P.19 – There are in fact no Pegasus crossings in the town

⁵¹³ Mayer Brown Technical Note May 2011 para 5.12 at ED/CPS/P01 Appx14 p.142

⁵¹⁴ TAT/RE/P para.2.18 p.9

⁵¹⁵ 21% of the training yard capacity

⁵¹⁶ TAT/RE/P para 2.19 p.9

⁵¹⁷ Evans evidence in chief

⁵¹⁸ Gittus evidence in chief – 2% growth to date this year.

⁵¹⁹ Accepted by Smith in XX TG

⁵²⁰ Roswell evidence in chief

⁵²¹ E.g. Godolphin see evidence in chief of Anderson

careers⁵²². There are also known proposals for short term growth⁵²³. There is no reason why growth at the annual rate of 2.6% experienced over the period 1998-2011 should not continue in the period to 2025. That would equate to growth in the order of 36% in the number of horses accessing the gallops in Newmarket⁵²⁴ and such growth would be in accordance with the Core Strategy objectives for the industry.

6.7.7. Rather than accepting the likely growth in this successful industry, the Appellant challenged the growth prospects and effectively argued that there was little prospect of growth in the short to medium term. It was implicit in the Appellant's case that his proposed development would be inconsistent with any material growth in the HRI. To take a short to medium term view in the midst of the recession, given an acknowledged finite capacity of the town, would be poor planning and in any event was misconceived. The evidence was that Newmarket is capable of bucking the wider trends in the industry and, whilst there can be no 'expectation'⁵²⁵ of growth of any particular level in the current climate, the levels of growth used by TG in their analysis were reasonably foreseeable and should be considered to provide a robust analysis.

6.7.8. The Appellant's reluctance to engage properly with the issue of growth reflected the simple acceptance that there must be a tipping point at which development would begin to constrain the industry, but which he did not identify⁵²⁶; yet further evidence of the failure of the Appellant and his team to discharge the onus which rests upon them in policy terms. The TG evidence showed that this tipping point has been reached.

6.8. Traffic Effects of the Development

Fordham Road

6.8.1. The TG's 2025 analysis of the trip generation should be accepted as clearly preferable to the Appellant's assessment. The result would be the addition of significant additional traffic to Fordham Road throughout the sensitive training period. This additional loading would be onto a network (in terms of highways, horse crossings and horsewalks) which is inadequate to cope safely, even with the current demands placed upon it.

6.8.2. Southbound traffic on Fordham Road already regularly queues up to the Snailwell Road junction⁵²⁷ with northbound traffic backing up from the Rayes Lane crossing to the Clock Tower junction. The delays are significant⁵²⁸. The Appeal Proposals would lead to increased delays over the existing situation at all junctions, other than the junction of The Avenue/High Street. Getting around the town would therefore be even more difficult than at present.

⁵²² See the evidence in chief of Hugo Palmer.

⁵²³ E.g. the Marco Botti proposal for a new 80 box yard on land behind Kremlin Stud Stables, Snailwell Road now with planning permission (see TG/WAG/P para 5.3 p.16

⁵²⁴ Evans Evidence in Chief.

⁵²⁵ The word put to Mr Gittus in XX by ED

⁵²⁶ Mr Smith conceded in XX by TG that there was a limit to how much traffic the HRI could continue to operate with but that he was unable to assist in identifying where that point was.

⁵²⁷ See e.g. TG/HP/P para 3.1 p.6 and Appx 5 photo 8.

⁵²⁸ Mr Wall's evidence (TG/CFW/P para.11.3 p.12) was that it can take him 5 minutes just to get out of his yard onto Fordham Road and then a further 12 minutes or so to make the short journey from Induna Stables to the Severals.

Fordham Road Horsewalk

- 6.8.3. The increased numbers of horses in training in the yards served by Fordham Road has led to increased pressure on the Fordham Road horsewalk. This has sufficient width for only one string to use it at a time. There is no scope for strings travelling in opposite directions to pass, which leads either to horses being forced onto the adjacent footway or onto the carriageway in order to complete the journey. Even the Appellant accepted that this was undesirable⁵²⁹. With increased traffic from the proposed development, the situation would materially worsen.

Fordham Road/Snailwell Road Crossing

- 6.8.4. Whilst use of the Snailwell Road crossing does provide a means for those travelling to the gallops to minimise this particular conflict with traffic, it adds further interruption to the traffic and also requires use of a crossing which is poorly located with regard to the turning movements at the Snailwell Road/ Fordham Road junction, as well as having poor visibility lines and the absence of a horsewalk leading to it.
- 6.8.5. Mayer Brown's assessment of the crossing is that it is '*intrinsically unsafe*'⁵³⁰. There is no scope for use of this crossing in an eastbound direction because the visibility is so bad⁵³¹ and its use is fraught with risk, even with additional signage or speed reduction measures. Even if it were to be used more frequently, the effect would be increased use of the Rayes Lane horse crossing, thus adding yet further interruption to the traffic flow.
- 6.8.6. Increased traffic and increased horses on this creaking infrastructure could only lead to increased conflict, driver frustration and delays to the HRI's essential travel.

Rayes Lane Horse Crossing

Visibility

- 6.8.7. The Rayes Lane crossing is used by large numbers of horses on their way to and from training and is similarly problematic. Temperamentally, racehorses do not happily stand and wait for gaps in traffic; nor are they readily reined back or prepared to re-trace their steps. It is important for safety reasons that they are kept on the move and that the visibility at the crossing points allows for that to be accommodated as safely as possible. The effective visibility splays at the Rayes Lane crossing are seriously deficient. In particular, on the Rayes Lane side of Fordham Road, splays of just 20.7m and 12.7m are available with an 'x' distance of 5m.
- 6.8.8. Whilst there is no available guidance on horse crossings that is tailored to the specific circumstances of Newmarket, there is guidance for equestrian crossings in DoT Traffic Advisory Leaflet 03/03 *Equestrian Crossings*⁵³² ("TAL 03/03") which supplements TA57/87⁵³³. This says that accidents involving ridden horses can be very serious for all concerned and that horses that are

⁵²⁹ Michaels XX SHNAG

⁵³⁰ ED/CPS/PR1 Appx 1 para 53 p.17

⁵³¹ See TG/RE/P para 5.58 p.63 and Figure 11

⁵³² CD65

⁵³³ CD67

kept waiting by busy roads may be difficult to control, as might horses which are used to travelling in groups if the group becomes split up. In terms of visibility requirements for riders and horse crossings, TAL 03/03 advises that much of the advice in TA57 Roadside Features *"will be applicable for all roads"*⁵³⁴.

- 6.8.9. TA57 notes that *"horses often cannot be held by their riders safely at the road edge without encroaching onto the carriageway and, when crossing a road, a horse can react unpredictably and may stop suddenly"*⁵³⁵. That accords with the HRI's evidence about the typical problems experienced at crossings. For a 50kph 85th percentile approach speed, TA57 identifies a desirable visibility of 135m⁵³⁶.
- 6.8.10. Given the nature of thoroughbred horses, an 'x' distance of 5m is the desirable minimum. Whilst it is acknowledged that the guidance advises that this may be reduced to 3 m where the 5 m is unachievable, this is in the context of the more normal single or small groups of manageable horses and not young thoroughbreds with no, or very limited, previous exposure to traffic. The need for a 5 m 'x' distance was demonstrated by the Appellant's own evidence. The review of the video taken of the Rayes Lane Crossing on 8 March 2011 disclosed a number of adverse horse reactions to vehicles approaching from the south⁵³⁷. That is unsurprising, because the visibility is so constrained to the south that horses receive no warning of the approach of vehicles as they are about to enter the crossing. For the rider to get any effective view to the south, the horse's head has to be at the edge of, if not over the edge of the carriageway. That is inherently unsafe. Whilst there may not have been reported accidents at the crossing, there have been injuries to horses and riders and many near misses. Adding yet more traffic, including, construction traffic during the lengthy construction period⁵³⁸, would further impair the safety of this crossing.

Horse/Vehicle Conflicts

- 6.8.11. That effect would be compounded by the increased frustration of drivers as the delays they already experience getting around this part of Newmarket worsened. TG's analysis demonstrated that, with the development in place and no growth in horse numbers, by 2025 there would be an 83% increase in vehicular/horse conflict over the position in May 2011⁵³⁹. Allowing just for the Appellant's 10% growth in horse numbers, the conflict would increase by 162%. These percentages were derived using PV², a standard formula for the measurement of pedestrian/vehicle conflict which can assist in identifying the need for additional pedestrian crossing facilities. Whilst not intended for use in the present context and inevitably having some limitations, this formula can assist in providing a direct measure of the scale of the conflict which would arise with the development in place.

⁵³⁴ See Introduction

⁵³⁵ Para.11.1.3 p.11/1

⁵³⁶ Table 2 p.11/3

⁵³⁷ ED/CPS/P01 para.7.6.5 p.67

⁵³⁸ Whilst HGV traffic can be minimised by routeing agreements etc, there is no realistic means to control the use of Fordham Road by vans and trucks used by construction workers

⁵³⁹ See TG5. On WSP's assumptions there would be an increase of 77% as at 2025 and 43% as at 2018.

- 6.8.12. The extent of increased conflict with increased horse numbers would be consistent with TG's observations of the horse crossings at Rayes Lane and Bury Road. A comparison of the 2009 and 2011 observations shows that with increased horses, the delays to traffic at both crossings increases substantially⁵⁴⁰. This resulted largely from the fact that the increased numbers of horses resulted in a greater frequency of interruption (i.e. more strings) rather than the increased length of the existing interruptions (i.e. longer strings). The other parameters remained largely the same (e.g. average delay per horse, average horses per string and average length of interruption).

Delays and Driver Frustration

- 6.8.13. TG's analysis of the effect on delays if all the existing capacity for horse growth is utilised⁵⁴¹ was not challenged in terms of its methodology. All that was said was that growth in the short to medium term would not result in a 39% increase in horse numbers. However, even if growth were to be less, the delays would still be substantial. For example, planning permission has been given for the Marco Botti yard and, as anticipated, the Council has required access to the gallops to be via the Snailwell Road crossing and Rayes Lane and not via the Fordham Road horsewalk⁵⁴². There is therefore every prospect of at least one additional string of twenty horses crossing Fordham Road at Rayes Lane in the am peak. One string alone would add an additional two minutes delay to the peak hour traffic at the crossing, in addition to an equivalent delay at the Snailwell Road crossing⁵⁴³, with a consequent knock on effect to the already significant queuing. This cannot fail to increase driver frustration and lead to an increase in the number of incidents of inappropriate driver behaviour at the crossings.
- 6.8.14. Whilst the TG witnesses and others were taxed as to whether they had evidence that such incidents were caused by driver frustration, it is difficult to see what other cause there could be for drivers driving through strings, failing to give way, or the kinds of verbal abuse which the witnesses and third parties attested to. There is of course no offence of driving whilst frustrated, so it is unsurprising that none of the reported accidents identify this as a contributory factor but, whether the cause is impatience, frustration, discourtesy or ignorance does not alter the fact that such incidents are frequent and would undoubtedly increase as the traffic increased.

LINSIG

- 6.8.15. In response to this, the Appellant sought to rely on a LINSIG analysis of the Rayes Lane crossing to demonstrate that any increased delays as a result of their development would be imperceptible and therefore not likely to affect driver behaviour⁵⁴⁴. However, that analysis is flawed on so many levels that it should be disregarded.

⁵⁴⁰ See TG/RE/P Tables 5.4 and 5.5 p.46. The increased delay at Rayes Lane is 4mins 2 sec and at Bury Road 7mins 31 secs during the AM peak hour.

⁵⁴¹ TG/RE/P Table 5.6 p.47

⁵⁴² See Unilateral Obligation dated 1 September 2011 – Clause 5.1.

⁵⁴³ Assuming a crossing time of 3 seconds per horse.

⁵⁴⁴ ED/CPS/P01 Appx 21 p.232

- 6.8.16. Firstly, LINSIG is designed to model controlled crossings, not uncontrolled crossings, and the developer of the model⁵⁴⁵ had not approved its use in these circumstances.
- 6.8.17. Secondly, there are no material similarities between a controlled crossing and the Rayes Lane horse crossing other than the conflict between vehicles and another stream of movement (in this case horses) which require one or other to stop to avoid an accident. The horse movements are uncontrolled i.e. there is variability in terms of the number of interruptions, the length of the interruptions and the periods between those interruptions. As the Jockey Club witness explained, no training day is ever the same. In contrast, LINSIG assumes the presence of an electronic controller which by definition is inconsistent with the operation of an uncontrolled crossing.
- 6.8.18. Thirdly, no allowance has been made in the modelling for intergreen periods, notwithstanding the variability in driver response to horses crossing and LINSIG is accepted to be extremely sensitive to the modelling of the intergreens in terms of the assessed capacity⁵⁴⁶.
- 6.8.19. Fourthly, the model was “validated” by reference to queue lengths observed on a single day⁵⁴⁷ but the observed queues did not reflect the typically observed queues back to Snailwell Road or to the Clock Tower junction. No queue length observations were made on 30 June 2010 or 1 July 2010. It is an abuse of LINSIG to derive a saturation flow from observed delays; the saturation flow is an assessed input. On the Appellant’s approach, the queues observed on other days e.g. back to Snailwell Road could not be reproduced by the model, other than by significantly reducing the saturation flow. This demonstrated that all that had been created was, at best, a dubious model of a one day snap shot.
- 6.8.20. Fifthly, even the most cursory observation demonstrated that the performance of Fordham Road is affected by the interaction between a number of junctions and accesses within a comparatively short distance, including the access to Fairstead House School. Simply to model one ‘junction’ in isolation was meaningless and, over and above existing traffic, the Appeal Proposals would involve the introduction of a pedestrian crossing between Rayes Lane and Snailwell Road, which would add yet further complications to the interactions that were omitted from the model .
- 6.8.21. Sixthly, the saturation flow used in the modelling made no allowance for the proposed mitigation measures and their effect on capacity⁵⁴⁸.
- 6.8.22. Seventhly, no proper allowance was made for growth, and the modelling of the allowance that was made was flawed. To model growth by increasing the delay caused by each string in the model by 10%, was misconceived. The number of additional horses using the crossing which this would represent would be tiny and would in any event be exceeded by the known proposals⁵⁴⁹. The growth would most likely result in additional strings

⁵⁴⁵ JCT

⁵⁴⁶ Smith XX

⁵⁴⁷ 8 March 2011 see ED/CPS/P01 Appx21 p.239

⁵⁴⁸ See ED18. The effect of the possible narrowing will be likely to reduce capacity and therefore the Appellant’s saturation flow is overstated.

⁵⁴⁹ The Marko Botti yard

(rather than increased string length) which would lead to increased frequency of interruptions and significant additional delay.

- 6.8.23. Finally, the flawed output of the model gave no indication of the delays which any given driver on Fordham Road would experience in 2018. Simply to assert that the worst increased delay would be an average of 31 seconds was meaningless without knowledge of what the 31 seconds would be added to and how it would relate to the individual motorist. Given that delays are already known to exceed 10 minutes on this section of Fordham Road, any increased delay would result in material worsening of an already very difficult situation.
- 6.8.24. The LINSIG analysis was therefore useless and the fact that it had been accepted by Suffolk County Council as being *“an appropriate method of modelling the horse crossing...in a manner that allows the delay to traffic to be suitably assessed”*⁵⁵⁰ simply served to underscore the absence of robustness in their approach to this appeal.

Rat Running

- 6.8.25. Finally on this issue there is the question of rat running down Snailwell Road. For the reasons set out above, the modelling of the A14/A142 junction was inadequate and therefore the Appellant’s claimed 35 second improvement (‘with development 2018’) compared to the 2018 ‘do nothing’ scenario on the A142 southbound was at least unreliable⁵⁵¹. In consequence, there was no sound basis for the contention that there would be no detriment in terms of rat running down Snailwell Road.
- 6.8.26. Rat running already gives rise to significant safety concerns both in terms of Godolphin’s access to their training facilities north of the A14 where horses have to brave rat running traffic from the north, and the yards further south on Snailwell Road, including Pegasus Stables, who have to cope with a combination of rat running traffic and parked cars as they head to and from the gallops. Understandably, strings make use of the footway rather than the carriageway for safety purposes.
- 6.8.27. What is needed is a solution to the constraints at Junction 37 of the A14 to reduce the existing propensity to rat run. That is an issue which could, and should, be addressed in a strategic way as part of the Single Issue Review of the Core Strategy, as the Appellant’s highways witness acknowledged⁵⁵². This kind of issue is why the plan-led process exists.
- 6.8.28. In summary, the Appeal Proposals would have a materially greater impact on the local road network than the Appellant assessed. The effect would be significant harm to the safe, efficient and economic operation of the HRI and would therefore be likely to constrain growth not just in that industry but also other growth within the town. The effects of the imposition of development of the scale proposed in this appeal have not been properly assessed either individually or cumulatively and the extent of harm has

⁵⁵⁰ Highways SOCG

⁵⁵¹ See CD114 Table 7 p.25

⁵⁵² Mr Smith conceded in XX that a junction improvement capable of addressing the cumulative development demands of development elsewhere in the Newmarket, the District and East Cambridgeshire District was an important decision for the CS Review.

been consistently underestimated. The proposed mitigation package reflects the failure to properly assess the impacts. It appears to reflect what would be deliverable without delaying the development rather than what would be required.

Mitigation

- 6.8.29. There is no dispute that, without adequate mitigation, the effects of the Hatchfield Farm development on the HRI would be unacceptable⁵⁵³. Whether the traffic effects of the Appeal Proposals on the HRI are capable of being adequately mitigated is a matter of judgment. It is key to that judgment that those effects are properly quantified and their implications understood.

Equestrian Evidence

- 6.8.30. The Appellant could rely only on his equestrian expert for that judgment. However, as has already been said, his expertise was too limited to be able to provide a reliable judgment and, his judgment was wholly reliant on the Appellant's highways assessment of trip generation and delay⁵⁵⁴. He was not competent to appraise the growth prospects of the industry and he made no allowance for any such growth in his assessment of the adequacy of the mitigation measures.
- 6.8.31. Further, he had focussed only on the 2018 horizon year 'with' and 'without development' scenarios and had not taken into account that the existing state of affairs is only just manageable (a fact that he did not dispute). He also failed to ascertain what the increase in traffic would be during the sensitive training period, and therefore failed to appraise its effects. He was unable to advise on the effects on trainers or owners of additional congestion within the town and how that might impact on the HRI. He was therefore bound to concede, as he did, that he could not advise the Secretary of State that the mitigation measures he was advocating would adequately address the impacts of the development at whatever assessment year was chosen⁵⁵⁵.
- 6.8.32. That was a crucial concession because there is no evidence upon which to conclude that the effects of this development could be adequately mitigated.
- 6.8.33. It would be the *volume* of additional traffic from the proposed development that would cause the harm and it was no defence to assert that horses become desensitised to traffic⁵⁵⁶ because firstly, not all horses do, and secondly, in Newmarket the horses are young thoroughbreds which are less predictable than more mature competition horses. A large number also enter training having rarely if ever encountered traffic. In addition, safety is not the sole concern of the HRI. Measures to reinforce the priority accorded to the horse within the town, to improve the visibility of, and at, the crossings and to seek to reduce speed were all welcomed but would not mitigate adequately for the effect of this scale of development on the operation of the combined activities of the industry.

553 Accepted Smith XX by WSP

554 See ED/JDM/P01 para 2.2 p.5 and para 4.3 p.19

555 XX TG

556 ED/JDM/PR1 para 3.1 p.4

Horse Crossings Safety Review

6.8.34. The mitigation package was heavily informed by the JCE and TG⁵⁵⁷ and reflected work which was already proposed to reflect the findings of the Newmarket Horse Crossings Safety Review 2007⁵⁵⁸. At the time of that Review, it was anticipated that the identified measures would improve the existing conditions, thus providing scope for growth in the industry and compensation for the background growth in traffic likely to occur during the Core Strategy period. However, the Appellant's proposed mitigation falls short of providing the full range of mitigation measures sought. A further key weakness of the Appeal Proposals is that they are of such a scale that the additional traffic attributable to them, would on their own absorb much, if not all, of the benefit provided by the measures, thereby preventing any other kind of growth within the town, including that of the industry itself.

Mitigation

6.8.35. The proposed mitigation has been divided into two categories by the Appellant. Those measures that he considers to be necessary to enable the development to go ahead, and those which he proposes to fund through the mechanism of a unilateral obligation, but which are regarded as unnecessary to address the identified highways impacts. The evidence does not justify this distinction and on a proper analysis, all of the mitigation satisfies the tests set out in Circular 11/95, paragraph 14⁵⁵⁹ for the imposition of conditions.

6.8.36. The Appellant's 'necessary category' includes:-

1. Traffic calming and visibility improvements on the approach to the town centre crossings (warning signs, LED signs, SLOW markings and Dragon's teeth⁵⁶⁰),
2. Improved signage on the entrances to Newmarket to warn non-local drivers of the presence of horses,
3. Funding for a review of the speed limit on Fordham Road⁵⁶¹, and
4. Improved awareness for new residents through information provided in a welcome pack⁵⁶².

6.8.37. The Appellant's 'desirable category' includes:-

1. Funding for a horsewalk on Snailwell Road from Pegasus Stables to Fordham Road and the provision of a horse crossing from Pegasus Stables to the new horsewalk,
2. Improved surfacing, signage and road markings at Lord Derby's Gap,
3. Funding for the widening of Fordham Road horsewalk if that is feasible,

⁵⁵⁷ The mitigation package was advanced without prejudice to their contention that the effects of development of this scale in this location were not capable of mitigation.

⁵⁵⁸ ED4 – progress has already been made in implementing the identified improvements and it is anticipated that the full measures will be carried out within the next five years – see TG/WSG/P para.6.4 p.17

⁵⁵⁹ CD17

⁵⁶⁰ See ED/CPS/P01 Appx 21 Dwgs HC/02, HC/03, HC/04 and ED18

⁵⁶¹ JCE understand that this is to happen shortly in any event.

⁵⁶² ED/JDM/P01 section 4.6 pp20-21

4. Funding for additional crossings for stables on Fordham Road to cross to a widened horsewalk⁵⁶³.

Appellant's Necessary Mitigation

- 6.8.38. The additional signage, road markings and speed limit review would all be welcome as would be the commitment to information packs for new residents. However, their benefit should not be overstated. As the Appellant acknowledged *"In Newmarket it is common knowledge that the town is home to thousands of horses. There are warning signs, flashing lights, gallops, walkways, crossings etc all over town"*⁵⁶⁴ and *"one cannot but be aware of horses in the town whether a visitor or resident"*⁵⁶⁵. Yet, notwithstanding all of this, there remain problems and, even where there is an advisory 20 mph limit outside St Louis School and a clearly visible horsewalk, the mean and 85th percentile speeds exceed the 30 mph speed limit.
- 6.8.39. The key weaknesses of both the Snailwell Road and Rayes Lane horse crossings would remain unaddressed by the mitigation proposals. There is no proposal to improve the visibility at the Snailwell Road crossing and this would compel increased use of the Fordham Road horsewalk. Signalisation of the Snailwell Road crossing would provide some relief, but only at the expense of increased delay and driver frustration. Increased pressure on the Fordham Road horsewalk will lead to more horse use of the Fordham Road footway or the carriageway itself, which would be increasingly less safe as the Appeal Proposals developed and the traffic on Fordham Road increased. There is no realistic alternative to this, unless the Fordham Road horsewalk is widened⁵⁶⁶. There was no adequate investigation of the scope for this by either the Appellant or the County Council. Although the Appellant's consultants suggested that there may not be sufficient width on Fordham Road to accommodate the widening, that suggestion had no sound basis. If accurate, the Fordham Road cross-section⁵⁶⁷ shows no such constraint with a carriageway width of 6.7 m. The County Council has provided no reasoned basis for its view why such widening would not be feasible and it should be required. If there is uncertainty about its delivery, then planning permission should be refused, thereby compelling the Appellant and Highway Authority to investigate the issue properly.
- 6.8.40. Whilst a visibility improvement is now proposed at Rayes Lane with the proposed building out of the western kerb to the south of the crossing, that would only deliver a 3 m 'x' distance. With a horse's head and neck at 1.8 m from the rider⁵⁶⁸, this effectively means that to benefit from the visibility, the horse's head has to be some 1.2 m from the carriageway edge. Whilst that would be better than the existing arrangement, there would also be some 34% more traffic by 2025 as a result of general growth and the Hatchfield Farm development. The risk of spooking and other incidents

⁵⁶³ See ED/CPS/P01 para 8.1.1 p.76

⁵⁶⁴ ED/JDM/P01 para 3.5.15p.17

⁵⁶⁵ ED/JDM/P01 para. 3.5.20 p.18

⁵⁶⁶ The training operations are such that whilst some broad coordination of the timing of lots can limit the potential for conflict on the horsewalk, it is impossible to avoid it.

⁵⁶⁷ ED14

⁵⁶⁸ See CD65 p.3 *"...a rider of a horse can typically be 1.8m from the front of the horse"*

would be substantially increased. The limited visibility improvement would not therefore amount to adequate mitigation.

The Appellant's Desirable Mitigation

- 6.8.41. The Snailwell Road improvements would be essential. In the absence of a horsewalk, use of the footway by horses would continue and this is the same footway that pedestrians, and no doubt cyclists, who chose to use the access from Hatchfield Farm onto Snailwell Road would need to use. That conflict must be avoided. In addition there is the issue of rat running. If TG's evidence is accepted that the modelling of Junction 37 of the A14 is not adequate, then the risk of rat running has not been properly assessed. Whilst the Appellant is committing to payment of the sum of £150,000 in the event that rat running was shown to increase as a result of the development, there was no evidence that this would be sufficient to fund measures capable of addressing the issue, or that such measures would be acceptable to the respective County Councils.

Scale of the Packages

- 6.8.42. The real weakness of the mitigation package is that the scale of the development was fixed well before the impact on the horseracing industry even crossed the mind of the Appellant as an issue. It can be no more than an attempt to graft on compensatory measures because mitigation for the additional volume of traffic is not possible. However, the extent of compensation required did not feature as part of the Appellant's assessment, nor was there any consideration of the cumulative effects of the likely growth at Newmarket or the likely implications of this large development absorbing all of the benefit of the only identified compensatory package. This reinforces the fact that mitigation and compensation need to be looked at on a strategic basis, with the opportunities for improvements to serve the future growth of the town as a whole identified, costed and planned. The proper place to do that is the plan-led system.

6.9. Countervailing Considerations

- 6.9.1. In support of the contention that the Appeal Site should be released now, the Appellant relied principally on the following: -
1. Housing need, and in particular the absence of a five year supply of housing land,
 2. The need for a sustainable distribution of housing and employment growth,
 3. Benefits to Newmarket's economy from diversity of growth, and
 4. A contention that it is an inevitable conclusion that the Core Strategy Review will identify Hatchfield Farm as a strategic allocation for both housing and employment uses.

Housing Need

- 6.9.2. The TG recognised that the District needs to make provision to meet its assessed housing need. With the likely revocation of the East of England Plan and the Single Issue Review of the Core Strategy, the overall district housing requirement of 10,100 will be re-visited but, even if it were to remain unchanged, that requirement would not justify the grant of planning permission for these Appeal Proposals.

- 6.9.3. Having regard to commitments to date, translated to a five year supply requirement there is a need for 1,820 dwellings. The supply is identified at 1,337 dwellings⁵⁶⁹ which equates to 3.6 years. Even allowing for slippage in the Core Strategy Single Issue Review, there is ample time to enable the most sustainable strategy for the District to be put in place following the preparation of a revised evidence base.
- 6.9.4. That evidence base will need to correct the errors of the past and enable a number of strategic issues to be addressed which were simply not grappled with adequately within the previous process, or by the Appellant in this appeal. These include: -
1. The extent to which the SPA is truly a constraint to additional development at Brandon and Mildenhall if suitable mitigation/compensation were provided,
 2. The cumulative traffic effects of all growth proposed at Newmarket and the capacity of the town to accommodate that growth, having regard to the objective of protecting its unique character and operation,
 3. The cross border effects of growth on key infrastructure such as Junction 37 of the A14 and the need for a comprehensive solution to facilitate all planned growth without materially worsening existing problems, and
 4. Demonstrating by means of a lawful SA/SEA that the scale and the chosen distribution of growth is the most sustainable having regard to the reasonable alternatives⁵⁷⁰.

Likely Housing Completions

- 6.9.5. The Appellant sought to negate consideration of these important strategic issues all for the sake of 100-125 dwelling completions on the Appeal Site by April 2016⁵⁷¹. This was a realistic figure, given all that would need still to be achieved in terms of disposal of the land, the discharge of planning conditions and securing the approval of reserved matters. In five year land supply terms this would represent a contribution of just four months supply. Whilst the Appellant argued that a greater contribution might be made in the five year period⁵⁷² the contribution to supply would remain small. The Appellant's views on early delivery may well be over-optimistic, particularly when they are expressed by someone who is not a house builder.

Alternative Sources of Supply

- 6.9.6. The extent of the shortfall in meeting housing needs pending a review of the Core Strategy was undisputed but that is capable of being readily remedied once the review is complete. The Council's SHLAA identifies 108 sites within the District as being potentially suitable with a capacity of some 15,500 dwellings⁵⁷³. The land availability evidence base thus identifies that there are alternative locations to the Appeal Site where sustainable development could take place. There should be no difficulty "catching up" if the housing

⁵⁶⁹ CD44 para. 2.9

⁵⁷⁰ See PPS12 para. 4.43

⁵⁷¹ See Holden Proof para.5.10 p.40

⁵⁷² Possibly 200 dwellings

⁵⁷³ See FH/MS/P para 4.6 p.17

market within the District is as the Appellant maintained it to be, and there was no evidence that the distribution proposed by the substantially quashed Core Strategy would be the only appropriate distribution capable of being in general conformity with the RSS for as long as it survives.

Policy Support for Sustainable Housing

- 6.9.7. Of course, in terms of housing need, particularly affordable housing need, any delay is regrettable, particularly with the increased emphasis on growth espoused in the Ministerial Statement of 23 March 2011⁵⁷⁴ and the favourable consideration required of housing proposals where there is no five year supply⁵⁷⁵. However, the Government is at pains to stress that it is only development which accords with the key sustainable development principles which should benefit from favourable consideration and is therefore 'suitable' having regard to PPS3. Because the Appellant could not demonstrate that the Appeal Proposals would not harm Newmarket or constrain other potentially more important and more sustainable growth opportunities, he could not demonstrate that it would be 'suitable'. Indeed, the evidence of TG demonstrated that it was not.

Link with Employment

- 6.9.8. As to the need for housing and employment to be provided in balance, that has little substance in this case. Whilst CS1 of the Core Strategy⁵⁷⁶ says that provision will be made for approximately 5 ha of new employment land in Newmarket that is not linked in any logical or reasoned way to the development of 1,200 dwellings. One of Newmarket's functions is as a dormitory town for Cambridge. Reducing the propensity to travel out would be an advantage of the 5 ha of employment land. Loading yet more housing onto the edge of the town in a location with easy access to the A14 is not an obviously sustainable step and the traffic assignments showed the weakness. There was no evidence that the overall effect of the Hatchfield Farm development would be enhanced transportation sustainability of the town, or that development of a lesser scale at the town would not deliver the same, if not greater, benefits. The scale of the employment element in the Appeal Scheme was apparently randomly chosen and its composition was clearly driven by the need to keep the impact on Junction 37 of the A14 at a level which the Highways Agency would find acceptable, rather than consideration of a 'sustainable balance'.

Sustainable Distribution

- 6.9.9. Newmarket is the largest town in the District and has the greatest range of services and facilities but that fact is not, in isolation, an adequate guide to the distribution of growth. That much was accepted on behalf of the Appellant, it being conceded that the transportation sustainability advantages of the town would not be such as to justify material harm to the HRI through the loss of land in existing HRI use⁵⁷⁷. To approach distribution of housing simply by reference to transportation sustainability takes no account of the environmental considerations such as the need to protect the

⁵⁷⁴ CD14
⁵⁷⁵ PPS3 para.69
⁵⁷⁶ CD44p.29
⁵⁷⁷ Sellwood XX TG

uniqueness of Newmarket. That of course was the essential weakness of the Core Strategy. Unless it was shown that any alternative distribution of growth would have a greater effect on the multiple sensitivities of Newmarket, little weight could be accorded to this issue in the overall balance.

- 6.9.10. As TG's Highways Witness demonstrated, contrary to the assertion made at the independent examination, and erroneously accepted by the Inspector, it does not follow that distributing growth elsewhere in the District, other than Newmarket, would lead to an increased impact on, inter alia, the HRI within the town. The analysis showed that in order for car trips to employment in Newmarket from the residential development at Hatchfield Farm to be equivalent to the next highest alternative would require a mode share for car travel of just 25.5%⁵⁷⁸. That may be compared with the Appellant's assumed 68% car driver mode share. This demonstrates that the likely alternative growth locations will not generate the same increase in traffic flows in Newmarket and therefore would have less impact on the HRI.
- 6.9.11. Appropriate growth would be beneficial in terms of employment diversity and support for existing services and facilities but pursuit of these benefits must not be at the expense of harm to the HRI, which is so important to the local economy. The future growth of the industry will play an important role in assisting in the diversification of the local economy by virtue of enhanced tourism opportunities and increased equine research, as encouraged by Spatial Objective ECO3 of the Core Strategy⁵⁷⁹. The Hatchfield Farm proposals would reduce the prospects of both and, rather than the need for growth supporting the Appeal Proposals, these proposals serve to demonstrate why there is a need for a proper capacity assessment of the town before the pass is sold permanently in favour of this one development.

Local Economy

- 6.9.12. Whilst the Appellant sought to denigrate the economy of the town by drawing comparisons between it and other towns in the Cambridge Sub-Region and with Bury St Edmunds⁵⁸⁰, that was not a proper or a fair comparison, as demonstrated by the Volterra Report⁵⁸¹. The town is unique and has been protected for that reason. It made little sense to compare it with market towns in quite different locations with different accessibility characteristics and fewer constraints. Spatial planning is not about competitions between settlements, but rather what is appropriate for each settlement having regard to its particular characteristics. Such comparisons should be given little if any weight.

Outcome of the Single Issue Review

- 6.9.13. Equally, the contention that it is inevitable that Hatchfield Farm will be allocated through the Single Issue Review of the Core Strategy was misconceived. Underlying that assertion is the claim that the Core Strategy

⁵⁷⁸ TG/RE/P section 6 pp.67-68 para 6.8

⁵⁷⁹ CD40 p21. Diversification of employment which risks alienating foreign investment in the industry when that foreign investment is important to future growth and the key insurance policy against recession would be an entirely counter productive step.

⁵⁸⁰ See ED/RMS/P Appx 2 Bone Wells Urbecon Ltd Report

⁵⁸¹ SHN/JB/PR Appx JB18 section 2 pp4-6

evidence base supports the identification of north-east Newmarket for 1,200 dwellings in a comprehensive and robust manner⁵⁸². The Appellant accepted that⁵⁸³, were that the case, one would expect to find as a minimum in the evidence base, an analysis of the sensitivities of Newmarket to growth and of its capacity having regard to those sensitivities, an objective analysis of growth in the HRI over the plan period, and an analysis of the cumulative traffic impacts of the proposed development with an indication of the likely mitigation required. Yet none of this evidence exists.

- 6.9.14. The Parish Profile and Settlement Hierarchy determined the distribution of growth without consideration of environmental constraints⁵⁸⁴. The IECA⁵⁸⁵ had no highways input and did not attempt to address the effects of growth on the operation of the HRI. The document expressly emphasised that it did not intend *"to form a robust justification for housing allocations"*⁵⁸⁶. The highways input, when it was eventually produced by Suffolk County Council after the Core Strategy had been submitted to the Secretary of State, made no attempt to assess the cumulative effects of development, or how these might impact on the phasing or priority to be accorded between developments. And of course, as the High Court held, the SA/SEA provided no explanation for why it was the most sustainable option to treat Newmarket as the appropriate location for increased housing when the plan period was extended. The evidence base simply does not exist to be able to provide that explanation.
- 6.9.15. Even were the Appellant right in the assertion that some loss of Hatchfield Farm to development were inevitable, it does not begin to follow that this would justify a development of the scale proposed in this Appeal.

Alternatives Considered by the Appellant

- 6.9.16. The analysis of alternatives in the Appellant's addendum to the Environmental Statement (ES)⁵⁸⁷ in no sense makes up for the deficiencies in the Council's work. Outside Newmarket no other site is examined, nor does the report outline the alternative capacity in alternative sustainable settlements. The ES should also include proper assessment of the cumulative highways effects. These deficiencies in the environmental information are such that planning permission should be refused. Indeed, it would be unlawful to do otherwise without involving a breach of the EC Treaty and Directive obligations⁵⁸⁸.
- 6.9.17. There are no considerations that, individually or cumulatively could justify taking the risk with the unique national and international importance of Newmarket which the Appeal Proposals represent. The proper planning of the town requires far better than perpetuating a top down distributive approach which is as flawed at a local level as it is at a regional level.

⁵⁸² See e.g. ED/RMS/P para. 7.8.4 p.104
⁵⁸³ Sellwood XX TG
⁵⁸⁴ CD97
⁵⁸⁵ CD33
⁵⁸⁶ Ibid para 2.13 p.20
⁵⁸⁷ CD104.2.B.2
⁵⁸⁸ TG12, para 13

6.10. The Development Plan

East of England Plan (EEP)

- 6.10.1. The East of England Plan is presently a component of the Development Plan but the proposal for revocation contained in the Localism Bill is a material consideration in the context of this case where the Appellant argued that the proposed development would contribute principally to longer term development needs and the EEP requirement, upon which the Core Strategy is based, may well have ceased to exist before development could even be commenced⁵⁸⁹. That tempers the weight to be accorded to the EEP but, whether or not the EEP is revoked will not be determinative of this appeal. In large measure, the principally relevant policies of the EEP either duplicate national policy or find resonance in the Core Strategy or saved policies of the Forest Heath Local Plan.
- 6.10.2. The overall spatial vision incorporates the objective of improving and conserving the region's environment⁵⁹⁰ and sets the context for the spatial distribution which, in relation to settlements such as Newmarket, is not prescriptive as to the scale of growth⁵⁹¹. Any such growth is to respect environmental limits⁵⁹² and there is an emphasis on the sustainable and dynamic growth of clusters, of which the HRI is a good example⁵⁹³. The need therefore to ensure that the HRI cluster can grow, consistent with the environmental limits of the town, is an important objective. That should not be harmed and/or frustrated by development which could and should go elsewhere.

Forest Heath Core Strategy

- 6.10.3. The Core Strategy is consistent with this thrust of policy. The emphasis is on the protection of the intrinsic character and built historic heritage of the towns, including Newmarket⁵⁹⁴. Newmarket also has its own vision⁵⁹⁵ which is one of preservation and enhancement with selective growth meeting local needs. Stress is placed on the priority to be accorded to the need to protect the town in any balance⁵⁹⁶. The imperative is clear. The precautionary approach which should be adopted is itself embodied in policy in CS13. Unless the absence of harm is demonstrated the appeal should not be allowed. The robustness required by that policy must be commensurate with the importance of the town.

Forest Heath Local Plan

- 6.10.4. Whilst the policies of the Forest Heath Local Plan are now of some age, age is not itself relevant to whether those policies are up to date. Insofar as the policies seek to protect the character and operation of Newmarket and the HRI, they are as necessary and valid as at the date they were adopted, and

⁵⁸⁹ See the example given by Sullivan LJ in Cala 3 at para 33.

⁵⁹⁰ Amplified by policy ENV6 CD31 p.59

⁵⁹¹ CD31 p.12 Policy SS4

⁵⁹² Ibid p.9 Policy SS1

⁵⁹³ Ibid Policy E4

⁵⁹⁴ CD40 Vision 1

⁵⁹⁵ Ibid Vision 2 and CS1

⁵⁹⁶ See e.g. Spatial Objective ECO5

no one has suggested otherwise. Development which would harm the operations of the training yards would be contrary to policy⁵⁹⁷ whether that impact is direct or indirect.

- 6.10.5. For the reasons already rehearsed above, the Appeal Proposals would conflict with the central policy thrust of the Core Strategy and the retained policies of the Local Plan. Because the site is not suitable for the proposed development, it does not benefit from any 'favourable consideration' and the need is not so pressing that it should outweigh the policy conflict.

6.11. National Planning Policy Framework (NPPF)

- 6.11.1. The NPPF was much heralded and therefore the evidence has already addressed its substance. It is a consultation draft and may be subject to change not least because it is to be presented to Parliament. Much of its content simplifies rather than alters existing national policy and the emphasis on growth and the presumption in favour of sustainable development operates within the plan-led system⁵⁹⁸, itself regulated by the need for SA and SEA.
- 6.11.2. Nothing in the NPPF can be treated as sanctioning poor planning because that would involve an overriding conflict with the NPPF read as a whole.
- 6.11.3. The Appeal Proposals are not sustainable. They would seriously harm a nationally and internationally renowned town and industry and threaten its future growth prospects⁵⁹⁹. They are the antithesis of the well considered, respectful and locally acceptable development which the reforms to the planning system are designed to deliver. They are a product of the discredited top down approach and should now be consigned to history. Even judged with a proactively favourable eye, the development is not sustainable when judged against the relevant key principles and cannot benefit from a presumption in its favour.
- 6.11.4. Quashing of the housing distribution policies of the Core Strategy on the grounds of unlawfulness has provided the opportunity to do things properly and it is not for the Appellant to take opportunistic advantage of a very temporary lacuna. The circumstances here are not those anticipated by paragraph 110 of the draft NPPF⁶⁰⁰. The Core Strategy is not out of date or silent, it is simply inchoate as a result of legal flaws in its preparation. What is missing is an analysis of the scale of growth consistent with the nationally important constraints on the town of Newmarket and a balancing of those with constraints elsewhere. It is this which the Council are addressing through their Single Issue Review and which will enable the collective vision of what is right to be established, as required by the draft NPPF⁶⁰¹. It would be a perverse result indeed if the grant of an ad hoc decision on appeal for a proposal, unsupported by any meaningful comparative analysis of alternatives and with no assessment of the cumulative effects of growth at

⁵⁹⁷ CD26 Policy 12.4

⁵⁹⁸ Para 19

⁵⁹⁹ In direct conflict with the objectives of draft NPPF paras 73 & 81.

⁶⁰⁰ CD160.1 p. 31 "Planning permission should be granted where relevant policies are out of date, for example where a local authority cannot demonstrate an up-to-date five year supply of deliverable housing sites."

⁶⁰¹ See para 25.

Newmarket, could be said to make up for the deficiencies in the selection of a broad location for development identified by the High Court.

- 6.11.5. The Council should be supported, and not undermined, in their decision to undertake a prompt Single Issue Review of the Core Strategy⁶⁰². That process is the only place where the important strategic decisions can be taken within the context of an appropriately comprehensive evidence base.

6.12. Conclusion

- 6.12.1. For all these reasons the Appeal should be dismissed.

7. The Case for Save Historic Newmarket Limited (SHNL)

7.1. Introduction

- 7.1.1. Newmarket holds a special place in the life of the United Kingdom. It is not simply another English market town but a town which has, since the time of Charles II, been home to the UK horseracing industry (HRI). Its fame extends beyond the UK and its reputation is international. It makes a major contribution to local employment and the local economy as well as, importantly, making a significant contribution to the UK economy. Despite its greater resilience than other parts of the racing industry to the current difficult economic climate, it nonetheless faces the challenges of a tough economy, competition from abroad and the difficulties facing the industry generally while betting is reformed. It is in a sensitive position and, as even the Appellant's witnesses recognised, the racing industry here should be protected *at all costs*⁶⁰³. As SHNL's Economics Witness explained, whilst Newmarket has until now been seen as one of the world's prime locations for training horses, lessons from other industries indicate that such primacy *"is hard won and easily lost"*. She also said that the importance of the horseracing industry to the economy of Newmarket is such that *"anything that would be likely to have the potential to undermine its success should be resisted."*
- 7.1.2. The horseracing industry in Newmarket stands on a knife edge. The traffic in the town has increased to the point where it places severe pressure on the racing industry and its most valuable commodity, namely large numbers of the young and sensitive race horses which traverse the town through the traffic six days a week, 52 weeks a year. That pressure manifests itself not simply in a few accident statistics but in the daily threats and incidents which place at risk the horses and their riders despite the use of the highest professional standards and the vast experience of the trainers, many of whom are of international renown.
- 7.1.3. The Appeal Proposals would create a real risk to this important industry and to the economic heart of this unique town. At a difficult time, the Appellant seeks to pre-empt the Council's current housing review for the District, following the quashing of the unlawful main housing policies in the Core Strategy. At best,

⁶⁰² The draft NPPF Impact Assessment proclaims that the "Government believes that it is local councils and communities that should decide how best to plan for the growth of their areas – CD160.2 p.48

⁶⁰³ Michaels XX

the Appeal Proposals would add only a few hundred houses to the housing stock in the short to medium term and, whilst the site was claimed to be sustainable, it is nothing of the sort. The speculative benefits are a chimera compared with the known importance of the racing industry. There is no good reason at this difficult time to place an industry of known economic significance at risk for such little public gain and accordingly permission should be refused.

