

# SUNNICA ENERGY FARM

EN010106

8.58 Written Summary of Applicant's Oral Submissions at the Issue  
Specific Hearing 3 (ISH3) on 8 December 2022

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010



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**Sunnica Energy Farm**

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# 1. Introductory remarks

## 1.1 Introduction

- 1.1.1 The Issue Specific Hearing 3 (ISH3) was held at 10:00am on 8 December 2022 as a blended event at King Edward VII Memorial Hall, High Street, Newmarket, Suffolk CB8 8JP and by virtual means using Microsoft Teams.
- 1.1.2 The ISH took the form of running through the items listed in the agenda published by the Examining Authority (ExA) on 1 December 2022 (Agenda). The discussion predominantly focused on:
  - (a) Socio-economic and land use
  - (b) Air quality and human health;
  - (c) Water resources, flood risk and drainage; and
  - (d) Public rights of way.

# 2. Agenda Item 1 – Welcome, Introductions and arrangements

## 2.1 The Examining Authority

- 2.1.1 Grahame Kean, Guy Rigby and Karin Taylor.

## 2.2 The Applicant

- 2.2.1 **SPEAKING ON BEHALF OF THE APPLICANT:** Richard Turney (Barrister at Landmark Chambers), Daniel Baird (Director at Daniel Baird Soil Consultancy Limited), Bethan Haynes (Associate Director at Lichfields) and Paul Gregory (Battery Safety & Testing Project Consultant at BST&T Consultancy Services Ltd).
- 2.2.2 Present from the Applicant: Luke Murray (Director at Sunnica Limited), Nigel Chalmers (Technical Director at AECOM Limited), Bill Gregory (Associate Director at AECOM Limited) and Jon Howells (Associate Director at AECOM Limited).
- 2.2.3 The Applicant's legal advisors: Nicholas Grant (Barrister at Landmark Chambers), and Richard Griffiths, Tom Edwards, Alexis Coleman, Jonathan Leary and Toby Yeates, all of Pinsent Masons LLP.

## 2.3 Host Authorities

- 2.3.1 Suffolk County Council (SCC): Michael Bedford KC (Barrister at Cornerstone Chambers), Paul Warmington (Consultant at Agilia Infrastructure Partners), Claire Dixon (West Area Rights of Way Manager at SCC).
- 2.3.2 East Cambridgeshire District Council (ECDC) and Cambridgeshire County Council (CCC): Hashi Mohamed (Barrister at No.5 Barristers Chambers), David Carford (Programme

Manager at CCC), Andrew Phillips (Planning Team Leader at ECDC), Camilla Rhodes (Asset Information Manager at CCC).

2.3.3 West Suffolk Council (WSC): Ruchi Parekh (Barrister at Cornerstone Chambers); Julie Barrow (Principal Planning Officer at WSC); Andrea Mayley (Economic Development and Business Growth at WSC), Matthew Axton (Environment Officer at WSC).

2.3.4 SCC, ECDC, CCC and WSC are referred to collectively as the “LPAs” throughout this submission.

## 2.4 Parish Councils

2.4.1 **Worlington Parish Council (WPC):** Paula MacKenzie (Councillor at WPC).

## 2.5 Interested parties

2.5.1 Say No To Sunnica Action Group (SNTS) and Newmarket Horseman's Group (NHG): John Steel KC (Barrister at 39 Essex Chambers), Daniel Kozelko (Barrister at 39 Essex Chambers), Peter Danks (Agricultural Consultant at Reading Agricultural Consultancy), Sam Franklin (Agricultural Consultant), Patrick Stevenson (Agricultural Consultant), Richard Sykes Popham (Popham Planning Consultants), John Gosden (Newmarket Horse Trainer), Christian Wall (Newmarket Horse Trainer) and John Morrey (Tattersalls Horse Auctioneer).

2.5.2 Brookside Stud: John James (Owner of Brookside Stud in Badlingham and Director of Newmarket Stud Farmers Association).

2.5.3 Dr Edmund Fordham (Local Resident).

## 3. Agenda Item 2 – Principle and Nature of the Development

3.1.1 By way of introduction, the ExA noted that this Agenda item was originally concerned with the proposed Battery Energy Storage System (BESS) and associated development, however the ExA is satisfied that there is no need to explore this in any further detail at the Hearing.

3.1.2 The ExA confirmed that this Agenda item will include the implications of the Applicant's intended change request as set out in the Update by the Applicant on Heritage Matters and Substation Connection [REP3A-037].

### 3.2 Implications for the Proposed Development of an eventual recommendation to delete part of parts of the Order limits

3.2.1 The ExA summarised the intended changes to be submitted as involving the removal of land, including the extent of compulsory acquisition powers, thereby reducing the impacts of the Scheme rather than changing or expanding them. Richard Turney, on behalf of the Applicant, confirmed this was correct.

3.2.2 The ExA then asked whether the Applicant was in a position to submit the change request on or before 13 January 2023. Richard Turney, on behalf of the Applicant, said that the Applicant considers 20 January 2023 to be the appropriate submission date although if no

further advertisement of the change was required, then the Applicant may work to an earlier date.

**Post-hearing clarification:** the Applicant will submit the Change Request on or before the 13 January 2023.

- 3.2.3 The ExA then moved on to the main substance of the agenda item and summarised the tiered approach to issues adopted by the LPAs in the Joint Local Impact Report (Joint LIR) [REP1-024], namely: (1) those which can be agreed with the Applicant; (2) those requiring more work to be done by the Applicant; and (3) those which are fundamental to the nature of the Scheme and local geography which are therefore unlikely to be capable of being dealt with. For example, the LPAs still consider certain areas within the Order limits are so significant that they should be removed (including ECDC's written representation [REP2-131] that E05 and W03 to W12 should be removed). The ExA requested comments from the LPAs in light of the Applicant's intention under its proposed change request, particularly in relation to any issues still causing concern under (3) above. Mr Mohamed, on behalf of the LPAs made a number of submissions on these matters.
- 3.2.4 The ExA asked the Applicant whether any technical issues may or may not impinge on the feasibility of the removal of the other parts of the sites which the LPAs are requesting.
- 3.2.5 Richard Turney, on behalf of the Applicant, responded as follows:
- (a) In principle, as already seen, it might be possible to reduce the development and still consent the Scheme (for example, as evidence by Sunnica West B). However, Mr Turney noted that the removal of Sunnica West B has resulted from particularly careful consideration of heritage impacts. Mr Turney clarified that the effects of removing part of the site for heritage reasons results in the remainder of the Sunnica West B not having sufficient justification to pursue. The Applicant's position is that more solar has been lost than is required to be lost for the heritage effects.
  - (b) Next, Mr Turney submitted that the factors considered in deciding to remove Sunnica West B would not necessarily apply in any other case. The decision to remove a parcel or part of a parcel will be a fact sensitive question, including considering the effects on mitigation measures. For example, ecological measures may not be linked to a single parcel and landscape measures designed around a proposed developable area may need to be rethought if the developable area changes. Any proposed change would have to be carefully considered on its particular facts.
  - (c) Mr Turney also noted the need to consider the interaction with other infrastructure. For instance, removing parcels of land required for solar arrays may require the removal or redistribution of other parts of infrastructure in relation to BESS, the substations and/or cable routes.
  - (d) Mr Turney added that the effect on the overall Scheme in terms of making best use of the grid connection at Burwell must be considered. In other words, whether the removal of land would impact on the delivery of 500MW output at Burwell and the consequences of that in terms of making the best

use of the available connection for the purpose of renewable energy generation.

- (e) Finally, Mr Turney emphasised that it is not just a question of the mitigation hierarchy and simply seeking to avoid *any* harm, as there is national policy which identifies how to approach the issues raised. In terms of ecology, paragraph 5.3.7 of Overarching National Policy Statement (NPS) for Energy (EN-1) states "*development should aim to avoid significant harm*". The threshold is therefore "significant" harm, not *any* harm. Paragraph 5.3.13 goes on to note that, in light of the need for new infrastructure, local and regional biodiversity interests "*should not be used in themselves to refuse development consent*". As such, national policy recognises that certain developments will have adverse impacts but then it informs how to go about approaching such harms. Similarly, in relation to landscape, paragraph 5.9.21 of NPS EN-1 states:

*"5.9.21 Reducing the scale of a project can help to mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design of a proposed energy infrastructure project may result in a significant operational constraint and reduction in function – for example, the electricity generation output. There may, however, be exceptional circumstances, where mitigation could have a very significant benefit and warrant a small reduction in function. In these circumstances, the IPC may decide that the benefits of the mitigation to reduce the landscape and/or visual effects outweigh the marginal loss of function".*

Mr Turney indicated that this clearly sets out the test for the ExA.