7.1.4. SHNL's grounds of opposition to the appeal can be summarised as follows:

1. The additional traffic that the urban extension would generate within Newmarket would severely undermine the town's status as a world class centre for the horseracing industry. This would jeopardise the existing success of the economic cluster built around the industry in Newmarket and would constrain its future growth,
2. The scheme would cause permanent harm to the historic character of Newmarket, owing to its poor design and the harm it would cause to the Newmarket Conservation Area,
3. The proposals are premature and would prejudice the outcome of the Council's housing policy review, which may result in a significantly lower housing requirement than that currently contained in the unquashed element of Policy CS7 (which was based on the, soon to be abolished, RSS target) and/or may result in a distribution of new housing across the District, with which a 1,200 dwelling urban extension in Newmarket would be wholly inconsistent. Even if the final version of the NPPF removes the current policy relating to prematurity, the very limited benefit of allowing the development to proceed before the outcome of the housing policy review (a maximum of 160 dwellings and very possibly significantly less) would clearly be outweighed by the harm to the resulting proper planning of the District,
4. There are serious and wide ranging deficiencies in the environmental information provided by the Appellant, particularly with regard to biodiversity, bats, and the impact on the nearby SPA and SACs. The breach of Article 6(3) of the Habitats Directive and Regulation 61 of the Habitats Regulations means that permission could not lawfully be granted, and
5. The claimed benefits of the scheme do not justify placing at risk the horseracing industry which is of undoubted economic importance both to Newmarket and the UK. In particular, the Appellant's reliance on the Council's current inability to demonstrate a five year supply of deliverable housing sites was overstated and should not justify granting permission in the light of the development's fundamental flaws, which also go to demonstrate that the proposals are not sustainable.

7.2. Impact on the Horseracing Industry (HRI) in Newmarket

Importance of the Horseracing Industry

7.2.1. Newmarket has been at the focal point of horseracing for centuries. It is the epicentre of flat horseracing in Europe and over a third of the economically active people in Newmarket are directly employed in the industry (over 50% if associated jobs are included)⁶⁰⁴. It is unrivalled as a concentrated centre for

⁶⁰⁴ Mr Boyd proof para. 3.18; Mr Gittus XX

training, racing, sales, breeding and a range of ancillary services (such as specialist equine veterinary businesses, saddlers and farriers). It has some 1,820 ha (4,500 acres) of world class training facilities which at peak times cater for over 2,500 thoroughbred horses per day⁶⁰⁵.

7.2.2. Racehorses are a highly valuable commodity, some worth many millions of pounds and their value exists at a young age (until 3 - 4 years old). Their owners are the 'clients' of the industry, many of whom are from overseas, including the Middle and Far East, Australia, America, Ireland and South Africa⁶⁰⁶. These foreign investors have become all the more important since the onset of the domestic downturn. Newmarket is not without high level competition for the business, in particular from the high quality training facilities in Ireland and France (particularly Chantilly)⁶⁰⁷. The unique selling point that has kept Newmarket ahead of its rivals in the international market is its unique historic setting in which horses can train. They walk through the town every day to access the 80 km (50 miles) of gallops available in a range of locations, together with the unparalleled concentration of different services (breeding, racing etc) all in the same location. As the International Racing Bureau's Australian clients put it earlier this summer, *"in this town the horse really is king"*⁶⁰⁸.

7.2.3. In the unchallenged evidence of one of the trainers: -

"35. The status and the quality of Newmarket studs tops the world, the density of studs in that area is greater than anywhere else in the world, the stallions there include Pivotal, Danoli and Oasis Dream, they are the finest in Europe. We have an enormous investment in bloodstock based in the Newmarket area due to extraordinary investment by a lot of British and foreign interests who have brought the finest blood lines in the world and have brought them to Newmarket ...

*36. It is hard to put figures on the investment here, but I would estimate that the studs are over a billion pounds, and the racing stables would average in value about £4 million each. The value of the racing and breeding stock runs into thousand of millions. Investments of this nature are only remaining here because their owners wish to breed, train and race them here. Similarly the stallions capable of generating the staggering incomes outlined above only remain here because their owners regard Newmarket as a good environment to breed their horses".*⁶⁰⁹

7.2.4. The pivotal role of the HRI in the Newmarket economy is recognised both by the East of England Regional Economic Strategy and the Greater Cambridge Sub-Regional Economic Strategy, both of which identify it as not only an existing economic asset *"of international renown"* but also an opportunity for further growth⁶¹⁰. As the Economic Strategy states: -

"Support of such clusters is important to encourage strong market town economies and reduce levels of commuting into Cambridge".

⁶⁰⁵ Mr Gittus XX

⁶⁰⁶ See e.g. Mr Gosden's proof (SHN/JG/P) paras. 32-33. In EIC Mr Gosden stated that some 75% of his clients were from overseas

⁶⁰⁷ Mr Gosden proof para. 26 & EIC – see an extract from the Chantilly website is at SHN6

⁶⁰⁸ Third party evidence of Mr Donald, Managing Director of International Racing Bureau

⁶⁰⁹ Mr Gosden proof SNH/JG/P

⁶¹⁰ Mr Boyd proof paras. 3.12 - 3.16

- 7.2.5. This economic contribution is experienced at a national level. The contribution of the horseracing industry to the UK economy (some £3.4bn annually) is on a par with the British Film industry, which the Government has recently identified as of significance to the Government's growth strategy and, like the film industry, it generates significant inward investment from overseas⁶¹¹. Some 15-20% of the industry takes place at Newmarket and SHNL's Economics Witness concluded that Newmarket is a "*national asset*", the protection of which should be "*a key aim of the planning system in support of the growth agenda*"⁶¹².
- 7.2.6. The Appellant's suggestion that the challenges facing the horseracing industry as a result of the economic downturn meant that Newmarket's economy ought to diversify (the implication being that Hatchfield Farm would deliver this objective) was wholly contrived.

Health of the HRI

- 7.2.7. The 2009 Smiths Gore survey of horseracing establishments at Newmarket⁶¹³ found that the number of horses training in Newmarket had grown steadily year on year between 1997 and 2009 (p.18), and that "*there were more horses in training in May 2009 than in any month during the previous decade*" (p.19). One in three businesses said they had grown over the past five years, and notwithstanding the recession, over 20% of businesses expected further growth between 2009-2014 and over 50% expected to maintain their current level of activity (Fig 4 on p.19).
- 7.2.8. The report also found that there was substantial unsatisfied demand for paddock land, with 73% of respondents saying that they would make use of more land if it were available (p.22). Given the catastrophic effects of the recession on many other sectors of the economy, the picture that the Smiths Gore report paints of the horseracing industry in Newmarket is of a sector that has proved extraordinarily resilient. Lord Derby himself took the report to indicate that the horseracing industry would enjoy further growth over the next five years in an email sent in February 2010 (SHN7).
- 7.2.9. Newmarket currently faces issues both with regard to difficult economic conditions and difficulties relating to the reorganisation of betting⁶¹⁴. Even in 2011, there was still growth as the worst effects of the downturn hit the industry. The number of horses using the Jockey Club Estates' facilities was up 2% on 2010⁶¹⁵. That may be a modest increase, but many other industries are still losing turnover and shedding jobs. The recent planning permission for a new 80 box training facility demonstrates that this pattern is continuing⁶¹⁶.
- 7.2.10. The reason for the industry's remarkable durability has been the extent of foreign investment in Newmarket from those who are relatively immune from the effects of the downturn, and it is precisely these individuals whose continued investment would be jeopardised if the Appeal Scheme were permitted. The appeal therefore comes inopportunistically at this time of sensitivity in the

⁶¹¹ Mr Boyd rebuttal (SHN/JB/PR) Appx JB18, at paras 3.1 3.8.

⁶¹² Ibid, para. 4.4

⁶¹³ Mr Michaels Appendix 4 (ED/JDM/PA)

⁶¹⁴ Mr Gosden EIC

⁶¹⁵ Mr Gittus EIC

⁶¹⁶ See Mr Boyd's Update on Growth Prospects of Horseracing Industry (SHN14).

industry's economic circumstances, threatening the very source of income that is enabling the industry to withstand the downturn.

- 7.2.11. As the Economics Witness explained, diversification is not necessarily the correct economic strategy in every location. When concerned with a cluster of interconnected businesses centred round a particular specialism in one geographic location, developing and building upon that specialism can be more productive⁶¹⁷. Such clustering is specifically supported in paragraph 73 of the draft NPPF and is precisely the situation in Newmarket, where 33% of economically active people are directly employed in the horseracing industry. The Appellant's assertion that this meant 67% of people had no connection with the industry ignored the considerable proportion of additional jobs that are indirectly connected with the industry due to the economic activity it generates in the town (eg. in the hotel sector) and, additionally, fails to comprehend that for one particular sector to be directly responsible for a third of direct employment in a particular settlement is an astonishingly high amount. It is almost on a par with the proportion of jobs in the City of London which are directly dependent on the financial sector⁶¹⁸.

Diversity of the Local Economy

- 7.2.12. The Appellant's approach of treating Newmarket like any ordinary market town in the region was therefore wholly misconceived⁶¹⁹. The suggestion that the 'cyclical nature' of the horseracing industry was a reason for diversification was also flawed because there is no such thing as a non-cyclical industry and all sectors have been hit by the recession. The fact that the horseracing industry has proved unusually resilient is a reason for continuing to focus on consolidating on the success of that industry cluster in Newmarket. Mrs Rosewell is not only one of the country's leading economists but she was also the only economist to give any evidence at the Inquiry. The Appellant's Planning Witness accepted that, not being a qualified economist himself, he was not in a position to gainsay her evidence on this topic.
- 7.2.13. The suggestion that there was a need for 1,200 dwellings at Hatchfield Farm to service those working in the horseracing industry was equally without merit. The Appellant put forward no industry evidence to back up this assertion, and none of the several industry witnesses who gave evidence at the Inquiry identified any such need. Moreover, the Smiths Gore report found that 68% of the businesses surveyed *"felt that there was enough suitable accommodation in the area for their staff"* and only 20% disagreed⁶²⁰. The far greater concerns were to avoid *"too much development and traffic in Newmarket"*, *"ensuring that there are enough suitable premises for training"* and *"continuing to develop Newmarket as the historic home of racing"*. These were the three most mentioned issues by respondents to the survey when questioned about *"key issues facing the sustainability of the industry at Newmarket"*⁶²¹.

⁶¹⁷ Mrs Rosewell RX

⁶¹⁸ Mrs Rosewell RX

⁶¹⁹ See the critique at paras. 2.1–2.6 of Mrs Rosewell's report (SHN/JB/PR Appx JB18).

⁶²⁰ Mr Michaels Appendix 4, p.24.

⁶²¹ Ibid, p.26

- 7.2.14. On the issue of *“how the town can be improved for the benefit of the horseracing industry”*, the report records that *“the overwhelming response was to improve the traffic situation for horses, manage the increasing volumes and keep any increase due to development to a minimum.”* The Appeal Scheme therefore runs contrary to the greatest perceived requirements in the Smiths Gore report.

7.3. Relevant Planning Policy

- 7.3.1. The importance of the horseracing industry to the economy and to Newmarket’s cultural heritage is recognised in a raft of policies in the 1995 Forest Heath Local Plan and the Core Strategy⁶²², for example paragraph 3.5.5 of the latter states: -
“The horseracing and bloodstock industries around Newmarket dominate the economy of the town and its surrounding area. Current planning policy is aimed to ensure that these industries thrive and prosper...”
- 7.3.2. Similarly, the Core Strategy’s Spatial Vision provides that *“Newmarket’s position as the international home of horseracing will be preserved and enhanced”*, an objective which Policy CS1 seeks to deliver by providing that *“the importance of the horseracing industry and Newmarket’s associated local heritage and character will be protected and conserved through the plan period”*. By definition, a scheme that would undermine the success of the horseracing industry in Newmarket would be contrary to these Development Plan policies.
- 7.3.3. At a national level, the recent Ministerial Statement *Planning for Growth* (CD14) puts the economic implications of development proposals at the forefront of considerations. Planning for the continued success and future growth of economically productive sectors such as the horseracing industry is at the heart of the Government’s growth agenda. A development which would place that at risk would be directly contrary to *Planning for Growth*. In this context, SHNL’s Economic Witnesses’ evidence was particularly important and compelling.
- 7.3.4. In a similar vein, paragraph 73 of the draft NPPF⁶²³ calls for the planning system to “support existing business sectors”, encourage “local and inward investment” and “positively plan for the location, promotion and expansion of clusters”. Taken together with the identification of Newmarket by the Regional and Sub-Regional Economic Strategies as an internationally important cluster of businesses associated with the horseracing industry, representing the economic “assets and opportunities” of the Greater Cambridge Sub-Region⁶²⁴, the message from the draft NPPF is clear: the planning system should actively embrace the horseracing industry and be proactive in safeguarding its future success and potential for growth.
- 7.3.5. It is significant that neither *Planning for Growth* nor the draft NPPF promote development at any cost. Where the overall net effect of new development would be *detrimental* to existing economic assets, and thus threaten future growth, it cannot draw any support from these new policies. The Appellant’s Planning Witness appeared to recognise this in cross-examination when he

⁶²² Mr Boyd proof paras. 2.40-2.70.

⁶²³ CD160.1

⁶²⁴ Mr Boyd proof (SHN/JB/P paras. 3.12-3.15).

accepted that, insofar as the Appeal Scheme would place the future prospects of the horseracing industry at risk, it would be inconsistent with paragraph 73 of the draft NPPF and *Planning for Growth*.

- 7.3.6. In calling for the planning system to “*address potential barriers to investment*” paragraph 73 of the draft NPPF observes that such barriers can include “*poor environment*”. That is precisely the threat to Newmarket. The growing traffic problem in the town already poses a threat to investment, which is only just manageable at present. Rather than seeking to address this potential barrier to investment, the Appeal Scheme would substantially exacerbate it, to the point where real harm would be done to the success of the horseracing industry.

7.4. Impact on the Horseracing Industry

Experience of the Equine Witnesses

- 7.4.1. The horseracing industry witnesses were best placed to consider the likely effect of the additional traffic from the Appeal Scheme on the industry. Between them, they had decades of experience of training horses and other associated activities in Newmarket. They have unparalleled experience of the relationship between horses and traffic in Newmarket and know very well the demands and concerns of the industry’s clients; particularly the key overseas investors. It is an essential part of their job to keep in constant dialogue with those investors and their evidence was not contested by a single industry witness or racehorse expert. Indeed the Appellant called none.
- 7.4.2. The Appellant’s Planning Witness acknowledged that he was not in a position to gainsay the evidence of these industry experts with regard to the nature of the industry, their daily operations and the priorities and concerns of their clients.
- 7.4.3. As for the Appellant’s own equine witness, by his own admission, he did not have any experience of training racehorses. His background was in the training of competition horses for dressage, show jumping and eventing. But competition horses are not worked at the same young ages that racehorses are. At the age that competition horses are beginning to be backed and worked, racehorses are on the point of retirement. Inevitably this means that his experience was of older, more mature and much less skittish animals, than the racehorses with which the Appeal is concerned⁶²⁵. He accepted that his references to horses becoming accustomed to traffic were based upon his experience of training older horses. Furthermore, he accepted that the younger racehorses are more skittish and sensitive, but also every year ‘yearlings’ are added to those coming out for training and these would have limited, if any, experience of cars.
- 7.4.4. Moreover in cross-examination, it became clear that: -
1. He had only visited Newmarket six times; the first visit being as recently as March 2011,
 2. On none of those occasions did he ride out on a thoroughbred racehorse,
 3. He did not feel that he had sufficient information to be comfortable forming a judgment on the issues covered by his evidence until May 2011, and yet he had already agreed in March to give evidence in support of the Appeal Scheme; a matter which casts significant doubt on his objectivity,

⁶²⁵ Mr Michaels accepted this in XX. See also Mr Gosden’s rebuttal (SHN/JG/R) paras. 2-5 and his EIC.

4. Aside from the single unnamed trainer at the yard from which he rode out, he had not sought to consult with those actively engaged in the horseracing industry at Newmarket to get an idea of their experience of the relationship between horses and traffic. It subsequently emerged that the trainer in question had specifically told him how dangerous the Fordham Road horsewalk was⁶²⁶ but he omitted to mention this is a matter of serious concern, and
 5. He had no experience of, nor had contact with, the clients of the racing industry.
- 7.4.5. There must be a question about the weight to be accorded to this evidence, but nonetheless, from the perspective of someone experienced in older and less skittish competition horses, the Appellants' equine witness, still confirmed the wide range of matters which could spook even such older horses.

Safety

- 7.4.6. Contrary to the suggestions made by the Appellant's team, the concerns are not just about traffic causing accidents. Horses may be spooked not just by poorly driven cars but by various aspects of driving and traffic; not merely the sounding of horns or slamming of doors, but even matters such as vehicles going over humps in the road or sunlight reflected from a windscreen. What this shows is that even with the experience of more mature older horses, the generation of more traffic (and not merely an increase in poor driving or accidents) creates the circumstances in which more issues are likely to arise. With animals of such sensitivity and value, this is a matter which required serious and careful deliberation, not simply attempts to sideline the issue by focussing on recorded injury accident statistics, the length of queues or examples of poor or reckless driving.

Existing Traffic Conditions

- 7.4.7. Those with extensive experience of the horseracing industry and its clients were unanimous about the effect that an urban extension at Hatchfield Farm would have, with no one speaking in favour of the scheme. They all explained cogently how the traffic problem in Newmarket, as it currently stands, is just about manageable; but only just. Their views were that the increased traffic arising out of an urban extension which would increase Newmarket's population by at least 2,880 (an increase of at least 19% over the 2001 census figure of 14,995)⁶²⁷ would fundamentally alter that finely balanced equilibrium, thereby causing lasting harm to the HRI.
- 7.4.8. As explained by a trainer, it would be commercially imprudent for him to actively talk down the attractiveness of Newmarket to his clients and in any event the owners decide for themselves where to locate their horses; it is not for trainers to tell them how to spend their money⁶²⁸.
- 7.4.9. The range and unanimity of the industry witnesses clearly exploded the contrived attempt to characterise the opposition to the scheme as nothing more than a personal agenda on the part of certain individuals.

⁶²⁶ See Mr James Fanshawe's email note dated 21 September 2011 and the attachments thereto (TP166).

⁶²⁷ This may be a significant underestimate: see Phillips proof (FH/JP/P) para. 3.3.3

⁶²⁸ Mr Gosden XX

Highways Evidence

- 7.4.10. Considering that the TA and the ES had both been updated, the Appellant's highways and related evidence showed surprising weaknesses, despite the agreement that the impact of the scheme on the HRI has always been a key consideration for the determination of the application⁶²⁹.
- 7.4.11. There had been no consultation with the HRI during the preparation of the Core Strategy and no horseracing expert had any input at all into the application or accompanying documentation, let alone gave evidence for the Appellant at the Inquiry⁶³⁰. The ES accompanying the application barely mentioned the horseracing industry at all. Aside from three sentences about horsewalks⁶³¹, it was completely silent on the subject. The "Horseracing Impact Statement" (CD108) was not written by anyone with experience in the industry, was not based on surveys and failed to grapple in any detail with the impact that additional traffic would have on accident risk and the clients' willingness to maintain their horses in Newmarket.
- 7.4.12. The ES Addendum considered the impact on horseracing solely by reference to the technical highways position, without any consideration of the impact that the development traffic would have on sensitive young horses or the industry clients' desire to remain at Newmarket. Moreover, Chapter 3 of the ES Addendum makes the bare assertion that the horse crossings "*have been analysed*" and that the impact of the development traffic on them would be "*imperceptible*", but no reasoning is provided for this assertion either in the text or appendices. Moreover, there is no consideration in the ES Addendum of the impact of development traffic on horsewalks (as opposed to horse crossings), despite acceptance by the Appellant's equine witness that horses can be spooked by traffic whilst using the horsewalks.
- 7.4.13. As set out above, the Appellant's equine evidence turned out to be significantly less relevant and less expert than might have seemed to be the case.
- 7.4.14. There were a number of attempts at misdirection in the Appellant's case. Firstly, the attempt to "tot up" the relatively small number of reported or noted accidents/incidents which had occurred involving horses and vehicles. Secondly, the suggestion that the SHNL focus was on increases in traffic increasing driver frustration through added delays. Thirdly, that it is good practice to keep accident/horse injury records. Fourthly, that the only areas of concern were at horse crossings and nowhere else. Fifthly, that there was no evidence of concern by owners. None of these propositions bears examination and did not stand up to cross-examination.

Reported Accidents

⁶²⁹ Mr Sellwood XX

⁶³⁰ Mr Sellwood confirmed in XX that no expert in horseracing matters was involved in the scheme when the application, Environmental Statement or ES Addendum was prepared. There was a half-hearted attempt to suggest that Lord Derby himself counted as such an expert, but he does not have any first hand experience in training horses in Newmarket nor did he have any direct authorship of any of the application documentation (Sellwood XX). Similarly, it was said that one of those working on the DAS, Sophie Smith, had endurance racing as one of her hobbies – but that is no substitute for professional training experience and as stated above in relation to Mr Michaels, the skittish character of 2-3 year old horseracing thoroughbreds is very different from other horses.

⁶³¹ At paras. 6.2.10, 6.5.20 and 6.5.23

- 7.4.15. It is true that the number of reported accidents is relatively low. However, this is plainly only the “tip of the iceberg” since incidents and injuries occur as a result of the interaction between horses and traffic on a daily basis. All of the HRI witnesses gave consistent evidence on this issue and this was undisputed by the Appellant’s witnesses⁶³². It was also acknowledged by the Appellant that the examples given in the evidence were put forward as examples only of daily occurrences and not a comprehensive listing of all incidents involving injuries or cases where injuries could easily have occurred⁶³³. The undisputed, though numerically unquantified evidence as to daily incidents and daily risks associated with traffic presented a clear picture. Whilst the old Local Plan refers to problems with traffic being identified in 1995, the HRI witnesses and others made clear that matters have got much worse in recent years.

Risk to Horses and Riders

- 7.4.16. As the witnesses made clear⁶³⁴, driver frustration, and its increase due to more traffic, would not be the only risk to horses from the Appeal Proposals. As noted above, there is a whole range of physical stimuli, visual and audible, that traffic can generate and which can put horses at risk. These include matters as mundane as revving engines, noise from speed bumps, light reflected off windscreens. Added to this is the risk which may occur regardless of driver frustration e.g. through driver inadvertence or carelessness, having to stop suddenly or too close to the horses crossing, or trying to overtake without noticing the horses. Added to that is the fact that there are undoubtedly issues of driver frustration or irritation in the heavy levels of traffic which Newmarket undoubtedly suffers⁶³⁵.
- 7.4.17. The Appellant’s witness seemed to accept the simple proposition that an increase in traffic would represent an increase in risk to horses travelling on and beside the highway in a variety of ways. The Appeal Scheme would add to the traffic and, what may appear to the Appellant not to be a great increase, is a judgment that should be reached in a general context of the unique characteristics of Newmarket and the sensitivity of the horses (inevitably young, sensitive, present in numbers and highly valuable) to traffic.

Accident Records

- 7.4.18. The good practice of keeping records is observed by many trainers, as are precautionary measures, such as the arrangement of strings with the more sensitive horses in the middle of string, and having riders in front and behind who are able to assist in keeping the string calm⁶³⁶. The issue is that there is enormous discomfort with publicising the issues about the traffic in the town. This is why there has been no ‘outcry’ (as the EAS Report ED4 para. 4.8 p. 8 incorrectly suggested might be expected) at the greater number of unreported incidents because it would publicise an issue to the damage of Newmarket as a

⁶³² See also Mr James Fanshawe’s email dated 21st September 2011 and the accompanying attachments (3P-166)

⁶³³ See e.g. the heading to Mr Palmer’s proof Section 3 (“*problems I encounter on a daily basis*”) and the terms of that section; Mr Gosden’s proof para. 38 and his rebuttal paras. 20-21; Jacko Fanshawe (3P7) pp. 2-8; John Berry (3P4) and Mark Tompkins (3P3) - amplified at length in their oral evidence

⁶³⁴ Mr Gosden proof para. 38; Mrs Fanshawe pp.2-6.

⁶³⁵ Mr Gosden, who was on the scene shortly afterwards, rejected the suggestion that the incident at Hyperion Garage in December 2006 was simply to be pigeonholed as drunk driving and involved a driver who (albeit intoxicated) was frustrated by the slow traffic.

⁶³⁶ See Mr Gosden rebuttal, para. 22.

racetrack. To suggest that those centrally involved in training should seek to stir up concerns and adverse reactions was nonsensical⁶³⁷.

Risks other than at Horse Crossings

- 7.4.19. The Appellant's Highways and Equestrian Witnesses both accepted in cross-examination that traffic presented risks to racehorses other than at or on the crossings. Examples included horses walking close to the road, or those having to walk on the carriageway or the footway (e.g. at Fordham Rd and Snailwell Rd). Indeed, although later accepted as impracticable, the widening of the Fordham Road horsewalk was suggested at one stage and was considered on behalf of the Appellant to be 'highly desirable' because of the current situation⁶³⁸. Additional traffic would simply make the situation worse, as was eventually agreed by the Appellant's equine witness.

Raynes Lane / Fordham Road Horse Crossing

- 7.4.20. The Raynes Lane / Fordham Road horse crossing was the only one studied for the Appellant⁶³⁹. Here the total horse movements amounted to 1,100 which represents only some 20% of the likely number occurring daily in Newmarket (5,000 on the assumption that approx 2,500 horses make two crossings each on their way to and from the public training facilities). Even there, the Appellant's witness had not experienced the horse crossing himself on horseback despite riding out on several occasions and agreeing that it was necessary to assess the crossings from the perspective of the rider and not merely on foot⁶⁴⁰.

LINSIG

- 7.4.21. The reliance on LINSIG is absurd. It was designed, predicated and calibrated upon its use for traffic lights at junctions and has not been designed, tested or based on use at horse crossings. The only resemblance between the two is that horses delay traffic and cause the traffic to stop, and then to move away again. Other than that entirely superficial coincidence, which it has in common with other traffic delaying factors such as pedestrians, it simply does not sit at all well with the modelling approach required by LINSIG, for example there is no controller⁶⁴¹.
- 7.4.22. A glance at the LINSIG Manual (SHN11) at section 2.4 shows how difficult it would be to force a string of horses into the structure of that modelling process. Moreover, the purpose and basis of LINSIG is made very clear in section 1.1 where it says "*The idea behind LINSIG is straightforward in that it models traffic signal junctions in a similar way to how a real traffic controller actually works. This means that LINSIG takes account of the features and constraints of the controlling equipment...*" This can only mean one thing - namely that this model is wholly inappropriate for modelling anything other than traffic lights. It is not possible simply to adjust red and green times according to traffic flows, as can be done at signalised junctions, nor is it illegal to push through a gap in a

⁶³⁷ Mr Gosden XX/RX and 3P7 (Jacko Fanshawe), p.4 last sentence

⁶³⁸ Mr Michaels XX

⁶³⁹ TA CD 105 p. 6 Table 1 and CS Proof pp. 60 - 63

⁶⁴⁰ Mr Michaels XX

⁶⁴¹ Mr Smith XX (DE).

string as it is to jump a red light⁶⁴². Horses tend to react on such occasions, whereas traffic lights do not spook.

- 7.4.23. This bizarre use of the LINSIG model was further underlined by the fact that saturation flows need to be set (see the Manual at pp. 17 and 43) and this represents the number of Passenger Car Units which can get through the junction during the green phase. Since there is no controller and no traffic lights at a horse crossing, a default green phase had been assumed (when the horses were not crossing), but it was only calibrated by reference to a single visit to the site, without any further attempt to see whether it held good for other days or other configurations and timings of horses crossing. It was therefore a one off adjustment of a value which had been derived from a wholly different data source.
- 7.4.24. Even if there had been a reasonable fit with the purpose, calibration and operation of the software which allowed it to be used for horses, the need to set saturation flows manually required more than a single observation to give it any degree of credibility; yet this was not done. It was accepted on behalf of the Appellant that strings of horses were variable in numbers, in the time they arrived and took to cross, and in the gaps between them. All of these showed the inappropriateness of using modelling software which is predicated on a traffic light model. It is notable that the *LINSIG* software designer had not been asked to comment on the appropriateness of the use of LINSIG⁶⁴³.

7.5. Other HRI Impacts

- 7.5.1. The failure to carry out a defensible assessment of the one horse crossing that was studied, was compounded by several other failures relating to the impact of development traffic on the HRI. These failures should be judged in the context of the risk to the industry and its high value to Newmarket and the UK, as well as the Appellant's own evidence that Newmarket "must be preserved at all costs"⁶⁴⁴.

Growth in HRI

- 7.5.2. The Appellant assumed no growth in the HRI but instead used a crude 'sensitivity test' of 10% which was applied to the Rayes Lane / Fordham Road crossing analysis. This assumed additional horses in the strings and not an increase in the numbers of strings which would be more likely, at least on some occasions. A growth factor of 10% applied to the existing 2,500 x 2 horse movements per day would be an increase of 500 movements which would be in the order of 20 additional strings. There was no attempt to assess this scenario.
- 7.5.3. The prospects of growth in the horseracing industry were underestimated and generally sought to be downplayed by the Appellant. There was simply no basis for assuming that in the period to the completion of the proposed development in 2030 that there would be only 10% growth in the industry, or

⁶⁴² Insofar as the Appellant seeks to rely on the provisions of the highway code relating to how drivers should respond to horses, following the Inspector raising the point with Mr Gosden, the very fact that no one at the inquiry was able to give an immediate answer as to what the highway code actually said tells one everything about the extent to which drivers are likely to have any horse-related provisions at the forefront of their minds (whereas everyone knows it is illegal to jump a red light).

⁶⁴³ Mr Smith XX

⁶⁴⁴ Mr Michaels proof, section 7, para. 2.

that it would manifest itself simply in the form of longer strings rather than new stings⁶⁴⁵.

Period of Traffic Assessment

- 7.5.4. Although peak hour assessments had been carried out and the interaction with horses examined in that hour, the training day runs from around 05.00 hrs to 13.00 hrs and, save in the earliest part of the day, the horses are faced with significant levels of traffic which remain after the peak (though at a slightly lower level)⁶⁴⁶. However, despite the revisions to the TA and the production of evidence, no assessment was made of the wider and critical impact of the development traffic on the training day as a whole. While some of those trainers with fewer horses may be able to get their horses out and back from the gallops by the peak hour, this cannot be done by those with more substantial establishments who will be sending several lots of horses out for training from the early morning until midday⁶⁴⁷. This is not the complete or careful assessment needed to ensure that the HRI in Newmarket is preserved 'at all costs'.

Mitigation

- 7.5.5. The proposed mitigation measures do not address the fundamental problem that the increased traffic would necessarily bring with it an increased risk of conflict between horses and vehicles. High visibility signs and road markings may alert some drivers to the horse crossings, but they would not, and cannot, stop horses from getting spooked by vehicles. Nor would they address the issue of increased driver frustration or the possibility that drivers could be aware of the horse crossing, but not notice an approaching string of horses. Moreover, the mitigation measures supposedly on offer have been somewhat of a moving feast. The Appellant promised much, but in the end seemed set to deliver little. Indeed, on a close examination of the Section 106 obligations, there was remarkably scant commitment beyond the offer of financial contributions.

Owners' Concerns and Perceptions

- 7.5.6. The suggestion that owners were not concerned, or there was no evidence of such concern, because no one had specifically come forward, was equally misplaced. Firstly, Godolphin and Darley were prominently represented at the Inquiry. They are not only major training and stud establishments in Newmarket and the UK but in a single ownership, namely the Al Maktoum family, probably the most significant owner of racehorses in the world. Godolphin has been active in its opposition to the proposals and put forward its concerns as part of the Tattersalls Group⁶⁴⁸. Godolphin and Darley were also amongst the claimants in the High Court who challenged the Core Strategy. Secondly, trainers of experience, such as the HRI trainer witness, should be taken to know their own business and what they consider would affect their clients. Thirdly, one of SHNL's trainer witnesses had been approached by two of his current owners who specifically indicated that if the Appeal Proposals were to go

⁶⁴⁵ Cf. the recently permitted new 80-box yard – see Mr Boyd's *Update on Growth Prospects of Horseracing Industry* (SHN14).

⁶⁴⁶ See the TA (CD104 Graphs 1 and 2. Mr Smith acknowledged this in XX

⁶⁴⁷ See e.g. Mr Gosden's proof at paras. 18–23, Mr Wall's proof at paras. 6.2–6.6, Mr Palmer's proof at paras. 2.2–2.5,

⁶⁴⁸ See Mr Anderson's proof at para. 10.1: "we have major concerns.. our greatest worry..."

ahead they would no longer place their horses in Newmarket⁶⁴⁹. The Appellant's non-expert witnesses were plainly not in a position to gainsay the evidence of the industry on such matters, as they acknowledged⁶⁵⁰.

- 7.5.7. In any event, it is the perception of the owners of these highly valuable horses that is of critical importance. If they consider that the risks are increasing and conclude that Newmarket is no longer the best place to keep their horses, they would vote with their feet and move their horses elsewhere. The evidence before the Inquiry was that this is precisely what would happen if the Appeal Scheme were permitted⁶⁵¹. Owners are not going to digest the contents of a transport assessment, but instead would form their own perceptions of the impacts from the traffic generated by 1,200 additional dwellings on the delicately balanced relationship between cars and traffic in Newmarket, which already gives rise to significant concerns⁶⁵². The situation would change from one that is seen to be just about tolerable to one in which, to use an Australian owner's phrase, the horse would no longer be king⁶⁵³.

Foreign Competition

- 7.5.8. Prize money is significantly greater in Australia, Japan, America and France than it is in the UK. It is the unique historic setting in which horses can train at Newmarket that enables it to compete with these overseas locations. The threat of losing business to Chantilly looms particularly heavily because it is well located near Paris, in a beautiful setting with no traffic, and training facilities that rival those of Newmarket⁶⁵⁴. The major foreign investors are particularly footloose. They have horses stabled in a number of different countries and so they can easily direct their new stock away from Newmarket to an alternative overseas training establishment where they already have a footing⁶⁵⁵. The Inquiry heard how a Saudi owner experienced terrible traffic on a recent visit to Newmarket and, as a result, has already decided that he will be better off stabling his horses in Chantilly from next year⁶⁵⁶.

Actual Harm

- 7.5.9. The Appellant's attempts to characterise this as involving merely the *perception of harm*, rather than actual harm, betrayed a failure to understand the issue and such an approach was rightly abandoned. If the owners decided to direct their trade to Chantilly rather than Newmarket because of their concerns about the impact of the scheme on the safety of their horses and/or the environment in which they are trained, then the resultant loss of economic investment and the decline in the HRI at Newmarket would plainly constitute actual, not perceived, harm to the economy⁶⁵⁷. This appeal is therefore entirely different from, e.g., cases concerning the extent to which local residents' fears of increased crime that may

⁶⁴⁹ John Gosden's Proof para.39

⁶⁵⁰ Mr Sellwood XX

⁶⁵¹ See e.g. Mr Gosden proof (SHN/JG/P) para. 39

⁶⁵² Mr Gosden EIC

⁶⁵³ See e.g. Mr Gosden proof (SHN/JG/P) para. 39.

⁶⁵⁴ Mr Gosden proof para. 26 & EIC – see an extract from the Chantilly website is at SHN6

⁶⁵⁵ Mr Gosden EIC

⁶⁵⁶ Mr Gosden EIC

⁶⁵⁷ Mr Boyd EIC

arise from a development is a material consideration absent evidence that there would in fact be an actual increase in crime⁶⁵⁸.

Equine Bio-tech Uses

- 7.5.10. Finally, the suggestion by the Appellant's Planning Witness in his oral evidence that the employment element of the Appeal Scheme could be put to a horse-related biotech use should be given no weight as there is no commitment in the Section 106 obligations to such a use. Moreover, the responses to the pre-application public consultation roundly rejected such an idea because the employment area of the site would not be suitable for the access and egress of horses⁶⁵⁹. Whilst it was suggested by the Appellant that the horse-related biotech use could involve research that did not require the physical presence of horses, there were no specifics on what that might actually involve or the extent to which such research actually exists, let alone is in demand in the area.

7.6. Impact on the Character of Newmarket

Impact on the Conservation Area

- 7.6.1. It was common ground that the related activities of racehorse breeding, training and sales underpin the character and appearance of the Newmarket Conservation Area (CA)⁶⁶⁰. Accordingly, the threat that the proposed urban extension at Hatchfield Farm poses to the continued success of the horseracing industry at Newmarket also represents a threat to the CA⁶⁶¹.
- 7.6.2. As the Appellant's Heritage Witness acknowledged, if some of the buildings in the CA ended their historic connection with the horseracing industry because of a decline in business, and they were put into some other use, that would cause harm to the CA because that historic connection is a key characteristic of the CA. This threat is specifically identified in the Council's Conservation Area Appraisal⁶⁶².
- 7.6.3. The activity associated with the horsewalks and horse crossings is also a characteristic of the CA which adds to one's experience of it⁶⁶³. The sight of horses permeating through the town is a key element of what makes Newmarket unique. Accordingly, if the number of horses in Newmarket were to suffer a significant decline this experience would be significantly diminished.
- 7.6.4. Harm would also be caused to the CA by the substantial increase in traffic driving through it as a result of the Appeal Scheme. Already, the Council's CA Appraisal puts the *"growing volume of traffic and congestion"* at the top of its list of factors causing intrusion or damage to the CA⁶⁶⁴. The Appellant's own DAS identifies traffic impact on the conservation area as a constraint affecting the development⁶⁶⁵. In any view, this acknowledged problem would be exacerbated

⁶⁵⁸ eg *West Midlands Probation Committee v. Secretary of State for the Environment* (1998) 76 P.&C.R. 589

⁶⁵⁹ See p.23 of the DAS (CD103).

⁶⁶⁰ Mr Mascall XX – see also Mr Mascall proof (ED/RM/P) para. 4.63

⁶⁶¹ Mr Mascall himself agreed in XX that *"a threat to the future of the HRI in Newmarket is a threat not just to the economy but also to the CA"*.

⁶⁶² Agreed by Mr Mascall in XX; see also his Apx 3 (ED/RM/PA) pp.4-5 under the heading "Pressures for Change".

⁶⁶³ Mr Mascall paras. 4.40-4.41 & 4.64.

⁶⁶⁴ Mr Mascall Apx 3 (ED/RM/PA) p.4 under the heading "Intrusion of Damage"

⁶⁶⁵ CD 103, p.16.

by the addition of the traffic generated by a 1,200 home urban extension at Hatchfield Farm, regardless of whether one uses the Appellant's or Tattersalls' figures.

- 7.6.5. On top of this, the Appellant proposed to undertake various works at the horse crossings at the Fordham Road / Rayes Lane junction (immediately adjacent to the CA and within its setting) and on the Bury Road (within the CA) as a purported means of mitigating the impact of the additional traffic generated by the development. The Appellant's conclusion that these works would not harm the character or setting of the CA was based on his assumption that they would be '*modest*' in their visual impact⁶⁶⁶. That was a naïve assumption.
- 7.6.6. During the Inquiry it became clear that the works envisaged by the Appellant would include contrasting red colour road surfacing (not the 'buff or neutral tone' assumed by his Heritage Witness, who confirmed in cross-examination that a red coloured surfacing would, in his view, be inappropriate and harmful to the CA)⁶⁶⁷. The mitigation would also include high visibility road markings, a substantial build-out of the kerbline at the Rayes Lane / Fordham Road crossing⁶⁶⁸ and the addition of new signs with flashing LED lights. These measures are deliberately designed to be conspicuous, not modest, in an attempt to alert drivers to the presence of the horse crossings. It is simply unrealistic to suggest that they would have no visual impact on the CA. They are precisely the kind of features which the English Heritage guidance *Streets for All* and the County Council's *Suffolk Conservation Manual* seek to avoid in conservation areas and other sensitive locations.
- 7.6.7. The national version of *Streets for All* (CD163) advises that authorities should '*relate ground surfaces to the local context*', '*minimise signage*', '*use a single dark colour for all items*'. Traffic management should '*adopt a minimalist approach*' and it deprecates the use of '*coloured surfaces*'.
- 7.6.8. The East of England version of *Streets for All* (CD162) calls for road markings to be used '*sparingly*' in sensitive areas (pp.23 & 50), cautions that signs should be kept to a minimum as their clutter '*gets in the way and masks local character*' (pp.27 & 33) and where new signs are necessary their design '*should be simple*' (p.23). The General Principles at p.51 reiterate the national guidance in calling for '*minimal visual interference with the established street scene*' and advising that colour contrasting surfaces are '*usually undesirable*'.
- 7.6.9. The *Suffolk Conservation Manual* (CD164) states that '*the uncluttered nature of streets adds greatly to their character*' and therefore the provision of alien features should '*in most instances... be avoided*'. The Manual goes on to state that the imposition of new lighting '*can have a major impact upon the character and appearance of the conservation area*' (p.23) and therefore that '*signs should only be illuminated if there is a statutory requirement*' (p.26). As for road surfaces, the Manual advises that '*wherever possible lines and road markings in conservation areas should be avoided*' (p.26).

⁶⁶⁶ Mr Mascall rebuttal paras. 1.20-1.21.

⁶⁶⁷ Cf Mr Mascall rebuttal (ED/RM/R) para. 1.22). Mr Smith specifically said that he would envisage the colour of the contrasting surface to be red

⁶⁶⁸ See ED18

- 7.6.10. Against the background of this guidance, it was untenable for the Appellant to suggest that the imposition of contrasting coloured surfacing, high visibility road markings, illuminated flashing LED signs (which would operate in hours of darkness given the early start that trainers make and thus introduce a significant element of night-time illumination⁶⁶⁹) and a significant build-out of the kerbline would not harm the character and appearance of the Newmarket CA. These urbanising features would cause significant visual intrusion. The same can be said of the introduction of speed calming chicanes in the Snailwell Road, the rural character of which is recognised by the DAS as something which needs to be preserved⁶⁷⁰.
- 7.6.11. It was no answer for the Appellant to say that he was not seeking planning permission for these works. They were improvements which his Highways Witness considered to be capable of mitigating the impact of the development. He envisaged that they should be the subject of a Grampian condition (No. 33) and/or planning obligations in respect of horse crossings and other improvement works. The evidence clearly demonstrated that these works would harm the Conservation Area.

7.7. Demonstration of Design Quality

- 7.7.1. An important factor in determining the impact of the appeal scheme on the historic character of Newmarket is whether it would have a high quality of design. As the Appellants accepted, a large urban extension which is not well designed would permanently undermine the character of the town. Paragraphs 33 and 34 of PPS1 emphasise the need for good high quality designs. This message is reiterated in paragraphs 13-16 of PPS3 and at paragraphs 114-123 of the draft NPPF. The Appellant's witness accepted that, high quality design is a fundamental part of what the draft NPPF means by 'sustainable development' and therefore an application which does not guarantee a high quality design cannot benefit from the proposed presumption in favour of sustainable development.
- 7.7.2. Because of this fundamental objective of ensuring high quality design the new regime for outline planning applications now requires the submission of a design and access statement (DAS) to set out the principles and parameters that would govern future reserved matters applications. The former 'blank cheque' outline permissions, with a red line around a plan, are no more. In order to ensure that a high quality development would be delivered, the principles and parameters need to be established at the outset⁶⁷¹. The development approved by an outline planning permission is then constrained to those principles and parameters: see the DCLG's *Guidance on information requirements and validation*⁶⁷². As the Inspector in the Filton case noted, '*the purpose of the DAS at the outline stage is to establish the principles that will guide the development, and to demonstrate - typically by reference to examples - how those principles will ensure good design*', so as to '*fix the quality of the development*'⁶⁷³. As the Appellant's Planning Witness acknowledged, the need for design quality to be fixed by a set of clear principles and parameters at the outline stage is particularly important

⁶⁶⁹ Mr Michaels XX

⁶⁷⁰ CD 103 p.22.

⁶⁷¹ Accepted by Mr Sellwood in XX.

⁶⁷² CD168, para. 115

⁶⁷³ CD166, paras. 10.14 & 10.123

where, as here, it is intended that the site will subsequently be split up and the scheme brought forward by different developers⁶⁷⁴.

- 7.7.3. In the present case therefore, the Secretary of State (SoS) needs to be satisfied that the principles and parameters set out in the DAS accompanying the application would lead to a high quality development⁶⁷⁵. In order for the SoS to reach such a conclusion, he will need to be satisfied that the DAS explains and justifies principles that would ensure a high quality layout at the reserved matters stage. This is a clear and unequivocal requirement of DCLG's *Guidance on information requirements and validation*, paragraph 130 of which states: -

'If the layout is reserved at the outline stage, the outline planning application should provide information on the approximate location of buildings, routes and open spaces proposed. The design and access statement accompanying an outline application should explain the principles behind the choice of development zones and blocks or building plots proposed and how these principles, including the need for appropriate access will inform the detailed layout. The use of illustrative diagrams is encouraged to assist in explaining this.'