3.2.6 The ExA clarified that it is presumably therefore a question of balance, whereby removing a section of land would be a question of balancing the ecological and landscape harm against any significant operational constraint to be justified. Richard Turney, on behalf of the Applicant, responded as follows:

- (a) Mr Turney agreed that one of the questions is balance, however the Applicant would go further than that. For example, in relation to landscape (particularly outside designated areas) it is a heavily tilted balance in favour of renewable energy generation as the mitigation anticipated in EN-1 is one which would only lead to a "*small reduction in function*" and one that does not lead to a "*significant operational constraint*."
- (b) Further, in relation to the Scheme, the parcels of land proposed to be removed by CCC/ECDC amounts to 236 ha of developable area (fields W03 to W12), which on no sensible basis is a "*small reduction in function*" and in fact is larger than the Little Crow Solar Park NSIP (which was a 220 ha site). As such, the suggestion from CCC/ECDC is to effectively remove a solar development from the Scheme which is larger than a consented nationally significant infrastructure project on the basis of non-designated landscape features. In considering landscape, Mr Turney emphasised that under national policy, local landscape designations are not sufficient to prevent consent, and this landscape is not even a local designation and therefore

not even within the territory of paragraph 5.9.21 of NPS EN-1. Mr Turney reiterated that the idea of avoiding impacts has to be understood in light of national policy.

**Post-hearing Note:** It is recognised that CCC/ECDC SNTS in its written submissions and orally at ISH3 have also made the argument that the harm to Chippenham Park RPG (including if that harm is considered as less than substantial as is the Applicant's position) caused by development in parcels W03-W12 should necessitate the removal of these parcels. Whilst, following discussions at ISH2, the Applicant will provide more information at Deadline 5 about how the Scheme has sought to sustain and conserve the significance of this heritage asset (with reference to paragraph 5.8.12 of the existing NPS), it is considered important to note that, whilst the Applicant acknowledges that it will impact upon the setting of the RPG, it is not considered that the significance of the asset is lost; and nor is the understanding of its setting, given the mitigation measures that have been put in place.

Furthermore, the Applicant notes paragraph 5.8.15 of the existing NPS which sets out the need for the Secretary of State to balance harm to the significance of a designated heritage asset against the public benefit of development.

For the same reasons as those given in the Update by the Applicant on Heritage Matters and Substation Connection **[REP3A-037]** for the removal of all of West Site B following the removal of parcel W01; if parcels W03-W12 were to be removed then the Applicant considers that the rest of West Site A would also need to be removed (being the remaining field W15). If West Site A is removed, then this would fundamentally change the Scheme by removing a large proportion of the MW able to be produced by the Scheme. This would make East Site A and B unviable in economic terms; as well as the practical issues that would arise in determining what would then be a suitable connection route from those sites to Burwell without West Site A and B. As such, the Applicant considers that the removal of parcels W03-W12 would mean that the Scheme would not be able to proceed.

In this context, the harm caused from parcels W03-W12 needs to be balanced against the benefits of the Scheme as a whole, not just those parcels. The Applicant has set out in this submission, the Planning Statement **[APP-261]** and the Statement of Need **[APP-260]** the benefits of this Scheme, including fundamentally the ability to utilise a 500MW national grid connection to deliver low carbon electricity to the nation. It is considered that these benefits outweigh the less than substantial harm (an assessment that is agreed by Historic England) to Chippenham Park RPG.

Furthermore, building on the points in relation to landscaping above, this would be an example of a change to avoid a visual impact (in respect of a heritage asset) which would result in a significant reduction in function, in this case total. The ExA and Secretary of State will therefore need to balance the loss of the Scheme against a harm that is not substantial. It is the Applicant's case that the benefits of the Scheme are to such an extent that the loss of the Scheme for such a harm should not be countenanced.