- 7.7.4. This is not a mere technicality. The information required by paragraph 130 of the Guidance is essential if the SoS is to be satisfied that the development is well planned and that the total number of 1,200 dwellings can be accommodated on the site, together with all the other elements in a way that would ensure a high quality, integrated development. As paragraph 35 of PPS1 states: -

"High quality and inclusive design should be the aim of all those involved in the development process. High quality and inclusive design should create well-mixed and integrated developments which avoid segregation and have well-planned public spaces that bring people together and provide opportunities for physical activity and recreation. It means ensuring a place will function well and add to the overall character and quality of the area, not just for the short term but over the lifetime of the development. This requires carefully planned, high quality buildings and spaces that support the efficient use of resources. Although visual appearance and the architecture of individual buildings are clearly factors in achieving these objectives, securing high quality and inclusive design goes far beyond aesthetic considerations. Good design should:

- address the connections between people and places by considering the needs of people to access jobs and key services,*
- be integrated into the existing urban form and the natural and built environments,*
- be an integral part of the processes for ensuring successful, safe and inclusive villages, towns and cities, and*
- create an environment where everyone can access and benefit from the full range of opportunities available to members of society; and, consider the direct and indirect impacts on the natural environment."*

- 7.7.5. The layout of a development - defined in paragraph 129 of the DCLG Guidance as *'the way in which buildings, routes and open spaces (both private and public) are provided, placed and orientated in relation to each*

⁶⁷⁴ Mr Sellwood stated in EiC and XX that this was Lord Derby's current intention for the site.

⁶⁷⁵ Accepted by Mr Sellwood in XX

other and buildings and spaces surrounding the development' plays a fundamental role in fulfilling this objective.

- 7.7.6. In the present case, what scant information there is in the DAS on the layout of the development falls far short of that required by paragraph 130 of the Guidance and, as a result, the SoS cannot have confidence that the Appeal Scheme would deliver a high quality development in accordance with paragraph 35 of PPS1.
- 7.7.7. Nowhere in the DAS is the requirement to show '*the approximate location of buildings*' met⁶⁷⁶.
- 7.7.8. The DAS also does not comply with the requirement to '*explain the principles behind the choice of development zones and blocks or proposed building plots and how these principles, including the need for appropriate access will inform the detailed layout*'. The Inspector in the Filton case, with whom the SoS agreed, held that, in order for this requirement to be satisfied, there needed to be a '*clear indication of how the internal elements of the blocks (any sentinel houses, private and communal gardens, garages, parking and circulation areas) would be deployed*' and '*a clear indication of the possible disposition of built form*'⁶⁷⁷. The Appellant's Planning Witness acknowledged in cross-examination that this was lacking from the DAS.
- 7.7.9. The Masterplan, at page 18 of the DAS, is at least as vague as that contained in the DAS for the Filton Scheme (CD167 p.49) which the Inspector and the SoS found to be deficient (CD166). It was conceded on behalf of the Appellant that the '*layout is not specifically shown*' on the masterplan⁶⁷⁸.
- 7.7.10. The only part of the DAS which the Appellant pointed to as addressing paragraph 130 of the DCLG Guidance was the collection of sketches at pages 38-52⁶⁷⁹. Whilst these sketches provide a general indication of the appearance of the buildings (albeit a fairly vague one), they provide little or no information about the layout of the individual character areas, let alone how they would be stitched together to create a well-planned and integrated overall layout. What information there is comes unaccompanied by any clear explanation or justification. Moreover, the use of such sketches, as opposed to more detailed and precise plans or drawings, was specifically criticised by the Inspector in the Filton case⁶⁸⁰.
- 7.7.11. The Appellant's response was that the SoS is now less exacting in the level of detail required in a DAS in order to provide the necessary fix on the quality at the outline stage⁶⁸¹. However, this argument does not bear scrutiny. Firstly, the DCLG Guidance was published as recently as April 2010 and contained virtually the same wording as the predecessor guidance in Circular 01/06 *Guidance on Changes to the Development Control System*⁶⁸². Secondly, the Inspector in the

⁶⁷⁶ Accepted by Mr Sellwood in XX

⁶⁷⁷ CD 166 paras. 10.6 10.7 (Inspector's Report), with which the SoS agreed at para. 13 of her Decision Letter (also at CD 166)

⁶⁷⁸ Mr Sellwood XX

⁶⁷⁹ Mr Sellwood XX

⁶⁸⁰ CD166 para. 10.11 (Inspector's Report), endorsed by the SoS at para. 13 of her Decision Letter

⁶⁸¹ Mr Sellwood XX

⁶⁸² The catalyst for the new guidance appears to be the recent changes to the process for making planning applications, in particular the introduction of the standard 1APP form: see in particular Sections 2 and 3 of CD168. The decision to

Ipswich appeal, concluded that the DAS in that case showed '*insufficient guidelines such that one is unable to conclude that the development as a whole would be of a sufficiently high standard*⁶⁸³, a conclusion with which the SoS agreed⁶⁸⁴. That decision is less than a year old and gives the lie to any suggestion that the SoS has diluted the requirements for design and access statements since the Filton decision.

- 7.7.12. It is also no answer to say that design and access statements should be concise documents. A DAS need not be lengthy in order to contain the information required by paragraph 130 of the DCLG Guidance⁶⁸⁵. The DCLG Guidance makes clear that, whatever the length of DASs, what is important is that they '*effectively cover all of the design and access issues*' (at para. 122). The DAS for the appeal scheme plainly does not.
- 7.7.13. The validation of the application by the Council does not assist the Appellant. The issue for the SoS is not whether the application is valid, but whether it provides the necessary guarantee that the development would be of a sufficiently high quality. The validation of the Filton and Ipswich applications did not stop the Inspectors, and the SoS, in those cases from holding that those schemes were deficient⁶⁸⁶. Nor is there any merit in the Appellant's protest that SHNL had not called any design evidence at the Inquiry. It does not take an expert architect to ascertain whether the DAS does, or does not, contain the information required by policy. It is clear from the DAS, and acknowledged by the Appellant's witness, that the requisite material is missing. Therefore the SoS does not have the information that his own policy requires to be provided in order to show that the development would be of a high quality design.

7.8. Prematurity

- 7.8.1. Central to the context for this appeal is the judgment of Collins J in April 2011⁶⁸⁷, in which he held that the allocation of an urban extension at Hatchfield Farm in the Forest Heath Core Strategy (CS) had not been subject to a valid strategic environmental assessment (SEA) owing to the failure to address reasonable alternatives, and was thus unlawful. His subsequent Order quashed those elements of the Core Strategy, Policies CS1 and CS7 relating to the distribution of housing, which removed a significant part of the housing policies from the CS.
- 7.8.2. The Council has since resolved to undertake a review of the CS housing policies in which, not only the distribution of housing, but also the overall amount required will be reconsidered and will be subject to a fresh SEA process⁶⁸⁸.

incorporate the guidance on DAS requirements alongside the guidance on this new application process appears to have been aimed at having one consolidated policy document on information requirements and validation.

⁶⁸³ Mr Boyd Appx 11, Inspector's Report para. 243.

⁶⁸⁴ Mr Boyd Appx 11, Decision Letter para.13: "*like the Inspector [the SoS] is unable to conclude that the development as a whole would be of a sufficiently high standard*".

⁶⁸⁵ Accepted by Mr Sellwood XX

⁶⁸⁶ See in particular para. 243 of the Inspector's Report in the Ipswich Decision (Boyd Appx 11).

⁶⁸⁷ *Save Historic Newmarket Ltd & Others v. Forest Heath District Council* [2011] EWHC 606 (Admin).

⁶⁸⁸ Mr Boyd rebuttal (SHN/JB/PR) paras. 2.8-2.12, Mr Smith rebuttal (FH/MS/R) paras. 3.1-3.8

Legal Implications

- 7.8.3. Having found that the SEA for the CS, and in particular of the allocation of Hatchfield Farm, was deficient, Collins J was obliged under EU law to quash the allocation so as to enable a valid SEA to take place. As he held at paragraph 14 of the judgment, there is a clear analogy with the position where a planning permission has been granted in breach of the EIA Directive: in either case, the principle of sincere co-operation in Article 4(3) TEU⁶⁸⁹ obliges Member States to ensure that EU law is given full effect and therefore a non-compliant plan or planning permission (as the case may be) must be quashed so as to enable a fresh decision to be made which is in full accordance with the relevant EU law obligations. See **Berkeley v. Secretary of State for the Environment** [2001] 2 A.C. 603 per Lord Bingham at p.608D (describing the duty of co-operation as creating “an obligation of national courts to ensure that Community rights are fully and effectively enforced”) and Lord Hoffman at p.616D-(on EIA); Case C-201/02 **R (Wells) v. Secretary of State for Transport, Local Government and the Regions** [2004] Env. L.R. 528 per the CJEU at paras. 64-66 (on EIA) and **City and District Council of St Albans v. SSCLG** [2010] J.P.L. 10 per Mitting J at para. 22 (equating the position under the SEA Directive to that relating to EIA).
- 7.8.4. The High Court judgment also means that: -
1. the quashed policies no longer form part of the Development Plan nor can they be a material consideration,
 2. the evidence base for the plan is tainted and cannot be relied upon since it was conducted in the absence of a proper and lawful SEA. This was made clear in argument following judgment on 25.3.11 by Collins J⁶⁹⁰, and
 3. The plan examination conducted by the CS Inspector was similarly contaminated by the failure of the CS SEA to comply with the law⁶⁹¹. As Collins J held: -

“40. In my judgment, Mr Elvin is correct to submit that the final report accompanying the proposed Core Strategy to be put to the inspector was flawed. It was not possible for the consultees to know from it what were

⁶⁸⁹ Art. 4(3) TEU (previously Article 10 of the Treaty establishing the European Community) provides:

“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.”

⁶⁹⁰ “171. MR ELVIN: ... Would your Lordship be willing to give a declaration to that effect, that those parts of the SA and the SEA which have been found to be unlawful relating to housing do not form part of the lawful evidence base for the core strategy. I simply say --

172. MR JUSTICE COLLINS: I think that goes without saying, on the basis of the judgment, does it not? I mean, the declaration surely is only necessary, in formal terms, if the judgment does not make clear what the situation is and the judgment does make it clear.

173. MR ELVIN: My Lord, I simply raise it because --

174. MR JUSTICE COLLINS: You mean, someone might try otherwise --

175. MR ELVIN: Lord Derby may say to the Inspector you may need to look at the evidence base. Your Lordship has made it clear that the evidence base related to the housing. By clear implication from your Lordship’s judgment—

176. MR JUSTICE COLLINS: Well, it is not implication, it is explicit.”

⁶⁹¹ Directive 2001/42/EC and the Environmental Assessment of Plans and Programmes Regulations 2004

the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified in the final report. There was thus a failure to comply with the requirements of the Directive ..."

7.8.5. The Appellant's suggestion that the deficient SEA was merely a technical procedural matter which does not undermine the evidence base for the CS⁶⁹² was therefore wholly misconceived.

7.8.6. What the Appellant now seeks is for the SoS to grant permission for the very same 1,200 dwelling urban extension which was the subject of the quashed allocation and flawed SEA, by relying on the unquashed policies of the CS and the underpinning evidence base without any fresh SEA⁶⁹³. To do so would be to pre-empt the Council's Single Issue and new SEA which is required as a result of the Highs Court's Order. It is clear from the CJEU's judgment in **Wells** that this would be in breach of the duty of sincere co-operation in Article 4(3) TEU⁶⁹⁴. At paras. 62-66, the CJEU held as follows (emphasis added): -

"62. By its third question, the referring court essentially seeks to ascertain the scope of the obligation to remedy the failure to carry out an assessment of the environmental effects of the project in question.

63. The United Kingdom Government contends that, in the circumstances of the main proceedings, there is no obligation on the competent authority to revoke or modify the permission issued for the working of Conygar Quarry or to order discontinuance of the working.

64. As to that submission, it is clear from settled case-law that under the principle of cooperation in good faith laid down in Article 10 EC the Member States are required to nullify the unlawful consequences of a breach of Community law (see, in particular, Case 6/60 Humblet [1960] ECR 559, at 569, and Joined Cases C-6/90 and C-9/90 Francovich and Others [1991] ECR I-5357, paragraph 36). Such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (see, to this effect, Case C-8/88 Germany v Commission [1990] ECR I-2321, paragraph 13).

65. Thus, it is for the competent authorities of a Member State to take, within the sphere of their competence, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment (see, to this effect, Case C-72/95 Kraaijeveld and Others [1996] ECR I-5403, paragraph 61, and WWF and Others, cited above, paragraph 70). Such particular measures include, subject to the limits laid down by the principle of procedural autonomy of the Member States, the revocation or suspension of a consent already granted, in order to carry out an assessment of the environmental effects of the project in question as provided for by Directive 85/337.

⁶⁹² Mr Sellwood Proof paras.7.1.1-7.1.3 & 7.21

⁶⁹³ Note: the ES and Addenda do not purport to meet the requirements for SEA; in particular, the consideration of reasonable alternatives is limited to alternatives within Newmarket rather than the consideration of potential alternatives elsewhere in the District which would be a necessary component of any SEA

⁶⁹⁴ Formerly Article 10 of the EC Treaty.

66. The Member State is likewise required to make good any harm caused by the failure to carry out an environmental impact assessment."

- 7.8.7. As indicated above, the Courts have held that the position in relation to SEA is analogous to that relating to EIA: see Collins J at para. 14 and **St Albans** at para. 22.
- 7.8.8. In the present case, the SEA accompanying the CS has been found to be deficient and, as a result, the High Court has quashed the housing distribution policies which were challenged by SHNL (although the SEA's failure to consider reasonable alternatives related not just to the housing distribution policies but to all policies in the CS: the SEA failed to deal with alternatives at all). The quashed policies included the allocation of a 1,200 urban extension at north-east Newmarket which, whilst not mentioning Hatchfield Farm by name, could not be delivered without Hatchfield Farm and therefore unquestionably established the principle of an urban extension at the site. As Collins J held at paragraph 38 of his judgment:
- "...there is a degree of artificiality in the way the Council have dealt with this since the area (which includes Hatchfield Farm) proposed for the development is very close to being specific. Certainly if not the whole a large part of Hatchfield Farm will be used. Thus the need for a proper consideration of any alternatives and of the effects of the increases in the number of dwellings is all the more important."*
- 7.8.9. Therefore the deficient SEA and the principle of development at Hatchfield Farm are inextricably linked.
- 7.8.10. Following the High Court's judgment, applying the ECJ's observations in **Wells**, the TEU duty of sincere co-operation means that the UK authorities (including both the Council and the SoS) must:-
1. nullify all the unlawful consequences of the breach of the SEA Directive (**Wells** para. 64),
 2. ensure that the issue of housing distribution in the District, and in particular the principle of an urban extension of Hatchfield Farm, is subject to a valid SEA which inter alia deals fully with all reasonable alternatives (Wells para. 65), and
 3. make good any harm caused by the failure to carry out a valid SEA of the principle of an urban extension at Hatchfield Farm (Wells para. 66).
- 7.8.11. The way by which the Council has decided to comply with these obligations is to undertake a housing policy review accompanied by a fresh SEA. This is the manner in which the responsible public authority intends to make good the defect in the SEA and their earlier process. Yet, the Appellant is asking the SoS to pre-empt that process by giving the go-ahead to the same 1,200 dwelling urban extension that was the subject of the previously deficient SEA and quashed policies, without any new SEA and in reliance on the remaining policies of the CS which, whilst not quashed by Collins J (because they were not the specific target of SHNL's challenge), were not themselves subject to a valid SEA either. For the SoS to accede to this request, and thus hijack the fresh SEA process required by the High Court, would be the very opposite of sincere co-operation and would thus be contrary to Article 4(3) TEU.

Policy implications

- 7.8.12. In policy terms, the quashing of the allocation and the pending CS review means that the appeal is a textbook case of prematurity. Paragraph 17 of *The Planning System: General Principles* (CD134) provides: -

"In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category..."

- 7.8.13. On any basis, allowing this appeal would predetermine decisions about the scale, location or phasing of new development which are being addressed in the CS housing policy review.

Magnitude of the Scheme and Alternatives

- 7.8.14. This Appeal would fix 1,200 homes, nearly a fifth of the District's overall requirement under the East of England Plan⁶⁹⁵ in a single location at Hatchfield Farm and thus substantially predetermine the decisions to be made about the distribution of housing across the District. The pervading assumption underpinning the Appellant's case was that it is inevitable that the housing policy review will re-allocate an urban extension at Newmarket (an assumption so ingrained that the review of alternative sites in the ES Addendum failed to look at locations outside the town), but the truth is that the outcome is far from certain. Given the sensitivity of Newmarket to development pressures, it is a *non sequitur* to suggest that just because it is the largest settlement in the District it will have to bear the lion's share of new development. As the Council's evidence made clear, there are a number of potential alternative options that merit careful consideration and the housing policy review may conclude that the better option would be to locate the bulk of new development elsewhere, such as in other market towns in the District (Mildenhall and Brandon), the key service centres (Brandon and Red Lodge) and the primary villages (Beck Row, Exning, Kentford and West Row). The October 2010 SHLAA update indicates 108 alternative sites as potentially suitable for housing. Collectively, these sites have a capacity for some 15,500 dwellings, which could be phased to achieve a good spread of development over the next 15 years⁶⁹⁶.
- 7.8.15. The Appellant's suggestion that the allocation of 5 ha of new employment land for Newmarket brings with it a commensurate need for new housing is misplaced since there is already a considerable need for new jobs amongst those living in the town. The 5 ha employment land would therefore service the existing population⁶⁹⁷. Moreover, even if the housing policy review were to conclude that *some* development should take place at Hatchfield Farm, it by no means follows that the amount of development allocated would have to be the 1,200 dwellings proposed in the Appeal Scheme.

⁶⁹⁵ The EoEP requirement is 6400, of which 1200 homes at Hatchfield Farm would represent 18.75%. Mr Smith proof (FH/MS/P) paras. 4.5-4.8.

⁶⁹⁶ Ms Smith proof (FH/MS/P) paras. 4.5-4.8.

⁶⁹⁷ Mr Boyd EIC

Pre-determination of the Single Issue Review

- 7.8.16. Allowing the appeal would predetermine the Council's review of the amount of housing required in the District. If the overall housing requirement is reduced from that currently set out in Policy CS7 (which is based on the East of England Plan (EEP) figure of 6,400 homes to 2021 extrapolated forward to 2031), then the case for an urban extension at Hatchfield Farm would be even weaker. The Council said that the Single Issue Review would consider reducing the plan period and accordingly the commensurate housing figure for the District. However, the Localism Bill will no doubt be enacted before the Review is adopted in April 2013⁶⁹⁸, thereby abolishing the EEP and its housing requirement. This is important because the requirement for a draft DPD to be in general conformity with the relevant Regional Strategy only arises at the examination stage (see Sections 20(5) and 24(1) of the Planning and Compulsory Purchase Act 2004). At the earlier stage of preparation and consultation, local planning authorities are merely required to "*have regard to*" the RSS (see Section 19 of the 2004 Act). Accordingly, providing that in consulting upon the issues and options for the housing policy review the Council has regard to the EEP, there would be nothing to prevent those issues and options including a lower housing requirement than that prescribed by the EEP. Following the enactment of the Localism Bill and the abolition of the EEP, the Council would then be able to submit that lower requirement for examination in April 2013.

Reconsideration of the Habitats Regulations Requirements

- 7.8.17. The housing review is bound to have to reconsider the habitats issues and to consider whether the same conclusions should be reached about water supplies as in the adopted Core Strategy Appropriate Assessment (CD130) of two years ago. This may have resulting implications for the amount and/or location of development.

Prematurity

- 7.8.18. Giving the go-ahead for an urban extension at Hatchfield Farm now would predetermine these important questions of scale and location. This is not a matter of mere process. It is about the proper long-term planning of the District as well as remedying the breach of EU law. The significance of the issues at stake and the permanent harm that would be caused if the wrong decisions are made (particularly given the profound economic and cultural importance of the horseracing industry at Newmarket) mean that the most careful consideration needs to be given to the alternative options for the amount and location of housing in the District over the next 15-20 years, taking into account the range of consultation responses from key stakeholders and the public. Bypassing that consideration by means of an *ad hoc* grant of permission on appeal would be the very opposite of proper long-term planning.
- 7.8.19. There is a close analogy here with the SoS's recent appeal decision concerning an application for a 1,085 dwelling urban extension on the Northern Fringe of Ipswich at a site falling within an area proposed for development in the draft Ipswich Core Strategy. At paragraphs 238-239, the Inspector concluded: -

⁶⁹⁸ Ms Smiths's (FH/MS/R) rebuttal para. 3.6

"238. In this case the appeal site comprises a large part of the land in the northern fringe area covered by Policy CS10. Also the proposed development involves a sizeable proportion of the new dwellings destined to be provided in this area. Added to this is the fact that the policy is subject to examination as part of the development plan process. It is by no means certain that the policy will remain unchanged. Furthermore, there is the Secretary of State's revocation of the RSS. The targets and policies set in the RSS no longer apply and thus the question of housing figures may be looked at afresh by the local planning authority with the resultant effect on the location and amount of housing in the northern fringe area in particular and Ipswich as a whole. The net result is a lack of certainty over the submission Core Strategy.

*239. Accordingly, I conclude that the proposed development is so substantial and its effect would be so significant that granting planning permission at this time could be prejudicial to the Ipswich Core Strategy and thus the proper long-term planning of the area."*⁶⁹⁹

7.8.20. As in the Ipswich case, there is a 'lack of certainty' over the outcome of the Council's housing policy review as to the location and amount of housing in the district. Granting permission for the urban extension at Hatchfield Farm would thus be prejudicial to the housing policy review and the proper long-term planning of Forest Heath, just as was the case in Ipswich. There is no merit in the Appellant's attempt to distinguish the Ipswich decision on the basis that the scheme in that case was also considered to undermine the comprehensive development of the Ipswich northern fringe⁷⁰⁰. The issue of comprehensive development was addressed in a separate part of the Inspector's Report and the Decision Letter and did not impact upon the conclusions reached by the Inspector and the SoS on the issue of prematurity⁷⁰¹.

7.8.21. Moreover, as said by the Council's witness, even if the housing policy review reinstated that allocation for 1,200 dwellings at Hatchfield Farm, only a limited 'headstart' would have been lost compared to granting permission now⁷⁰². The earliest that the Appellant envisaged dwellings being built, if the appeal were allowed, was September 2013. By comparison, the new housing policies are anticipated to be adopted in December 2013 and it would be realistic to expect that, if the allocation were reinstated, a planning application would be submitted and approved in 2014 and development could commence in late 2015; only two years later than what the Appellant said would be the case if the appeal were allowed. At the Appellant's expected build rate of 80 dwellings per annum (dpa), this translates into a headstart of just 160 dwellings. Moreover, there must be serious doubt about the ability to start making completions by September 2013 if the current appeal were allowed, and therefore the headstart may well be significantly less than this. However, even at 160 dwellings, this would be a relatively limited short term fix which would not remotely justify sacrificing the proper long term planning of this sensitive area.

⁶⁹⁹ Mr Boyd Appx 11 (SHN/JB/PA). The SoS expressed agreement with the Inspector's conclusions on this point: see para. 12 of his Decision Letter. See also the Polegate case at Boyd Appx 10

⁷⁰⁰ Mr Sellwood EIC/XX.

⁷⁰¹ Para. 12 of the Decision Letter and paras. 237-238 of the Inspector's Report deal with prematurity whereas para. 13 of the DL and paras. 240-241 of the IR deal with the comprehensive development point under a different heading.

⁷⁰² Ms Smith EIC

- 7.8.22. Although paragraph 72 of PPS3 provides that applications for housing should not be '*refused solely on grounds of prematurity*', this does not assist the Appellant in the present case.
- 7.8.23. Nothing in the wording or objectives of PPS3 suggests that paragraph 72 is intended to repeal the guidance in *The Planning System: General Principles* regarding proposals that would predetermine important questions which are the subject of a pending DPD process and would thus harm the proper long-term planning of the area in question. The most sensible interpretation is that paragraph 72 is directed at the situation where planning permission is sought for the early delivery of a development allocated to come forward at a later stage in the plan period; the logic being that the early delivery of housing is considered not to be a bad thing, and therefore that it should not be resisted on the sole ground that it is 'premature'.⁷⁰³ Such an interpretation gives full effect to the importance that PPS3 places on housing delivery whilst at the same time not undermining the guidance in *The Planning System: General Principles*.
- 7.8.24. In any event, paragraph 72 of PPS3 is a statement of the SoS's policy in normal cases. As a matter of law, it must admit of exceptions in unusual cases⁷⁰⁴. This is one such exceptional case, since the High Court has held that, in order to give effect to the SEA Directive, the strategic issue of housing distribution across the District needs to be reconsidered and be subjected to a valid strategic environmental assessment; an exercise on which the Council has now embarked. To grant permission now would frustrate the High Court's judgment by predetermining the reconsideration that was found to be required by EU law.
- 7.8.25. Moreover, prematurity is not the sole basis on which SHNL object to the scheme. There is nothing in paragraph 71 of PPS3 which prevents prematurity justifying the refusal of planning permission when taken together with other considerations.
- 7.8.26. Even if the final version of the NPPF were to remove the current policy relating to prematurity, the very limited benefit of allowing the development to proceed before the outcome of the housing policy review (a maximum of 160 dwellings and very possibly significantly less) would clearly be outweighed by the harm that would be caused to the proper planning of a highly sensitive area. When such a process is also combined with the need to carry out an up to date appropriate assessment with regard to the 'in combination' effects of housing upon the European designated sites such as Fenland SAC, the case for not permitting the Appeal Scheme to proceed is further strengthened.

7.9. Inadequate Environmental Information

- 7.9.1. At the end of the Inquiry, there remained substantial inadequacies in the environmental information provided by the Appellant, which meant that: -
 1. The application failed to comply with the EIA Directive and EIA Regulations, or at least even if lawful the ES and Addenda are substandard and lacking in some important matters which is a matter of significant relevance to the planning merits of the appeal,

⁷⁰³ Ms Smith proof (FH/MS/P) paras. 3.15-3.17.

⁷⁰⁴ Otherwise it would be an unlawful fetter on the SoS's discretion: see eg. *R v. Secretary of State for the Home Department ex parte Venables* [1998] A.C. 407.

2. Applying the precautionary principle, it cannot rationally be concluded that there would be no risk of the Appeal Scheme having significant effects on the Fenland SAC, Devil's Dyke SCA and/or the Breckland SPA and therefore in the absence of an Appropriate Assessment (AA) of the scheme's impact on these sites, Regulation 61 of the Habitats Regulations and Art. 6(3) of the Habitats Directive preclude the SoS from granting planning permission,
3. Even if an AA were carried out, the evidence has not been provided to meet the high hurdle set by the CJEU which is that there must be certainty of no adverse effect, and
4. There were deficiencies in the Appellant's survey work which mean that the Appeal Scheme is not in accordance with relevant development plan and national policies.

Environmental Impact Assessment

- 7.9.2. Paragraph 4 of Schedule 4 of the EIA Regulations says that an ES must contain an assessment of the likely cumulative effects of the proposed development. The Council's scoping opinion dated October 2007 also highlighted '*the direct, indirect, secondary and cumulative impacts of the development with other nearby development*' as a matter that the ES needed to address⁷⁰⁵. In response, Chapter 17 of the ES stated that the only development that would be considered for its cumulative effects in conjunction with the Appeal Scheme was the allocated 8 ha business/science park at the George Lambton Playing Fields Site (see para. 17.2.5). The ES Addendum adopted the same approach (see CD104A, para. 10.3.2).
- 7.9.3. However, an application has now been submitted for a fundamentally different kind of development at the George Lambton site than that which was assessed in the ES⁷⁰⁶. Instead of an 8 ha business/science park, Sainsbury's Supermarkets Ltd are proposing a substantial retail-led scheme that would also involve a large cinema and up to 90 new homes. As acknowledged by the Appellant's Planning Witness, a scheme of this nature would have a much greater trip generation than a business/science park (as is clear from the 497 space car park). The demand on the water supply and/or sewerage network might also be greater, given the different requirements that residential and leisure uses have to those of business uses. None of this was assessed. The cumulative assessment of the George Lambton site and Hatchfield Farm therefore proceeded on an assumption which is now out of date.
- 7.9.4. It is no answer for the Appellant to protest that they could not be criticised for this as the ES was prepared back in September 2009, before the George Lambton proposal came forward. Given the obvious amount of work that has already gone into producing the Sainsbury's scheme shown in the promotional material at CD165 (published in July 2011), it is inconceivable that this scheme had not been conceived by May 2011 when the ES Addendum was published. Given the importance of the George Lambton site to the cumulative assessment, the Appellant's representatives could and should have contacted the owner of the George Lambton site (with whom the Appellant's witness said he had a good relationship)⁷⁰⁷ when preparing the cumulative

⁷⁰⁵ See CD104 Appendix 2.1.

⁷⁰⁶ See Mr Boyd's note at SHN17 and the promotional material at CD165

⁷⁰⁷ Mr Sellwood XX.

impacts section of the ES Addendum, in order to check whether the assumption in the original ES was still up-to-date. They failed to do so and as a result the assessment of cumulative impacts is flawed.

- 7.9.5. The SoS does have a wide discretion in considering whether the ES and any additional information accompanying an application is sufficient to comply with the requirements of the EIA Directive and Regulations: see **R (Blewett) v. Derbyshire CC** [2004] Env. L.R. 29 per Sullivan J at para. 42 and **R (Jones) v. Mansfield** [2004] Env. L.R. 21⁷⁰⁸. He will nonetheless have to consider very carefully whether an ES and Addendum which assess cumulative impacts on a false assumption, without any consideration of a substantial proposal in the immediate vicinity which would be developed at the same time as the Appeal Scheme, complies with the requirements of the EIA Directive and Regulations with regard to cumulative effects.
- 7.9.6. In any event, since the assessment of environmental impacts was conducted in such a flawed manner (with two Addenda required under Regulation 19 due to earlier inadequacies and further bat surveys during the Inquiry), it should be treated with caution both generally and with regard to the fact that it was utilised in part to support the identification of mitigation measures. The failure to assess the cumulative impacts of an urban extension at Hatchfield Farm and the George Lambton application is a further reason why the long term proper planning of the area would be best served by allowing the Council's housing policy review (and accompanying SEA) to run its course.

Habitats Regulations

- 7.9.7. Properly understood, the failure to deal with Habitats issues means that permission not only should not be granted, but *cannot* be granted as a matter of law.
- 7.9.8. Article 6(3)-(4) of the Habitats Directive provides: -
"3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.
4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted."
- 7.9.9. Transposing this requirement, Regulation 61(1) of the Habitats Regulations provides: -

⁷⁰⁸ Under "The role of the Court", per Dyson LJ

“A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.”

- 7.9.10. In considering whether a proposal engages the need for an appropriate assessment, the competent authority must apply the precautionary principle. The hurdle is a very low one: only if there is **no risk** of the appeal scheme having significant effects on a European site can it be said that an appropriate assessment is not necessary⁷⁰⁹. See Case C-127-02 **Waddenzee** [2005] Env. L.R. 14, where the CJEU held that appropriate assessment is required for all proposals where: -

“[44] ... it cannot be excluded, on the basis of objective information, that it will have a significant effect on [a European] site, either individually or in combination with other plans or projects” (para. 45) and that “in case of doubt as to the absence of significant effects such an assessment must be carried”.

- 7.9.11. There are no fewer than three designated European sites in the vicinity of Hatchfield Farm: Fenland SAC, Devil's Dyke SAC and the Breckland SPA (there are multiple designations, including also SSSIs and NNRs). No evidence has been provided to justify the absence of an appropriate assessment of the implications (particularly in relation to disturbance from increased visitors and hydrology from increased water demand) for these sites.

- 7.9.12. This is especially concerning in relation to the Chippenham Fen SSSI, which forms part of the Fenland SAC and is less than 3 km away from the site⁷¹⁰. In its list of ‘factors... adversely affecting the site's ecological character’, the Designation Document for Chippenham Fen Ramsar Site⁷¹¹, specifically cites ‘water diversion for [off-site] irrigation/domestic/industrial use’ as an ongoing adverse factor⁷¹². It also notes that the site currently enjoys a ‘low level of usage’ by recreational visitors⁷¹³, which indicates a potential sensitivity to an influx of visitors from a large-scale urban extension in the very near vicinity. The Fenland SAC (including Chippenham Fen) Data Sheet⁷¹⁴ states under ‘4.3 Vulnerability’; *‘Chippenham Fen NNR has suffered from a changed hydrological regime due to abstraction from the underlying chalk aquifer. This problem is being addressed through supply of supplementary water together with a programme of vegetation and invertebrate population monitoring. This project is being taken forward by English Nature, the Environment Agency and Anglian Water Services plc.’*

- 7.9.13. The Council's Habitats Regulations Assessment (HRA) [CD130] states that there ‘is likely to be a significant effect’ on European sites arising, inter alia

⁷⁰⁹ Prof Humphries confirmed in XX that this was common ground.

⁷¹⁰ See Mrs Ward proof (SHN/DW/P) paras. 5.1-6.5.

⁷¹¹ Part of SHN 22.

⁷¹² Add SHN 22, page 6.

⁷¹³ At p.6 (Box 31: “Current Recreation and Tourism”)

⁷¹⁴ Part of SHN 22

from Policy CS7 (which at that time included the urban extension at Hatchfield Farm) in relation to *'water abstractions that have the effect of reducing water volume'* (p.38). There follows a list of European sites that *'may be affected by water abstraction'* which includes the Fenland SAC, Breckland SPA and Chippenham Fen SSSI (p.46). On page 47, the HRA notes that *'the water supply for the area is heavily dependent on ground water abstraction as a result of historical development and due to potential surface water sources having similar constraints'*.

- 7.9.14. Page 47 also explains that the native sources from where the current water supply is derived are already over-licensed and over-abstracted, which as the Appellant's Ecology Witness acknowledged in cross-examination, meant that even whilst Anglian Water may operate within the existing capacity of its water supply sources, there must be a risk that additional abstraction would have an adverse impact on the relevant European sites. The fact that there may, at present, be capacity does not mean that there would be no risk of harm. On page 49, it says that *'the available information indicates that the main water demands in the District are around Newmarket, which is an area which has been highlighted for further development'* and that Anglian Water's draft Water Resources Management Plan shows that the water resource zone in which Newmarket lies will only have a surplus of water resources *'until 2019'*. The HRA then concludes at page 49 (emphasis added):-

'From the available documentation and the above appropriate assessment it appears that existing water resources will be sufficient to cater for the increased demand brought about by new development, although this may be dependent, to a certain extent, on water transfer schemes. However, until Stage 2 of the SFRA/WCS [the Forest Heath combined Strategic Flood Risk Assessment and Water Cycle Study] is complete this cannot be confirmed, so, following the precautionary principle, it is therefore not possible to determine that there will be no adverse effect upon the integrity of the European sites as a result of water abstraction.'

- 7.9.15. The Appeal Proposals would deliver the 1,200 dwelling urban extension that was allocated in the original Policy CS7 to which the above comments were, in part, directed. The development will continue well beyond the tipping point in 2019 when the surplus of water resources is anticipated to run out. The clear message from the Council's HRA must therefore be of a risk from the Appeal Scheme to a European site through increased water demand and the consequent abstraction.
- 7.9.16. Indeed, it appears that the Council did not lawfully carry out a Habitats Assessment since, although this was for the adoption of a plan within the Habitats Regulations, the Council abdicated the assessment to the EA at the abstraction stage, despite the fact that existing sources were under stress⁷¹⁵.
- 7.9.17. In its consultation response to the application, dated 27 January 2010⁷¹⁶, the EA stated that its lack of objection to the development was subject to a number of points, including the following on page 5:-
- 'in accordance with the Conservation (Natural Habitats &c) Regulations 1994, the local planning authority should determine if the application is likely to have a significant effect on Chippenham SSSI, a component of Fenland SAC. This*

⁷¹⁵ See e.g. the notes as to OA and OL notations on CD 130 p. 47 indicating damage at low water times even within existing licences.

⁷¹⁶ Ward Supplementary Appx DW21

determination should consider the effect the development would have alone, and in combination with other plans and projects...'

- 7.9.18. Natural England's (NE) scoping response for the Appeal Scheme, dated 4 September 2007 (DW18), stated:-

'Potential impacts on designates sites in the area that will need to be assessed include the effects of increased water abstraction as a result of the new development and increased visitor pressure on nearby sites from 1,200 residential units'

- 7.9.19. This request was reiterated in NE's consultation response to the application and the ES, dated 28 January 2010 (DW22):-

'The details of the source of the water supply for the housing have not been detailed in the documents we received. A number of Sites of Special Scientific Interest (SSSI) lie within close proximity to the proposed site, in addition Wicken Fen RAMSAR lies within a 10 km radius. Although contamination issues in respect to water resources have been examined the issue of water supply has not. In our response to the scoping opinion (dated 4th September 2007) Natural England did request that the impacts of increased water abstraction in relation to SSSI's and other designated sites were examined.'

- 7.9.20. More recently, NE was consulted by the Council on a contemplated further planning application for development at Hatchfield Farm. Its response dated 24 February 2011⁷¹⁷ highlighted the site's proximity to European and other designated sites, and concluded in the final paragraph:-

'The application is situated about 2.6 km from Chippenham Fen National Nature Reserve which forms part of the Fenland Special Area of Conservation (SAC) and Chippenham Fen Ramsar site which are European sites protected under the Habitats Regulations. The scoping opinion request does not provide sufficient information for Natural England to advise on any likely significant effect on the protected site. We will be happy to consider the requirement for a Habitats Regulations Assessment on receipt of more detailed information on the proposal, particularly in relation to water resources.'

- 7.9.21. This shows that NE are still alive to the issue of potential harm to the nearby European sites and are not satisfied that the absence of any risk of impacts has been adequately demonstrated to date. NE's letter dated 20 September 2011 (CD181) expressing agreement with the information provided to it by the Appellant on other ecological issues is conspicuous for its failure to endorse the absence of an AA. The Appellant's witness confirmed that he did not submit anything to them on habitats when providing the documentation that led to this letter⁷¹⁸.

- 7.9.22. There was therefore a consistent pattern of concern being expressed from the Council, the EA and NE as to the potential impact that an urban extension in this part of Newmarket would have (whether on its own or taken in combination with other developments) on the nearby European sites, particularly Chippenham Fen, as a result of the increased water demand and abstraction.

- 7.9.23. SHNL's Ecology Witness was an expert with substantial experience of the relationship between hydrology and European sites (including writing the AA

⁷¹⁷ Mrs Ward App DW23

⁷¹⁸ Humphries XX.

guidance for European sites which are the subject of water management plans). She explained why the statutory bodies were right to express concern. The features for which Chippenham Fen has been designated are very sensitive to changes in hydrology. In particular, the vegetation is dependent upon spring water, with its specific nutrients and lower temperature than rainwater, and if the amount of spring water is reduced, or its content or temperature, were affected then these plant communities would be harmed⁷¹⁹.

- 7.9.24. Although AW's consultation response stated that '*there is sufficient water resource capacity to supply this development*' and that '*the development can be supplied from the network system that at present has adequate capacity*' (DW19; emphasis added), that does not demonstrate that there is no risk of impact on the nearby European sites since AW does not explain where the network would obtain additional capacity following 2019 when the existing surplus runs out. The issue was not resolved by reference to the AW response since: -
1. The response is now 2.5 years out of date,
 2. The response does not take the matter beyond 2019, when the Appeal Scheme would only be partially built,
 3. It did not in any event deal with water sources, water stress or relevant issues with regard to habitats assessment,
 4. It did not purport to consider in combination effects, nor would there be any reason to expect it to do so. This is a mandatory consideration under the Habitats Regulations (Reg 61) which has not been addressed. Moreover, an assessment in 2009 could not carry out an in combination assessment of impacts relevant to the determination of this appeal in 2011/2012, and
 5. In cross-examination the Appellant's Ecology Witness expressly confirmed that he had no evidence (whether in this letter or elsewhere) that AW has assessed the likely impact of the effects of the increased water demand arising from the development on the nearby European sites. What he added in re-examination did not in any way alter that conclusion. The AW letter neither indicated the supply, nor purported to function as an assessment of the Habitats issues for the purposes of this appeal.
- 7.9.25. The Appellant's witness argued that any effect upon the European site depended on how AW chose to source their water supplies, but that was not an adequate response. The possibility of an AA relating to hydrological impacts at a time when AW applies for a water abstraction licence does not in any way obviate the need for an AA now. To decide otherwise would be wrong in law. It may also be the case that the conclusion on page 49 of CD130 was wrong in law.
- 7.9.26. The requirement for Appropriate Assessment under Regulation 61 of the Habitats Regulations applies to the grant of '*any consent, permission or other authorisation for, a plan or project*' in respect of which a risk of significant effects cannot be ruled out. Article 6(3) of the Habitats Directive is in similar terms. It would therefore be plainly unlawful to consider that AA is not necessary at the planning application stage on the ground that the matter can be resolved at such time as an application is made for a water abstraction licence. The Directive and Regulations apply in terms to applications for both projects

⁷¹⁹ Mrs Ward EIC

and the term project has a wide and autonomous EU law meaning: see **R (Akester) v. Defra** [2010] Env. L.R. 33 where the introduction of new ferries to the Isle of Wight was held to be a 'project' and to require AA.

- 7.9.27. Against this background, there was a remarkable absence of objective information demonstrating that, despite the concerns expressed in the Core Strategy Appropriate Assessment, by the EA and NE, there would be no risk of significant effects on the nearby European Sites as a result of increased water demand. At paragraph 10.4.77, the ES states: -

'Impacts of changing hydrology on surrounding designated sites: reason – The potential effects of water abstraction, or pollution on sensitive receptors such as the designated sites (and in particular those designated for aquatic habitats or habitats reliant on current ground water and hydrology, such as Snailwell Meadows SSSI, Chippenham Fen, Fenland SAC and Snailwell Pools Fen SSSI and Snailwell grassland and Woods CWS) would not be significant and the reasons are as follows see Chapters 12 and 13 for full details on the following points'.

- 7.9.28. The reasons that follow relate to the discharge of surface water and drainage. There is silence on the issue of increased demand on the water supply network (and it is notable that the EA's consultation response quoted above, stating that insufficient information is provided as to impact on European sites, is specifically directed at paragraph 10.4.77). Chapter 12, to which paragraph 10.4.77 cross-refers, is similarly silent. Paragraph 12.3.3 simply sends the reader back to Chapter 10, stating: *'consideration of nature conservation sites reliant on water supply and water quality is given in Chapter 10 'Ecology and Nature Conservation'.* At paragraph 12.5.22, the ES concludes that *'the anticipated effect on water demand as a result of the Proposed Development is considered to represent a direct, long term, permanent **moderate negative** effect on water resources compared to baseline consumption and prior to mitigation'* and that after mitigation *'the residual effect on water supply is likely to be of direct, long term, permanent **minor negative** significance compared to the existing conditions'* (emphasis in original).

- 7.9.29. However, the ES is silent as to the implications that this permanent negative effect would have on the nearby European sites in terms of abstraction. Chapter 13 on Ground Conditions and Contamination also fails to deal with the issue. Moreover, there is no attempt to assess the hydrological impact of the Appeal Scheme on European sites in combination with other anticipated developments (as called for in the EA's consultation response quoted above) and, as already mentioned above, there is no assessment of the cumulative impacts with the George Lambton scheme in respect of which a planning application has been made and which would, if permitted, add to the water supply demand. It must also be remembered that the water Resource Area (WRA 09) covers a number of districts other than Forest Heath, such as East Cambridgeshire, and there is nothing purporting to consider in combination impacts across the districts⁷²⁰.

- 7.9.30. In **Waddenzee** the CJEU set a very low bar for screening for an AA: -
1. An AA is required if the plan or project is likely to have a significant effect on the site (para 40),

⁷²⁰ Professor Humphries agreed

2. The trigger for assessment pursuant to Art 6(3) does not presume that the plan or project considered definitely has such effects, but rather follows from the mere possibility that such an effect attaches to the plan or project (para 41),
3. It follows that the requirement for an assessment pursuant to Art 6(3) would arise where there was a probability or risk that the plan or project would have an effect on the site concerned (para 43), and
4. In the light of the precautionary principle, such a risk would exist where it could not be excluded on the basis of objective information that the plan or project would have significant effects on the site concerned (paras 44 and 45).

7.9.31. At paragraph 44 the CJEU held: -

'44 In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment, in accordance with the first subparagraph of Art. 174(2) EC, and by reference to which the Habitats Directive must be interpreted, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned. Such an interpretation of the condition to which the assessment of the implications of a plan or project for a specific site is subject, which implies that in case of doubt as to the absence of significant effects such an assessment must be carried out, makes it possible to ensure effectively that plans or projects which adversely affect the integrity of the site concerned are not authorised, and thereby contributes to achieving, in accordance with the third recital in the preamble to the Habitats Directive and Art. 2(1) thereof, its main aim, namely, ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora.'

7.9.32. Applying the precautionary principle, the only rational conclusion is that this is within the CJEU's category of 'cases of doubt' which require appropriate assessment. The Appellant's witness himself said that, speaking as an ecological expert, he could not at this stage rule out the creation of risk to European sites as a result of the increased water demand arising from the Appeal Scheme (whether in itself or in combination). This concession means that, on the Appellant's own evidence, the SoS cannot lawfully grant permission because there has been no Appropriate Assessment.

7.9.33. In re-examination he sought to argue, contrary to the position he had accepted in cross-examination, that had there been some issue with Habitats then it would have been raised by the Council or the SoS before the Inquiry. This is simply absurd: -

1. NE and the EA both raised the issue in clear terms but, for reasons which are wholly unexplained, the points had not been addressed. Dr Collins in her recent letter from NE (CD181) appeared to have forgotten this and did not mention Habitats,
2. The Council had been asked to take a view on the basis of an ES which, in relation to bats and badgers, was plainly defective though this only became clear at a later stage,
3. The SoS determines an appeal on the evidence at the Inquiry and not ahead of the Inquiry being held. The starkest example of this is the rejection in 2004 of the proposals by ABO for a deep water terminal at Dibden Bay, Southampton⁷²¹, principally for breach of Habitats requirements with regard

⁷²¹ Decision letter 20.4.04 ref. P89/24/59

to the Southampton Water SPA, following an Inquiry which opened on 27.11.01 and closed over a year later on 12.12.02, having sat for 120 days.

7.9.34. There is also the matter of the potential impact of increased visitor disturbance arising out of placing a new population of at least 2,880 in the vicinity of European sites, in particular Chippenham Fen, which is just 2.6 km away from Hatchfield Farm. The Wildlife Trust for Cambridgeshire Bedfordshire, Northamptonshire and Peterborough has highlighted the potential threat posed by the scheme as a result of increased visitor pressure⁷²², as did NE in its September 2007 scoping response. The ES scopes out visitor impact on Chippenham Fen on the basis that its distance from the site '*is over 3 km which is a long way to travel for recreational purposes*' and it is unlikely to be attractive to significant numbers of visitors as there is only one public footpath within it⁷²³.

7.9.35. As to this: -

1. Leaving aside the fact that the distance is actually just 2.6 km, there was no evidential basis for the assumption that people would not travel this kind of distance for recreational purposes such as dog-walking. Indeed, the English Day Visits Survey indicates that walkers and families are prepared to travel significantly further⁷²⁴,
2. Experience elsewhere (Dorset and Thames Basin Heaths) utilised a 5 km zone for assessing potential for harm from visitors from new housing not the 3 km here. While there are inevitably differences between the sites, Table 4 on page 32 of CD130 indicates that the numbers of visitors at Thames BH and Breckland would be broadly similar (0.50 visitors per hour as opposed to 0.63 at Thames Basin Heaths), and
3. There is in fact a network of public paths in the vicinity of (and leading to) Chippenham Fen, a footpath bordering it as well as the one that crosses the site. The rest of the Fen is not fenced off and can be easily accessed by the public⁷²⁵.

7.9.36. Therefore it cannot reasonably be said that there would be no risk of significant additional visitor pressure arising out of an urban extension 2.6 km away at Hatchfield Farm with at least 2,880 residents.

7.9.37. The Appellant's suggestion that the Appropriate Assessment for the Core Strategy (CD130) had assessed the potential impact of disturbance and concluded that there was no likely significant impact outside a 2.5 km buffer was demonstrably flawed. This buffer is directed at a different kind of disturbance: namely the impact of nearby housing on the behaviour of certain species of birds. The Document⁷²⁶ concluded that at a distance of 2.5 km the impact of development on the nesting habits of stone curlew would be negligible. The Council's AA therefore does not provide a basis for concluding that there would be no risk of significant impacts on Chippenham Fen arising out of increased visitor pressure. Indeed, at pages 32 & 33, the Appropriate Assessment for the Thames Basin Heaths was referred to and it was relied upon in the Council's Appropriate

⁷²² Mrs Ward proof para. 5.1.

⁷²³ CD104, para. 10.4.77

⁷²⁴ Mrs Ward proof para. 5.5.

⁷²⁵ Mrs Ward proof para. 5.6

⁷²⁶ See eg. pp.24-26,

Assessment⁷²⁷. This used a zone of influence of 5 km for impact from development by means of recreational visits from residents.

7.9.38. Accordingly, there is no evidential basis on which the SoS can rationally conclude that the concerns raised by the Wildlife Trust and NE are unfounded, and that there would be no risk of the Appeal Scheme having a significant effect on a European site as a result of increased visitor pressure. In this respect too, the appeal is within the CJEU's category of '*cases of doubt*' requiring appropriate assessment.

7.9.39. If the SoS were to agree that an AA were required, then the conclusion must be that the appeal has to be refused since it cannot be carried out in the absence of appropriate evidence. As the CJEU held in **Waddenzee** at paragraph 60 the approach to assessing 'adverse effect on integrity' is also highly precautionary: -

"61 ... under Art.6(3) of the Habitats Directive, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects."

7.9.40. There can be no such certainty or absence of reasonable scientific doubt absent any up to date evidence relating to water supply or *in combination* assessment. The 2009 AW response simply will not do as an answer to the stringent requirements of the Habitats Regulations, nor was that letter ever intended to fulfil that role. The duty under reg. 61 and art. 6(3) with respect to *this* project cannot be discharged at some indeterminate date by AW with respect to a different, water resource project. It would also run contrary to the purpose and effect of Regulation 61 and Article 6(3).

7.9.41. If the SoS agrees with these arguments, it would not be appropriate to allow the Appellant a further opportunity to carry out assessment work and submit additional evidence to inform an AA. That would in any event necessitate a re-opening of the Inquiry. The Appellant had several years to carry out the necessary assessment work and it was considerably added to, in large extent as a result of the inadequate nature of the original work. More than ample opportunity has been given and absent the evidence to allow permission to be granted in accordance with the Habitats Regulations and Directive, the appeal should be refused.

7.9.42. For all these reasons, in the absence of such an assessment, Reg. 61 of the Habitats Regulations and Article 6(3) of the Habitats Directive preclude the SoS from granting planning permission, regardless of any other factors present in the planning case.

⁷²⁷ In XX, Prof Humphries described the references in the FHCS AA to disturbance as being "*predicated on the Thames Basin AA*".

7.10. Compliance with the Development Plan

Ecology

- 7.10.1. Core Strategy Policy CS2 requires that areas of biodiversity interest are '*protected from harm*' and that where mitigation measures are employed they '*result in a net gain of biodiversity for the District*'. Paragraph 1 of PPS9 *Biodiversity and Geological Conservation* (CD8) is couched in a similar vein. This requires adequate ecological surveys that have been undertaken in accordance with good practice guidance but that was not so in this case.
- 7.10.2. There are serious and wide ranging deficiencies in the surveys carried out in support of the Appeal Scheme⁷²⁸ which, in several respects, makes it impossible for the SoS to conclude that the scheme is in accordance with Policy CS2, PPS9 and Circular 06/05 (CD16).
- 7.10.3. Apart from the habitats issue, the proposals would reduce biodiversity⁷²⁹ and would have an adverse impact on a site which, whilst not of major importance, nonetheless has features of more than a Local or District importance.
- 7.10.4. The Appellant's witnesses underplayed the ecological significance of the site, despite the presence of three Red Data Book plant species, one of which remains nationally scarce⁷³⁰ (in Suffolk it is found only in the extreme west⁷³¹), 32 bird species of which there are 4 UK BAP priority species, 3 Red List species (confirmed breeding or probably breeding); 6 Amber List species (confirmed breeding or probably breeding); a protected species of lizard; brown hare which is a UK BAP priority species; multiple bat roosts on, and adjacent to, the Site with at least 7 species of bat⁷³², and the significant recent discovery of badger setts⁷³³. While there may be no reliable means of assigning the site as a whole to a specific category of significance, the above features make a clear case for it being given not less than District significance (with individual components being rated higher).
- 7.10.5. It follows that the impacts have been underestimated by the Appellant. The original ES⁷³⁴ and its underlying reports had to be supplemented on numerous occasions by additional survey work, including further bat and badger surveys during August while the Inquiry was adjourned, in response to the Inspector's Regulation 19 requirements.
- 7.10.6. Accordingly, the latest ecological picture of the site was not the same as that indicated in the original ES. Accordingly the structural and parameter plans for the site⁷³⁵ were designed before the science was complete and before the effects could reasonably be judged. The mitigation therefore had to be

⁷²⁸ Mrs Ward 's and Mr Andrew's evidence

⁷²⁹ See the requirements currently in PPS9 and see also the draft NPPF §§160 171

⁷³⁰ The comment that it is only a limited specimen does not deal with the concern since it is precisely because it is limited in distribution that it is nationally scarce

⁷³¹ SHN/DEW/PAApxDW8p.25

⁷³² Leisler is rare in GB see SHN/HA/PA, HA12p.34,4 records only outside Thetford Forest. Serotine is at the northern edge of its range HA 11 p. 20.

⁷³³ One main sett, annexe, subsidiary, and outliers totalling 8

⁷³⁴ Sept 2009, CD 104

⁷³⁵ See the ES section 4 and CD101

'retro-fitted' to the already designed scheme as more information became available⁷³⁶.

- 7.10.7. Mitigation needs to be based on sound knowledge of the site and the likely impacts⁷³⁷ and if the assessment is imperfect then the mitigation cannot simply be used to provide a sticking plaster to cover the defects. For example page 40 of NE's Bat Mitigation Guidelines⁷³⁸ and NE's Standing Advice Species Sheets which require no net loss of bat roosts⁷³⁹ or badger habitat⁷⁴⁰.
- 7.10.8. This posed a number of difficulties when the mitigation proposals were compared with the parameter plans that underpin the ES and are necessary for a lawful grant of outline planning permission⁷⁴¹:-
 1. At the end of the Inquiry, the proposals for badger mitigation were still uncertain⁷⁴². They might involve the retention of setts and the creation of new ones (CD 170 fig. 1) very close to the area for proposed new housing, or allowing self-displacement of the badgers. This latter approach would depend wholly on the assumption that badgers would move to the studlands to the south. It was simply a hope and not underpinned by any evidence. Much of the 'retained' open habitat would be largely sports pitches or recreation areas and therefore would not replace the arable habitat which currently provides a significant component of their diet (especially in the summer). There is plainly a risk that the badgers' activities would conflict with residential owners and the use of the sports pitches. The badgers might also run the risk of crossing the nearby roads and they might migrate to the lands used by the racing industry. If the latter they would present significant risks to the HRI⁷⁴³ and there was no evidence that the Appellant had sought any advice on this issue,
 2. The proposals for bat mitigation would place them within a densely developed site, surrounded by dwellings, gardens and business uses. It was unrealistic to suggest that the mitigation would be successful in terms of the light issues. There could be no effective control over the use of individual households' exterior lighting, or that of business premises⁷⁴⁴. Even if the street lighting was controlled⁷⁴⁵ this would be a wasted effort if the gardens in the proximity to the retained foraging corridors were to have security lights; and what if the sports pitches were illuminated? Furthermore, there would also be no means of securing the future of some proposed mitigation measures, such as bat boxes. Their survival might well be no more than a matter of hope,
 3. It was not planned to demolish the remaining buildings at Hatchfield Farm

⁷³⁶ E.g. further bat roosts, badgers discovered in 2011 etc.

⁷³⁷ Note Dyson L.J. in **R(Jones) v. Mansfield** - p. 406 "It is clear that a planning authority cannot rely on conditions and undertakings as a surrogate for the EIA process. It cannot conclude that a development is unlikely to have significant effects on the environment simply *because* all such effects are likely to be eliminated by measures that will be carried out by the developer pursuant to conditions and/or undertakings. But the question whether a project is likely to have significant effect on the environment is one of degree which calls for the exercise of judgment."

⁷³⁸ RNHA8

⁷³⁹ RNH A7 Section 5

⁷⁴⁰ FH5 §§5.1-5.3

⁷⁴¹ See ES 2009 CD 104 Section 4 figs. 4.1-4.5 and CD 101

⁷⁴² CD 170 p. 4.

⁷⁴³ Mrs Ward suppl proof SHN/DEW/PS §§3.26, 3.27

⁷⁴⁴ Mrs Ward SHN/DEW/P §3.15

⁷⁴⁵ As Mr Andrews explained in RX

that are of significance to the EU protected species but their future was unclear and it seems inherently unlikely that they would be left as they are within and adjacent to a new development site. In that event, the ES ought to have assessed the effect of renovating them in order to ensure that the site was not salami-sliced in terms of assessing its likely effects, and

4. It is also relevant that no mechanism was suggested to secure the long terms future and funding of ecological mitigation / compensation measures. Whilst SHNL did not accept that there would be ecological enhancement of the site overall⁷⁴⁶ such mitigation or compensation provision as might be made would be illusory if significant elements did not survive long after development.

7.10.9. The surveys were still unsatisfactory at the end of the Inquiry for the reasons set out in the SHNL evidence⁷⁴⁷. These included:-

1. Most of the suitable reptile habitat was not surveyed in 2011 despite the fact that more of it had been surveyed in 2008. An approximately 650m band of habitat was not surveyed whereas some 960 m of poor habitat was surveyed. Even if the Appellant was correct in sampling only the appropriate habitat, this did not explain why more poor habitat was selected for survey than in 2008 and why the amount of poor habitat surveyed exceeded the appropriate habitat that was not surveyed,
2. There was a surprising failure to identify badger setts until August 2011 (despite 2 versions of the ecology chapter of the ES in 2009 and 2011). Such was the effect of the discovery that a further ES addendum had to be produced and this identified seven setts (CD 170). Even that was not accurate because SHNL's ecologist found another sett on her site visit. In contrast the Appellant's original Ecology Witness's proof stated that there was '*no evidence of badger*' and '*no badger setts have been identified on site*'⁷⁴⁸. This must cast significant doubt on the competence of the previous surveys and of the ES on this issue,
3. There was no systematic use of good practice for bat surveys which were critical to establishing a proper baseline for the impact assessment. Despite the Appellant's references to 'proportionality' in surveys, that was simply fudging the fact that the BCT Guidelines had not been observed. It is notable that the Appellant focused on the NE Standing Advice Species Sheets on Bats⁷⁴⁹ which ignored the statements in §§4.1 and 4.2 that the sheet was no more than a brief summary of what was required,
4. Neither the building inspection surveys nor the emergence/re-entry surveys complied with the BCT Guidance and in this respect the Appellant's witness placed reliance on proportionality which was really a euphemism for non-compliance. Surveys should follow the guidance⁷⁵⁰. In its Species Sheet, NE specifically requires compliance with the BCT Guidance, but there were several respects in which the work failed to comply, including :-
 - a. Absence of the required proper recording of the inspections (unlike emergence surveys, when the August team were recording),
 - b. Multiple emergence surveys (one pair of emergence and re-entry surveys

⁷⁴⁶ Mrs Ward, SHN/DEW/P §§ and DEW/PS §§3.29-3.30

⁷⁴⁷ Evidence of Mrs Ward and Mr Andrews

⁷⁴⁸ [ED/RGD/P] §§5.4.35, 5.436

⁷⁴⁹ RHN A7

⁷⁵⁰ CD79 §6.2.1 bullet point 5 and §6.2.3

count as one only⁷⁵¹) over June to August⁷⁵²: *'best practice is to space the surveys evenly through the optimum period'*⁷⁵³ – *'at least three... during the summer period'*⁷⁵⁴. There were not three surveys and they were not evenly spaced out over the optimum period. They were only days apart. The 2010 survey only covered Building C and could not make up the deficiency,

- c. The emergence surveys did not provide full coverage⁷⁵⁵ and did not follow the guidance to concentrate on the buildings and potential emergence points⁷⁵⁶. There is no BCT guidance suggesting the need to make written records during the survey. The use of ultrasound detectors may improve coverage but it is clear that even the SM2 unit, so lauded by the Appellant's witness in evidence in chief, failed to pick up the myotis (likely Natterer's bat) observed by Surveyor 4 (near buildings G & F) at 21:01 on 11.8.11⁷⁵⁷ nor was it picked up by the SM2 inside Building F (despite the alleged sensitivity and range). Although the Appellant made claims for a minimum range, no literature or evidence was provided to support those claims and SHNL's bat ecologist who is a licensed surveyor, doubted the claims, and
- d. Despite the obvious inadequacies in previous surveys, the tree surveys failed to resurvey all the trees⁷⁵⁸. Moreover, although much was made of ivy and the like, the trees would plainly provide attractive roosting habitat to many species. Trees are listed for pipistrelles, Natterer's bats, noctules and Leisler's bat in the BCT Table 6.1⁷⁵⁹.

7.10.10. The clearly unsatisfactory nature of what was done is shown by the summary sheet ED 23 in which: -

1. Five buildings, including E1, were not included until 2011 and Building E1 was not even recorded by the September 2011 surveyors,
2. Many of the roosts were not identified until 2011,
3. Building A was not identified as being of high potential until August 2011; in fact it was said to be of 'low potential' in Sept 2010, and
4. Up to date emergence surveys were not done except for Building C until August 2011, thus failing to cover a number of different times in the year and different aspects of bat behaviour.

7.10.11. There were a number of red herrings which should be ignored: -

1. The Appellant repeatedly argued that SHNL's witnesses should have approached his team to resolve matters, but there were discussions both with the Appellant's witnesses and the Council. SHNL's witnesses had made their positions clear in their evidence and it was in any case up to the Appellant to carry out EIA, Habitats and other assessment requirements in accordance with proper practice and the law, and

⁷⁵¹ NE Species Sheets RNH B7 §4.4, final para

⁷⁵² CD79 Table 4.7 p. 39. See also §6.3 p. 56.

⁷⁵³ CD79 Table 4.7 p. 39 note 1

⁷⁵⁴ CD79 §6.4.3 p. 58, first para

⁷⁵⁵ RNH B5i - contrast different locations shown on RNH A5 fig. 2, produced using same base plan, same caveat and by the same firm/surveying team

⁷⁵⁶ CD79 §4.6.5 p. 42

⁷⁵⁷ RNHA5

⁷⁵⁸ See Mr Andrew's evidence

⁷⁵⁹ CD79 page 49

2. NE's latest letter of 20.9.11⁷⁶⁰ and its lack of objection to the proposals gave no indication of the detail with which they had considered the proposals. Whilst some degree of diligence might be hoped for, it is not known how much time was spent by an officer digesting and understanding the recent material. In any event, the NE officer had not seen the contrary evidence to that produced by the Appellant⁷⁶¹ and would not therefore have been able to consider both sides of the issues. In its recent letter, NE certainly did not comment on Habitats issues and did not appear to have followed up the concerns about water in its letters of 4.9.07 and 28.1.10⁷⁶². This was strange given the Habitats issues raised in its scoping letter for Hatchfield Farm (for an application not taken forward) on 24.2.11⁷⁶³. No assumptions should be made about what NE actually did or considered and the decision should be made on the evidence that was before the Inquiry.

Badger Mitigation and the Loss of Biodiversity

- 7.10.12. The surveys show most badger activity to be in the northern part of the site; there being only inactive setts in the southern part and no tracks or latrines. The southern part is therefore most likely only used for foraging and feeding purposes. It is therefore questionable whether the badgers would be easily located to the studland further to the south, regardless of the claimed earthworm population. In this connection, no surveys had been carried out into the feeding habits of the badgers. The Appeal Scheme would remove the arable content of their diet but this would not be made up for by the berries and nuts in autumn that might be obtained from the landscape planting scheme. The biodiversity of the site would not be maintained and, with the loss of their territory, badgers could well forage beyond the confines of the studland to the south. In which case, they would come into conflict with the users of the development eg homeowners, as well as harming the safety of horses and their riders. Furthermore, the loss of arable land could affect such species as skylarks and brown hare⁷⁶⁴.

Air Quality

- 7.10.13. In the light of the further modelling undertaken for the Appellant, SNHL did not pursue their previous objection on the grounds of air quality⁷⁶⁵. However, the very fact that this further modelling proved necessary at the eleventh hour in order to address the deficiencies identified by SHNL⁷⁶⁶ was a further indication of the Appellant's lack of rigour in assessing environmental issues during the preparation of the Application.

Housing Supply

Five Year Supply

- 7.10.14. The Council accepted that there was only a 3.6 year supply of deliverable housing sites when judged against the current requirements of Policy CS7. This brings into play paragraph 71 of PPS3 *Housing*, which says that in such cases

⁷⁶⁰ CD181

⁷⁶¹ See SHN20

⁷⁶² DW 18 and 22

⁷⁶³ DW 23

⁷⁶⁴ ED37

⁷⁶⁵ SOCG3

⁷⁶⁶ As to which see Mr Othen's report at SHN/JB/PA Tab 12

Local Planning Authorities should consider favourably applications for housing, having regard to paragraph 69.

7.10.15. It is well established that PPS3 paragraph 71 does not require unsuitable development (including development that would prejudice an ongoing review of a development plan document) to be permitted simply because it would deliver a quick fix to local housing numbers. The SoS's recent appeal decisions relating to housing schemes in Ipswich and Polegate make this clear⁷⁶⁷. So too does paragraph 69 of PPS3, to which paragraph 71 cross refers. Accordingly, given the harm that the development would cause, paragraph 71 does not assist the Appellant⁷⁶⁸.

7.10.16. Moreover, the weight that should be given to the Council's failure to demonstrate a five year supply in the present case is significantly limited by the uncertainty about the extent to which the Appeal Scheme would actually reduce the shortfall in the five-year supply (which stands at 446 units as of March 2011⁷⁶⁹).

Likely Contribution to the Housing Supply

7.10.17. The highest the Appellant could put it was that the scheme '*is capable of* delivering '*around 200 units*'⁷⁷⁰. As the witness accepted in cross-examination however, the question for the SoS in considering the scheme's likely contribution to the five year supply is not what the site is *capable of* delivering, but what it would *actually* deliver. On this, the evidence is strikingly flimsy. The Appellant's ambition of achieving '*around 200 units*' assumed that dwellings would start being built in September 2013 and proceed at a rate of 80 dpa over the 2.5 years to March 2016⁷⁷¹. But, the evidence casts serious doubt on the sufficiency of the time for the developer to be in a position to start building dwellings in September 2013.

7.10.18. In particular: -

1. No significant expenditure would be likely to be incurred in preparing reserved matters applications and discharging conditions precedent until permission was granted and either the six-week challenge period had expired without any challenge being made (taking us to Spring 2012 at the earliest) or, if a challenge were lodged, it had been determined by the High Court⁷⁷²,
2. Lord Derby would not undertake the development himself and intends to sell the site to one or more established developers⁷⁷³. Despite this application having been several years in the making, no developer had even agreed heads of terms. Given the evidence on behalf of the Appellant that multiple developers had expressed an interest, a selection process would be necessary before a preferred purchaser was selected (whether for the whole site or the first tranche) and this was acknowledged by the Appellant's witness⁷⁷⁴. It was clear from his answers in cross-examination that this process had not yet

⁷⁶⁷ SHN/JB/PA Tabs 10-11.

⁷⁶⁸ See Boyd proof section 6

⁷⁶⁹ Mr Boyd proof (SHN/JB/P) para. 6.12

⁷⁷⁰ Mr Sellwood Rebuttal (ED/RMS/R) para. 2.2

⁷⁷¹ Mr Sellwood XX.

⁷⁷² Mr Sellwood XX

⁷⁷³ Mr Sellwood XX

⁷⁷⁴ Mr Sellwood XX

begun. However, he anticipated Savills putting together a marketing brochure, then allowing up to a month for responses from the market, then Savills and Lord Derby drawing up a shortlist of 3 or 4 candidates, followed by further negotiations before a preferred purchaser was chosen. Once commenced this process could easily take at least two months from start to finish,

3. Even when a preferred purchaser was selected and heads of terms had been agreed, no developer would spend substantial sums bringing the scheme forward until the sale was completed⁷⁷⁵. However, from SHNL's witness' experience working for a housebuilder, the due diligence and negotiations involved in completing the sale of a property transaction of this scale can readily take six months⁷⁷⁶,
4. Accordingly, the evidence showed that if the appeal were determined in the first part of 2012, there could easily be a delay of up to eight months whilst a preferred purchaser is selected, heads of terms agreed and the purchase completed. This must cast serious doubt on whether the developer would be in a position to start spending the substantial sums necessary to prepare reserved matters applications and to discharge all the conditions precedent before the end of 2012. The Appellant's Planning Witness accepted that the process of preparing and obtaining consent for a reserved matters application for a development of this scale can readily take a year. On that basis, a start date of September 2013 would be most unlikely,
5. The uncertainty regarding drainage cast further doubt on the degree to which the site would contribute towards the five year supply. It was accepted on behalf of the Appellant⁷⁷⁷ that there would be a condition requiring no development to be commenced until a drainage strategy had been agreed and implemented, and that such a strategy would be unlikely to allow development to commence unless and until Anglian Water (AW) had confirmed that there was adequate capacity. The ability to make an early start to completions in September 2013 would therefore be contingent upon sufficient capacity by that time. However, AW had confirmed that the process to provide the necessary capacity improvements would not commence until planning permission had been granted (say Spring 2012)⁷⁷⁸. The first stage of that process would be to undertake a detailed appraisal '*to ascertain the full requirements, including costs and timescales*'⁷⁷⁹, which would take up to 16 weeks⁷⁸⁰. As he acknowledged⁷⁸¹, only then would it be known what improvements were required, how long they would take and how much they would cost. At the present stage, AW has consistently refused to confirm that the planned 80 dpa start in September 2013 would be possible, and have declined to commit to putting a timescale on the upgrades that may prove to be necessary⁷⁸². Therefore as the Appellant accepted⁷⁸³, the SoS has no evidence at all before him as to how long it would take before the drainage infrastructure to allow a build rate of 80 dpa would be in place,

⁷⁷⁵ Mr Sellwood XX

⁷⁷⁶ Mr Boyd EiC

⁷⁷⁷ Mr Sellwood XX

⁷⁷⁸ Mr Sellwood Rebuttal Appendix 6 (ED/RMS/RA).

⁷⁷⁹ See AW's email of 21 June 2011 at SHN8. See also Boyd proof paras. 5.9-5.10 & 6.14.

⁷⁸⁰ See AW's email of 27 July 2011 at SHN8

⁷⁸¹ Mr Sellwood XX

⁷⁸² see the email of 7 July 2011 at SHN8

⁷⁸³ Mr Sellwood XX

6. Moreover, the nature and extent of the necessary improvements to the drainage infrastructure would depend on the extent of other development coming on line at the same time⁷⁸⁴; it would not be ring-fenced for Hatchfield Farm. In particular, the mixed-use scheme at the George Lambton Playing Fields site, for which a planning application had recently been submitted and which is planned to come forward in parallel with Hatchfield Farm⁷⁸⁵, would add further demand if it were to be permitted. A scheme of that size would inevitably have a significant demand on the drainage infrastructure and would therefore be a complicating factor. The cumulative impacts of this and the Hatchfield Farm development were not assessed in the ES or the ES Addendum, and
 7. Finally, even if an early start could be made, there must be significant doubt over the Appellant's assumption that a build rate of 80dpa would be achieved. Firstly, there was no evidence before the Inquiry that developers in this locality have been able to achieve a consistent build rate of 80dpa in recent years. Secondly, as acknowledged by the Appellant⁷⁸⁶, it is not unusual for housebuilders to buy sites and landbank them; commencing development in order to keep the permission extant but then keeping it in the pipeline whilst they focus on other sites. The absence of a committed developer means that the SoS cannot have confidence that this would not happen here.
- 7.10.19. For all these reasons, whilst the Appellant says that the appeal site '*is capable of*' contributing '*around 200 units*' to the five-year supply, in truth this was no more than an aspiration. The evidence demonstrated that it is unlikely that this would be achieved and the actual contribution would probably be substantially smaller.

Absence of Core Strategy Housing Policy

- 7.10.20. Finally, the supply issue should be set against the enforced absence of housing policy in the Council's Core Strategy and the review which has been begun. Together, these show the need for a fundamental reappraisal of the District's housing requirements in the light of the localism agenda. If the outcome is to lower the housing requirement below the current figure in Policy CS7, which itself is based on the soon-to-be-defunct East of England Plan, then by the time the development commenced it is distinctly possible that the housing shortfall by which the Appellant sought to justify the scheme would no longer exist or at least be very substantially reduced. That would be a perverse outcome.
- 7.10.21. Therefore, given the very limited benefit from the development to the housing stock in the medium term, now is not the time to be making decisions for Newmarket which would be likely to have enduring effects.

7.11. Conclusions

- 7.11.1. It was a consistent theme of the Inquiry that the more scrutiny the Appeal Scheme had, the more its shortcomings became clear. From the ill-conceived assertion that Newmarket's economy needs to diversify away from the racing

⁷⁸⁴ AW's email of 7 July makes clear (and as Mr Sellwood agreed in XX)

⁷⁸⁵ See CD165 and Mr Boyd's note at SHN17

⁷⁸⁶ Mr Sellwood XX

industry, to the lack of any horseracing input into the scheme's design and evolution, to the traffic evidence being based on equating horses with traffic signals, to the significant failure of the DAS to provide the level of information required by policy, to the wide-ranging deficiencies in the environmental information, many of which remained, despite repeated attempts to patch them up. In so many respects, the Appeal was constructed on foundations of sand.

- 7.11.2. At the same time, the one indisputable truth is the vital contribution that Newmarket's horseracing industry makes to the economy at a national level and has continued to make even in the depths of recession. This means that the industry should be protected at all costs. The damage that would be caused, both to the economy and to Newmarket's historic character, if the future prosperity of the industry were compromised, means that extreme caution should be applied to anything that may place it at risk. The evidence that the Inquiry heard from those who best know the industry and its clients was unanimous and unequivocal as to the harm that the Appeal Scheme would cause.
- 7.11.3. In contrast, the claimed benefit to the Council's five year housing supply would be only up to 160 homes, and might well be substantially lower, given the continuing questions over the ability to make an early start on site. It might also be that, by the time occupations began, the Council's housing policy review could have reduced the housing requirement and/or directed the distribution of housing to other parts of the District. On any view, therefore, the Secretary of State would get a scant return for placing at risk the economic success story around which Newmarket's international reputation is based.
- 7.11.4. For all these reasons, the Appeal should be dismissed.

8. The Cases for the Other Third Parties

8.1. Newmarket Town Council (Doc 3P4)

- 8.1.1. On behalf of Newmarket Town Council, Cllr Berry pointed out that the people elected to the Town Council were there to represent all the residents of Newmarket. Indeed the Council may be considered even more representative after the recent elections because it now includes representation from the racing community.
- 8.1.2. Newmarket is the product of three and a half centuries of racing history and it holds a unique position in the world of horseracing which is by far the biggest employer in the town. As such, Newmarket attracts a disproportionately large number of visitors and tourists who could be likened to pilgrims to this home of horseracing; just like Lords is the spiritual home of cricket. Although currently dormant, there is an embryonic plan to apply for World Heritage status.
- 8.1.3. If the increasing conflicts between the traffic and the large numbers of horses who move around the town each day were to become unmanageable the HRI and the whole town would suffer. A one week snap-shot at one stable showed many near misses and one horse and rider down on the road,

both being badly shaken and grazed⁷⁸⁷. The Town Council is therefore acutely aware of its responsibility to the livelihoods of thousands of local residents and to those around the world who depend on Newmarket's position in horseracing. In a personal capacity, Mr Berry estimated that his strings of horses are involved in near misses with vehicles about once in every three days (G5/163).

- 8.1.4. The Town Council expressed their views on the proposed urban extension to the north-east of Newmarket at the Core Strategy examination. They still consider a population increase of more than 20% over the 15,031, 2001 census figure and the resulting road traffic would have a serious detrimental impact on the environment, fabric, structure and character of the town, which is already suffering from the weight of traffic.
- 8.1.5. In particular, there would be significant damage to, and possibly the total demise of, the local thoroughbred race horse breeding and training industries, which depend on a relatively peaceful environment and the free movement of animals about the town. This has already occurred at Epsom. If the owners and trainers were to decide that Newmarket was no longer suitable for their animals they would find other centres, possibly abroad, who would be keen to accommodate them. This would be a local disaster and a national humiliation.
- 8.1.6. There is insufficient employment in the town to cater for the new population, and the situation would be even worse if the HRI were to decline as a result of the development. In practice Hatchfield Farm would probably become a lifeless dormitory estate serving the employment in Cambridge or Bury St Edmunds and the character of Newmarket would be irretrievably lost.
- 8.1.7. The Town Council considered it unrealistic to expect residents at Hatchfield Farm to walk or cycle the 3 km (2 miles) or so into Newmarket and the park and ride bus service would be unlikely to be economically viable bearing in mind that Cambridge's popular and nationally admired park and ride service is supported from the public purse.
- 8.1.8. The traffic along Fordham Road would become intolerable and certainly unsafe for pedestrians, cyclists and horses, whilst the increased difficulties at the A14 junction would further increase rat running along Snailwell Road.
- 8.1.9. The proposed number of affordable houses would make little difference to the extent of the social housing waiting list in the area and they would be unlikely to appeal to those most in need, especially those employed in the racing industry whose employment is some way from the site. In addition, the increased traffic would exacerbate the existing air quality problem around the Clock Tower and Old Station Road areas.
- 8.1.10. Nevertheless, the Town Council recognised that some growth is inevitable and even desirable, but this could be achieved without a development of the proposed scale at Hatchfield Farm. Indeed some of the other settlements in the district such as Mildenhall, Brandon, Lakenheath and Kentford would welcome additional development and its associated infrastructure.

⁷⁸⁷ Berry 3P4 App A

- 8.1.11. Whilst remaining firmly opposed to the development, if the appeal were to be allowed the Town Council considered it essential that the necessary infrastructure should be guaranteed through appropriate conditions and agreements. This should include improvements to the A14/A142 junction and proper access from the A142, establishment of the park and ride and bus service, cycle and walk ways and school provision, together with improvements to Fordham Road and the horse crossings and signage as well as the affordable housing and community facilities in the form of shops, surgery, nursery, post office, hall and recreational spaces. It is this kind of provision which is sadly lacking at Red Lodge. Furthermore, there would be a need to enhance the town's existing facilities such as the police and fire services, education, medical and dental, community welfare, library, post office, recreation and rail and bus services. In addition, all construction traffic should be routed from the north, thereby avoiding the town centre.

8.2. Cllr Hirst (Doc WH/P)

- 8.2.1. Cllr Hirst expressed his views both as a Town Councillor and the District Ward Councillor.
- 8.2.2. He considered the Appellant's assessment of the A14/A142 junction to be unsound because the data was based on just one survey on a Thursday; the quietest day of the week. Furthermore, it was four years out of date. He had conducted his own peak hour surveys which showed much longer queues than those in the Transport Assessment. There are already severe problems at this junction, which the Highways Agency considered to be the eighth worst on their network⁷⁸⁸. Accordingly, he considered the additional traffic from the Appeal Proposals would further harm the operation of this junction, which would damage the interests of the important commercial and business area in the northern part of Newmarket.
- 8.2.3. He said that the Appellant's traffic generation figures were totally unrealistic. As an experienced cyclist himself, he could not envisage that, from this out of town location, 8.2% of the trips would be by bicycle. His estimate was more like 1.2%. The direct route to the town would be by Fordham Road, but this is already very busy and dangerous. He considered the proposed cycle route to the town to be a nightmare because of the need to cross the A142, negotiate 2 or 3 roundabouts, ride along Willie Snaith Road to join the 'Yellow Brick Road', which itself is about a 1.5 km route down to the town. The latter is a remote and isolated route which is rarely used by cyclists and deserted at night. The proposed route was therefore dangerous to navigate, remote and unsuitable.
- 8.2.4. Again, he considered the target of 9.4% of trips on foot was far too high. He acknowledged that national advice is that walking may replace car journeys for distances of under 2 km, but in the location of Hatchfield Farm the figure would be more like 2%. Taking realistic cycling and walking figures into account the 60% car driver factor in the TA would more likely be in the region of 72-74%. The car trip generation of the development was therefore seriously under-estimated.

⁷⁸⁸ WH/P App 5

- 8.2.5. With a development of 1,200 homes and some 3,000 people, the TA says that only 20% of the traffic would use Fordham Road. Where would the other 2,400 people go? No onsite facilities would be provided initially and, even when the numbers of dwellings were sufficient and they were provided, they would still only cater for some of the resident's needs. In practice, there would be frequent visits to the town along Fordham Road, where the proportion of journeys would be more like 80%, not 20%.
- 8.2.6. This much increased traffic flow would endanger horses, riders and pedestrians on the horsewalks and at the horse crossings, for example at Rayes Lane and St Mary's Square.
- 8.2.7. Not only would there be additional traffic from the residential element of the development but the employment uses would also generate traffic. There is no ready pool of workers in Newmarket for the anticipated research and development businesses, which would probably draw employees from the Cambridge area. Furthermore, there would be no link to prevent more employment uses in advance of housing on the site. In these circumstances the assumption in the Travel Plan of 50% of home to work journeys being within the site was just wrong.
- 8.2.8. The HRI is a vital part of the economy of Newmarket and it is protected by the policies of the Core Strategy, but it is very vulnerable to increased traffic flows. The traffic from the proposed development would unacceptably harm road and horse interactions in the town, as well as increasing rat running along Snailwell Road; yet the Horseracing Impact Statement did not consider there to be any undue concern?

Mr Goff (Doc 3P1)

- 8.2.9. Mr Goff is chairman and a director of Blandford Bloodstock Ltd, one of the 30 bloodstock agencies in Newmarket. He is also a Council Member of the Federation of Bloodstock Agents and a Member of the Race Committee at Epsom Downs Racecourse.
- 8.2.10. The panoply of the horseracing industry has evolved over 250 years in Newmarket. It is world famous as the home of horseracing and attracts large sums in foreign investment and employs large numbers of people.
- 8.2.11. All the horse related businesses rely on being able to get around the town quickly and efficiently, yet the traffic situation has been getting worse and worse since at least 1996, especially on the Fordham and Bury Roads, which are now under severe pressure from traffic congestion.
- 8.2.12. Recently a lorry fire on the A14 caused traffic to be diverted through the town, which was at a standstill for five hours.
- 8.2.13. He described the need to escort owners and breeders around the town and, on some occasions, having to drive up Bury Road and through Moulton Village to get to Warren Hill, rather than taking the direct route via the Clock Tower roundabout because of traffic congestion.
- 8.2.14. Owners often complain about the congestion, and he envisaged that they could conclude the safety of their horses would be at risk and decide not to send them to Newmarket if the Appeal Scheme were allowed.

- 8.2.15. Lord Derby made suggestions just before the Council's decision about the possibility of such mitigation measures as a horse tunnel. This was ill-thought out and is no longer proposed, but the currently proposed mitigation would be totally inadequate to overcome the effects of the increased traffic.
- 8.2.16. There would be no doubt that the Appeal Proposals would make the traffic congestion worse and therefore put the whole of the horseracing industry in Newmarket at risk.
- 8.2.17. The Newmarket Retailers Association is also totally opposed to the development, which they consider would be the end of the Newmarket High Street, thereby further damaging the heart of the town.
- 8.2.18. Lord Derby's public relations machine aims to show him as part of the horseracing community in Newmarket and that he would not do anything to harm it, but he is proposing to sell his own land for personal gain at the expense of this unique local community.

8.3. Mrs Scrope (Doc 3P2)

- 8.3.1. Much of the concern about the traffic in Newmarket stems from the frequent closures of the A14 and the subsequent diversion of traffic through the town and the surrounding local villages.
- 8.3.2. Despite the recession having reduced the increases in national freight traffic down to about 2 or 3% pa, there was an increase of about over 11.5% in the number of containers passing through Felixstowe Port in one year ending in 2010. With the completion of the Trinity Terminal in 2012 that would rise by 70% and, with completion of the South Terminal in 2016, there would be a further 200% rise. This is because Maersk, the biggest container shipping line in the world, having moved its British base from Southampton to Felixstowe, and that they have also placed orders for 20 Triple-E container vessels (with an option for a further 10). Each of these vessels would carry 18,000 containers, 16% more than the present largest ships; and Felixstowe is one of the three confirmed European destinations for these vessels.
- 8.3.3. No rail improvements are expected until 2018 so much of this additional traffic would pass along the A14 where the planned £1.4bn road improvements were cut in 2010.
- 8.3.4. A little while ago, it could be said that the A14 had Felixstowe at one end and the Midlands at the other, now it is China at one end and the Midlands at the other.
- 8.3.5. With this huge increase in HGVs on the A14, much more traffic from Hatchfield Farm than allowed for in the Transport Assessment would travel through the town and make the situation for horses traversing Newmarket impossible.
- 8.3.6. Not only that, but Fordham Road is inadequate now when there is an A14 diversion, but what would it be like in future?
- 8.3.7. In the light of the inadequacies of the national road infrastructure, the provision of a few road markings and a roundabout or two would be laughable; if it were not so serious.

- 8.3.8. The Hatchfield Farm development could only be deeply detrimental to the existing community of Newmarket. Instead, we should be resolving the major infrastructure problem before it is too late. The plans are made, the ships are ordered, the lorries are coming. Surely this is not the time to increase the critical local traffic problem still further.

8.4. Mr Donald

- 8.4.1. Mr Donald said that he was involved in public relations connected with the horseracing industry in the UK and abroad.
- 8.4.2. He explained that overseas racing interests contributed significantly to the UK's prize money, which typically amounted to some £10-£15m per annum for British trainers. His activities over the last 10 years or so in countries such as America, South Africa and Japan had attracted overseas horses to race at such places as Ascot and York, as well as Newmarket. Even if racing at say Ascot owners wished to stable their horses in Newmarket because it certainly has the best equine facilities in the UK, and possibly the world. The synergy of all the various businesses and their standard of excellence is admired as far away as the Far East.
- 8.4.3. Owners are delighted to see the interaction of horses in the town and to see them training on the Heath. One of a group of Australian enthusiasts commented that he had never seen anything like it and that 'the horse was king in the town'; but how long would that last if the Appeal Scheme were permitted?
- 8.4.4. Additional traffic from the scheme would make the existing difficult traffic situation worse and owners could well decide to move their horses elsewhere. There really are no comparable centres in the UK, so they would be quite likely to go to France, where there is also better prize money.
- 8.4.5. Newmarket has no God given right to be the centre of excellence for horseracing which should be safeguarded for the future.

8.5. Mr Tompkins

- 8.5.1. Mr Tompkins had been a trainer in Newmarket for some 30 years with between 70 and 80 horses currently in training and about 20 at a stud farm. He is also the Chairman of the Newmarket Federation.
- 8.5.2. He explained that Newmarket is a unique market town with a world renowned name as the home of horseracing, and a major tourist attraction. When the railway was built, it went under the Heath, and during the Second World War, not an acre of the Heath was ploughed up. The bypass did not touch the gallops, and a new town was built at Haverhill, not Newmarket.
- 8.5.3. If the Hatchfield Farm development was permitted there would be a considerable increase in the traffic in the town, where there are no back roads to ease the pressure. There are already many near-misses on the horse crossings and the lack of horse awareness of new residents, coupled with the increased traffic, would significantly increase the risk to both horses and riders. The increased congestion would also harm the ability of owners and trainers to get to the gallops to see their horses in training and also impair the response times for vets, doctors and ambulances.

- 8.5.4. In these circumstances, with chaos on the roads at most times, rather than just at peak times, the bloodstock business would move elsewhere and many of the ancillary businesses would close. Newmarket would lose its unique identity and it would become an urbanised commuter town with no tourist industry.

8.6. Mr Consodine

- 8.6.1. Mr Consodine is an independent retailer with a flower shop in Newmarket and he is also the Vice Chairman of the Retailers Association for the town.
- 8.6.2. He commented that everyone knows Newmarket around the world as the centre of horseracing with its wonderful historic character. He considered that progress could be good, but not if, as in this case, it would harm the historic character of the town and its lifeblood, the horseracing industry.

8.7. Mr Johnstone (Doc 3P5)

- 8.7.1. Mr Johnstone considered that detailed foul and surface water drainage designs, including SuDS, were required at this outline application stage because the site overlies a major aquifer that should not be polluted.
- 8.7.2. He argued that the estimated water demand for the proposed development was too low. This was of particular concern because the Environment Agency's Water Resources Strategy shows the area to be already over-abstracted, and East Anglia as a whole is known to be a water-stressed area. New water infrastructure would be needed and this should be funded by the development.
- 8.7.3. The development should incorporate ecologically sound waste management processes such as a biomass unit.
- 8.7.4. With the undeveloped land in the vicinity of the Tesco store there should be no need for further industrial units in the general area in the short to medium term.

8.8. Mr Coldrey (Doc 3P6)

- 8.8.1. Mr Coldrey lives just outside Chippenham and he was particularly concerned about the traffic through this village of some 410 people. He had conducted his own traffic survey which showed nearly 1,000 vehicles passing through Chippenham between 06.20 hrs and 09.00 hrs in July 2011. These vehicles were already avoiding the terrible traffic congestion at the A14/A142 junction, where the proposed development would make conditions even worse. Not only would there be undue traffic in the small village of Chippenham where horses from the studs have to cross the road, but there would also be a significant increase in rat running along Snailwell Road to Newmarket.
- 8.8.2. Apart from the danger to horses, increased traffic would make it increasingly difficult for vets, trainers and particularly owners to move around the town. With deteriorating conditions, the latter would be likely to move their horses elsewhere; for example to France.

8.9. Mrs Fanshaw (Doc 3P7)

- 8.9.1. Mrs Fanshaw is the wife of a trainer and a partner in Pegasus Stables on Snailwell Road. Pegasus Stables has three strings of about 20 horses each (G5/4) that ride out and back every weekday morning between about 6.00 hrs and 11.30hrs. She described the conflicts between the strings of horses and vehicular traffic particularly along Snailwell Road and Fordham Road which is generally at its worst between about 07.15 and 08.45hrs each day. She noted the increased traffic when parents are taking their children to school.
- 8.9.2. Whilst many people treat racehorses and their riders with respect, there was an increasing trend for drivers to put horses in jeopardy by driving too close, forcing their way past and, on occasions, being very abusive. Lorry drivers seem to think they have carte blanche to whiz past and spook horses.
- 8.9.3. She noted several occasions on which riders from Pegasus Stables had been injured due to horses being upset by traffic, and she said that every trainer had an accident book in which accidents were recorded for Health and Safety reasons. Although they were not all vehicle related, there were 12 such entries in the Pegasus Stables book for the last 12 months. The bigger yards could well have more incidents, though they would not be publicly reported.
- 8.9.4. She recounted being present at the Bury Road crossing when a horse was hit by a car in December 2006. The horse had to be put down and the rider was injured and off work for three months. On another occasion, a gold medal winning horse got loose on the Heath and bolted for home, colliding on the way with a car on Hamilton Road, badly shaking the driver.
- 8.9.5. She acknowledged that even the very best of riders can lose control of racehorses on occasion, particularly when spooked. For instance, horses can suddenly jump into the road at the gaps in the barrier along the Fordham Road horsewalk. However because of the narrow width of the horsewalk, these gaps are necessary to allow one string to move out onto the footway or carriageway when another string is coming in the opposite direction. Of course, this use of the footway or carriageway by horses conflicts with pedestrians and vehicles.
- 8.9.6. When originally built, the Fordham Road horsewalk was only used by the horses from Pegasus Stables, but now there are two other yards using it. If the new planning permission for an 80 box yard on Snailwell Road had not prevented horses using it, there could have been 350 to 400 horses a day on this horsewalk.
- 8.9.7. She said that their second lot of the day would sometimes use the crossing at the Snailwell Road/Fordham Road junction on their way out, but only if there was a person available to stop the traffic. This is because of the vulnerability of horses and riders at this crossing which has particularly poor visibility. The visibility is even worse for returning riders and therefore seldom used.

- 8.9.8. The traffic information for the Inquiry was very hard to understand, but it was clear that some of the data had been taken from days during the school holidays and non-race days, thereby giving a false impression.
- 8.9.9. Even with the present traffic congestion, it takes 20 minutes or so to reach the train station, so there would be little prospect of people from Hatchfield Farm using the proposed bus service to do so.
- 8.9.10. Newmarket is also the diversion route when the A14 has to be closed. On those occasions there is gridlock and there is little prospect of any reduction in the frequency of such events.
- 8.9.11. Furthermore, there is no way that the interaction of horses and traffic can be predicted by standard traffic modelling techniques. They simply cannot take into account the 3,000 or so horses crossing and re-crossing the town in the mornings.
- 8.9.12. The proposed mitigation in the form of dragon's teeth road markings and Thermotor slow signs would make no difference. There are markings and signs outside Fairstead House and St Louis Schools, just yards from the Rayes Lane crossing, where cars still race to beat the horses to the crossing.
- 8.9.13. Newmarket is the best place in the world to train horses and the industry employs over 6,000 people directly or indirectly, and greatly supports other local businesses, such as hotels, pubs and shops. If the Appeal Scheme were allowed to go ahead, and owners concluded Newmarket was not safe for their horses, they would send them elsewhere; possibly abroad. That would tear the heart out of the HRI in this country as recognised by Richard Spring (the former MP) when speaking in Parliament in January 2010. Even Lord Derby's longest standing trainer Sir Mark Prescott has spoken out against the scheme, although not written in objecting.
- 8.9.14. It would be illogical to have planning policies to protect the stables and studland around Newmarket and then to allow a development that would severely damage the racing industry as a whole, as has happened at Epsom over the last 20 years or so.

8.10. Mrs Beckett (Doc 3P8)

- 8.10.1. Lord Derby was gifted Stanley House Stud and the Hatchfield Farm site, just as Newmarket was gifted to the people of East Anglia. Newmarket has been steeped in history over the centuries and most of the change and growth has been in keeping with its historic character and the needs of the horseracing industry. The town should be allowed to mature in a suitable sustainable way and certainly not with the proposed large scale urban extension that has not been sanctioned by the plan-led system.
- 8.10.2. If, as Lord Derby says, the development would be a separate sustainable community with its own houses, employment, school, community facilities and Tesco just across the road, what benefit would there be to the rest of Newmarket?
- 8.10.3. This isn't a matter of nimbyism, it is a genuine concern for the town where there has been considerable development of one form or another in recent years, and still empty houses on Studland Park and at Red Lodge.

- 8.10.4. The proposals for dragons teeth and Thermo light warning signs would make the town look like the Golden Mile at Blackpool and traffic calming on Snailwell Road would be impracticable.
- 8.10.5. It is also most unlikely that people would cycle or walk as much as has been assumed in the Transport Assessment. Whilst it may be considered practical to walk up to 2 km, that is certainly not likely if carrying shopping, pushing a child in a buggy or with another child in tow. The proposed cycleway through Noel Murless Way would be totally inappropriate and the proposed bus route to the train station would be impractical considering the limited parking there.
- 8.10.6. Bearing in mind the experience at Red Lodge, the promises in a Section 106 obligation cannot be relied upon to provide the necessary infrastructure.
- 8.10.7. There is very strong public opposition to Lord Derby's scheme which has been refused by the democratically elected members of the District Council and should not be allowed on appeal.

9. Written Representations

9.1. Local Planning Authority (Forest Heath District Council)

- 9.1.1. Ms Smith was the only witness to give evidence at the Inquiry on behalf of the Local Planning Authority.
- 9.1.2. However, proofs of evidence were also prepared by Mr Beighton (FH/DRB/P & R) Mr Palmer (FH/JP/P) and Mr Phillips (FH/JP/P) which, between them, covered the need for, and the justification of, the various community infrastructure measures and affordable housing to be included in the Section 106 obligation.
- 9.1.3. In the light of the agreement reached between the Council and the Appellant during the Inquiry on these matters, neither of these witnesses was called, but their proofs remain as written representations.
- 9.1.4. Shortly before the opening of the Inquiry, Dr Ford of Mayer Brown Ltd submitted a written report to the Council on the highways impacts of the Appeal Proposals (FH12).

9.2. Suffolk County Council

- 9.2.1. A proof of evidence (FH/NRM/P) was also prepared by Mr McManus, on behalf of the Suffolk County Council, dealing with the costs of education and library facilities for inclusion in the Section 106 obligation. He was not called to give evidence at the Inquiry in the light of the agreement reached between the County Council and the Appellant during the Inquiry, but his proof remains as a written submission.
- 9.2.2. Agreement was also reached on the Healthcare and Police funding that would be appropriate to the development (G5/168).
- 9.2.3. As the Local Highway Authority, Suffolk County Council also submitted a written statement which set out their position on highways matters (SCC 1). In essence their position was that, with the identified package of mitigation

measures, there would be no material highways impact from the Appeal Proposals, subject also to the necessary conditions and legal agreements.

9.3. Highways Agency

- 9.3.1. The Highways Agency raised no objection to the Appeal Proposals providing the proposed highway improvements were implemented. They confirmed that in their view the changes would leave the A14 Trunk Road 'no worse off' and therefore the scheme would be acceptable (G5/24 & 44).

9.4. Cambridgeshire County Council

- 9.4.1. Cambridgeshire County Council reviewed the revised Transport Assessment and concluded that, with the constraint of the Ely bridge, some 17 km (11 miles) away on the A142, the Appeal Proposals would not have a significant material impact on the operation of the local transport networks within Cambridgeshire (G5/60).

9.5. Snailwell Parish Council

- 9.5.1. Snailwell Parish Council referred to the present rat running through Snailwell Village to avoid the congestion at the A14/A142 junction at peak times of the day. They said that at least 20% of the vehicles were exceeding the speed limit and that there had already been one serious accident and plenty of near misses. This level and speed of traffic was also making it very difficult for the residents to leave their properties in the mornings.
- 9.5.2. They said that the Hatchfield Farm scheme would increase the traffic on the A14/A142 junction thereby making the situation even worse, and the proposed traffic lights would not alleviate the problem. The planned additional developments in Ely, Soham and Fordham will anyhow generate more traffic and, in their view, the A14/A142 junction should be rebuilt before any additional traffic should be allowed.

9.6. Natural England

- 9.6.1. When consulted in March 2011, Natural England held the view that the bat surveys carried out to that time were reasonable in terms of methodology, timing and the effort expended. They considered it was a matter for the LPA to consider whether the three tests of a European Protected Species licence could be met (G5/30). Since that time, more bat surveys were carried out and more protected species were identified on the site. The Natural England views on these matters are covered in the evidence of the parties.

9.7. Matthew Hancock MP (G5/93)

- 9.7.1. Mr Hancock said that the historic town of Newmarket is the global headquarters of horseracing which makes a significant contribution to the national economy on a par with the British film industry. It employs, directly and indirectly, some 5,000 people and the Appeal Proposals would put this industry at risk.
- 9.7.2. He considered the scheme to be too big and that it would cause a significant increase in traffic in the town, thereby adversely impacting on the horseracing industry.

- 9.7.3. In the light of the High Court's quashing of those parts of the Core Strategy which directed such a large development to the north-east of Newmarket, it would be premature to allow this development in advance of the Council's Single Issue Review. With the evident strong public opposition and the imminent prospect of the Localism Bill being enacted, there is every prospect that such a large development in this location would be avoided. There are other places in the general area where the local population would welcome such development.
- 9.7.4. In the event that the appeal were allowed, and the traffic congestion became even worse, owners would be likely to relocate their horses elsewhere; probably abroad.

9.8. Other Third Party Representations (G5)

- 9.8.1. The bundle letters that were submitted at the Application Stage is attached to the Appeal Questionnaire (Doc G8).
- 9.8.2. At the Appeal Stage, there was a bundle of letters from other third parties (G5), of which two were in support of the scheme. These representations welcomed the prospect of residential development on the site in order to provide additional affordable accommodation and to encourage further trade in the town (G5/122 & 161).
- 9.8.3. Apart from these two supporting representations, the remainder raised very much the same issues as have already been reported above.
- 9.8.4. However these letters also emphasised the number of empty houses in the development opposite Hatchfield Farm and at Red Lodge. They noted the difficulties of car parking in the town and the refusal of other developments along Fordham Road, at least partly, for traffic reasons. They pointed to the current inadequacies in community facilities, such as schools, doctors' surgeries and the absence of an A & E facility in the town. Furthermore, they gave personal accounts of accidents and near misses between horses and vehicles, some of which may well already have been covered in the above cases. They showed a general concern that the development would produce more traffic in the town and, taken with a fall in prize money in horseracing, that the horseracing industry would move away from Newmarket. One letter pointed to Malton in North Yorkshire and Lambourn in Berkshire where training can be carried out in more rural conditions, unlike Epsom which had become more urbanised and had lost many of the horses it used to have in training. This same letter said that if the Appeal were allowed, it would kill the goose that had laid the golden eggs for the last 300 years (G5/2).

10. Section 106 Obligations

10.1. Appellant's Comments (ED40)

- 10.1.1. There are two Section 106 Unilateral Obligations. The first covers the CIL-compliant benefits for the County Council and the District Council and the other covers those horse related benefits which the Appellant considers to be non-CIL compliant.

10.1.2. With regard to the County Council, a package of obligations and contributions coming to just over £8.6m was agreed as CIL compliant⁷⁸⁹, as follows: -

1. Pre-school site or a £358,000 contribution,
2. Primary School site and a £4,993,000 contribution,
3. Temporary education accommodation contribution of £190,000,
4. Secondary School contribution of £167,297,
5. Real time passenger information contribution of £44,000,
6. Bus station improvement contribution of £400,000,
7. Park and Ride site and £30,000 contribution,
8. Horse signage contribution of £15,000,
9. Horse crossing contribution of £80,000,
10. Traffic management measures totalling some £311,000, plus a further £150,000 for traffic calming on Snailwell Road if found necessary after automatic number plate recognition surveys on completion of 400 dwellings,
11. Pedestrian and cycle enhancement contribution of £32,000,
12. Library contribution of £10,252,
13. Travel Planning, including car sharing and monitoring at £30,000, a travel plan co-ordinator and an implementation bond of £410,000,
14. A bus service bond of £1,321,220, and
15. A Travel Plan Target Bond of £100,000.

10.1.3. In addition, the contributions payable to the County Council for Health Care and Police and Community Safety were agreed through Lawson Planning Partnership and would be CIL compliant⁷⁹⁰.

10.1.4. The mechanism for delivering all of these benefits was agreed with the County Council to be through the Section 106 Obligation⁷⁹¹.

10.1.5. With regard to the District Council, the following contributions/obligations have been agreed as CIL complaint:-

1. The provision of 15.38 ha of open space with Landscape Management covering Allotments, the LEAP, the MUGA, the NEAPs and LAPs, open space and sports pitches (grouped together as ALMNP), with provision for commuted sums if the Council take the land or if it is transferred to a management company. The provision of these facilities would be phased in accordance with the progress of the development⁷⁹²,
2. 30% Affordable housing with a tenure split of 60% social rented, 10% affordable rented and 30% intermediate housing, and
3. A Community Centre and Pavillion to be constructed and offered to the Council with a commuted sum, or transferred to a management company if not accepted by the Council, together with a commuted sum of £150,461. Although this amount included a number of provisional sums, it had been computed on the best evidence currently available by experienced estimators⁷⁹³ and the Council would have control of the specification, as included in the definition in the UU⁷⁹⁴ and through approval of reserved matters conditions. If the Council considered the

⁷⁸⁹ See summary ED28

⁷⁹⁰ FH9

⁷⁹¹ ED30

⁷⁹² ED30 Schedule 2 and ED38

⁷⁹³ ED34

⁷⁹⁴ ED30 Page 6

sum too small they could decline to accept the transfer and the building would then be transferred to the Community Facilities Management Company that would, if necessary, be able to raise funds from the residents⁷⁹⁵. Furthermore, the additional suggested condition for a Communities Facilities Management Plan would give the Council control over the management responsibilities and maintenance schedules⁷⁹⁶.

Form of the Obligations

- 10.1.6. The mechanism for delivering all these would be through the Section 106 Obligation which, it was thought, had been agreed with the District Council.
- 10.1.7. In closing however, the Council suggested that the form of the Section 106 obligation is defective because it is in a unilateral form rather than an agreement. The criticism focused on the provisions in the Fourth Schedule (Community Centre and Pavilion) although there was also limited reference to the Second Schedule (ALMNP). The suggestion appeared to be based on the provisions requiring the District Council's approval to certain matters before the development proceeds and, linked to that, the absence of a dispute resolution mechanism in the event that there were a dispute over the Council's approval.
- 10.1.8. This fundamentally misunderstands the effect of the Obligation and fails to recognise that the points raised make no difference whether the obligation is unilateral or by agreement.
- 10.1.9. Firstly, the form of covenants about which the Council was concerned may be described as follows: -

A agrees to do or not to do X provided that B first approves (such approval not to be unreasonably withheld).
- 10.1.10. The substance and effect of this is that A says: "I agree that I will not do X unless B approves...."; but B does *not* say "I agree to approve".
- 10.1.11. Secondly, it matters not whether such an obligation is in a unilateral undertaking under Section 106 of the TCPA 1990, or contained in a bilateral agreement because such a covenant places no requirement on B to do anything. It simply makes the approval of B a **pre-condition** to A being able to do X. There is no enforceable requirement on B to do anything.
- 10.1.12. In short: -
 1. the covenant in question is a covenant by A and not by B, but
 2. the requirement that B (such approval not to be unreasonably withheld) approve X is a precondition to A being able to do X, but
 3. that requirement is not a covenant by B. If B does not consent, A cannot force B to do anything (as a matter of contract law); see *Treloar v Bigge* (1874) LR 9 Ex 151 (Doc G7/1).
- 10.1.13. This is so, whether or not the obligation is in a bilateral or unilateral form. Indeed, if the obligation is in unilateral form this can be the only proper interpretation (since B does *not* agree to anything).

⁷⁹⁵ ED30 Fourth Schedule

⁷⁹⁶ FH7 additional condition

10.1.14. Thirdly, this does not render the obligation either unenforceable or impracticable: -

1. If B unreasonably withholds its consent, A may seek a declaration from the court as to what it may properly do: see e.g. *Winfrey and Chatterton's Agreement, Chatterton v Evison* [1921] 2 Ch 7 (Doc G7/2). This is a perfectly usual procedure where there is uncertainty about what a covenantee may or may not do under the terms of his covenants. The Courts are well able to resolve this sort of dispute and may do so speedily on an application for a declaration, and
2. If B is reasonable in withholding its consent, then it may take steps to enforce the obligation and prevent A from proceeding with X. B can enforce the agreement as usual. This is the same whether the obligation is contained in unilateral undertaking or a bilateral agreement.

10.1.15. Fourthly, the absence of a "dispute resolution provision" makes no difference to the above analysis. As explained in the previous paragraph, the court has jurisdiction to determine what A may properly do in the event that B withholds its consent and/or there is a dispute about whether the withholding of consent is reasonable. In any event, the courts will strive to prevent the absence of a workable dispute resolution mechanism within an agreement from rendering it unenforceable: see e.g. *Sudbrook Trading Estate v Eggleton* [1983] AC 444. 479B-D, 482A-B, 483D - 484A, C, 487H - 488D, D-F (Doc G7/3).

10.1.16. There is one further, important point to note. In the circumstances which we are considering, B is constrained to act reasonably by reason of its public law duties. B (i.e. the Council) cannot withhold its co-operation in the working out of the Unilateral Obligation proposed but must act reasonably both to ensure that the mechanism works and that the agreement is properly enforced - See generally *R v Warwickshire County Council ex p Powergen plc* (1998) 75 P & CR 89.

10.1.17. The formulae within the Unilateral Obligation put before the Secretary of State in this case are perfectly standard. They are both workable and practical. This conclusion is endorsed by case law (1) about the law of covenants generally and about (2) the duties of public authorities when faced with working through planning agreements (*Powergen*).

10.1.18. The Council also raised practical objections in terms of 'what if' they simply failed to approve the specifications and 'what if', even having approved it, they found that they either could not, or would not, accept transfer and management responsibility under paragraph 2 of the Fourth Schedule, whether because they were not satisfied with the specification, or they found the commuted maintenance sum too low, or for any other reason.

10.1.19. The two suggested conditions dealing with approval of the detail of the Community Centre and Pavilion, and then their maintenance and management responsibilities effectively negate the "what if" impact of a failure to approve any specification. These bite at commencement and, even if approval under the condition does not extend to a detailed specification for a prospective owner, which is not accepted, it is not the case that there would be no Centre/Pavilion, as suggested. The conditions must be complied with.

- 10.1.20. Therefore, the Section 106 obligation in effect simply provides a binding mechanism for offering the Centre/Pavilion, and its commuted sum, first to the Council.
- 10.1.21. If, for whatever reason, the Council were unwilling or unable to accept the transfer, provision is made in paragraphs 5-7 of the Fourth Schedule for the transfer to a Management Company. Not only would this be accompanied by the commuted maintenance sum but also by an ability to raise further monies to fulfil the obligation to manage and maintain in accordance with the Community Facilities Management Plan which would be approved under a condition. Furthermore, the Council would have control over the terms of the lease. This would more than adequately provide for the delivery and maintenance of the facilities in question.
- 10.1.22. In any event, the two suggested conditions would secure both the provision, maintenance and management responsibilities, as identified above, regardless of the efficacy or otherwise of the Section 106 obligation.

Other Terms of the Section 106 Obligation

- 10.1.23. Relating to the Police, the Appellant has agreed with the Council that the CIL-compliant package of measures consists of a 'drop in' facility in the Community Centre and IT provision of £15,000, together with revenue support of £7,400 for policing during construction. This is as set out in Schedule 12 of the Section 106 Obligation and Lawson Planning agreed to the overall contribution on behalf of the Police⁷⁹⁷.
- 10.1.24. With regard to the PCT, the Appellant has agreed with the Council that the CIL-complaint obligation includes a £130,800 contribution for improving or providing new GP facilities within 2 km of the site. This is set out in Schedule 11 of the Section 106 Obligation and Lawson Planning agreed the position on behalf of the PCT⁷⁹⁸.
- 10.1.25. In addition to the above CIL-compliant measures, after discussions with some sectors of the racing interest (notably the Jockey Club), the Appellant has decided to fund further improvements to horse infrastructure that would not comply with the CIL Regulations. The need for an additional horsewalk and crossing on Snailwell Road could be overcome by the traffic calming measures and the Lord Derby's Gap improvements would be of a different nature to the widening of the Bury Road horse crossing to provide more capacity. Added to these, the Mayer Brown report to the Council⁷⁹⁹ also considered these measures to be unnecessary.
- 10.1.26. Accordingly, these measures are presented in a separate 'Horse Safety Undertaking', under Section 106 of the 1990 Act⁸⁰⁰. This provides for payments to the County Council of £300,000 and £20,000 to implement a horsewalk on Snailwell Road and a crossing at Pegasus Stables, and to improve the existing horse crossing at the Lord Derby's Gap respectively.

⁷⁹⁷ LLP letter 19th September 2011 (FH9)

⁷⁹⁸ *ibid*

⁷⁹⁹ FH12

⁸⁰⁰ ED29

10.1.27. To the extent that the Secretary of State agrees with the evidence of the Appellant, the District Council and the County Council that these latter measures are not necessary, then, to comply with the legislation⁸⁰¹, no regard should be had to them in granting permission. However, the Jockey Club, TG and SHNL sought to argue that they would be necessary. If these latter views were accepted, regard should be had to the fact that this funding would be available and the Secretary of State could be satisfied that these works would therefore be carried out.

10.1.28. Whilst the Fordham Road horsewalk is well used by horses, there is insufficient width within the highway to widen it as Tattersalls sought⁸⁰².

10.2. Council's Comments (FH/11)

10.2.1. The Council pointed out certain discrepancies in the terms between the Main Summary of the S106 Undertakings (ED28) and the completed Undertakings (ED29 & 30).

10.2.2. By the end of the Inquiry, a package of measures had been agreed covering the social and community impacts of the development and also the highways mitigation (5.7.12).

10.2.3. However, there remained an issue over the delivery of the agreed measures because of the Appellant's decision to provide only a unilateral undertaking, rather than a bilateral agreement.

10.2.4. The Council explained the deficiencies of this approach during the Conditions/Obligations Session⁸⁰³. They considered that there should be a fully detailed specification of the items to be provided in order to ensure that all the required social and community infrastructure was properly costed and that it would be delivered in the future, for example they were particularly concerned about the exclusions from the estimated cost of the Community Centre and Pavilion (ED34).

10.2.5. In addition, the Council considered that the works to provide additional signage and to improve the horsewalks should be covered by conditions which would ensure their implementation, rather than the payment of sums of money through a unilateral undertaking. The latter would not carry the same reassurance because the necessary works have not been subject to full design and costing.

10.2.6. In a later submission⁸⁰⁴, the Council explained in more detail their concerns, about the delivery of the Community Centre & Pavilion and the outdoor facilities comprising the allotments, the LEAP, the MUGA, the NEAP, the LAPS, the Open Space and the Pitches (ALMNP).

10.2.7. The undertaking would require the provision of the Community Centre and Pavilion before the disposal of more than 450 dwellings. This building would have to be in accordance with a specification that would have been previously approved by the Council (that approval not to be unreasonably

⁸⁰¹ Reg. 122

⁸⁰² ED14

⁸⁰³ FH/6 and in the Conditions session.

⁸⁰⁴ FH/11

withheld or delayed), but the Council cannot be bound by a requirement in a unilateral undertaking.

- 10.2.8. The case of Treloar v Bigge (1874) LR9 Ex 151 Amphlet B referred to “the true intention of the parties” in an ‘agreement’ and not to a ‘unilateral undertaking’ by just one party and is therefore not directly relevant. Furthermore, Clause 3.8 requiring no unreasonable withholding of, or delay in, approval is not on all fours with the covenant in Treloar v Bigge. In that case, there was a simple covenant not to assign a lease unless the landlord’s consent was arbitrarily withheld but, in this case, there must be the approval of the specification before the terms of Clause 3.8 come into play.
- 10.2.9. If there were unreasonable refusal or delay by the Council, it is unclear whether the building would any longer have to be erected in accordance with an approved specification, ie could it be erected to any standard the developer chose, or indeed whether the building would have to be provided at all? It is also unclear whether the outcome would be any different in the event of a refusal or a delay. Furthermore, if the facilities cannot be provided in accordance with the definition, it is unclear whether they would still be required before the disposal of more than 450 dwellings.
- 10.2.10. Even if the case of Treloar v Brigge were applicable, there is still the need to resolve the effect of the operation of Clause 3.8. The Appellant suggested that in the event of the unreasonable withholding of consent (and presumably also in the case of delay), the Owner might seek a declaration from the Court, but there is no obligation on the Owner to do so. Winfrey and Chatterton’s Agreement [1921] 2 Ch7 is simply an example of a case where a declaration was sought.
- 10.2.11. Where there is a Treloar v Brigge type covenant, the party who gave the covenant might simply choose to act free of the restriction, as recognised in the Lee v Berkley Leisure Group Ltd (CA) (1995) 73 P & CR case. The Owner might therefore simply elect to ignore the requirement for the Community Centre and Pavilion, leaving the Council to decide if a court would uphold Clause 3.8 and whether it could justify enforcement.
- 10.2.12. In addition there is no yardstick to establish whether any delay was unreasonable in the circumstances, particularly where the Council has no obligation to do anything at all. With no obligation to do anything, it is wholly unclear how there could be unreasonable delay in not doing something.
- 10.2.13. Having regard to all the uncertainties, the Council would be put to the expense of legal proceedings simply to establish the meaning of the undertaking before they would be in a position to enforce its terms. That is not acceptable.
- 10.2.14. Given that the Owner would be free to act without first seeking a court declaration, the Appellant’s reliance on Sudbrook Trading Estate v Eggleton [1983] AC 444 is misplaced. A court can only intervene if a matter has been brought before it. In any event this was another case of a bilateral agreement in which Lord Diplock referred specifically to the breach of contractual duties.

- 10.2.15. The Powergen principle argued by the Appellant does not apply in this case. That case related to a highway authority refusing to enter into a S278 Highways Act agreement on safety grounds. In this case, the matter concerns what is, or is not, an acceptable specification for the works. The Council might quite reasonably conclude that the specification should not be approved, or that more time or information, were required to make the decision than the Owner considered appropriate.
- 10.2.16. Whilst the Appellant asserted that the arrangements are perfectly standard, no evidence from other decided cases was submitted.
- 10.2.17. The Appellant could not rely on a specification being approved under reserved matters. It would not be the 'approved specification' referred to in the undertaking. Furthermore, such a planning specification would not cover the detail necessary for a building owner who is expected to take on the perpetual maintenance obligation.
- 10.2.18. Even if an approved specification could somehow be achieved, the undertaking recognises that the Council might not choose to accept responsibility for the completed building, and the Council would not be bound by any terms in the undertaking on this point. It might for instance be concerned about the amount of the commuted sum for future maintenance because that is a fixed sum, despite an indeterminate specification.
- 10.2.19. If the Council declined the offer of the transfer, the undertaking provides for leasing to an, as yet non-existent, Community Facilities Management Company. The terms of that lease would be subject to Council approval, that would again be subject to Clause 3.8, which has already been found wanting. Furthermore, the Council would have no means under the obligation of enforcing the positive management and maintenance obligation (para 6 of the Fourth Schedule) against the management company which is not a party to the undertaking.
- 10.2.20. Similar concerns relate to the various outdoor facilities which also depend on an approved specification that would be subject to Clause 3.8, and for which there is no dispute resolution mechanism. The undertaking also allows for the grant of a lease to a body which does not yet exist, and on terms that would have to be approved by the Council; subject also to Clause 3.8.
- 10.2.21. Even if planning conditions were worded to expressly provide for the submission and approval of a specification, this would not be the specification called for by the undertaking. The specification for land use planning purposes may well not be adequate for the construction and future maintenance of these assets.
- 10.2.22. The unilateral undertaking is therefore inadequate because it engenders uncertainty and is ineffective in assuring its requirements. At best, it could result in the Council having to resort to repeated litigation to secure compliance and, at worst, it could leave the community without adequate provision or maintenance of the necessary community facilities.
- 10.2.23. If a planning permission is contemplated, the remedy would be to defer any decision until the Appellant had provided a satisfactory bilateral planning obligation. If no satisfactory obligation is provided, then the appeal should

be dismissed on this ground alone (leaving aside the Council's other substantive planning objections in relation to Reason for Refusal 2).

- 10.2.24. The Council could see no sound basis on which to conclude that the Snailwell Road horsewalk and crossing and the Lord Derby's Gap horse crossing should be differentiated from the other measures considered by the Appellant to be CIL compliant.

10.3. Tattersalls Group's Comments

- 10.3.1. TG considered that the Appellant was making a false distinction between those matters that would, and would not, be CIL compliant.
- 10.3.2. In their view, the new Snailwell Road horsewalk and crossing would be necessary as a result of the development because of the increased conflict between horses and the pedestrians and cyclists using the Snailwell Road access to the site, as well as the additional rat running due to the increased congestion at the A14 junction.
- 10.3.3. They also argued that the Lord Derby's Gap crossing would be subject to just the same increased traffic as the Bury Road Crossing a little further down the road, and should therefore be considered in the same way. If the High Street/ The Avenue improvements are considered CIL-compliant then so are the Lord Derby's Gap ones. It was also necessary to have consistency between the horse crossings in order to help the motorists' understanding of their function.
- 10.3.4. In the absence of any obligation on the County Council to carry out any of this work, these matters needed to be the subject of conditions. Similarly, in the absence of clarity, the Fordham Road Speed Limit review and the Snailwell Road automatic number plate recognition (ANPR) surveys should be the subject of conditions. In any case, the UU definition⁸⁰⁵ requires a repeat ANPR survey after the 400th dwelling, whereas the suggested Condition No 9 would allow up to 900 dwellings to be disposed of without any employment uses. Accordingly, the further survey to see if the traffic calming scheme was required should be after 1001 dwellings have been disposed of.
- 10.3.5. Schedule 8 of the UU sets out the timing for the traffic management measures, but all these works should be in place before there is any additional traffic on the highway from the development. This could best be achieved by a negative condition.

10.4. Save Historic Newmarket Ltd's Comments (SHN/16 & 25)

- 10.4.1. The Appellant had put forward a unilateral undertaking for the funding of a horsewalk along Snailwell Road and a horse crossing outside Pegasus Stables together with improvements to the Lord Derby's Gap horse crossing on Bury Road (ED29). He had entered into this undertaking despite the fact that he said it was non-compliant with Regulation 122 of the Community Infrastructure Regulations 2010.

⁸⁰⁵ ED30, page 14

- 10.4.2. SHNL considered these improvements to be CIL compliant, and to be required if the development were to proceed. However, the UU does not contain a mechanism to prevent the development going ahead without these improvements. It does not define the works, but simply requires the payment of sums of money.
- 10.4.3. No design work had been carried out, and there was no information before the Inquiry to show that it would even be possible to carry out the relevant works for which there was in any case no covenant with the highway authority for their completion. Accordingly, the document does not provide the necessary certainty that the works would be completed. In view of these flaws, a Grampian Condition should be used.
- 10.4.4. Regardless of these points, the improvements would be required before any additional traffic were introduced to the highway, not after 200 dwellings had been constructed.
- 10.4.5. With regard to the main obligation (ED30), SHNL had comments about both the second and eighth schedules – Landscape Management and Traffic Management respectively.
- 10.4.6. There appeared to be no funding for the Ecological Management Plan for such things as the maintenance of the planting and bird and bat boxes, although suggested Condition 27 would call for details to be approved as part of an ecological management plan. It is unlikely that the Natural England suggestion that the fine-leaved fumitory should be maintained in the general green infrastructure of the site⁸⁰⁶ would be successful because it depends on cultivation. The ES's suggestion that it should be on the allotments would be more appropriate, though at just 0.4ha, and some of that being in the form of raised beds, the area would be inadequate.

11. Suggested Planning Conditions

- 11.1.1. The Council submitted a schedule of suggested planning conditions⁸⁰⁷. These conditions were discussed at the Inquiry without prejudice to the parties' cases. Unless otherwise commented on below the conditions were agreed by the parties.
- 11.1.2. It was agreed that in order to avoid future changes of use which could affect traffic generation, **Condition 8** should be prefixed with 'Not withstanding the uses classes order'.
- 11.1.3. It was agreed that **Condition 9** should prevent more than 900 dwellings being disposed of before at least 50% of the employment floor space has been occupied.
- 11.1.4. In **Condition 12** the drawing number should be revision 'd'.
- 11.1.5. It was agreed that **Condition 16** should be deleted because it would duplicate Condition 19(1).
- 11.1.6. It was agreed that the three separate phases of highway works in **Condition 19** should be separated out.

⁸⁰⁶ CD181
⁸⁰⁷ FH7

- 11.1.7. **Condition 20** should say that '..... the service shall be operated in accordance....'
- 11.1.8. SHNL suggested that in **Condition 21**, the requirement should be for the open space provision to be 'up to' the overall amount in Condition 15 not 'within' it. There should be no opportunity for a reduction in the total area.
- 11.1.9. TG advocated a much more detailed design code condition than the Council's suggested **Condition 22** and also an additional condition requiring the reserved matters to be in accordance with the design code⁸⁰⁸. SHNL also suggested that the development should be constrained by the parameters of the Design and Access Statement as advocated in paragraph 115 of the guidance on DAS⁸⁰⁹. The Appellant did not disagree with either proposal.
- 11.1.10. A sustainable drainage scheme would be required, and the wording of **Condition 23** should be changed to that used by the Planning Inspectorate.
- 11.1.11. Anglian Water had indicated that there would be an initial limit on the available foul sewage treatment capacity and that time would be required to undertake the necessary assessment and provision of further capacity (7.10.18). In these circumstances, a condition should require a foul drainage strategy to be approved before development commences.
- 11.1.12. TG suggested three alternative conditions to the Council's renewable energy **Condition 24**⁸¹⁰. They would require a sustainable energy plan for the site with detailed approval for each phase and updating of the 10% on-site energy requirement in subsequent approvals, if required by new policy. The Appellant was generally happy with this approach, but commented on the need for a substantial dense core of development in order to make Combined Heat and Power schemes viable.
- 11.1.13. SHNL suggested replacing the Council's **Condition 27** which called for an ecological management plan in accordance with certain sections of the ES and other requirements with a series of much more detailed conditions. These would cover all the protected species known to be present on the site. They would require an annual monitoring report during, and for five years after, development of the site. They would call for details of the mitigation proposals for badgers and Red Data Book plants together with reptile surveys before ground clearance operations, surveys for bats and nesting birds and an agreed lighting scheme⁸¹¹. The bat and badger mitigation strategies would however be covered by the Council's Conditions 28 & 29.
- 11.1.14. The Appellant considered the Council's **Condition 27** to be adequate in that it required an ecological management plan that would cover all the relevant matters. Furthermore, it would not be possible to preserve the annual species of Red Data Book plants in perpetuity. Natural England simply wanted a scheme to conserve and manage cat mint and fine leaved fumitory on the site. The reptile condition is no more specific than would be the case in the management plan. In accordance with the Bat Conservation Trust

⁸⁰⁸ TG9 Conditions 22 & 22a

⁸⁰⁹ CD168

⁸¹⁰ TG9 Conditions 24, 24a & 24b

⁸¹¹ SHN16 Condition 27

guidelines, only those trees that would be affected should be the subject of further bat surveys. There is already a lighting condition and sub-clauses 6, 7, 8 & 9 would all be included in the ecological management plan.

- 11.1.15. With regard to **Condition 29** the Appellant pointed out that the badger mitigation scheme would make use of the studland to the south, which was protected by policy. It was also commented that this land would need to be retained for badger mitigation purposes in future.
- 11.1.16. TG suggested much more detailed replacement landscaping conditions for the Council's **Condition 30**⁸¹². These would call for a landscape strategy for areas not covered by the design code and that the reserved matters applications should deliver the relevant aspects of that strategy. They would also require detailed tree surveys, the identification of those trees and shrubs to be retained, with their subsequent retention and maintenance, and the future replacement of trees or plants that become no longer healthy specimens over the next five years.
- 11.1.17. **Condition 33** would require details of the mitigation works at several horse crossings and their subsequent implementation, but TG pointed out that land owned by the Jockey Club Estates would be required to widen the Bury Road crossing and that agreement might not be forthcoming. The Council considered a negatively worded condition to be appropriate. SHNL also suggested that these measures should be in place before development on the site commenced because of construction traffic in the form of cars and vans⁸¹³ – HGVs being routed via the A14.
- 11.1.18. Similarly, SHNL wished to see **Condition 34** require the horse crossing signage to be in place before the development commenced⁸¹⁴.
- 11.1.19. TG wished to see **Condition 34** replaced with a series of conditions that would approve the details and require completion of the following before commencement of the development: - the various horse crossings, the widening of the Fordham Road horsewalk, the provision of the new Snailwell Road horsewalk and crossing at Pegasus Stables, the implementation of traffic calming measures along Snailwell Road and the horse awareness signage on the roads entering the town. They also sought the approval of and implementation of a residents' horse awareness plan.
- 11.1.20. TG suggested the replacement of the Council's **Condition 37** with two further conditions requiring a site waste management plan and a detailed waste management plan for each part of the site covered by a reserved matters approval⁸¹⁵.
- 11.1.21. Whilst it seemed unlikely that there would be significant contamination on this greenfield site, the ES accepted the need for a contaminated land investigation as required under **Condition 38**.
- 11.1.22. TG's revised **Condition 39** would be unnecessary if their amendments to Condition 30 were accepted.

⁸¹² TG9 28-28d

⁸¹³ SHN16, para 2.3

⁸¹⁴ SHN16, para 2.4

⁸¹⁵ TG9 37 & 37a

- 11.1.23. In the event that Condition 30 is amended as suggested, that would replace **Condition 42**.
- 11.1.24. TG also suggested **additional conditions** relating to a sustainable materials strategy, the loading and unloading arrangements for HGVs for each phase, details of external lighting for each phase, details of fume extraction for the A Class uses, the minimum level of the Code for Sustainable Homes and the BREEAM ratings for non-residential buildings, as well as the detailed layout of sports pitches and play areas for each phase⁸¹⁶.
- 11.1.25. The County Council's suggested **additional condition** requiring a Community Facilities Management Plan was agreed⁸¹⁷.

⁸¹⁶ TG9, new conditions 40-47

⁸¹⁷ Attached to FH7

12. Conclusions

The figures in brackets (...) indicate the paragraphs from which the evidence is taken.

12.1. Adequacy of the Environmental Information

Environmental Impact Assessment

- 12.1.1. The original Environmental Statement (ES) was supplemented by an initial addendum and a subsequent badger addendum, together with more bat surveys and other data during the Inquiry (1.2.2, 1.2.3, 4.11.7, 7.9.6).
- 12.1.2. In accordance with paragraph 4 of Schedule 4 of the EIA Regulations, the Council's scoping opinion sought consideration of the cumulative impacts of the development with those of other nearby developments.
- 12.1.3. In considering cumulative impacts, Chapter 17 of the ES only took into account the allocation of an 8 ha business/science park on the nearby George Lambton Playing Fields (7.9.2). The ES addendum adopted the same approach, despite the subsequent application for a substantial retail-led scheme with a cinema and 90 new dwellings, which must have been in preparation before the addendum was submitted. This latter scheme would very likely have different environmental impacts (6.9.16, 7.9.3).
- 12.1.4. In addition, part of the Council's Core Strategy was quashed because it failed to satisfactorily consider alternative locations for large scale residential developments other than around Newmarket (3.1.2). Tattersalls said that the ES should therefore have considered alternative locations for such residential developments outside the immediate vicinity of Newmarket; but it did not (6.9.16).
- 12.1.5. Whilst in the ideal world, an ES should be fully comprehensive and complete at an early stage, circumstances do change as new information comes forward. Accordingly, formal addenda with public consultation may be produced, as in this case. However, more detailed environmental information inevitably emerges through witnesses' evidence or documents submitted during the Inquiry. This too is publicly available information and may be accepted, providing it does not amount to a paper chase (4.11.4).
- 12.1.6. Whilst the George Lambton Playing Fields have been allocated for an employment use for a long time (4.7.12) in the light of the planning application that was submitted during the Inquiry and the Appellant's witness' apparently good relationship with the proposed developers (7.9.4), it was perhaps unwise to assume no traffic generation from that site.
- 12.1.7. At the time that the ES was first produced, there was no reason to suppose that the Council's Core Strategy would be found lacking in its consideration of alternatives. After the High Court decision, there may have been more of a case for a wider assessment of alternatives, but even then, with a residual requirement of 7,343 dwellings in the period from 2010 to 2031 (4.3.5, 5.4.9), the proposed 1,200 houses would not preclude other housing developments going ahead elsewhere in the District. In this case, the failure to consider alternative locations must weaken the Appellant's case that the Hatchfield Farm site is the most viable sustainable location (4.5.4, 5.4.4), but this does not invalidate the ES.

- 12.1.8. All the environmental information, from whatever source, has been taken into account in reaching the following conclusions.

Habitats Regulations

- 12.1.9. The European Habitats Directive is transposed into English law by the Habitats Regulations 2010. In essence, Regulation 61(1) requires the Competent Authority (in this case the Secretary of State) to assess whether a proposed scheme, on its own or in combination with others, would be likely to have a significant effect on a European site. If so, an Appropriate Assessment (AA) of the implications in relation to the site's conservation objectives must be made before permission is given (4.11.9, 4.11.10, 7.9.9). Case law from the European Court of Justice shows that objective evidence is required to conclude that there would be no significant effect and, applying the precautionary principle, an Appropriate Assessment must be carried out in a case of doubt (7.9.10, 7.9.31).
- 12.1.10. Fenland SAC, Devil's Dyke SAC and Breckland SPA (with multiple designations of SSSIs and NNRs) are all in the vicinity of the Hatchfield Farm site (7.9.11). Chippenham Fen SSSI forms part of the Fenland SAC and is only about 2.6 km away (4.11.13, 7.9.20).
- 12.1.11. The Council's Habitats Regulations Assessment (HRA) notes the low level of recreational usage at Chippenham Fen (7.9.12), but the Wildlife Trust for Cambridgeshire, Bedfordshire, Northamptonshire and Peterborough highlighted the potential impact there could be from some 2,880 additional people living within about 2.6 km (7.9.34).
- 12.1.12. The ES scoped out recreational impacts because it said the site was 3 km away from the SSSI, which it considered a long way to travel for recreational purposes. However, there are a number of public footpaths in and around the site, and the English Day Visits Survey shows that walkers and families are prepared to travel significantly greater distances than that. Furthermore, in the case of the Dorset and Thames Basin Heaths SPAs, the AA considered a 5 km zone for this purpose (7.9.34, 7.9.35).
- 12.1.13. That 5 km zone was in relation to ground nesting birds for which pages 55 and 56 of the Council's HRA give different zones around their sites, the greatest distance being 1.5 km (4.11.13). In any case, Chippenham Fen SSSI is designated for its flora and invertebrates, which are much less likely to be affected by visitors than ground nesting birds (4.11.13). Therefore it may safely be concluded that there would be no significant effect from recreational uses and, as such, nothing to combine with other plans or proposals. Accordingly, an AA would not be required because of recreational considerations.
- 12.1.14. The Chippenham Fen SSSI designation document cites water diversion for domestic and industrial use as one of the factors that is adversely affecting the ecological character of the site (7.9.12).
- 12.1.15. The Council's Habitats Regulations Assessment (HRA) for the Core Strategy considered there was likely to be a significant effect on European sites arising, in part, from the developments in Policy CS7, which at the time included an urban extension at Hatchfield Farm. This was particularly in connection with water abstraction at Chippenham Fen SSSI in the period after 2019, when Anglian Water's current water resources are expected to

be fully utilised (7.9.13, 7.9.14, 7.9.24), and it recognised that the area is already over-abstracted (8.7.2). By 2019, the Appeal Proposals would only be partially completed, and no new source has been identified to meet the additional water demand after that date (1.1.11, 7.9.24).

- 12.1.16. In this respect, the Council's HRA and the Appellant both placed reliance on the need for Anglian Water to obtain the necessary licences for additional abstraction; with their own AA requirements (4.11.17, 7.9.25). But of course, by that time, the die would have been cast and the development would no doubt be in progress; not the outcome required under the Habitats Regulations.
- 12.1.17. The ES did purport to address the impacts on hydrology, and concluded that the effects on Chippenham Fen SSSI, amongst other sites, would not be significant. However, no sound reasons were given in relation to the water demand, even though one of the ES's conclusions was of permanent negative effects upon the water resources of the area. Thereafter, there was no assessment of this effect upon the European sites (7.9.27, 7.9.28, 7.9.29).
- 12.1.18. The Environment Agency and Natural England both raised the issue of harm to European sites in connection with the Appeal Application, and the latter raised it again, as recently as February 2011, in connection with a further prospective application on the Hatchfield Farm site (7.9.17 - 7.9.20).
- 12.1.19. In the circumstances, there must be at least some doubt whether there would be a significant effect on the ecology of Chippenham Fen SSSI and accordingly an Appropriate Assessment under the Habitats Regulations should be carried out.

Additional Environmental Information

- 12.1.20. The information necessary for the Secretary of State to carry out an AA was not before the Inquiry.
- 12.1.21. Whilst it would be regrettable to prolong the appeal process, there does not appear to be any legal reason why the Secretary of State could not call for the requisite information for an Appropriate Assessment (4.11.24, 7.9.41).
- 12.1.22. The position is even clearer in the case of the EIA Regulations where the Secretary of State could use his powers under Regulation 19, should he consider it necessary.

12.2. Main Considerations

- 12.2.1. The main considerations in determining this appeal relate to:-
 1. The ability of the highway network to safely accommodate the traffic from the development,
 2. The impact of the development on the horseracing industry in Newmarket and any consequential effects on the local economy or the historic environment,
 3. The ecological effects of the development,
 4. The need for, and the location of, new housing and employment development in the District,
 5. The assurance of high quality design,

6. The impact on air quality,
7. Compliance with the Development Plan, and
8. Other material considerations, including national policy and prematurity.

12.3. Highways

Existing Highway Conditions

- 12.3.1. The Hatchfield Farm development would have two access points from Fordham Road (A142) a little way to the south of its grade separated junction with the A14 Trunk Road (J37). Beyond this junction the A142 continues north towards Fordham and Soham (1.1.25, 2.1.1). In the morning peak period, there are long queues of southbound traffic approaching this junction, much of it turning right to travel westwards towards Cambridge. In the evening peak, there are reciprocal queues on the eastbound off-slip that can tail back onto the running lanes of the A14 (6.6.25, 8.2.2).
- 12.3.2. When there are substantial southbound queues on the A142 in the morning peak, some drivers wishing to travel to Newmarket divert off the main road and rat run through Snailwell and on down the Snailwell Road to join Fordham Road about 1 km south of the site (2.1.6, 4.8.12, 6.8.26, 8.8.1, 9.5.1).
- 12.3.3. In the morning peak period, traffic quite regularly queues back up Fordham Road from the Clock Tower roundabout, past the Rayes Lane Horse Crossing, as far as, or beyond, the Snailwell Road junction (2.1.8, 6.8.2). This situation is not helped by the strings of horses crossing at Rayes Lane (4.7.23, 6.8.7, 6.8.12).
- 12.3.4. There is no doubt that there is considerable traffic congestion in the town at peak periods (4.9.7, 6.5.1, 7.4.7, 8.2.13, 8.2.14, 8.5.4, 8.9.9, 9.7.4).
- 12.3.5. That congestion is made all the worse on the approximately 38 Newmarket race days a year (6.5.11), and the town can become virtually gridlocked on those occasions when the A14 traffic is diverted through the town because of accidents. In 2010, there were 8 lane closures on the A14 that caused moderate or severe delays and on a number of these occasions traffic was officially diverted through the town (6.5.12, 8.2.12, 8.3.1, 8.3.6, 8.9.10).

Future Highway Conditions

Baseline and Assessment Years

- 12.3.6. The Transport Assessment (TA) took 2008 as the baseline year and 2018 as the assessment year (4.7.6, 4.7.7, 4.8.8, 6.6.3). The Guidance for Transport Assessments advises that the assessment year should be consistent with the completion schedule for the development (6.6.11), but it also says that the year should be agreed with the relevant authorities (6.6.13). In this case the development would not be completed by 2018 (1.1.11) but the TA assumed the full traffic flows generated by the completed development would be on the highway network by that time (4.7.7). This choice of 2018 as the assessment year would limit the amount of traffic growth taken into account from other sources over an extended period (6.6.14) and, despite the increased uncertainties, there is no reason why National Trip End Model (NTEM) and the Trip End Model Presentation

Programme (TEMPRO) software should not be used to predict at least 15 years ahead, as required for DPDs (6.6.17).

- 12.3.7. The Appellant pointed out that Version 5.3 of TEMPRO had been used in the Transport Assessment (TA). If however the lower growth rates in the recently released version 6.2 are used, the traffic growth would be no more over 15 years than over the 10 years taken in the TA (4.8.8). Against this, Tattersalls argued that the growth rate could not simply be extrapolated because TEMPRO anticipated higher growth rates in the later part of the period to 2025 as the economy is assumed to recover (6.6.16).
- 12.3.8. The Guidance on Transport Assessment advises an assessment year no less than five years after registration of the planning application, which has been well exceeded in this case. For major developments, it also recommends assessments for the opening year and one or two further years. In this case there was the 2018 assessment and the reassessment of the TEMPRO growth (6.6.11).
- 12.3.9. The 10 year horizon was agreed with Suffolk County Council (SCC), the Local Highway Authority, and the Highways Agency (HA) for the A14 Trunk Road (4.8.8, 6.6.13), the fully built-out traffic flow has been assumed and there would appear to be some over-estimation against the most recent growth predictions. The 2018 assessment year should therefore be accepted.

Growth Factors

- 12.3.10. There has been a slight reduction in traffic flows over the last few years (4.7.6) but the anticipated traffic growth on the A14 Trunk Road was taken directly from the National Road Traffic Forecast (NRTF97) in agreement with the Highways Agency. This would accommodate the likely increased traffic from Felixstowe (4.7.14, 8.3.5).
- 12.3.11. Traffic growth on the local network was calculated using the DfT TEMPRO software and the data from the National Trip End Model (NTEM), though the latter had to be adjusted by removing the traffic from the Appeal Development in order to avoid double counting (4.7.8, 4.7.9).
- 12.3.12. The Appellant used the Newmarket (Main) TEMPRO data set as this is the area that includes the Appeal Site. 1,201 dwellings had been allowed for in that area in the 10 year period, and the Appellant removed 1,001 of these on the assumption that only 200 dwellings would be likely to come forward without Hatchfield Farm. He also removed the employment uses on the George Lambton Playing Fields because there appeared to be no realistic prospect of that development taking place (4.7.9 - 4.7.12). In the light of the recent planning application for a retail-led development on this latter site (7.9.3), this exclusion may be somewhat premature.
- 12.3.13. The 2006 Core Strategy Preferred Options included 696 dwellings on new allocations in Newmarket of which only 500 were attributable at the time to the Hatchfield Farm area, not the 1,001 removed by the Appellant (6.6.19). As at September 2006, there were 559 committed dwellings that should also have been retained in the TEMPRO data (6.6.19). With these adjustments there would be more traffic growth in Newmarket than allowed for in the TA.

- 12.3.14. Junction 37 of the A14 is a main route for traffic from the north in East Cambridgeshire District onto the A14 and away to Cambridge (6.6.25). Accordingly, the traffic growth at this junction would also be affected by development in Soham and Fordham (6.6.22, 9.5.2).
- 12.3.15. Therefore, there is some argument that, either the Rural East Cambridgeshire TEMPOR6.2 growth rate, or the trip generation from the significant committed development should be applied to the northern arm of the junction (6.6.26). Tattersalls calculated that by 2018 the former would give an additional flow of 144 vehicles on this link in the am peak (6.6.27).
- 12.3.16. Being outside the Newmarket (Main) area, these other developments would have been included in the traffic generation figures for the other areas, which are incorporated in the regional figures. This would give a simple approximation of traffic flows in the area (6.6.31) and in general, they should not therefore be double counted, as recognised by Suffolk County Council (6.6.22). In this case however, there is likely to be a particular concentration of the traffic flow onto the A14 at this junction and the general approach could result in some under-assessment. Nevertheless, Cambridgeshire County Council accepted the revised TA traffic flows (9.4.1).
- 12.3.17. On balance, it seems likely that the traffic growth has been somewhat under-estimated.

Trip Generation

- 12.3.18. The Appellant used average trip generation figures and also made allowances for the reductions due to travel plans and internalisation of home to work trips (4.7.17), whereas the Guidelines on Transport Assessment do not favour the use of average trip rates if there are to be further reductions for sustainability measures (6.6.34, 4.8.10). In the absence of identified users, Tattersalls therefore advocated the use of 85%ile trip generation figures which, even with allowances for internalisation and a travel plan, would generate some 1,200 trips, rather than the Appellant's 830 in the am peak hour (6.6.35).
- 12.3.19. Internalisation of employment trips would of course depend upon there being both employment and residential uses on the site. But suggested Condition No 9 would require no more than 900 dwellings to be disposed of until at least 50% of the employment space was occupied (4.8.11). To set against that, the easy access from the site to the trunk road network would tend to lessen the prospect of reduced trips (6.6.37). As the Appellant suggested, the traffic signals at the proposed site junctions might be arranged to throttle the flow of traffic leaving the site (4.8.11, 6.6.39), but any throttling of the incoming flow in the morning peak would be very likely to impact adversely on the adjacent highway network and should not therefore be assumed in the design of this new scheme.
- 12.3.20. Whilst improved provision would be made for cycling from the Appeal Site to the town centre, it would still involve crossing the busy A142, albeit at a new crossing, and a somewhat circuitous route which might not appeal to cyclists. There would also be the alternative of cycling along Snailwell Road and then down the busy Fordham Road (1.1.20, 2.1.6, 8.1.7, 8.2.3, 8.10.5, 10.3.2). The census proxy area opposite the site achieved a modal share of

7.6% and on that basis the Appellant's target of 8.2% could well be achieved (6.6.38).

- 12.3.21. The various on-site community facilities, including a local centre, as well as the retail facilities at Studlands Park on the other side of Fordham Road would all be within the reasonable 2 km walking distance (2.1.7, 4.7.22, 8.2.4). Therefore some journeys at least would probably be on foot.
- 12.3.22. The exact number of people who would use the proposed additional bus service from the park and ride site may be in doubt, but the road layout would accommodate this service better than the Studlands Park layout, and it would certainly be of some benefit in accessing the town and the train station (1.1.16, 4.8.11, 6.6.39, 8.9.9).
- 12.3.23. Overall, it seems likely that some more trips would be generated from the development than allowed for in the Appellant's figures.

Trip Distribution

- 12.3.24. Using the 2001 census cluster on the other side of Fordham Road as a proxy for the Appeal Site, in the am peak some 54% of journey to work traffic turned north towards the A14, with 46% heading south and west towards Newmarket. Because of possible changes due to the relocation of USAF personnel after the census, this was checked by a traffic survey in February 2010 and the proportion was found to be practically the same (4.7.18). From this, the proportions that would travel along Willie Snaith Road and down Fordham Road were generated, the latter being some 20% in the am peak (4.7.18).
- 12.3.25. Whilst there was some criticism of this 20% figure (8.2.5), it was accepted by Suffolk County Council, the Local Highway Authority (4.7.18), and there is little reason to question the general magnitude of that value.

Overall Traffic Flows

- 12.3.26. From the evidence, it seems that the Appellant's estimation of the likely traffic growth and possible trip generation may be a little low and therefore the resulting traffic flows somewhat higher than predicted by the Appellant (12.3.17, 12.3.23). Nevertheless, the Council and all the relevant highway authorities accepted the general level of traffic flows (5.7.2, 9.2.3, 9.3.1, 9.4.1). Accordingly, the following consideration of the traffic impacts is based on the Appellant's figures, but also bearing in mind the possibility of somewhat higher traffic flows.

Micro-Simulation Model

- 12.3.27. The S-Paramics model covered the A142 in the vicinity of the Appeal Site and was run for 'do nothing' and 'with development' scenarios (4.7.19, 4.7.20). Whilst the model was validated against quite limited survey data obtained on different dates (8.2.2), it was independently audited and accepted by Aecom on behalf of the Highways Agency and Suffolk County Council (4.7.19), and its conclusions were not criticised by Dr Ford of Mayer Brown, the Council's Highways consultants (4.8.12). There is no particular reason to doubt the overall conclusions, even allowing for the possibility of somewhat higher traffic flows, as noted above (12.3.17, 12.3.23, 12.3.26).

A14/A142 Junction (J37)

- 12.3.28. The conclusions from the S-Paramics model were that, with the proposed highway improvements at the A14/A142 junction, which would include its signalisation, the 'with development' scenario showed no detriment to the highway conditions when compared with the 'no development' scenario in 2018 (4.7.19). This scheme would implement the easiest options to achieve additional capacity, but there is no requirement to safeguard capacity for other purposes (6.6.8).

Rat Running on Snailwell Road

- 12.3.29. At the same time, taking the Appellant's figures, the approximately 1 km long morning am peak queue for vehicles travelling south through the network would be reduced, giving drivers a 35 second reduction in journey time. The Appellant therefore concluded that there would be reduced incentive for drivers to divert off the direct route and rat run via Snailwell Road (4.8.12, 6.6.25, 8.1.8, 9.5.1).
- 12.3.30. The computed 35 second journey time reduction (6.8.25) was calculated for the 2018 conditions 'with', and 'without', the development. That is the correct method of assessing the traffic effects of a development and the modelling did allow for some traffic growth, albeit not as much as Tattersalls envisaged (6.6.41). Of particular relevance however, it showed that the southbound queue length would still be very substantial and drivers could well perceive that there would be a benefit in diverting via Snailwell Road to at least keeping moving. In these circumstances, there is little chance of a significant reduction in rat running down Snailwell Road and, if the rather higher growth and trip generation were to occur, a real prospect of an increase.
- 12.3.31. The Appellant had however anticipated this, and included funding for automated number plate recognition surveys in the Section 106 obligation to check the extent of rat running. He also included a sum for mitigation measures, should they be required (4.8.12, 10.1.2). Whilst the specific measures had not been identified, as accepted by SCC, it seems likely that acceptable traffic calming could be introduced on this road without unduly impacting on the horseracing industry (6.8.26). If however these measures deterred drivers from rat running, then there could be a further increase to the queue on the main road.

Fordham Road

- 12.3.32. The S-Paramics model included the two proposed accesses to the Appeal Site from Fordham Road and it showed that they would function satisfactorily (1.1.8, 4.7.20). There is no reason to consider that the possible additional traffic envisaged above would materially affect that conclusion.
- 12.3.33. With the 20% allocation of the development's traffic to Fordham Road to the south of the site, a LINSIG model showed that the operation of the Fred Archer Way/ Fordham Road/ Waitrose/ Rookery Access linked signal controlled junction would be adversely affected with increased delays of between 3 and 8 seconds per passenger car unit, but this made no allowance for the Microprocessor Optimised Vehicle Attenuation (MOVA)

programme installed at this junction. Bearing this in mind, SCC agreed that sufficient mitigation could be provided through a financial contribution to the Urban Traffic Management and Control (UTMC) system and promotion of alternative travel modes (4.7.20).

- 12.3.34. The Clocktower Roundabout was assessed using ARCADY and no improvements were considered necessary (4.7.20).
- 12.3.35. Although the traffic conditions can already be very congested along Fordham Road (12.3.3) and future traffic growth could make the situation worse (6.6.7), when considering the 'with' and 'without' development scenarios, there were no objections from SCC to the above assessments (9.2.3) and, despite the possibly greater traffic flows referred to above, they should generally be accepted.

Rayes Lane Horse Crossing

- 12.3.36. Whilst the Highway Code recognises horse crossings, it does not give any priority to horses (4.7.23). The Rayes Lane horse crossing is heavily used by strings of racehorses on their way to and from their morning training sessions (6.8.7). There is no known computer programme to assess the interaction of strings of horses crossing a highway with the traffic flows. Although LINSIG had not been approved for this assessment, the Appellant considered a horse crossing to be similar in operation to a signal controlled crossing in that the horses cause the traffic to stop and then to start again (4.7.23, 4.8.13, 6.8.16, 7.4.21-7.4.24).
- 12.3.37. This use of LINSIG to assess the horse crossing at Rayes Lane was questionable in a number of ways. The model is not intended for uncontrolled crossings where the interruptions come at random times and for random periods, and it could take no account of the other highway features such as the accesses to the schools just to the north of the crossing, or the crossings further north up Fordham Road (6.8.16, 6.8.20). Additionally, there was no allowance for intergreen periods, and the saturation flows were set without regard to the proposed mitigation measures. The model was also validated against observations on a single day that may well not have been representative (6.8.18, 6.8.19, 6.8.21, 7.4.23, 7.4.24). These matters raise concerns about accepting the accuracy of a LINSIG analysis for this purpose but it was accepted by SCC (4.8.13) and may give some appreciation of the interruption to traffic flows.
- 12.3.38. The LINSIG assessment was carried out for the morning peak hour and that would appear an appropriate time to consider the highest traffic flows, despite the wider period over which horses may be crossing to and from their training (7.5.4).
- 12.3.39. If anything, the Appellant's sensitivity test of adding 10% to the length of the observed strings for future growth in horse numbers did show that additional delay for drivers would rise from 18 seconds to 31 seconds (4.7.24). However, any growth in horse numbers could well be in the form of more strings crossing the road, rather than longer strings (6.8.13, 7.5.2). This would most likely have a more disruptive effect on traffic flows because of the delay caused by the strings clearing the carriageway before vehicles could pull away. The prospect of growth in the number of horses is considered below (12.4.23).

- 12.3.40. Against this, Tattersalls argued that the formula of PV^2 (P = pedestrians and V = vehicles) could be used to test the degree of conflict because it is used to judge the need for pedestrian crossings (6.8.11). But this is not a recognised approach in mainland United Kingdom and seems to be of even less assistance than LINSIG (4.8.13).
- 12.3.41. From observations during the Inquiry site visits, and from the evidence given at the Inquiry, there is no doubt that the Rayes Lane crossing already delays traffic travelling up and down Fordham Road (1.4.1, 12.3.3) and that the increased traffic from the development would add to those delays. The proposed mitigation measures at the horse crossing, such as the proposal to build out the kerb line to the south, and the new road markings and surfacing (4.8.17, 6.8.40, 7.5.5, 8.9.12), would not materially affect the delays, but would instead be aimed at the safety of horses and their riders, together with that of other road users (See 12.4.18) .

Other Highway Matters

- 12.3.42. Fordham Road would carry about 20% of the traffic from the site and therefore interact with the Rayes Lane Crossing. Because of the distribution of the traffic across the road network, the proportion interacting with the St Mary's Square crossing would be very much less. Only about 3% would use Bury Road and therefore interact with horses on the Bury Road crossing by the Severals and on the Lord Derby's Gap Crossing (4.7.24).
- 12.3.43. A LINSIG model showed that the proposed improvements at the High Street/the Avenue Junction would provide more capacity which would cater for the additional traffic from the development (4.7.20).
- 12.3.44. Some additional traffic would also travel via the Studlands Park Avenue junction on Exning Road, but SCC agreed that a mini-roundabout at this junction would provide sufficient mitigation (4.7.20).

Conclusions on Highways Impact

- 12.3.45. There is no doubt that there is already considerable traffic congestion in Newmarket on many days, and that race days and A14 closures make this worse (12.3.4, 12.3.5). The additional traffic from the development can only add to the congestion.
- 12.3.46. However, taking into account the Appellant's Transport Assessment and their subsequent discussions, the relevant Highway Authorities and the Council (5.7.2, 9.2.3, 9.3.1) do not consider that, when assessed in the usual way, the road safety impact of the Proposals would amount to a reason to dismiss the Appeal. Even if the generated traffic did turn out to be a little higher than allowed for in the TA, it is clear that the normally assessed highway safety impacts would still not amount to a sound reason for refusal.

12.4. The Horseracing Industry (HRI) in Newmarket

Background

- 12.4.1. There was no dispute that Newmarket is the focal centre of horseracing in the United Kingdom and probably in Europe, if not the World, and it has an unrivalled concentration of training, racing, sales and breeding

establishments, as well as many ancillary services such as specialist equine vets, saddlers and farriers (2.1.13, 4.9.5, 6.3.5, 7.2.1, 8.1.2, 8.4.2, 8.5.2, 8.9.13).

- 12.4.2. Newmarket provides the headquarters for the global thoroughbred breeding and training industry. British racing employs some 18,600 people and, in 2008, it made a contribution of some £3.39 billion to the national economy through direct, indirect and induced expenditure. This puts it on a par with the UK film industry in terms of economic importance (6.3.2, 7.2.5). Much of the investment in the very valuable horses comes from international sources, with owners from the Middle and Far East, Australia, America, Ireland and South Africa (6.3.7, 7.2.2).
- 12.4.3. Some 15% of all UK trainers are located in Newmarket and about 19% of all horses are trained in the town. The surrounding studs represent approximately 20% of the UK bloodstock industry (6.3.2).

Horse Movements throughout the Town

- 12.4.4. There are about 80 training yards around Newmarket where, at peak times, some 2,500 to 3,000 horses may be in training (2.1.10, 6.4.2, 7.2.1). Practically all of these horses travel through the town on a daily basis to access the approximately 80 km of turf gallops (6.3.5, 7.2.2) which are set within the 1,820 ha of world class training facilities (7.2.1) on the Racecourse side, to the west, or on the Bury Hill side, to the east of the town (1.1.11).
- 12.4.5. The public training grounds are administered by the Jockey Club Estates and are available to all licensed trainers (6.3.5, 6.3.6) who may run large or small training yards. Some can have as many as 150 or more horses in training at any time (6.4.1).
- 12.4.6. Trainers send out their lots in separate strings of up to about 20 horses a time, which go to the most appropriate training ground for the horses in question. In some cases they may go via the Severals warm-up ring (6.4.3, 6.4.5). This generates a mass movement of horses across the town throughout the morning training period, which generally lasts from about 06.00 hrs to 11.00 hrs, six days a week (6.4.3). Whilst some horses have to walk along sections of trafficked roads, there are also specially designated horsewalks in many places in the town. These horsewalks cross the roads at horse crossings (2.1.12); two of the busiest being at Rayes Lane on Fordham Road, and Bury Road, close to the Severals warm-up ring (2.1.12, 7.4.20).

Safety of Horses and Riders

- 12.4.7. There was no dispute that thoroughbred racehorses are, by their very nature, highly strung and skittish and, when spooked, they can be a danger to both themselves and others. Furthermore, they enter training at just two years old and have a short racing career, which results in about 40% of all the horses crossing the town being young and inexperienced (6.5.3, 7.4.3).
- 12.4.8. Even though precautions can be taken, such as putting the most skittish horses in the middle of a string (7.4.18), any racehorse can be spooked by badly driven cars, and also by many other aspects of traffic such as the revving of engines, the sounding of horns, slamming doors, vehicles

travelling over speed humps or sunlight reflected from a windscreen (6.5.3, 7.4.6, 7.4.16, 8.9.5). They can even be spooked by prams, pedestrians, birds or a plastic bag or twig blowing in the wind (4.9.16).

- 12.4.9. Bearing in mind that in the order of 2,500 horses are likely to cross the town and back again six days a week, the possibilities of traffic-related incidents must have run into many millions over the accident recording period, and yet there are only a handful of reported accidents (4.9.18, 4.9.19, 6.5.5, 7.4.15, 7.4.20).
- 12.4.10. The very few 'personal injury' traffic accidents that do occur are of course recorded by the Highway Authority (4.9.21) and the necessary statutory records are kept by the trainers (7.4.18). But the HRI particularly emphasised the number of unrecorded 'incidents', of which they gave some examples. They argued that many near-miss incidents took place on a regular basis, but were not generally publicised (6.5.6, 7.4.8, 7.4.15, 8.1.3, 8.5.3, 8.9.4).
- 12.4.11. The report into horse safety commissioned by the Jockey Club acknowledged the possibility of more accidents occurring than had been reported (4.9.24). The Appellant also accepted that 'incidents', in the sense of horses reacting adversely to external stimuli, can be observed at any time all over Newmarket (4.9.22). The Local Plan identified traffic problems for the HRI as far back as 1995 (7.4.15) and it is remarkable that there are not many more serious recorded accidents. However, the test must be to consider what difference the Appeal Scheme would make (4.9.25).
- 12.4.12. Tattersalls estimated that there would be an increase of some 372 vehicles in the peak hour on Fordham Road of which about half would be due to the proposed development (6.6.42). The Appellant estimated an increase of some 82 vehicles in the peak hour (about 13%, or one every 45 seconds) on Fordham Road in the morning peak hour (4.9.27). In either case, this would increase the queuing a little both to the north and south of the Rayes Lane horse crossing (12.3.42) but, with significant queuing already, there would be little difference from the point of view of a horse that was crossing at Rayes Lane, or walking along the Fordham Road horsewalk (4.9.26). This horsewalk is not wide enough for two strings to pass (6.8.3, 8.9.5) but again there would be no material effect from somewhat longer traffic queues.
- 12.4.13. With the Jockey Club's Code of Conduct for riders, a very high level of courtesy is generally apparent between drivers and riders throughout the town (4.9.29), but there have also been instances of verbal abuse and drivers pushing through strings of horses (6.8.14, 8.9.2). There are no records of accidents that were clearly as a result of driver frustration (4.9.29) but increased delays would no doubt cause some further frustration and to some extent add to the incidents of bad driving (6.8.14). Nevertheless, with the current number of horses, the level of increased queuing would only marginally increase the delay for drivers and therefore this effect should not be particularly significant (4.9.30).
- 12.4.14. There are already arrangements for the lead rider of a string to activate warning lights at the horse crossings (4.8.17). The Appellant would fund various improvements to the horse crossings and these would include better signing, road marking etc (4.8.17, 6.8.36). In addition, the work at the

Rayes Lane crossing would improve visibility for riders to provide a 3 m 'x' distance. Whilst 5 m would be desirable, 3 m would be much better than at present and would therefore help to improve safety (4.8.18, 6.8.10, 6.8.40).

- 12.4.15. The Fordham Road / Snailwell Road Crossing is poorly located in respect of vehicle turning movements and has poor visibility, especially to the south, for horses crossing from west to east. There is also no horsewalk along Snailwell Road leading to this crossing (6.8.4). Whilst this is undoubtedly a less safe crossing than some of the others (8.9.7), the horses from a newly permitted 80 box yard have been conditioned to use this crossing. This safety issue was not therefore seen as sufficiently important to prevent the grant of planning permission (8.9.6).
- 12.4.16. At this crossing, the Appellant proposes comparable improvements, to those at Rayes Lane, apart from the visibility improvements (6.8.39), and would fund a survey to assess the case for a reduced speed limit on the road to the north (4.8.18). Whilst the Appellant does not consider it CIL compliant, he would also provide the funding for a horsewalk along Snailwell Road to this crossing (10.1.26).
- 12.4.17. As already noted, much less of the traffic from the development would pass over the St Mary's Square and Bury Road Crossings (12.3.42) where similar improvements would be made (4.8.18). The Appellant does not consider the works to the Lord Derby's Gap Crossing to be CIL compliant, but nevertheless says that funding would be available for similar improvements at this location (10.1.26).
- 12.4.18. As acknowledged by the Local Highways Authority, taken together, these improvements would provide sufficient mitigation for the increased traffic flow resulting from the Appeal Proposals in order to avoid any undue impact on highway safety (9.2.3, 9.3.1).
- 12.4.19. There would be some impact from construction traffic over a period of many years, but at least the Heavy Goods Vehicles could be routed to and from the site via the A14 (recommended Condition 32i). Consideration of construction traffic makes no difference to the conclusion that there would be no material impact upon highway safety.

Prosperity of the Horseracing Industry in Newmarket

Traffic Congestion

- 12.4.20. The HRI considers the present traffic congestion in Newmarket to be only just manageable for their industry because of the conflict between horses and vehicles, and because of the delays caused to trainers and owners in travelling around the town to observe their horses in training (6.5.14, 6.5.15, 8.2.13, 8.5.3). Similar free access is required by vets and the emergency services (6.4.9). Indeed, congestion has been recognised as a problem which might in future lead to the relocation of training yards to less central locations (6.5.9).
- 12.4.21. Despite these concerns and the other pressures on the industry (6.5.14), the HRI has continued to grow over recent years, unlike many other sectors of the British economy (7.2.7). In Newmarket the number of horses using the Jockey Club Estates' facilities was up 2% on 2010 so far in 2011 (7.2.9).

Much of this growth has been underpinned by considerable international investment (7.2.2, 7.2.10, 8.2.10) but this could easily be diverted elsewhere, particularly to other countries. Some trainers anticipated that worsening traffic conditions in the town would cause owners to send their horses to centres such as Chantilly (7.5.8, 8.4.4, 8.9.3). There is higher prize money in Australia, Japan, America and France and, at Chantilly in particular there are comparable high quality training facilities and, importantly, less conflict with traffic. There, conditions are much closer to the quiet rural environment that is so desirable for training racehorses (6.5.15, 7.5.8, 8.1.5).

- 12.4.22. Even if there were rather more traffic from the development, for the reasons given earlier (12.3.26), it is still unlikely to cause a significant increase in congestion and delays for people moving around the town.

Future Growth in the Industry

- 12.4.23. As noted above, the HRI in Newmarket has seen growth over the last few years (12.4.21), and the recent planning permission for another 80 box yard (8.9.6) may be taken to indicate the prospect of more growth in the future. Alternatively, the Appellant pointed to the yards for sale and to surveys that showed a prospective decline (4.8.15). The industry itself acknowledged the difficulties with the current economic conditions and the reorganisation of betting in the UK (7.2.9).
- 12.4.24. Whilst there may well be nearly 1,200 spare boxes in the town (6.7.4), that should not be taken to indicate that the industry could easily accommodate that number of additional horses because yards usually operate with a proportion of empty boxes (4.8.14). It would be possible to project the past growth and assume that this would continue in the future (6.7.5, 6.7.6), but that would assume the same economic conditions which may, or may not, be the case. There are also indications that the industry might decline (4.8.14). All that can reasonably be said is that there is at least a prospect of further growth in the industry.
- 12.4.25. As indicated above, if it occurred, further growth would most likely manifest itself in more strings of horses crossing the roads rather than the longer strings considered by the Appellant (12.3.38). If so, they would further delay the traffic and could well cause just the increased level of congestion so feared by the industry. Even though there is Development Plan policy support for the HRI in Newmarket (6.10.2, 6.10.4, 7.3.1, 7.3.2, 8.9.14), that does not automatically mean that the available highway capacity should be reserved exclusively for that purpose. This is a matter that would be much better resolved through the development plan process than through an appeal decision (6.7.2).

Perception and Actual Harm

- 12.4.26. The HRI argued that the owners' perception of harm from the traffic congestion due to the proposed development would cause them to send their horses elsewhere for training, as happened at Epsom (8.1.5, 8.9.14, 9.8.4). If so, this would harm the industry, with consequent harmful effects on the local economy and the character of the town (6.5.15, 7.5.6, 7.5.9). This case is therefore distinct from one in which, for example, there is

simply a fear of crime without any discernable reason for that fear (5.7.6, 7.5.9).

- 12.4.27. The development would increase the traffic congestion to some extent, but the HRI in Newmarket has shown considerable resilience in the current economic climate (12.4.13, 12.4.21). There was very little definitive evidence that owners would decide to move their horses, although there were reports that some were considering doing so (7.5.6). It may also be that those with substantial investments in the town, such as the Maktoun family with their Darley and Godolphin organisations and their private training grounds (2.1.9, 7.5.6), would be more reluctant to move, as inferred by their Chief Operating Officer (4.9.3).
- 12.4.28. Given the reputation of Newmarket as possibly the best place in the world to train racehorses (12.4.1), the owners' delight to see their horses traversing the town on their way to and from the gallops (8.4.3) and the apparent resilience of the industry during the recession (6.7.5, 7.2.7), it seems unlikely that owners would logically choose to move their horses away before the development took place. They would then be able to judge for themselves the result of the limited traffic impacts, rather than being swayed by a public campaign against the scheme (4.9.12). The conclusion must be that the risk to the horseracing industry is very small.

The Local Economy

- 12.4.29. It was variously said that the HRI generates about 3,000 or 5,000 of Newmarket's 11,000 jobs (6.3.4, 9.7.1). Other figures quoted the industry as directly employing 33% of the economically active people in the town (7.2.11). Regardless of the exact figure, it is clear that a very large proportion of the town depends on the HRI for their living (4.4.7): almost on a par with the proportion of jobs in the City of London that are directly dependent on the financial sector (7.2.11). People may be employed in the direct training of horses, their health and welfare, their acquisition and sale, or the promotion of British racing (6.3.4). This is a true cluster of economic activity with a direct spend of some £150m a year; £78m of which being on training, and an indirect spend of about £100m a year (4.4.5, 6.3.3).
- 12.4.30. From the above assessment of the owners' perceptions, it seems most unlikely that the Appeal Development would cause a material decline in horse numbers. If it did however, that could clearly have a considerable effect on the prosperity of the HRI and, as a consequence, on the local economy and character of Newmarket (7.5.9, 8.9.13).

Newmarket's Historic Environment

Visual Impact

- 12.4.31. Much of the centre of Newmarket is within the town's Conservation Area (CA), but the Appeal Site is separated from it by the studland and other development to the south of the site, and the development would have no direct impact on even the setting of the CA (4.12.1).
- 12.4.32. Some of the horse crossings are within the CA, or at least within its setting (7.6.5), and the proposed improvements would introduce elements that are intended to attract drivers' attention, such as flashing LED signs, high visibility road markings and contrasting road surfacing (7.6.6). They would

therefore have rather more than just the modest visual effect envisaged by the Appellant (7.6.5).

- 12.4.33. National and local guidance advises the general use of inconspicuous colours and designs in order to protect the character and appearance of conservation areas (7.6.6 - 7.6.9). However the proposed measures fall into the category of being the minimum necessary for highway safety purposes and therefore in accordance with the advice in Streets for All (7.6.7). Some of the contrasting road surfaces had already been laid by the County Council by the end of the Inquiry and there were no objections to the Appeal Proposals from the Council's Conservation Area Officer (4.12.5). There can be no serious objection with regard to the appearance of the Conservation Area.

Conservation Area Character

- 12.4.34. The Council's Appraisal document notes the growing volume of traffic as a factor causing intrusion or damage to the CA (7.6.4) and, as concluded above (12.3.26), there would be some more traffic from the development.
- 12.4.35. The Appraisal and the Core Strategy also note that the spirit and character of Newmarket are largely derived from the interplay between the historic environment and the operation of the horseracing industry on a daily basis (6.3.8).
- 12.4.36. If the Appeal Proposals caused the number of horses in training in the town to be significantly reduced, then the interplay between the historic environment and the HRI would undoubtedly be harmed. Furthermore, if the land and buildings presently occupied by the HRI were to be put to other uses that would most likely further alter the character of the area.
- 12.4.37. However, the conclusion has already been reached that the Appeal Proposals are most unlikely to cause material harm to the prosperity of the HRI in Newmarket (12.4.28) and therefore there should be no harm to the character or appearance of the Conservation Area.

Summary of HRI Conclusions

- 12.4.38. Newmarket is the centre of horseracing in the UK and a very important equine centre on the World stage (12.4.1). Large numbers of racehorses traverse the town on a daily basis on their way to and from training (12.4.4) where they interact with the traffic, particularly at horse crossings (12.4.6). Many of these horses are young and inexperienced and, as thoroughbred racehorses, they are highly strung, skittish and easily spooked by seemingly ordinary stimuli (12.4.7, 12.4.8). In the light of the number of potential conflicts, the recorded accidents/incidents is surprisingly low, but there are more that are not generally publicised (12.4.9 - 12.4.11).
- 12.4.39. The Appeal Proposals would result in some more traffic on the roads which are used or crossed by horses, the most affected being at the Rayes Lane crossing (12.4.12), but the overall effect would be adequately mitigated in highway safety terms (12.4.18).
- 12.4.40. The increased traffic would have some effect on trainers, owners and others travelling around the town (12.4.20). Despite the worsening traffic conditions over recent years, the HRI has continued to grow (12.4.21,

12.4.23) and further growth in the industry may take place (12.4.24). Any resulting highway conflicts from this growth should however be addressed through the Development Plan process (12.4.25). When weighed against the advantages of Newmarket, the actual traffic conditions are most unlikely to make owners send their horses for training elsewhere (12.4.28). If there is no material reduction in the number of horses in the town, there would be no effect upon the local economy or upon the historic character of Newmarket (12.4.29 - 12.4.37).

12.5. Ecology

Badgers

- 12.5.1. Badgers are a protected species and the Appellant said that there was 'no evidence of badgers' on the site, with 'no setts' identified until part way through the Inquiry. Then, after a more detailed search, a total of seven setts were identified, and another was subsequently located (4.10.7, 7.10.9). The survey showed most badger activity to be on the northern part of the site with only inactive setts and no tracks or latrines on the southern part (7.10.12). Nevertheless, the suggested mitigation proposals included the possible closure of the northern setts and establishment of two new setts just outside the southern boundary of the site. The intention was to encourage the badgers to relocate to the south where it was said, the earthworm population on the retained studland would provide a good source of food. It was also argued that the landscape planting on the site would provide an additional source of food (7.10.8, 7.10.12).
- 12.5.2. Even if the earthworm population on the studland is higher than the arable fields of the Appeal Site, the badgers have, for whatever reason, chosen to establish their setts in the northern part of the site. If these setts were no longer available to them, they would no doubt go elsewhere; possibly to the new setts provided as part of the mitigation. Certainly Natural England, the statutory advisers on the subject, do not consider there would be a loss of badgers from the area, providing the mitigation proposals were implemented (4.10.9).
- 12.5.3. The landscape planting on the site would take some time to mature sufficiently to provide any material food source for badgers and even then, their displacement from much of the site would increase their tendency to forage elsewhere. This could increase their use of the studland to the south and also that on the other side of Snailwell Road, therefore increasing the possibility of their digging in places that may cause danger to horses. The establishment of dwellings and their gardens on the site would of course be a completely new feature in the area. However, Natural England raised no objection on this point (4.10.9) and the presence of badgers should not preclude the proposed development, subject to the implementation of an agreed mitigation strategy.

Bats

- 12.5.4. Bats are a protected species and one of the Council's reasons for refusal related to inadequate information on bats (1.1.6) but, following further information, they withdrew their objection (4.10.1).
- 12.5.5. Various bat surveys were carried out from 2007 to 2011. Whilst there were some questionable lapses from the Bat Conservation Trust Guidelines, such

as the closeness of two surveys (7.10.9), taken together, they provided an adequate overall picture of the bat activity in and around the farm buildings and also the trees on the site. They indicated some overnight roosting as well as foraging and commuting, but not any maternity roosts; and the existing buildings on and adjacent to the site are to be retained (4.10.5, 4.10.6, 7.10.4, 7.10.8 - 7.10.10).

- 12.5.6. The mitigation strategy included dark areas for foraging and commuting corridors and the retention of overarching trees at the road crossings. These could be designed into the public spaces, but some dark areas could also be affected by security lights associated with the proposed residential properties (7.10.8). Nevertheless, in accepting the mitigation strategy, Natural England specifically referred to the proposal to 'minimise lighting around the central tree belts' (4.10.5). More detailed surveys would be required at a later stage in order to refine the mitigation strategy but, for the purposes of an outline planning permission, there is sufficient evidence to show that there would be no undue impact on the bat population on the site.

Other Protected Species

- 12.5.7. Three Red Data Book plant species, three Red and six Amber List bird species, together with a lizard and a brown hare were identified on the site (7.10.4). However, providing the mitigation strategies were guaranteed, Natural England were satisfied (4.10.4), and there was no reason to suppose that there were any great crested newts on the site (4.10.4).

Biodiversity Gain

- 12.5.8. The development would result in a considerable loss of arable land and its replacement with a number of other uses (4.10.10). Over time, the proposed planting could well provide more varied and diverse habitats than are currently available on the site. However, the loss of the arable land would affect such species as skylarks, and brown hare, and of course badgers, as noted above (7.10.12, 12.5.2). Whilst bearing in mind the difficulty of equating different habitats and species (4.10.10), the overall biodiversity interest of the site should be maintained.

12.6. Housing Need and Distribution

- 12.6.1. After the partial quashing of the Core Strategy by the High Court, the Council has just commenced a Single Issue Review (3.1.6, 5.2.15). However the remainder of the Core Strategy remains part of the Development Plan (4.3.5, 4.6.3) and, in accordance with the East of England Plan, it currently calls for 10,100 dwellings to be built in the period from 2001 to 2031 (3.1.6, 4.3.3, 5.2.4). The residual requirement is 7,343 from 2010 to 2031 (4.3.5, 5.4.9) and, of these, only a proportion can be expected on brownfield sites, therefore leaving about 4,824 to be delivered on greenfield land like the Appeal Site, which is outside the current settlement boundaries (4.3.4, 4.3.5).
- 12.6.2. Before the High Court judgement, the Core Strategy gave at least the strategic location of the north-east of Newmarket for 1,200 of these dwellings, but that no longer applies (4.3.5).

- 12.6.3. The Appellant and the Council agreed that the three market towns are the most sustainable settlements in the District and that, of these, Newmarket is the most sustainable because it has the most facilities (4.3.3, 4.3.10, 5.4.25, 6.9.9). The Appellant then concluded that, with the various policy restraints around the town, particularly connected with the horseracing industry, Hatchfield Farm to the north-east is the only realistic location for a sizeable urban extension (4.3.10).
- 12.6.4. As a consequence of sustainability considerations, the Council also accepted that, it would be reasonable to conclude that Newmarket should accept some growth, though not necessarily the release of all, or any, of the Hatchfield Farm site (5.4.25). In the light of the Council's Parish Profile (5.4.14), the Infrastructure and Environmental Capacity Appraisal (IECA) (5.4.15) and their Strategic Housing Land Availability Assessment (SHLAA) (5.4.17) this seems an appropriate view. The IECA shows available environmental capacity for an alternative housing distribution (5.4.15) and the latter indicates roughly a balance between the likely housing sites and the residual requirement, excluding the Hatchfield Farm site (5.4.17 - 5.4.20).
- 12.6.5. In addition to the general housing requirement, the Council's Strategic Housing Market Assessment (SHMA) shows a predicted need for 608 affordable dwellings a year in the District and there was a 19.9% increase in the number of applicants to the Newmarket Housing Register between August 2010 and May 2011, all of whom the Council judged to be in housing need (4.5.3). Despite SHNL's views to the contrary (7.2.13), there is no doubt that the proposed 30% affordable housing on the Appeal Site (10.1.5) would make a considerable contribution towards the District's requirements (9.8.2).
- 12.6.6. Accordingly, there is clearly a need for more general and affordable housing provision in the District which could be met by the Appeal Proposals. The absence of a five year housing land supply and the alternative ways in which the need could be met are considered below (12.14.1, 12.14.9).

12.7. Employment Provision

- 12.7.1. The Core Strategy calls for the allocation of an additional 16 ha of greenfield employment land between 2006 and 2026, of which 5 ha would be at Newmarket (4.3.7). That allocation would be over and above the 8 ha allocation of the George Lambton Playing Fields which is in the saved policies of the Local Plan. This has not as yet come forward and indeed was the subject of a retail-led application during the Inquiry (4.3.8). Although stated in terms of their 36,000m² of business uses (1.1.8), the Appeal Proposals would occupy about 10 ha of the site (5.5.7).
- 12.7.2. The Appellant argued the need for the additional employment and housing provisions to be in balance (4.3.9, 5.5.5), and there may be some benefit in highway safety terms from the internalisation of home to work trips on a large site (12.3.19). However, there does not appear to be any direct link between the two from the earlier stages of the Core Strategy which, at different times, included varying proportions of housing numbers and employment uses in Newmarket (5.5.7 - 5.5.9, 6.9.8).

- 12.7.3. Whilst the Appellant sought to compare the economy of Newmarket with other towns in the Cambridge Sub-region (4.4.7), Newmarket has the unique feature of the horseracing industry which the others do not (6.9.12). Accordingly, there is little benefit in such comparisons.
- 12.7.4. The Appeal Proposals would provide a considerable increase in employment space in close proximity to the largest most sustainable settlement in the district which would, in general, indicate a sizeable workforce (4.4.4). However, it must also be recognised that the HRI already directly employs about one third of that workforce and more are indirectly employed (12.4.29).
- 12.7.5. There is general Development Plan support for further employment uses in the Newmarket area but there is no identified occupier of the floorspace. Whether or not an equine bio-tech user would come forward is simply a matter of speculation (7.5.10). Whilst there would certainly be some employment benefits to the town, they would not be specific to the Appeal Site.

12.8. Countryside

- 12.8.1. As noted above, at least some of the new housing and employment land envisaged in the Core Strategy would have to be on greenfield sites outside the current settlement boundaries, like the Appeal Site (12.6.1, 12.7.1).
- 12.8.2. The development would result in the loss of approximately 58 ha of best and most versatile agricultural land. This weighs against the proposals, but it is an isolated area of farmland and there is no adverse comment from Defra (4.10.10).

12.9. Design Assurance

- 12.9.1. Paragraph 35 of PPS1 calls for high quality and inclusive designs which, particularly in the case of outline applications such as this, should be assured through Design and Access Statements (DASs), for which DCLG has published guidance (7.7.2).
- 12.9.2. SHNL considered that the DAS (CD103) did not comply with the guidance in several respects. In particular, they said it did not define the way in which the buildings, routes and open spaces would be provided, placed and orientated (7.7.5). They also said that the DAS did not show the approximate location of buildings (7.7.7) or explain the principles behind the choice of development zones and how they would inform the detailed layout (7.7.8).
- 12.9.3. In considering its adequacy, the DAS should be taken as a whole and can be read with the Development Specification (1.1.3, CD102). The DAS assesses the existing site and surroundings and sets out the design strategy, which started with the access requirements and the other constraints, such as the noise from the A14. After changes resulting from the public consultation exercise, there is a development framework, plans giving the building heights and key frontages, the residential densities and the residential character areas, for which there are design sketches based on the various character areas in Newmarket.

- 12.9.4. Taken together, there can be little criticism of the DAS in terms of the way the residential buildings, routes and spaces would relate to each other. The building heights were mostly given as a range (page 28), but that conforms to the advice in paragraph 134 of the guidance that the upper and lower limits should be indicated, and the maximum and minimum footprints are given in Appendix 1 to the Design Specification. The approximate location of individual buildings is not given specifically (7.7.7), but the nature of the residential areas is adequately covered in order to 'set the scene' for the detailed design.
- 12.9.5. The employment uses are less well defined. The DAS simply says that the buildings would be up to 9 m high in certain specified areas and there are no sketches or other illustrations of their appearance. However, the Specification says that there would be a range from two storey office units to large business park spaces adjacent to the A14 and it gives the considerable range of footprints that are envisaged. Despite the absence of any specific users, it would have been very beneficial to give some indication of the anticipated form and finishes of the buildings.
- 12.9.6. There is a minimum and maximum footprint for the 'A' Class units of the Local Centre but no other details. The Neighbourhood and Community Facilities in the Specification have a similar footprint constraint and, in the DAS, are said to be of between 1 and 3 storeys and up to 12 m high. Since these documents were produced, this has become the Community Centre and Pavilion, for which no other details are available, apart from the Section 106 obligation which calls for a specification to be approved by the Local Planning Authority. This hardly gives the degree of assurance of the high standard of design sought for an outline scheme through the DAS procedure.
- 12.9.7. Whilst the DAS sets out the areas intended for the proposed uses, there is little explanation of the rationale behind the choice of those uses in the first place, and their internal and external interactions, as called for in paragraph 145 of the guidance.
- 12.9.8. Against these criticisms, the Appellant referred to the Council's acceptance of the document and pointed to the suggested conditions that would tie the detailed designs to the submitted plans in accordance with the DAS (4.13.1, 4.13.2). These plans would indeed cover such things as the general layout, the building heights and densities, together with the phasing, open space and access (1.1.9). Nevertheless, this would not cover the rationale for the chosen uses, nor provide any certainty over the massing and appearance of the employment uses or the community facilities. Regardless of the Council's acceptance, in these respects the DAS does not provide the degree of certainty of the high quality design advised in the DCLG guidance.

12.10. Air Quality

- 12.10.1. SHNL initially raised an air quality objection to the scheme but, after the Appellant had carried out further modelling, that objection was not pursued (4.14.1, 7.10.13, 8.1.9). Furthermore, with no objection from the Council's Environmental Health Officer, there is no reason to conclude that there would be any undue effects upon the air quality in the town.

12.11. Section 106 Planning Obligations

CIL Compliance

- 12.11.1. The Appellant put forward two completed unilateral obligations, one to cover those matters he considered to be compliant with Regulation 122 of the Community Infrastructure Levy Regulations (ED30) and the other to cover those which he did not consider CIL-compliant (ED29) (10.1.1).
- 12.11.2. Regulation 122 says that a planning obligation may only constitute a reason for granting planning permission if the obligation is: -
 - (a) necessary to make the development acceptable in planning terms,
 - (b) directly related to the development, and
 - (c) fairly and reasonably related in scale and kind to the development.
- 12.11.3. There is no doubt that the major package of obligations and contributions covering the requisite infrastructure would comply with Regulation 122. In general they would cover phasing, the provision and maintenance of the various forms of open space on the site, the provision of 30% affordable housing, a community centre and pavilion, education contributions in various forms, public transport contributions, horse safety measures, traffic management and improvement measures, pedestrian and cycle enhancements, libraries, health and police contributions and travel planning (10.1.2 - 10.1.5).
- 12.11.4. The second obligation included a horsewalk and horse crossing along Snailwell Road and improvements to the Lord Derby's Gap crossing. It was said that these would still be implemented if planning permission was granted but, because of non-CIL compliance they should be discounted from the planning considerations (10.1.26, 10.1.27).
- 12.11.5. The Council, Tattersalls and SHNL all considered that these latter measures were equally CIL-compliant and should therefore be taken into account (10.2.24, 10.3.1 - 10.3.3, 10.4.1, 10.4.2).
- 12.11.6. There would be the same, approximately 3%, increase in traffic from the development at the Lord Derby's Gap crossing as there would be at the Bury Road crossing near the Severals (10.3.3). However, there are many fewer horse movements at the former than at the latter, where the improvements would incorporate an increase in the capacity of the crossing (10.1.25). Accordingly, the number of conflicts at Lord Derby's Gap would be significantly less, but there would still be significant benefit to motorists' understanding of horse crossings in the town if they were treated in a consistent manner, especially along the same road (10.3.3). Accordingly, the works at the Lord Derby's Gap should be considered CIL-compliant.
- 12.11.7. Under the terms of the main obligation, the Appellant would already be funding an automatic number plate recognition survey along Snailwell Road and would then be committed to traffic calming measures if the amount of rat running were to be increased by the development (10.1.25). That should adequately mitigate for any vehicular impacts. But there would be a pedestrian and cycle access from the site onto Snailwell Road (2.1.6) further significantly increasing the present conflict between pedestrians, cyclists and horses on their way to and from the gallops (8.9.1, 6.8.41). The new

horsewalk would therefore be required as a result of the development and should be considered CIL compliant (10.3.2, 10.4.1).

12.11.8. Accordingly, all the mitigation measures in both obligations should be considered CIL-compliant.

Enforceability of Obligations

12.11.9. Whilst the Council referred to certain discrepancies between the document summarising the main features of the two obligations and the obligations themselves, it is the latter that are of legal significance (10.2.1).

12.11.10. The Council agreed the package of measures to be covered in the Section 106 Obligations, but considered that they should be in the form of bilateral agreements rather than unilateral obligations (10.1.7, 10.2.2, 10.2.3).

12.11.11. With regard to the main obligation (ED30), the Council pointed out that a unilateral obligation could not bind them to take any particular action, yet the document required approvals at various stages if the development was to be successfully implemented (10.2.7)

12.11.12. The Council considered the Community Centre and Pavilion as an example (10.2.20). In that case, prior approval of the specification was required by the Council who were constrained by Clause 3.8 not to act unreasonably in withholding or delaying approval. However with no obligation to take any action at all, and no yardstick to establish unreasonable behaviour, it was unclear whether the building could be erected to any standard the developer chose, or indeed whether it would have to be provided at all (10.2.7 - 10.2.12). They said that any specification agreed under reserved matters would not be 'The Specification' required in the obligation (10.2.17 - 10.2.21). In these circumstances the Council envisaged the need for, and expense of, legal proceedings just to establish the meaning of the undertaking (10.2.13).

12.11.13. Even if the specification were agreed, the Council envisaged that they might choose not to accept the transfer of the building, for example, because of an inadequate commuted sum for its future maintenance. In that case, the obligation provides for leasing to a management company but that company does not yet exist and accordingly cannot be bound by the obligation. Furthermore, there would be no way of the Council enforcing the envisaged positive management and maintenance obligation against that company (10.2.18, 10.2.19).

12.11.14. The Appellant considered the form of the unilateral obligation to be quite normal (10.1.17, 10.2.16). He accepted that the Council could not be bound by an obligation to which it was not party, but simply considered the Council's actions to be a pre-condition for other actions (10.1.11, 10.1.13).

12.11.15. He noted the general constraint on the Council to act reasonably because of their public law duties (10.1.16) but, in any case, the Courts could be asked for a declaration if the Council did unreasonably withhold or delay any approval and, if it had been reasonably withheld or delayed, then the Council could enforce in the usual way (10.1.14). This would be the dispute resolution provision sought by the Council (10.1.15).

- 12.11.16. In connection with the Council's example of not approving the specification for the Community Centre and Pavilion or accepting its transfer, the Appellant considered the two proposed conditions would ensure its provision and future maintenance (10.1.19). If, for any reason, the Council chose not to accept the transfer of the building, the management company would receive the commuted sum for future maintenance and the Council would still have control of the terms of the lease to that company.
- 12.11.17. There is no doubt one party cannot be bound by a unilateral obligation produced by another party (12.11.11, 12.11.14) but, in this case, any actions of the Council such as approving a specification, would be pre-conditions to other actions by the Appellant, or his successor (12.11.14).
- 12.11.18. Bearing in mind the general duties of the Council, they should be expected to act in the public interest and, if they did not, the various legal cases referred to by the parties clearly demonstrate that such disputes can be resolved by the Courts (12.11.15).
- 12.11.19. Ideally, Section 106 obligations should be designed to avoid recourse to the Courts, if only for the delays and expense involved, but the conclusion must be that the main obligation could be enforced, should the need arise.
- 12.11.20. Should the Secretary of State consider that a bilateral agreement would be required to make the Appeal Proposals acceptable, it would be possible to defer a decision awaiting such an agreement (10.2.23).
- 12.11.21. The second 'horse safety' obligation (ED29) does not call for any specific actions by other parties and therefore the equivalent points are not relevant.
- 12.11.22. However, Tattersalls and SHNL both pointed out that the obligations required various payments to the County Council, yet there was no commitment from them to take any action. In these circumstances, they suggested the use of Grampian style conditions (10.3.4, 10.3.5, 10.4.3). This would be an appropriate way of securing these actions, and the need for, and timing of, the works is considered in the conditions section below (12.12).

Details of Obligations

- 12.11.23. The obligation does not include any funding for the Ecological Management Plan, but it would be approved under the suggested conditions and could call for the provision and retention of such things as bird and bat boxes (10.4.6).

12.12. Suggested Planning Conditions

- 12.12.1. Planning conditions may overcome objections to a scheme that would otherwise be refused permission. The Council's schedule of suggested planning conditions (FH7) was therefore considered at the Inquiry without prejudice to any of the parties' cases.
- 12.12.2. The Council's suggested **Condition 27** would simply call for an Ecological Management Plan to satisfy the requirements of certain sections of the original Environmental Statement and the Addenda. This is not a clear requirement for a condition and would be much better rewritten along the lines suggested by SHNL (11.1.13). Even so, the SHNL suggested

condition should be varied to remove the requirement for ecological surveys five years after completion, and the further bat surveys should apply to only those trees that would be affected by the development. In addition, there would be no need for this condition to deal with bat and badger mitigation which are the subject of the following two conditions (11.1.14).

- 12.12.3. Tattersalls suggested a series of additional conditions in place of **Condition 34** dealing with horse crossings, horsewalks and HRI mitigation generally (11.1.19).
- 12.12.4. In the light of the earlier conclusions, it would be appropriate to require the horse crossing works and improved horse awareness signage, for which there is funding in the Section 106, to be carried out through a Grampian style condition (12.11.22). That includes the provision of a horsewalk along Snailwell Road at the same time as the pedestrian access from the site. The traffic calming measures, which may or may not be required following the rat running surveys, and accordingly should not be the subject of a separate condition. They are covered by the Section 106 obligation (12.11.7).
- 12.12.5. No condition should require widening of the Fordham Road horsewalk because the evidence indicated that there was inadequate space within the highway, and it would therefore be impracticable (6.8.39, 7.4.19, 10.1.28).
- 12.12.6. All of the other suggested variations or additions to the schedule, as noted in Section 11 of this report, would be necessary for sound planning reasons and/or appropriate to improve the clarity of the conditions.
- 12.12.7. Accordingly, Annex A to this report gives the schedule of recommended conditions (renumbered) for use, if it is the intention to allow the appeal and grant planning permission.

12.13. Compliance with the Development Plan

- 12.13.1. The Development Plan currently includes the East of England Plan, the Forest Heath Core Strategy (as amended by the High Court) and the saved policies of the Forest Heath Local Plan (3.1.1 - 3.1.4).
- 12.13.2. The following policy considerations are based on the conclusions already reached above and take into account the effects of the planning obligations and the recommended planning conditions, if planning permission is to be granted.

Highways

- 12.13.3. Between them Policies T1, T2, T3, T4 and T6 of the East of England Plan, Policies CS1 and CS12 of the Core Strategy and Policy 9.1 of the Local Plan seek the use of sustainable modes of travel, the management of the regional and local road networks and, more specifically, the improvement of the A14/A142 junction and the provision of a park and ride facility on the edge of Newmarket (3.1.5, 3.1.6, 3.1.7).
- 12.13.4. The Appeal Proposals would improve the A14/A142 junction (12.3.28) and therefore help to manage that part of the regional network whilst at the same time not materially affecting highway safety in and around

Newmarket (12.3.46, 12.4.39). They would also provide a park and ride site on the edge of Newmarket (1.1.8) and, for instance, through travel plans and the internalisation of home to work trips (12.3.18), they would help to achieve more sustainable modes of travel.

- 12.13.5. In terms of highways policy, the development would comply with the policies of the Development Plan.

Horseracing Industry

- 12.13.6. Vision 2, the Spatial Strategies and Policies CS1 and CS6 of the Core Strategy aim to support the horseracing industry around Newmarket, as do Policies 5.14 and 6.10 and Chapter 12 of the Local Plan (3.1.6, 3.1.7).
- 12.13.7. With the proposed mitigation works, the increased traffic from the development would not harm the safety of horses walking through the town (12.4.39), but there would be some effect on the ease with which owners, trainers and vets would be able to move around the town. Nevertheless, taking into account particularly Newmarket's pre-eminent position in the horseracing industry, the impact is most unlikely to harm the prosperity of the industry (12.4.40).
- 12.13.8. The Appeal Proposals would therefore comply with the horseracing policies of the Development Plan.

Ecology

- 12.13.9. Between them Policies SS8, ENV1 and ENV3 of the East of England Plan, Policy CS2 of the Core Strategy and Policy 9.1 of the Local Plan seek to promote the natural environment and biodiversity (3.1.5, 3.1.6, 3.1.7).
- 12.13.10. With the proposed mitigation, there would be no material impact on the badger or bat populations on the site and the other protected species could also be protected. In the longer term, taking into account the proposed planting, the overall biodiversity interest of the site should be maintained (12.5.3 - 12.5.8).
- 12.13.11. The Appeal Proposals would therefore comply with the ecology and related policies of the Development Plan.

Housing

- 12.13.12. Policies H1 and H2 of the East of England Plan and Policies CS1, CS7 and CS9 of the Core Strategy set the housing requirement for the District as 10,100 dwellings for the period from 2001 to 2031, of which 240 would be on brownfield sites. Following the High Court judgment, there is no spatial distribution for the proposed housing. Whilst the regional target is 35% of affordable housing, the District's figure is 30% (3.1.5, 3.1.6).
- 12.13.13. The Appeal Proposals for 1,200 dwellings would make a considerable contribution to the residual requirement of some 7,300 up to the end of the plan period, and the 30% of affordable houses would both be in line with policy and help to meet a significant need in Newmarket (12.6.1, 12.6.2, 12.6.5). The sustainable distribution of housing is considered separately (12.14.5).

- 12.13.14. Leaving aside the distribution point, the Appeal Proposals would comply with the housing policies of the Development Plan.

Employment

- 12.13.15. Between them Policies CRS2 and E2 of the East of England Plan and Policies CS1 and CS6 of the Core Strategy seek to encourage employment developments in the market towns to promote more sustainable communities and indicate that a minimum of 16 ha of additional greenfield employment land will be allocated in the District; of which 5 ha would be in Newmarket (3.1.5, 3.1.6).
- 12.13.16. Although the employment element of the Appeal Proposals is stated in the application to be a maximum of 36,000 m² of business uses, they would occupy some 10 ha of the site, and they would benefit the general employment range in the town (12.7.1, 12.7.5).
- 12.13.17. The Appeal Proposals would comply with the employment policies of the Development Plan.

Countryside

- 12.13.18. Between them, Policies SS8 and CRS1 of the East of England Plan, Policy CS3 of the Core Strategy and Policy 9.1 of the Local Plan seek to protect the landscape, especially around the periphery of the market towns (3.1.5, 3.1.6, 3.1.7).
- 12.13.19. The Appeal Site is outside the settlement boundary established in the Local Plan Inset Map 3 (3.1.7) and therefore considered to be in the countryside where development of the kind proposed would be contrary to the Development Plan policies unless justified (see 12.14.6 below).

Agricultural Land

- 12.13.20. Local Plan Policy 9.1 aims to avoid the unacceptable loss of agricultural land (3.1.7) and, in this case, there would be the loss of some 58 ha of best and most versatile agricultural land (12.8.2). Nevertheless, this would not be unacceptable if there were a justified need for such development in this location; a matter considered below (12.14.1 - 12.14.5).

Heritage

- 12.13.21. Between them, Policies CRS1 of the East of England Plan and Policy CS3 of the Core Strategy seek to preserve the historic environment and the character and setting of the market towns (3.1.5, 3.1.6).
- 12.13.22. There would be no direct impact upon the historic character or setting of Newmarket and, without any effect on the prosperity of the horseracing industry, there would also be no material indirect effects (12.4.31, 12.4.33, 12.4.36, 12.4.37).
- 12.13.23. Accordingly, the Appeal Proposals comply with the heritage policies of the Development Plan.

High Quality Design

- 12.13.24. Policies ENV7, CS5 and 9.2 of the East of England Plan, the Core Strategy and the Local Plan respectively call for high standards of design that are complementary to the character of the area (3.1.5, 3.1.6, 3.1.7).
- 12.13.25. The Design and Access Statement (DAS) submitted with the application gave sufficient detail to ensure a high quality of design for the residential element of the development (12.9.4, 12.9.4). However, the DAS gave much less information about the design of the Local Centre and the Community Centre and Pavilion and there was no explanation of the rationale behind the choice of uses (12.9.8). These deficiencies cannot be overcome by planning conditions or obligations so there remains a level of uncertainty about the design and appearance of the development.
- 12.13.26. Accordingly, like in the Filton and Ipswich appeals referred to by SHNL (7.7.8, 7.7.11), it cannot be concluded that the development would necessarily comply with the design policies of the Development Plan.

Air Quality

- 12.13.27. Whilst not specific to air quality, Policy CS2 of the Core Strategy aims to protect the natural environment and that would be achieved (3.1.6, 12.10.1).

Sustainability

- 12.13.28. Policies SS1, SS2 and SS4 of the East of England Plan and Vision 1 and the Spatial Objectives of the Core Strategy all call for the development of more sustainable communities. In addition, Policy ENG1 encourages the supply of energy from decentralised sources (3.1.5, 3.1.6).
- 12.13.29. It has already been concluded that the Appeal Proposals would help to achieve more sustainable modes of travel (12.13.4), and the site is on the north-eastern edge of the most sustainable market town in the District (2.1.1, 4.3.5, 5.4.25). Furthermore, the suggested conditions would ensure sustainable development of the site, for example sustainable drainage (No 27) renewable energy generation on the site (No 30), waste management and recycling (No 53), sustainable materials (No 55) and sustainable building techniques (Nos 61 & 62) (Annex A).
- 12.13.30. Leaving aside the wider aspect of the sustainable distribution of housing throughout the District, the Appeal Proposals would comply with the sustainability policies of the Development Plan.

Infrastructure

- 12.13.31. Policy CS13 and 14.1 of the Core Strategy and the Local Plan respectively call for the provision of the necessary infrastructure to mitigate the impacts of developments. Local Plan Policy 10.4 also seeks the provision of outdoor play space as an integral part of developments (3.1.6, 3.1.7).
- 12.13.32. The main Section 106 unilateral obligation would provide extensive sums towards the enhancement of the local infrastructure. These include contributions towards schooling, libraries, health services, bus services and cycling. In addition considerable areas of open space in the form of sports

pitches, allotments, and play areas of various forms would be provided as well as a Community Centre and Pavilion (10.1.2 - 10.1.5).

12.13.33. Despite arguments to the contrary, it has been concluded above that the obligation would be enforceable (12.11.19).

12.13.34. The Appeal Proposals would therefore comply with the infrastructure policies of the Development Plan.

Summary of Compliance with the Development Plan

12.13.35. As concluded above, leaving aside the sustainable distribution of housing, the Appeal Proposals would comply with the policies of the Development Plan with respect to highways matters, the horseracing industry, ecology, housing, employment, heritage, air quality, sustainability and infrastructure provision (12.13.5, 12.13.8, 12.13.11, 12.13.14, 12.13.17, 12.13.23, 12.13.27, 12.13.30, 12.13.34).

12.13.36. They would not fully comply with the Development Plan in respect of design, countryside or agricultural land policies (12.13.19, 12.13.20, 12.13.26) though the latter two considerations need to be considered in relation to the sustainable distribution of housing (12.14.1 - 12.14.8).

12.14. Other Material Considerations

Housing Distribution

12.14.1. Following the High Court judgment, the Development Plan has no spatial distribution for the housing provision of 10,100 dwellings in the District for the period from 2001 to 2031 (3.1.2, 3.1.6, 4.6.3).

12.14.2. Nevertheless, Policies SS1 and SS4 of the East of England Plan and Vision 1 and paragraph 2.5.9 of the Core Strategy do generally seek to direct developments to the market towns, of which Newmarket is the largest and most sustainable (3.1.5, 3.1.6, 4.6.3). On that basis, the Appellant argued that Newmarket was the obvious place for new development and, with the various constraints of the policy protected studlands and other horseracing interests, the only realistic location for an urban extension was to the north-east, in the location of Hatchfield Farm (4.3.11). He pointed out that this was the conclusion throughout the development plan process leading to the adoption of the Core Strategy and that it was consistent with an acknowledgement of the severe constraints around the other settlements (4.3.5).

12.14.3. The Council accepted that Newmarket is the most sustainable of the market towns in the District (5.4.25). However, even with the constraints from the horseracing industry round Newmarket (4.3.10), the Infrastructure and Environmental Capacity Appraisal showed that an alternative distribution could be achieved within the environmental capacity of the settlements (5.4.16).

12.14.4. There is no reason to conclude that all sites in the Strategic Housing Land Availability Assessment (SHLAA) would necessarily come forward, or that others would not. However, it indicates roughly a 500 dwelling shortfall between the available housing sites and the present housing requirement, but that would not be sufficient to justify a 1,200 dwelling urban extension at Hatchfield Farm (5.4.13, 5.4.17 - 5.4.20).

- 12.14.5. The Appellant had not considered the merits of sites outside the Newmarket area (5.4.24, 6.9.16) and, as things stand, even if there were a need for some additional dwellings to the north-east of Newmarket there is no presently identified requirement for 1,200, or any other particular number of dwellings. When taking into account for example the three themes of sustainable development in paragraph 10 of the draft NPPF, this would not be the inevitable outcome of the Council's Single Issue Review, as assumed by the Appellant (4.5.4, 4.5.6, 6.9.13, 6.9.15).

Justification in the Countryside

- 12.14.6. Of the 10,100 new dwellings required by the Core Strategy, only a limited number could be sited on brownfield sites, with about 4,800 left to be accommodated on greenfield land (4.3.4). The Local Plan's Inset Map 3 shows the Appeal Site to be outside the settlement boundary for Newmarket and therefore in the countryside, where Policy 9.1 requires justification for developments such as the Appeal Proposals (3.1.7, 4.3.6).
- 12.14.7. That justification would be made out if it were shown that there was no alternative to the proposed development but, as indicated above, that is not the case (12.14.5).
- 12.14.8. The same can be said about the loss of agricultural land (12.13.20).

National Planning Policy

Housing Supply

- 12.14.9. The Council accepted that there was a supply of only 3.6 years of housing land within the District (4.5.2, 5.2.8, 7.10.14). Paragraph 71 of PPS3 says that, where the land supply is less than five years, planning applications for housing developments should be considered favourably, having regard particularly to the considerations in paragraph 69.
- 12.14.10. In essence, paragraph 69 says that, amongst other things, the site should be suitable for housing, be an effective and efficient use of land and comply with the housing objectives and the spatial vision for the area (5.6.3).
- 12.14.11. As noted above, there is no spatial distribution of the housing requirement (12.13.12). As far as it goes, the spatial vision is to direct developments to the most sustainable settlements such as Newmarket, but there is no sound evidence to show that all, or any, of the 1,200 dwellings proposed for Hatchfield Farm would be chosen when new comparative consideration is given to the distribution of possible housing developments (12.14.5). In the absence of this evidence, it is not clear that the proposed development would be an effective and efficient use of this greenfield land (4.5.9, 5.6.3).
- 12.14.12. Accordingly, the inadequacy in the five year housing land supply provides little support to the Appeal Proposals in this case. The contribution the site would make to the housing supply is considered below (12.14.18).

Prematurity

- 12.14.13. Paragraph 72 of PPS3 says that planning applications should not be refused solely on the grounds of prematurity. At the Inquiry, there were two

interpretations of this term prematurity. Either it referred to bringing forward a site earlier than phased, or alternatively allowing a development before the completion of the development plan (5.6.5, 5.6.6). Whilst the latter interpretation is most relevant in this case, it is the effect of the decision that should be considered.

- 12.14.14. The housing distribution of the Core Strategy across the whole District was quashed because of inadequacies in the Strategic Environmental Assessment of the Plan. In effect, the Judge said that the consultees would not know from the report what the reasons were for rejecting any alternatives to the urban development to the north-east of Newmarket (4.6.2, 5.4.11, 7.8.4).
- 12.14.15. Despite this, the Appellant is seeking very much the same 1,200 dwelling urban extension that was quashed, which SHNL argued would be a breach of the principle of sincere co-operation of full mutual respect between EU Member States (7.8.6). Whilst the Appellant considered the extant part of the Core Strategy was underpinned by an SEA and a lawful evidence base (4.6.3), the Council had just started a Single Issue Review to remedy these legal deficiencies (5.4.6, 7.8.10).
- 12.14.16. This review would be free to consider a shorter plan period (5.4.6), and therefore a lower total housing requirement. With the likely demise of the regional tier of the Development Plan, the annual requirement could also be reviewed (5.4.5). At a minimum however, the review will have to consider alternative distributions of the housing provision across the District and be supported by a new Strategic Environmental Assessment (SEA) (5.4.26). The traffic implications of alternative housing distributions would be taken into account as part of this work (4.8.20, 6.9.10, 6.9.16). Excluding any possible slippage, the review was programmed for adoption by December 2013 (5.2.16) and, if the Appellant was right that the Appeal Site would inevitably be identified as a strategic location for an urban extension, then completions could come on line in 2015/16; about two years later than the Appellant's anticipated date of September 2013 (5.2.11).
- 12.14.17. Taking into account the large scale of the development, this September 2013 date may be a little optimistic, because it relied upon a number of factors, such as waiting for the challenge period for any permission to expire, complex negotiations with developers, who might or might not achieve the planned completion rate, implementing the pre-development conditions, and there could also be delays in providing foul sewage treatment capacity (5.2.11, 7.10.18).
- 12.14.18. The Appellant anticipated the completion of some 200 dwellings within the current five year period (4.5.2, 5.2.12) but, at the anticipated rate of 80 dwellings per annum, a two year period would suggest that the completion of some 160 dwellings would be delayed, though there is no certainty over when a subsequent application would be made (4.6.7). Tattersalls put the figure at between 100 and 125 dwellings, which they equated to just a four month supply (6.9.5).
- 12.14.19. Whatever the actual figure, it is likely to be in the range of 100 to 200 dwellings and there is already a shortfall of 483 dwellings against the target (4.5.2), which the Appeal Proposals would help to rectify. There is

also a considerable need for affordable houses, and 50 of the first 200 would be affordable (4.4.1, 4.5.3).

- 12.14.20. To set against these short term benefits, the Single Issue Review would properly compare the long term sustainable alternative locations for housing developments in a way that simply cannot be carried out in determining a planning appeal. It would also give local residents an opportunity to influence the planning of their own communities, for example, it was said that residents of the other market towns would welcome additional housing (5.1.1 - 5.1.5, 7.8.18, 8.1.10, 9.7.3).
- 12.14.21. Even though the Single Issue Review has a long way to go before adoption, to allow such a large development, of which the housing element alone would amount to some 16% of the residual requirement for the whole District, would pre-empt the proper operation of the Development Plan process, as referred to in paragraph 17 of The Planning System: General Principles (4.6.2, 5.2.4, 5.6.9, 6.11.4, 7.8.12, 7.8.23). This conclusion appears to be generally in line with that reached in the Ipswich urban extension appeal referred to by SHNL (7.8.19).

Ministerial Statement

- 12.14.22. The written Ministerial Statement 'Planning for Growth' was issued in March 2011 and it says that the Government has a clear expectation that sustainable growth promoting development should be approved (4.3.15, 5.6.16, 6.9.7, 7.3.3). Although it is concluded above that the Appeal Scheme would meet the general sustainability policies of the Development Plan, it cannot be said that it would comply with the most sustainable distribution of housing developments, particularly with the absence of evidence that such a large development is required (12.14.11).
- 12.14.23. The Ministerial Statement goes on to urge Local Planning Authorities to press ahead without delay in preparing up-to-date development plans, and that is just what the Council is doing (5.6.16).
- 12.14.24. Therefore, the Ministerial Statement provides little support for the Appeal Proposals.

Draft National Planning Policy Framework

- 12.14.25. At present, the National Planning Policy Framework (NPPF) carries very limited weight because it is still in its first draft form and, in addition to the usual consultation process, it will also receive Parliamentary scrutiny (5.6.17, 6.11.1).
- 12.14.26. What weight can be ascribed to the NPPF would principally be in favour of sustainable developments where the development plan is absent, silent, indeterminate, or where relevant policies are out of date (5.6.17, 5.6.18). In this case, the spatial distribution of housing provision in the District is missing from the Development Plan, but it cannot be shown that this scheme would conform to the most sustainable distribution without completion of the Single Issue Review (12.14.20).

12.15. Overall Conclusions

- 12.15.1. Excluding consideration of the sustainable distribution of housing, the Appeal Proposals would generally comply with the policies of the Development Plan (12.13.35) apart from the design, countryside and agricultural land policies (12.13.36). These latter two considerations could potentially comply with the policies if the Appeal Site were considered to be part of a sustainable distribution of housing in the District.
- 12.15.2. However, there is no spatial distribution in the Development Plan and no clear requirement for 1,200 dwellings, and with them the other planned uses on the Appeal Site (12.14.5).
- 12.15.3. The absence of a five year housing land supply and the Planning for Growth statement provide little support in this case and neither does the draft NPPF (12.14.12, 12.14.24, 12.14.26).
- 12.15.4. By allowing the appeal, somewhere in the order of 100 to 200 dwellings, up to 50 of which would be affordable, could be brought forward at an earlier date than waiting for the Single Issue Review. This would help to meet a considerable immediate need in the District.
- 12.15.5. To set against this, the District's spatial distribution should be reinstated by about December 2013 through the Single Issue Review. In the meantime, it would be premature to permit this strategic scheme which represents such a large proportion of the District's residual housing requirement on a site which may or may not be chosen when properly evaluated through the democratic development plan process (12.14.21). Furthermore, there is no sound evidence to show how the increased water demand would be satisfactorily met in the future (12.1.19).

13. Recommendations

- 13.1.1. I recommend that the appeal be dismissed.
- 13.1.2. If however the Secretary of State should be considering allowing the appeal there would need to be an Appropriate Assessment under the Habitats Regulations (12.1.21).
- 13.1.3. Thereafter, if the Secretary of State considers that the appeal should be allowed, and planning permission granted, the recommended planning conditions are at Annex A.

J I McPherson
Inspector

Annex A

Recommended Planning Conditions

Submission of Reserved Matters Applications

1. Approval of the details of the layout, scale, appearance, and landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority.

Applications for the approval of the reserved matters relating to phase 1 (as shown on drawing 07.183/39b), and which shall include all local areas of play (LAPs) and other incidental open space associated with phase 1, including details of the park and ride, allotments, sports pitches, multi use games area (MUGA), Community Centre, local equipped area for play (LEAP), neighbourhood equipped play area (NEAP), and D1, A1, A3, A4 and A5 uses shall be made to the Local Planning Authority before the expiration of 3 years from the date of the permission.

Applications for the approval of all the reserved matters covering the entire site shall be made to the Local Planning Authority before the expiration of 10 years from the date of the permission.

Reason: The application is for outline permission only and gives insufficient details of the proposed development and to comply with Sections 91 and 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The residential elements of sub phase 1a, as shown on drawing 07.183/39b, shall be begun before the expiration of 2 years from the date of approval of the reserved matters submitted pursuant to residential phase 1.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning & Compulsory Purchase Act 2004), and to ensure that the development makes a material contribution towards meeting the Authority's five year housing land supply.

3. Following commencement of the development in accordance with Condition 2, the remainder of the development hereby permitted shall be begun before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning & Compulsory Purchase Act 2004).

Phasing

4. The development hereby approved shall be developed and completed in the order of sub phases 1a, 1b, 2a, 2b, and then 3, as identified on drawing no 07.183/39b. Where any conditions attached to this consent refer to sub phases these shall be taken as referring to sub phases 1a, 1b, 2a, 2b and 3 as shown on drawing no 07.183/39b

Reason: In the interests of ensuring the development is constructed in a satisfactory order.

Scope of Permission

5. The development hereby permitted shall accommodate no more than 1,200 dwellings.

Reason: In the interest of defining the scope and impact of this permission.

6. The development hereby permitted shall include no more than 1,000m² of D1 use, or uses, floorspace.

Reason: In the interest of defining the scope of this permission and to ensure a mixed use development.

7. The development hereby permitted shall include no more than 300m² of A1, A3, A4 and A5 use or uses in total.

Reason: In the interest of defining the scope of this permission and to ensure a mixed use development.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the development hereby permitted shall accommodate no more than 10,000 m² of B1a employment space use, with the remaining floorspace, up to the overall maximum of 36,000 m², being B1c use.

Reason: To ensure that the amount of external motor vehicle traffic generated by the development can be accommodated within the capacity of the local highway network.

9. No more than 900 dwellings shall be disposed of until at least 50% of the employment land (by gross external floor area) has been occupied.

Reason: To ensure the employment land is phased at least in part with the residential land to assist in trip internalisation.

Development to be in accordance with the plans

10. The development hereby permitted shall be carried out in accordance with the following approved plans:-

- Application Site Plan (No. 07.183/37b)
- Development Framework Plan (No. 07.183/44b)
- Movement Plan (No. 07.183/40c)
- Building Heights (No. 07.183/41c)
- Density (No. 07.183/42d)
- Phasing (No. 07.183/39b)
- Open Space (No. 07.183/43b)
- Northern A142 Access (No. 0719-SK-32-B)
- Southern A142 Access (No. 0719-P-02-D).

Reason: For the avoidance of doubt and in the interests of proper planning.

11. All reserved matters submissions shall be in accordance with the layout and disposition of uses indicated on drawing number 07.183/44b, received by the Local Planning Authority on 26th February 2010.

Reason: In the interests of ensuring a satisfactory development.

12. All reserved matters submissions shall be in accordance with the density indicated on drawing number 07.183/42d, received by the Local Planning Authority on 26th February 2010.

Reason: In the interests of ensuring a satisfactory development.

13. All reserved matters submissions shall be in accordance with the movement plan indicated on drawing number 07.183/40c (as amended by the northern traffic light signal controlled junction shown on drawing 0719-SK-32-B), received by the Local Planning Authority on 26th February 2010.

Reason: In the interests of ensuring a satisfactory development.

14. All reserved matters submissions shall be in accordance with the building heights indicated on drawing number 07.183/41c, received by the Local Planning Authority on 26th February 2010.

Reason: In the interests of ensuring a satisfactory development.

15. All reserved matters submissions shall be in accordance with the overall amount (15.38 hectares) and disposition of open space as indicated on drawing number 07.183/43b, received by the Local Planning Authority on 26th February 2010.

Reason: To provide sufficient open space in the interests of ensuring a sustainable development.

Local Centre

16. The 'Local Centre' shown indicatively with a peach coloured rectangle on drawing No 07.183/44b shall be marketed, following the disposal of the 250th residential dwelling (and marketed again following the disposal of the 750th and 1000th residential dwelling if necessary), in accordance with a marketing scheme which shall have been submitted to the LPA and have been approved in writing. The site to accommodate the Local Centre shall be serviced and made ready for construction prior to the disposal of the 351st residential dwelling.

Reason: To encourage the development of this market-led element within a wider mixed use development, in the interests of sustainability.

Highway Works

(The highway works shall be carried out in accordance with the submitted plans unless minor variations are required to comply with safety audits)

17. No part of the development hereby approved shall be brought into use unless and until the A142/A14 junction improvement works as shown on the following drawing numbers, and incorporating Urban Traffic Management and Control (UTMC), have been completed, and thereafter approved in writing by the Local Planning Authority: -

- 0719-P-05-B, and
- 0719-P-06-B

Reason: In the interests of highway safety.

18. The following highway works shall be completed prior to the first use or occupation of any part of the development in accordance with specific details which have first been submitted to and approved in writing by the Local Planning Authority: -

- The A142 / Northern site access junction shall be a traffic signal controlled crossroads incorporating Urban Traffic Management and Control (UTMC) in accordance with the details shown on plan 0719-SK-32-B,
- The A142 / Southern site access junction shall be a roundabout junction with Willie Snaith Road in accordance with the details shown on plan 0719-P-02-D,
- The southern internal site access junction shall be a signal controlled junction on the internal link road, incorporating UTMC in accordance with the details shown on plan 0719-SK-035-A,
- The internal link road connecting the Northern and Southern site access junctions shall be in accordance with the details shown on the Development Framework Plan, reference 07.183/44b,
- The puffin crossing across Fordham Road shall be in accordance with the details shown on plan 0719-P-03-C,
- The Studlands Park Avenue TOUCAN crossing link to cycle route shall be in accordance with the details shown on plan 0719-P-03-C,
- The TOUCAN crossing south of Fordham Road / Willie Snaith Road roundabout, and Zebra crossing at Tesco entrance shall be in accordance with the details shown on plan 0719-P-02-D,
- The shared use footway/ cycle track along the west side of Fordham Road between Willie Snaith Road and Noel Murless Drive shall be in accordance with the details shown on plan 0719-P-12-A,
- The shared use footway / cycle track along east side of Fordham Road between Studlands Park Avenue and Willie Snaith Road shall be in accordance with details which shall have first been submitted to, and agreed in writing by, the Local Planning Authority,
- The improved crossing facilities for pedestrians across Snailwell Road at its junction with Fordham Road shall be in accordance with details which shall have first been submitted to, and agreed in writing by, the Local Planning Authority. Those details shall include dropped kerb crossings and tactile paving, and
- The bus stops on Fordham Road adjacent to the proposed Park & Ride site shall be in accordance with the details shown on plan 0719-P-09-A.

Reason: In the interests of highway safety.

19. The following highway works required to serve the development shall be completed prior to the occupation of the 476th dwelling in accordance with specific details which have first been submitted to and approved in writing by the Local Planning Authority:–
 - The conversion of the Studlands Park Avenue/ Exning Road junction to a mini roundabout shall be in accordance with the details shown on plan 0719-P-08-A.

Reason: In the interests of highway safety.

20. The following highway works required to serve the development shall be completed prior to the occupation of the 501st dwelling in accordance with

specific details which have first been submitted to and approved in writing by the Local Planning Authority:–

- The Snailwell Road pedestrian access to the site shall be in accordance with the details shown on the Movement plan, reference 07 183/40c, and
- A horsewalk along the east side of Snailwell Road from the access to Pegasus Stables to the junction of Snailwell Road and Fordham Road and a horse crossing at Pegasus Stables to the new horsewalk shall be provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety

Bus Service Provision

21. Prior to the occupation or use of any part of the development, details shall have been submitted to and approved in writing by the Local Planning Authority of a bus service between the development site and the bus and railway stations. The details shall include for real time passenger information (RTPI) enabled buses that shall run with a 30 minute frequency, typically between the hours of 07:00-19:00 Monday to Saturday. The service shall be operating in accordance with the approved details.

Reason: In the interests of sustainable development.

Provision of Open Space

22. Prior to the commencement of the development a revised assignment of open space uses up to the overall amount specified in Condition 15 shall have been submitted to and approved in writing by the Local Planning Authority. The development and all reserved matters applications shall thereafter proceed in accordance with any such revised details.

Reason: To provide sufficient open space in the interests of ensuring a sustainable development.

Sports Pitches and Play Areas

23. Details of the relevant sports pitches and play areas, including their layouts, fencing and play equipment, shall have been submitted to and approved in writing by the Local Planning Authority before commencement of any reserved matters approval. The approved details shall be implemented before occupation of the relevant reserved matters site area.

Reason: In the interests of providing the necessary sports and play spaces for residents.

Design Code

24. Prior to the submission of the first of the reserved matters applications, a Design Code covering the built area of the development shall have been submitted to and approved in writing by the Local Planning Authority. The Design Code shall be prepared in accordance with the principles and parameters established in the outline application. It shall include both strategic and more detailed elements. Prior to the submission of the Design Code, the intended scope of the Design

Code shall have been submitted to and approved in writing by the LPA. The scope of the Design Code shall include: -

- a. Architectural and sustainable construction principles (including Secure by Design),
- b. Character areas,
- c. Street types and public realm,
- d. Car parking principles,
- e. Boundary treatments,
- f. Building types and uses,
- g. Building heights,
- h. Sustainable Urban Drainage Systems,
- i. Building materials,
- j. Environmental performance,
- k. Implementation of the Design Code,
- l. The proportion of homes to be designed to lifetime home standard and their distribution,
- m. Landscaping within the built area, and
- n. Details of the Design Code review period.

Reason: To ensure compliance with the provisions of the Design and Access Statement which accompanied the planning application, including all sustainability proposals, in the reserved matters applications.

25. Any application for approval of reserved matters shall be in accordance with the Design Code approved by the Local Planning Authority under Condition 24 and it shall incorporate a statement demonstrating that compliance. The development hereby permitted shall be completed in accordance with the approved Design Code.

Reason: To ensure compliance with the Design Code approved under Condition 24.

Community Facilities Management Plan

26. Prior to commencement of the development, a Community Facilities Management Plan (CFMP) shall have been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the management responsibilities and maintenance schedules for the Community Centre and Pavilion. The CFMP shall be implemented as approved.

Reason: In the interests of ensuring satisfactory management and maintenance of the Community Centre and Pavilion.

Surface Water Drainage

27. No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in Annex F of PPS25 (or any subsequent version), and the results of the assessment provided to the Local Planning Authority. The submitted details shall: -
 - a. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site

and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- b. include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To ensure satisfactory surface water drainage of the site without causing flooding elsewhere.

28. No building hereby permitted shall be occupied until the sustainable drainage scheme for the relevant area of the site has been completed in accordance with the approved details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

Reason: To ensure satisfactory surface water drainage of the site without causing flooding elsewhere.

Foul Drainage Strategy

29. No development shall commence until a Foul Drainage Strategy (FDS) for the whole development has been submitted to and approved in writing by the Local Planning Authority. This strategy shall identify the phases of development with their corresponding foul sewage flows, the means of their conveyance to the treatment works and the means by which they would be treated, together with the views of the Statutory Water Company on the scheme. The development shall be implemented in accordance with the approved strategy.

Reason: to ensure the satisfactory disposal of all foul sewage from the development

Renewable Energy

30. Prior to the submission of the first of the reserved matters applications, a Strategic Sustainable Energy Plan (SSEP) shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a strategic and sustainable approach to energy across the site in the interests of reducing carbon dioxide emissions.

31. No phase of the development shall commence until a Renewable Energy Statement (RES) for that phase has been submitted to and approved in writing by the Local Planning Authority. That statement shall demonstrate compliance with the Strategic Sustainable Energy Plan and show that the total predicted carbon emissions for that phase will be reduced by at least 10% through the implementation of on-site renewable energy sources. The statement shall include a schedule of proposed on-site renewable energy technologies (including the consideration of Combined Heat and Power), their respective carbon reduction contributions, size, specification, location, design and maintenance programme.

The approved renewable energy technologies shall be fully installed and operational prior to occupation of any of the approved buildings to which the

reserved matters application relates and shall thereafter be maintained and remain fully operational in accordance with the approved maintenance programme.

Reason: To ensure that future phases of the development meet potential higher standards in renewable energy policies.

Construction Method Statement

32. Prior to commencement of development a Construction Method Statement (CMS) shall have been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period, and shall provide for: -
- a. Site access for construction and workers' vehicles,
 - b. The parking of vehicles of site operatives and visitors,
 - c. Loading and unloading of plant and materials,
 - d. Storage of plant and materials used in constructing the development,
 - e. The erection and maintenance of security hoardings,
 - f. Wheel washing facilities,
 - g. Measures to control the emission of dust and dirt during construction,
 - h. A site waste management plan for recycling/disposing of waste resulting from demolition and construction work,
 - i. All HGV construction vehicles using only Junction 37 of the A14 for access and egress to the site,
 - j. The times of day of work and deliveries / collections,
 - k. The times of day when construction will take place.

Reason: In the interests of amenity, highway safety, and in the interests of protecting the effective operation of the Horseracing Industry adjacent to the site and within and around Newmarket.

Construction Environmental Management Plan

33. Prior to commencement of development a Construction Environmental Management Plan (CEMP) shall have been submitted to the Local Planning Authority and have been approved in writing. The approved CEMP shall satisfy the requirements set out in Section 10.5 of the submitted Environmental Statement, and shall be implemented during the construction process.

Reason: In the interests of protecting any on site biodiversity, in accordance with the provisions of PPS9.

Ecological Management

Ecological Management Plan

34. Prior to commencement of development a long term Ecological Management Plan (EMP) for the protection of the features of ecological interest on the site shall have been submitted to and approved in writing by the Local Planning Authority. The EMP shall include provision for an annual monitoring report to be prepared and submitted in September each year during the construction of the development and until the development is complete.

Reason: To protect the ecology and biodiversity of the site.

Plants

35. No development shall commence until a mitigation package for the preservation of the Red Data Book plants found on the site has been prepared and approved in writing by the Local Planning Authority. The mitigation package shall include any methods of translocation, timetable, long term management and monitoring. The monitoring scheme shall include for annual monitoring of the translocated material and other plants, and for the submission of proposals to the Local Planning Authority for the replacement of plants that are not subsequently found on the site.

Reason: To protect the ecology and biodiversity of the site.

Reptiles

36. No ground clearance shall take place on any part of the site before a scheme has been submitted to and approved by the Local Planning Authority for the survey of areas identified in the Reptile Habitat Suitability Survey as good quality habitat for reptiles. That scheme shall include mitigation measures and the scheme shall be implemented as approved.

Reason: To protect the ecology and biodiversity of the site.

Bats

37. Prior to commencement of each phase of the permitted development all trees that would be affected by that phase of the development shall be surveyed for the presence of, or use by, bats. No development shall take place until full details of the bat-related mitigation and enhancement measures for the entire site shall have been submitted to and approved in writing by the Local Planning Authority. Such details shall include details of a post construction lighting plan, details of any months when clearance or other works will not take place, as well as details as to how the development would comply with the requirements of section 4.2 of the WSP Environmental 'Hatchfield Farm: Bat Internal Building Inspections and Emergence and Activity Surveys' report dated September 2010. The approved scheme shall thereafter be implemented in accordance with the approved details.

Reason: To protect the ecology and biodiversity of the site.

Badgers

38. Prior to commencement of the development, specific details of the badger related mitigation measures for the entire site shall have been submitted to and approved in writing by the Local Planning Authority. Such details shall include how the development would comply with the requirements of section 4 of the URS 'Environmental Statement Addendum (Badger Assessment, August 2011)' report. The scheme shall thereafter be implemented in accordance with the approved details

Reason: To protect the ecology and biodiversity of the site.

Birds

39. A survey for nesting birds shall be undertaken by a competent ornithologist prior to the commencement of any vegetation removal or ground clearance during the months of March and April, the methodology having previously been approved in

writing by the Local Planning Authority (LPA). The results of the surveys and the appropriate mitigation measures for each phase shall have been approved in writing by the LPA prior to the vegetation removal or ground clearance taking place and the mitigation measures shall be implemented as approved.

Reason: To protect the ecology and biodiversity of the site.

40. No phase of the development shall be occupied until the ecological mitigation and enhancement measures have been implemented in accordance with the approved details.

Reason: To protect the ecology and biodiversity of the site.

Landscape Management Plan

41. Prior to submission of the first reserved matters applications, a Landscape Strategy covering the strategic landscape areas of the development shall have been submitted to and approved in writing by the Local Planning Authority. The Landscape Strategy shall include the principles of the following: -
- a. Hard and soft landscaped areas, play areas, adventure play spaces, mounding, surface materials and boundary treatments,
 - b. Strategic SUDS features such as balancing ponds, including their edge treatments and any proposed bunding,
 - c. Strategic earth modelling, mounding, re-grading and/or embankment areas,
 - d. Strategic planting details within soft open space areas,
 - e. The location, size and access arrangements for public open space, and
 - f. Vehicular and pedestrian access points, maintenance tracks, footpaths and cycleway routes.

The Landscape Strategy shall not include areas of landscape or public realm that are otherwise covered by the Design Code required by Condition 24.

Reason: To ensure appropriate and satisfactory landscaping of the site in the interests of visual amenity and biodiversity.

42. Prior to commencement of any area covered by any reserved matters application, a landscaping and planting scheme (including detailed designs and specifications) that would deliver the relevant elements the approved Landscape Strategy shall have been submitted to and approved in writing by the Local Planning Authority. The details shall be accompanied by a design statement demonstrating how the proposals accord with the approved Landscape Strategy. The scheme shall be implemented as approved.

Reason: To ensure appropriate and satisfactory landscaping of the site in the interests of visual amenity and biodiversity.

43. No development within a part of the site for which reserved matters approval is sought shall take place until such time as a land survey, tree survey and arboricultural implications assessment, applicable to the site in accordance with BS:5837:2005, have been submitted to and approved in writing by the Local Planning Authority. The surveys shall include: -
- a. The location of all trees, shrub masses and hedges,
 - b. The location of buildings and other structures, boundary features and services,

- c. Spot heights of ground levels throughout the site,
- d. The location of trees on land adjacent to, or which overhang, the development site,
- e. A categorization of trees or groups of trees for their quality and value in accordance with Table 1 of the British Standard, and
- f. The protective fencing to be provided around each retained tree or hedge.

Reason: To ensure appropriate and satisfactory landscaping of the site in the interests of visual amenity and biodiversity.

44. No development shall take place until a schedule of landscape maintenance for a minimum period of five years from the date of implementation of each phase has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.

Reason: To ensure that the landscaped areas are maintained in a healthy condition in the interests of visual amenity.

45. Any trees or plants provided as part of a landscaping scheme which, within a period of five years of the planting date, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted.

Reason: To ensure replacement trees or plants are planted if the originals die before becoming properly established.

Travel Plans

46. Prior to the commencement of development, residential and employment Travel Plans shall have been submitted to and approved in writing by the Local Planning Authority. Such approved arrangements shall be implemented in full and in accordance with the timetables for implementation as set out in the approved Travel Plans.

Reason: In the interests of sustainable development.

Bus Stop Details

47. Prior to the commencement of development, details of all bus stops to be provided within the site shall have been submitted to and approved in writing by the Local Planning Authority. The details shall include Disability Discrimination Act compliant facilities, bus shelters, and Real Time Passenger Information (RTPI) facilities and shall thereafter be implemented in accordance with the agreed details prior to the first use or occupation of the development.

Reason: In the interests of encouraging sustainable travel.

Horse Crossing and other HRI Mitigation

48. No development shall take place until details of the mitigation works to be undertaken at Rayes Lane/Fordham Road, Severals/Bury Road, St Mary's Square and the Lord Derby's Gap horse crossings have been submitted to and approved in writing by the Local Planning Authority. Those details shall be in accordance with drawing numbers HC01A, E811/02 CE Rev, HC04 and E811/03.

No development shall commence until the approved works have been completed.

Reason: To mitigate the effects of traffic from construction works and the future development traffic on the horseracing industry.

49. No development shall commence until details of the safety improvements to the Snailwell Road/Fordham Road horse crossing have been submitted to and approved in writing by the Local Planning Authority. Those details shall be in accordance with drawing HC02. No development shall commence until the approved works have been completed.

Reason: To mitigate the effects of traffic from construction works and the future development traffic on the horseracing industry.

50. No development shall commence until details of the Residents' Horse Awareness Plan designed to raise the awareness of the residents of the development to the operations of the Horseracing Industry within the town and the sensitivities of thoroughbred racehorses have been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the timescale for its production and distribution to all occupants of the development and it shall be implemented as approved.

Reason: To mitigate the effects of traffic from construction works and the future development traffic on the horseracing industry.

51. No development shall commence until details of the appearance and location of the additional signage to be provided on the roads entering Newmarket to warn drivers of the presence of horses have been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the works have been implemented as approved.

Reason: To mitigate the effects of traffic from construction works and the future development traffic on the horseracing industry.

Programme of Archaeological Work

52. Prior to commencement of development in accordance with a reserved matters approval for any part of the site, a programme of archaeological work for that part of the site shall have been submitted to and approved in writing by the Local Planning Authority. The programme shall be implemented as approved.

Reason: To ensure the proper recording of any archaeological remains.

Waste Management Plans

53. Prior to the commencement of development in accordance with a reserved matters approval for any part of the site, a Site Waste Management Plan (SWMP) shall have been submitted to and approved in writing by the Local Planning Authority. The SWMP shall include details of:-
- a. The anticipated nature and volumes of waste,
 - b. Measures to ensure the maximisation and the reuse of waste,

- c. Measures to ensure effective segregation of waste at source including waste sorting, storage, recovery and recycling facilities to ensure the maximisation of waste materials both for use within and outside the site,
- d. Provision of home composting within each residential plot,
- e. Steps to ensure the minimisation of waste during construction,
- f. Proposed monitoring and timing of the submission of monitoring reports,
- g. The proposed timing of the submission of a Waste Management Closure Report to demonstrate the effective implementation of the plan. Management and monitoring of construction waste during the construction lifetime of the development, and
- h. Central waste storage areas.

Reason: To ensure a sustainable approach to waste management on the site.

54. Prior to the commencement of development in accordance with a reserved matters approval for any part of the site, a Detailed Waste Management Plan (DWMP) shall have been submitted to and approved in writing by the Local Planning Authority. The DWMP shall include details of: -
- a. Systems for waste storage and recycling at each dwelling,
 - b. Central communal locations for collection of waste,
 - c. Access routes and stopping/turning/reversing locations for waste collection vehicles, and
 - d. Systems for the disposal of items including bulky waste, clinical waste and garden waste.

Thereafter, the implementation, management and monitoring of waste shall be undertaken in accordance with the approved details. No buildings shall be occupied until the approved facilities have been provided for that building and the approved facilities shall be retained thereafter.

Reason: To ensure a sustainable approach to waste management on the site.

Sustainable Materials Strategy

55. Prior to the submission of the first reserved matters application, a Sustainable Materials Strategy designed to assess the use of low environmental impact materials for the public realm and infrastructure works shall have been submitted to and approved in writing by the Local Planning Authority. That strategy shall include the use of timber from certified sources and the use of locally reclaimed and sourced materials. The strategy shall be implemented as approved.

Reason: To ensure a sustainable approach to the choice of materials.

Contaminated Land Investigation and Mitigation

56. No development shall commence on any part of the site for which reserved matters approval is sought until a scheme to deal with contamination has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public, buildings, and / or environment when the site is developed. Development shall not commence until the measures in the approved scheme have been implemented, including any decontamination/remediation as necessary.

Reason: To prevent pollution of the environment.

HGV loading and unloading

57. Details of the loading and unloading facilities for heavy goods vehicles (HGVs) servicing the new buildings on the development shall have been submitted to and approved in writing by the Local Planning Authority for each relevant phase of the development or building. The approved HGV loading and unloading facilities shall be available prior to occupation of the relevant phase or building in accordance with the approved details and shall thereafter be retained for that purpose.

Reason: To ensure that services and accesses are provided to the development without detriment to the surrounding highway network.

External Lighting

58. Details of any external lighting for each phase or building shall have been submitted to and approved in writing by the Local Planning Authority prior to the implementation of that phase or building. The approved works shall be completed prior to the occupation of that phase or building and thereafter be retained and maintained as approved.

Reason: To safeguard the amenities of the locality.

Noise Insulation

59. The residential dwellings on the site shall be constructed so as to provide sound attenuation against external noise and to provide internal noise levels no greater than:—
- a. Daytime levels of 35dBLAeq, 16hr within living accommodation, between 07:00 – 23:00 hrs, with windows shut and other means of ventilation provided, and
 - b. Night time levels of 30dB(A) LAeq 8hrs within bedrooms between 23:00 to 07:00 hrs, with windows shut and other means of ventilation provided.
- These levels exclude noise levels arising from construction operations on the site.

Reason: In the interests of ensuring a satisfactory noise environment for residents within the dwellings on the site.

Extraction Equipment

60. As part of the submission of any reserved matters application which includes a use within Class A of the Town and Country Planning (Use Classes Order)(1987)(as amended), details of the equipment for the purpose of extraction and/or filtration of fumes or odours shall be submitted to the Local Planning Authority. No Class A floorspace shall be occupied until those details have been approved in writing by the Local Planning Authority and the approved scheme has been implemented. Thereafter it shall be maintained in accordance with the manufacturer's instructions.

Reason: To protect the amenities of the nearby residents.

Code for Sustainable Homes

61. All residential buildings shall be constructed to meet the minimum level of the Code for Sustainable Homes applicable at the time that the relevant reserved matters application is approved. Prior to the occupation of any dwelling, a Post-Construction Stage assessment shall be undertaken for that dwelling. Should that assessment indicate that the minimum specified code level has not been met, appropriate mitigation to ensure that it is met, shall be undertaken. Prior to occupation of the dwelling, the developer shall submit to the Local Planning Authority a certificate from the Building Research Establishment or another certified third party, stating the relevant code level that has been met.

In the event that such a rating is replaced by a comparable national measure of sustainability for building design, the equivalent level shall be applicable to the proposed development.

Reason: To ensure the residential element of the development accords with current sustainable building standards.

BREEAM for Non-Residential Buildings

62. All non-residential buildings shall be constructed to meet the applicable BREEAM 'very good' or 'excellent' rating. No later than six months after occupation of any non-residential building, following a post construction review, a certificate shall be issued by an approved BREEAM Assessor to the Local Planning Authority indicating what BREEAM rating has been met.

In the event that such a rating is replaced by a comparable national measure of sustainability for building design, the equivalent level shall be applicable to the proposed development.

Reason: To ensure the non-residential element of the development accords with current sustainable building standards.

Annex B

Abbreviations used in the Report

ALMNP	Allotments, LEAP, MUGA, NEAPs, LAPs, open space and sports pitches (all grouped together)
(the) Appellant	The Earl of Derby
AA	Appropriate Assessment under the Habitats Regulations
AW	Anglian Water
ARCADY	Assessment of Roundabout Capacity and Delay
ANPR	Automatic Number Plate Recognition
BREEAM	Environmental Rating System for Buildings
CCC	Cambridgeshire County Council
CFMP	Community Facilities Management Plan
CA	Conservation Area
CEMP	Construction Environmental Management Plan
CMS	Construction Method Statement
CD	Core Document
CS	Forest Heath Core Strategy
'The' Council	Forest Heath District Council
CJEU	Court of Justice of the European Union
dB(A)	Decibels (A weighted)
DAS	Design and Access Statement
DfT	Department for Transport
DCLG	Department of Communities and Local Government
DWMP	Detailed Waste Management Plan
dpa	Dwellings per Annum
DPD	Development Plan Document
EAS Report	Newmarket Horse Crossings Safety Review
EEP	East of England Plan (Regional Spatial Strategy)
EMP	Ecological Management Plan
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
EU	European Union
LP	Forest Heath District Local Plan
FDS	Foul Drainage Strategy
GTA	Guidance on Transport Assessment
HRA	Habitats Regulations Assessment
HGVs	Heavy Goods Vehicles
HA	Highways Agency
HRI	Horseracing Industry
IECA	Infrastructure and Environmental Capacity Appraisal
JCE	Jockey Club Estates
LED	Light Emitting Diode
LPA	Local Planning Authority
LINSIG	Computer Model for Signal Controlled Crossings
LAPs	Local Areas of Play
LEAP	Local Equipped Area for Play
MOVA	Microprocessor Optimised Vehicle Attenuation
MUGA	Multi Use Games Area

NPPF	National Planning Policy Framework
NNR	National Nature Reserve
NRTF	National Road Traffic Forecast
NTEM	National Trip End Model
NE	Natural England
NEAP	Neighbourhood Equipped Play Area
PPSH	Parish Profile and Settlement Hierarchy
RTPI	Real Time Passenger Information
RSSs	Regional Spatial Strategies
RES	Renewable Energy Statement
SHNL	Save Historic Newmarket Limited
SoS	Secretary of State
SSCLG	Secretary of State for Communities and Local Government
SSSI	Site of Special Scientific Interest
SWMP	Site Waste Management Plan
SAC	Special Area of Conservation
SPA	Special Protection Area
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SSEP	Strategic Sustainable Energy Plan
SCC	Suffolk County Council
SA	Sustainability Appraisal
TG	Tattersalls Group, comprising Tattersalls Ltd, Darley Stud Management Co Ltd, Godolphin Management Ltd, Jockey Club Estates Ltd, Newmarket Trainers Federation and the Newmarket Stud Farmers Association
TEMPRO	Trip End Model Presentation Programme
TEU	Treaty of European Union
TA	Transport Assessment
TAL	Traffic Advisory Leaflet
UTMC	Urban Traffic Management and Control
WSELR	West Suffolk Employment Land Review
WMS	Written Ministerial Statement
WSP	A firm of Consultants

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DOCUMENTS

GENERAL DOCUMENTS

- G1** Notes of Pre-Inquiry Meeting
- G2** Inquiry Notification
- G3** Attendance Lists
- G4** Inspector's Inquiry Notes
 - 1 – Comments on Draft Conditions as at 11 July 2011
 - 2 – Comments on draft Heads of Terms for S106 as at 13 July 2011
 - 3 – Timescales for further Evidence
 - 4 – Comments on Draft Conditions as at 5 September 2011
 - 5 – Comments on draft UU
- G5** Bundle of third party letters
- G6** Bundle of Legal Cases
- G7** Bundle of Legal Cases
- G8** Appeal Questionnaire and attachments

CORE DOCUMENTS

National Guidance

- CD1** PPS1 Delivering Sustainable Development
- CD2** PPS1 Supplement: Planning and Climate Change, 2007
- CD3** PPS3 Housing
- CD4** PPS4 Planning for Sustainable Economic Growth
- CD5** PPS5 Planning for the Historic Environment, 2010
- CD6** PPS7 Sustainable Development in Rural Areas, 2005
- CD7** PPS25 Development and Flood Risk, 2010
- CD8** PPS9 Biodiversity and Geological Conservation
- CD9** PPG13 Transport
- CD10** PPG17 Planning for Open Space and Recreation, 2002
- CD11** PPPG24 Planning and Noise, 1994
- CD12** The Localism Bill
- CD13** Budget Statement 2011
- CD14** Statement by Minister of State for Decentralisation (23rd March 2011)
- CD15** Circular 05/05 : Planning Obligations
- CD16** Circular 06/05 : Biodiversity and Geological Conservation - statutory obligations and their impact within the planning system (2005)
- CD17** Circular 11/95 The Use of Conditions in Planning Permissions
- CD18** DfT Circular 02/2007 Planning and the Strategic Road Network
- CD19** Traffic Advisory Leaflet 3/97
- CD20** Traffic Advisory Leaflet 5/05
- CD21** Traffic Advisory Leaflet 1/06
- CD22** 2008 Household Projections 2008-33 (November 2010) : CLG Housing Statistical Release
- CD23** Design Manual for Roads and Bridges
- CD24** DfT Guidance on Transport Assessment
- CD25** The Highway Code

- CD26** Forest Heath District Local Plan 1995
- CD27** Good Practice Guidelines: Delivering Travel Plans through the Planning Process

Regional Guidance

- CD28** Submitted RSS for the East of England (December 2004)
- CD29** Panels Report (June 2006)
- CD30** Newmarket to Felixstowe Corridor Study; EERA
- CD31** Approved RSS for the East of England (May 2008)

Local Policy

- CD32** Forest Heath District Council Biodiversity Action Plan (2003) (online resource)
- CD33** Infrastructure and Environmental Capacity Study (May 2009)
- CD34** FHDC Local Plan Review Issues Report (2001)
- CD35** FHDC Core Strategy Issues and Options (2005)
- CD36** FHDC Core Strategy Preferred Options (2006)
- CD37** FHDC Site Specific Policies and Allocations: Issues and Options (2006)
- CD38** FHDC Core Strategy Final Policy Option (2008)
- CD39** FHDC Core Strategy Proposed Submission Document (2009)
- CD40** Forest Heath Core Strategy (May 2010)
- CD41** Core Strategy Inspector's Report (March 2010)
- CD42** High Court – CD42 (i) Judgment (March 2011) CD42(ii) Order (April 2011)
- CD43** Forest Heath District Council 5 year land supply August 2009
- CD44** Forest Heath District Council 5 year land supply March 2011
- CD45** Joint Strategic Housing Land Availability Assessment 2010

Planning

- CD46** The Newmarket Conservation Area Appraisal Consultation Draft (Forest Heath District Council – June 2009)
- CD47** The Economic Impact of British Racing (British Horseracing Authority – 2009)
- CD48** NATS TCN North Consultation – Response of the Newmarket Horseracing and Breeders Group (June 2008)
- CD49** Newmarket Town Council report “A Vision for Newmarket Town Centre”
- CD50** Western Suffolk Employment Land Review prepared by GVA Grimley for Suffolk County Council – May 2009
- CD51** East Cambridgeshire Core Strategy
- CD52** Planning and the Budget (DCLG)
- CD53** Section 106 county-wide Developers Guide consultation documents – duplicate of CD128

Transport

- CD54** Suffolk County Council Local Transport Plan 2006-2011 (2007)
- CD55** Suffolk Local Transport Plan 2011-2031 – duplicate of CD93
- CD56** Support Statement Transport (FHDC March 2009)
- CD57** Highways Agency Technical Notes 1-4 (Faber Maunsell/AECOM)
- CD58** Guidelines for Providing for Journeys on Foot (Chartered Institution of Highways and Transportation 2000)
- CD59** Forest Heath LDF Transport Impacts AECOM (November 2009)
- CD60** Cambridgeshire County Council Traffic Monitoring Report (2010)

CD61	DFT Transport Analysis Guidance – April 2009
CD62	Employment Densities Guide – Drivers Jonas Deloitte (2010)
CD63	Suffolk Advisory Car Parking Standards (2002)
CD64	Guidelines for the Environmental Assessment of Transport Impacts – Institute of Environmental Assessment
CD65	Traffic Advisory Leaflet 3/03
CD66	LTN 1/95
CD67	TA57/87

Miscellaneous Documents

CD68	Forest Heath Planning Committee Reports <ul style="list-style-type: none"> i) Planning Committee (23.5.10) ii) Planning Committee (2.6.10) iii) Planning Committee (9.2.11) iv) Planning Committee (14.3.11)
CD69	Forest Heath LDF Working Group Reports <ul style="list-style-type: none"> • LDF Working Group (8.11.10)
CD70	Jockey Club Estates Rules for Newmarket 2011
CD71	Suffolk Trends - Traffic Monitoring Report for 2009
CD72	Suffolk County Council Travel to Work Report 2010
CD73	Transport in the Urban Environment
CD74	Guidelines for Ecological Impact Assessment in the United Kingdom : Institute of Ecology and Environmental Management (2006)
CD75	Guidelines for Baseline Ecological Assessment: Institute of Environmental Management and Assessment (1997)
CD76	Handbook for Phase 1 Habitat Survey : A Technique for Environmental Audit: Joint Nature Conservation Committee (JNCC) (2003)
CD77	Biodiversity Action Plan : UK Biodiversity Action Plan (1994)
CD78	The State of the UK's Bats : Bat Conservation Trust (2006)
CD79	Bat Surveys - Good Practice Guidelines ; Bat Conservation Trust (2007)
CD80	Bat Mitigation Guidelines : English Nature (2004)
CD81	Bat Workers Manual: English Nature (2004)
CD82	Cambridge LBAP : (online resource)
CD83	Suffolk LBAP : (online resource)
CD84	Birds Census Techniques : Academic Press (2000)
CD85	The Population Status of Birds in the UK : JNCC (2002)
CD86	BTO Common Birds Census Instructions : British Trust for Ornithology (1983)
CD87	Reptile Survey, an introduction to planning, conducting and interpreting surveys for snake and lizard conservation Froglife Advice Sheet 10 : Froglife(1999)
CD88	Herpetofauna Workers Manual: JNCC (2003)
CD89	Surveying Badgers, an occasional publication of the Mammal Society No. 9 (1989)
CD90	Audit Commission; Trading Places : The Supply and Allocation of School Places (1996)
CD91	Audit Commission; Trading Places : A Management Handbook on the Supply and Allocation of School Places
CD92	Audit Commission; Trading Places : A Review of Progress on the Supply and allocation of School Places (2002)
CD93	Suffolk Local Transport Plan 2011- 2031 – Part 1 – Transport Strategy – duplicate of CD55

CD94 Suffolk Local Transport Plan 2011 – 2031 – Part 2 – Implementation Plan

CD95 Annual Monitoring Report 2010 – duplicate of CD146

CD96 West Suffolk Employment Land Review

CD97 Parish Profile and Settlement Hierarchy (2008)

Appellant's Folders

CD 97A

Volume	Tab	Description	Duplicate No
1	1	Application November 2009	CD98
	2	Amended Application Feb 2010	
	3	Ownership Certificates	
	4	Original Application Plans	
	5	Original Access Plans	
	6	Development Specification	CD102
	7	Design and Access Statement	CD103
	8	Environmental Statement and Non-technical Summary	
2	8/1	ES Plans and Appendices up to Appendix 10.4	
3		ES Appendices 11.1 onwards	
4	9	Original Transport Assessment with Appendices to Appendix F	
5		Transport Assessment (TA) from Appendix G	
6	9/1	TA Volume 3 - A14/A142 Modelling	
	9/2	TA Volume 4 - Public Transport Strategy	
	9/3	TA Volume 5 - Framework Residential Travel Plan	
	9/4	TA Volume 6 – Framework Workplace Travel Plan	
	10	Flood Risk Assessment	CD106
7	11	Planning Policy Statement	CD107
	12	Horseracing Impact Statement	CD108
	13	Statement of Community Involvement	CD109
	14	Tree Survey	CD110
	15	Revised Transport Assessment	
8		Revised Transport Assessment Appendices F-R	
9		Revised Transport Assessment Appendices S-V	
10		FHDC Documents	
11		Environmental Statement Addendum	CD104

Documents Submitted with the Planning Application

CD98	Submitted planning application forms
CD99	Applicants' covering letters dated 30 th November 2009 and 26 th February 2010.
CD100	Submitted land ownership and agricultural holdings certificates.
CD101	Submitted parameter plans as follows – <ul style="list-style-type: none">• Application Site Plan – 07.183/37b• Development Framework Plan – 07.183/44b• Movement Plan – 07.183/40c• Building Heights – 07.183/41c• Density – 07.183/42d• Phasing – 07.183/39b• Open Space – 07.183/43b• Access Plans – 0719-P-01-B and 0719-P-02-C
CD102	Development Specification dated November 2009, as amended by letter from Sellwood Planning dated 26 February 2010
CD103	Design and Access Statement
CD104	Environmental Impact Assessment and Non-Technical Summary
CD105	Transport Assessment, as amended, and draft Travel Plan
CD106	Flood Risk Assessment
CD107	Planning Policy Statement
CD108	Horseracing Impact Statement
CD109	Statement of Community Involvement
CD110	Tree Survey

Documents arising following the refusal of planning permission

CD111	WSP Bat Survey Report, September 2010
CD112	Letter from Highways Agency dated 5 th January 2011

Documents submitted following the lodging of the appeal

CD113	Amended Access Plan – 0719/SK/32 revision B, dated December 2010
CD114	WSP Supporting Technical Information – Modelling Technical Note 1: Signalised Northern Access Junction, March 2011

Other

CD115	SCC School Organisation Review, Public Consultation document in the Newmarket area, 22 September 2008 – 15 December 2008
CD116	FHDC Report to Council, 8 December 2008 "Suffolk Schools Organisation review" and Minutes
CD117	"Suffolk County Council Supplementary Planning Guidance relating to Section 106 Obligations"
CD118	Submission by Suffolk County Council on s106 Obligations – Hatchfield Farm Development Proposals.
CD119	"Suffolk County Council Section 106 Developers Guide to Infrastructure Contributions" "Topic Paper 3 – Education Provision" – duplicate of 128
CD120	"Parish Profile and Settlement Hierarchy Evidence Base Supporting Document" (FHDC : May 2008)
CD121	Museums Libraries & Archives publication ' <i>Public Libraries, Archives and New Development: A Standard Charge May 2010</i> '
CD122	Suffolk County Council 'Newmarket Library Information Sheet' (April 2010).
CD123	Oxfordshire County Council report ' <i>Survey of People in new housing in Oxfordshire</i> ' (Published 02 March 2004)
CD124	Department for Education (DfE) (2010) <i>The Importance of Teaching – The Schools</i>

	<i>White Paper 2010</i>
CD125	Department for Education and Skills (DfES) (2002) Extended Schools: <i>providing opportunities and services for all</i>
CD126	Department for Education and Skills (DfES) (2004) Five Year Strategy for Children and Learners.
CD127	Department for Education and Skills publication ' <i>Briefing Framework for Primary School Projects: Building Bulletin 99 (2nd Edition)</i> ' (Published 23 November 2006)
CD128	Consultation Documents: Section 106 Developers Guide to Infrastructure Contributions in Suffolk which includes: <ul style="list-style-type: none"> - Section 106 Developers Guide to Infrastructure in Suffolk; - Section 106 Planning Obligations – Code of Practice Protocol; and, the following topic papers on; Air Quality, Archaeology, Education Provision, Fire and Rescue Service Provision, Health Infrastructure Provision, Highways and Transport, Libraries and Archive Infrastructure Provision, Police Infrastructure Provision, Pre-School Provision, Supported Housing, and Waste Disposal Facilities – Duplicate of CD53 and CD119
CD129	Statement of Case from – <ul style="list-style-type: none"> i) The Earl of Derby ii) Save Historic Newmarket Limited iii) Tattersalls Ltd iv) Forest Heath District Council
CD130	Forest Heath District Council. Habitat Regulations Assessment: Forest Heath District Council Core Strategy Development Plan Document (March 2009)
CD131	European Commission (2001) Assessment of plans and projects significantly affecting Natura 2000 sites.
CD132	European Commission (2000) MANAGING NATURA 2000 SITES
CD133	Planning for Growth – Planning Inspectorate Advice 31 March 2011
CD134	The Planning System – General Principles (2005)
CD135	Salisbury convention / Doctrine 2006
CD136	CLG Secretary of States letter 27 th May 2010: Abolition of Regional Strategies
CD137	CLG letter 10 th November 2010: Abolition of Regional Strategies
CD138	Cala Homes High Court Judgment
CD139	Cala Home Court of Appeal Judgment
CD140	FHDC Full Council 12 th May 2010 COU/10/464
CD141	FHDC LDFWG 8 th November 2010 LDF10/074
CD142	FHDC LDFWG 19 th April 2011 LDF11/078
CD143	FHDC LDFWG 20 th June LDF 11/079
CD144	FHDC Planning Committee 22 nd December 2010
CD145	FHDC Planning Committee 28 th April 2010 PLN 10/650
CD146	FHDC Annual Monitoring Report 2010 – duplicate of CD95
CD147	Infrastructure and Environmental Capacity Appraisal (May 2009)
CD148	Strategic Housing Land Availability Assessment (June 2009)
CD149	Forest Heath District Council (August 2009) Design guide for Open Space and Sports Facilities at Hatchfield Farm.
CD150	ODPM (2002) Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation.- duplicate of CD10
CD151	ODPM (2002) Assessing Needs and Opportunities: A Companion Guide to PPG17
CD152	Saved policies of the Local Plan 1995
CD153	FHDC draft Supplementary Planning Document for Open Space, Sport and Recreation Facilities
CD154	Communities and Local Government Press Notice dated 15 June entitled "Positive Planning: a new focus on driving sustainable development"
CD155	Communities and Local Government Press Notice entitled "Presumption in favour of sustainable development"

CD156	English Heritage publication - "The setting of heritage assets: English Heritage Guidance"
CD157	Council's case on Reasons for Refusal 1 and 2
CD158	Draft Planning committee minutes 22 June 2011
CD159	Letter from Suffolk County Council dated 5 July 2011
CD160	(1) Draft National Planning Policy Framework (2) Impact Assessment (3) Consultation (4) Communities Publication 25 July 2011 - Dramatic simplification of planning guidance to encourage sustainable growth"
CD161	Position Statement of Suffolk County Council Transportation
CD162	English Heritage "Streets for All"
CD163	English Heritage "Streets for All" – webpage
CD164	Suffolk Conservation Manual
CD165	Sainsbury's flyer relating to George Lambton Playing Fields
CD166	Secretary of States decision letter dated 19 June 2007 – Appeal by Bovis Homes Ltd - Filton
CD167	Design and Access Statement – Filton
CD168	Communities and Local Government publication – Guidance on Information required and validation
CD169	Badger Survey – August 2011
CD170	Environmental Statement Addendum (Badger Assessment, August 2011)
CD171	Assessment of Trees as roosts for bats
CD172	Bat survey – emergence/re-entry Survey 2011
CD173	Bat survey – Building Assessment 2011
CD174	WSP drawing – Figure 1 – Summary of bat activity surveys – 2010 and 2011
CD175	WSP drawing – Figure 2 – Lighting principles
CD176	WSP drawing – Figure 3 – Habitat Continuity Figure
CD177	Arable Field Margins – Plant Communities
CD178	Reptile Habitat Assessment
CD179	Amended Chapter 7 in Addendum to the ES, including bird survey 2011
CD180	Natural England – Standing Advice Species Sheet: Badgers
CD181	Letter from Natural England dated 19 September 2011

STATEMENTS OF COMMON GROUND

- SOCG 1** Between the Appellant and the Council
(Planning, Design, Layout and Character, Amenity, Flood risk, Trees, Archaeology, Renewable Energy, Noise & Vibration, Air Quality, Agricultural Land, Economic Impacts, Ground Contamination, Bats)
- SOCG 2** Between the Appellant and Suffolk County Council (Traffic)
- SOCG 3** Between the Appellant and Save Historic Newmarket (Air Quality)
(also ED32)
- SOCG 4** Between the Appellant and Save Historic Newmarket (Ecology)
(Also ED21)

DOCUMENTS SUBMITTED BY THE PARTIES

PROOFS FROM FOREST HEATH DISTRICT COUNCIL

FH/DRB/P Proof of Evidence of Dave Beighton
FH/MS/P Proof of Evidence of Marie Smith
FH/JP/P Proof of Evidence of Jim Phillips
FH/MJP/P Proof of Evidence of Martin Palmer
FH/NRM/P Proof of Evidence of Neil McManus for (Suffolk County Council)

REBUTTAL PROOFS FROM FOREST HEATH DISTRICT COUNCIL

FH/DRB/R Rebuttal of Dave Beighton
FH/MS/R Rebuttal of Marie Smith

OTHER DOCUMENTS FROM FOREST HEATH DISTRICT COUNCIL

FH1 Opening Submissions - Mr Michael Bedford
FH2 Inquiry Note re. Conditions
FH3 Report to Local Development Framework Working Group dated 8 July 2009
FH4 PPS 12
FH5 Standing advice species sheet Badgers – Natural England
FH6 Position statement re Conditions as at 5 September 2011
FH7 Draft conditions as at 20 September 2011
FH8 Additional condition relating to Community Facilities Management Plan
FH9 Local Development Framework draft minute – 29 June 2011
FH10 Closing submissions – Mr Michael Bedford
FH11 Further submissions on Unilateral Undertakings
FH12 Mayer Brown Report

PROOFS FROM THE APPELLANT (EARL OF DERBY)

ED/RM/PS Summary Proof of Evidence of Roger Mascall
ED/RM/P Proof of Evidence of Roger Mascall
ED/RM/A Appendix of Roger Mascall
ED/RB/PS Proof Summary of Rory Brooke
ED/RB/P Proof of Evidence of Rory Brooke
ED/RB/A Appendix of Rory Brooke
ED/RMS/PS Summary Proof of Evidence of Bob Sellwood
ED/RMS/P Proof of Evidence of Bob Sellwood
ED/RMS/A Appendix of Bob Sellwood
ED/CPS/PO1 Proof of Evidence of Colin Smith
ED/CPS/PA01 Appendices of Colin Smith
ED/MGM/S Summary Proof of Michael Melton
ED/MGM/P Proof of Evidence of Michael Melton
ED/MGM/PA Appendices of Michael Melton
ED/RGD/PS Summary Proof of Rossa Donovan
ED/RGC/P Proof of Evidence of Rossa Donovan
ED/RGC/PA Appendices of Rossa Donovan
ED/JDM/PO1 Proof of Evidence of Jeremy Michaels
ED/JDM/PA01 Appendices of Jeremy Michaels
ED/RNH/SP Supplementary Proof of Evidence of Prof R N Humphries

REBUTTAL PROOFS FROM THE APPELLANT (EARL OF DERBY)

ED/RM/R	Rebuttal of Roger Mascall
ED/RB/PR	Rebuttal of Rory Brooke
ED/RMS/R	Rebuttal of Bob Sellwood
ED/RMS/R1	Supplementary Statement on the Volterra Report of Bob Sellwood
ED/RMS/R2	Response to John Boyd Submission SHN/15 of Bob Sellwood
ED/RMS/R3	Response of John Boyd Submission SHN/17 of Bob Sellwood
ED/CPS/PR1	Rebuttal of Colin Smith
ED/CPS/PRA1	Appendices to Rebuttal of Colin Smith
ED/CPS/PR2	Review of R Evans' Appendix J of Colin Smith
ED/JDM/PR1	Rebuttal of Jeremy Michaels
ED/RNH/PR	Rebuttal of Prof R N Humphries
ED/RNH/PSR	Supplementary Rebuttal Evidence of Prof R N Humphries
ED/DL/PR01	Rebuttal of Prof Duncan Laxen
ED/DL/RA01	Appendices to Rebuttal of Prof Duncan Laxen
ED/DL/SR01	Supplemental Rebuttal of Prof Duncan Laxen

OTHER DOCUMENTS FROM THE APPELLANT (EARL OF DERBY)

ED1	Opening Submissions - Mr J Karas QC
ED2	Forest Heath Core Strategy Topic Paper No. 1 (revised version 3) - Housing
ED3	Inquiry Note re. Heads of Terms for S106 Agreement
ED4	Newmarket Horse Crossings' Safety Review - December 2007
ED5	Core Strategy Representations <ul style="list-style-type: none"> ▪ Jockey Club Estates - CS1, 7, 8 ▪ Tattersalls CS6, 9, 2, 1
ED6	Press Articles - Country Life - 21 April 2010 - Big Interview
ED7	Technical Note dated 19 July 2011 relating to traffic flow
ED8	Newmarket Racecourses - the Home of Racing
ED9	Technical Note - clarification in Rebuttal of Colin Smith ED/CP5/PR1 Paragraph 2.5.4 with reference to Table 1
ED10	Technical Note dated 18 July 2011 relating to cross-checking of survey date against longer term monitoring
ED11	Screen Shot - Temprow Model
ED12	Policies 142 & 143 - East Cambridgeshire District Local Plan and Map 34 - Snailwell
ED13	Extract from Local Plan 1995
ED14	Fordham Road Cross-Section
ED15	Extract from DMRB
ED16	Extract from Manual for Streets 2
ED17	Technical Note on Traffic Growth
ED18	Rayes Lane Horse Crossing – Mayer Brown and WSP drawings
ED19	Email from Savills dated 15 July 2011
ED20	Welcome Pack
ED21	Agreed statement of common ground – Diana Ward/Professor R N Humphries
ED22	Curriculum vitae of Professor R Humphries
ED23	Bat Survey
ED24	Diet of bat species and feeding around street lights
ED25	Inquiry note – horse crossing warning signs
ED26	Company search against Save Historic Newmarket Ltd
ED27	Response to Inspector's Inquiry Note 5 on draft Unilateral Undertaking
ED28	Summary of Section 106 Undertakings
ED29	Unilateral Undertaking dated 22 September 2011 between The Right Hon Edward Richard William Earl of Derby DL C Hoare & Co Suffolk County Council

- ED30** Unilateral Undertaking dated 22 September 2011 between
The Right Hon Edward Richard William Earl of Derby DL
C Hoare & Co
Forest Heath District Council
Suffolk County Council
- ED31** Hatchfield Farm Section 106 Delivery Table
- ED32** Statement of Common Ground on Air Quality between
The Earl of Derby
Save Historic Newmarket Ltd
- ED33** Full set of planning application plans
- ED34** Gleeds Report on Budget Cost Estimates
- ED35** Letter dated 22 September 2011 from Andrew Biddle of Stanley House Stud
- ED36** Proposed condition relating to provision of a community centre
- ED37** Net Biodiversity Gain relating to badgers (RHN 14 I (a))
- ED38** Revised Hatchfield Farm Section 106 Delivery Table
- ED39** Closing Submissions - Mr J Karas QC
- ED40** Appellant's submissions regarding the S106 Undertaking and bundle of cases

PROOFS FROM THE TATTERSALLS GROUP

- TATT/WAG/P** Proof of Evidence of William Gittus
- TATT/JH/P** Proof of Evidence of John Holden
- TATT/JH/A** Appendices of John Holden
- TATT/RE/P** Proof of Evidence of Rob Evans
- TATT/JSC/P** Proof of Evidence of James Crowhurst
- TATT/JP/P** Proof of Evidence of Hugo Palmer
- TATT/HA/P** Proof of Evidence of Hugh Anderson
- TATT/CFW/P** Proof of Evidence of Chris Wall

REBUTTAL PROOFS FROM TATTERSALLS GROUP

- TATT/WAG/PR** Rebuttal of William Gittus
- TATT/JH/PR** Rebuttal of John Holden
- TATT/RE/PR** Rebuttal of Rob Evans

OTHER DOCUMENTS FROM TATTERSALLS GROUP

- TG1** Opening Submissions - Mr Simon Bird QC
- TG2** Calendar of Race days
- TG3**
 - Graph - Tempro Rural East Cambs Growth - A142N
 - Graph - Tempro Newmarket Main Growth - A142S
- TG4** Technical Note 1 - Table 4.7 Revision 19/07/2011
- TG5** Technical Note 2 - Pedestrian Vehicle Conflict Measurement
- TG6** Technical Note 3 - Table 4.7 Revision
- TG7** Statement of William Gittus re use of training grounds
- TG8** Cannon Consulting drawings E811/01, E811/02 and E811.03
- TG9** Suggested revised and additional comments
- TG10** Proposed changes to draft planning obligation
- TG11** Closing submissions (to include legal submissions) – Mr Simon Bird QC

PROOFS FROM SAVE HISTORIC NEWMARKET LIMITED

SHN/JB/PS	Summary of John Boyd
SHN/JB/P	Proof of Evidence of John Boyd
SHN/JB/PA	Appendices of John Boyd
SHN/HA/P	Proof of Evidence of Henry Andrews
SHN/HA/PA	Appendices of Henry Andrews
SHN/JG/P	Proof of Evidence of John Gosden
SHN/JG/PA	Appendices of John Gosden
SHN/DEW/P	Proof of Evidence of Diana Ward
SHN/DEW/PA	Appendices of Diana Ward
	Supplementary Evidence of Bridget Rosewell

REBUTTAL PROOFS FROM SAVE HISTORIC NEWMARKET LIMITED

SHN/JB/PR	Rebuttal of John Boyd
SHN/HA/PR	Rebuttal of Henry Andrews
SHN/HA/SP	Supplementary Proof of Henry Andrews
SHN/JG/PR	Rebuttal of John Gosden
SHN/DEW/PS	Supplementary Proof of Diana Ward

OTHER DOCUMENTS FROM SAVE HISTORIC NEWMARKET LIMITED

SHN1	Opening Submissions - Mr David Elvin QC
SHN2	Biological Conservation 93 (2000) "Competition for food by expanding pipistrelle bat populations might contribute to the decline of lesser horseshoe bats"
SHN3	Bats and Lighting - The London Naturalist No. 85, 2006
SHN4	Bats and lighting in the UK - Bat Conservation Trust
SHN5	The Zoological Society of London (2001) "Assessing the impact of a music festival on the emergence behaviour of a breeding colony of Daubenton's bats."
SHN6	Chantilly Racing - Information Sheet
SHN7	Email dated 15 February 2011 from Lord Derby entitled "A message to ROA members about Save Historic Newmarket".
SHN8	Email dated 21 June 2011 from Anglian Water Authority entitled "Hatchfield Farm"; email dated 7 July 2011 from Anglian Water Authority entitled "Hatchfield Farm Newmarket"; dealing with drainage strategy and sewerage network.
SHN9	Extract from Report to Secretary of State for Communities and Local Government by RPE Mellor - Appeal by Pelham Holdings Ltd
SHN10	Extract from presentation by Tibbalds to Newmarket Town Council on 18.07.2011 relating to George Lambton Playing Fields
SHN11	LinSig Version 3
SHN12	DofT National Transport Model
SHN13	Press release – Newmarket Journal – 14 December 2006
SHN14	Report of Stephen Othen - Air Quality Consultant
SHN15	Update on Growth Prospects
SHN16	Comments on draft S106 undertakings and conditions
SHN17	Update on George Lambton Planning application
SHN18	Research article – Resource Dispersion Hypothesis
SHN19	First Witness statement of Rachel Hood
SHN20	Email dated 20 September 2011 from Alison Collins, Natural England
SHN21	Comments on horsewalk contribution
SHN22	Biology and Ecology of earthworms
SHN22a	Email re spreading horse manure on Stanley Stud land
SHN23	Information sheets relating to EU sites
SHN24	Closing submissions of David Elvin QC

DOCUMENTS FROM SUFFOLK COUNTY COUNCIL

- SCC1** Position Statement from Suffolk County Council Transportation
- SCC2** SCC comments on Conditions and Undertakings (13 September 2011)
- SCC3** SCC comments on Conditions and Undertakings (19 September 2011)

DOCUMENTS FROM CLLR HIRST

- WH/P** Proof of evidence with appendices (1-9)
- WH10** Plan of Cycle Route for Site Visit

DOCUMENTS FROM OTHER THIRD PARTIES

- 3P1** Letter submitted from RTA Goff dated 13 July 2011
- 3P2** Statement submitted by Mrs Alexandra Scrope
- 3P3** Statement submitted by Mark Tompkins
- 3P4** Statement submitted by Councillor John Berry
- 3P5** Statement submitted by John Johnston
- 3P6** Statement submitted by Chris Coldrey
- 3P7** Statement submitted by Mrs Jacko Fanshawe
- 3P8** Statement submitted by Mrs Sara Beckett

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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.