- 3.2.7 Michael Bedford KC, on behalf of SCC, accepted the need for the ExA to consider policy but disagreed with the Applicant's submission that paragraph 5.9.21 of NPS EN-1 sets out the policy test. Mr Bedford summarised that the LPAs have identified particular parcels which they propose are not acceptable, therefore the LPAs propose an alternative approach to the Scheme, which does not necessarily mean an outcome of refusal. The suggestion is

for the Scheme to be modified, either by the Applicant or by the ExA in its recommendation to the Secretary of State.

3.2.8 Ruchi Parekh, on behalf of WSC, agreed with the other LPAs' positions. Ms Parekh emphasised the sensitive nature of the exercise and the fact that it is not a case of repeating the approach from Sunnica West B to the parcels highlighted by WSC.

3.2.9 John Steel KC, on behalf of SNTS and NHG, also made submissions on this point.

3.2.10 Richard Turney, on behalf of the Applicant, clarified that the Applicant's submission is not that the exercise is black and white. In fact, the Applicant's position is that there are inherently shades of grey. In principle, elements of the Scheme can be cut out, although that needs to be assessed on a practical level to determine whether such removals would work as a consentable and developable scheme. It is entirely fact sensitive. Mr Turney added that the removal of Sunnica West B is a useful example but it has exposed some more complex and wider issues:

- (a) Contrary to Mr Steel's submission on behalf of SNTS, Mr Turney strongly encouraged that the ExA should consider draft NPS EN-1 as important and relevant, as this has precedent across all other comparable decisions.
- (b) Mr Turney suggested that the ExA should not entertain Mr Steel's representations in relation to the merits of planning policy under the draft NPSs as per section 94(8)(b) of the Planning Act 2008.
- (c) Mr Turney summarised that NPS EN-1 identifies interests of recognisable importance which required particular attention in decision making, hence the language on declining consent in certain circumstances. However, the policy recognises other harms will be the inevitable consequence of nationally significant energy development, hence the inclusion of mitigation and compensation. The Applicant proposes that the removal of Sunnica West B is appropriate action in response to the particular heritage issues arising there, and if the LPAs require any more to be done then the LPAs should provide those suggestions to the Applicant, beyond just the requests to delete a plot. Mr Turney, on behalf of the Applicant, concluded that the Applicant's position is not that removal of plots would be impossible, there must be careful consideration in doing so.

3.2.11 Richard Turney, on behalf of the Applicant, returned to the issue of loss of energy to the grid connection. Mr Turney added that this is important because the maximum megawatt (MW) output of the solar farm will be greater than the 500MW available grid connection due to the loss at transmission. This does not mean there is a far greater excess being exported from the solar farm and therefore there is scope to cut out parcels; rather it ensures best use of the available connection. Mr Turney added that fields have different outputs due to size and solar resource, which has enabled the Applicant to identify the MW loss from Sunnica West B.

**Post-hearing note:** the Applicant will make a post-hearing submission at Deadline 5 setting out the operational constraints in relation to potential further reduction of the developable area of the Scheme, including the impacts on MW output of the Scheme if certain parcels were removed.

- 3.2.12 The ExA then referred back to the letter from ECDC dated 7 November 2022, which referred to the fact that solar farms of this scale should be 'limited to 25 years' unless there is exceptional justification (as per paragraph 2.49.12 of draft NPS for Renewable Energy Infrastructure (EN-3)) and queried whether this means exceptional justification is needed to apply for longer than 25 years.
- 3.2.13 Ruchi Parekh, on behalf of WSC, said that this is not stated explicitly in the draft policy although it should be read alongside paragraph 2.49.13 whereby timescales are to be an important consideration when assessing impacts.
- 3.2.14 Richard Turney, on behalf of the Applicant, said that a brief answer is set out in the Applicant's response to written representations [REP3A-035] in response to the written representation of ECDC [REP2-131]. Mr Turney clarified that the policy is certainly not set in an exceptional circumstances test, and instead explains in broad terms that a typical design life is 25-30 years but may be longer. Mr Turney concluded that given the Applicant seeks consent for a 40-year Scheme, the draft policy does not require the Applicant to justify that timeframe, but that the Applicant must assess the effects of the Scheme across that 40-year period.

### 3.3 **Benefit to the local community from reduced energy costs**

- 3.3.1 The ExA queried whether the Scheme would be one where the local community would derive any special benefit over and above that which the general population would eventually experience through the reduction in energy costs. Richard Turney, on behalf of the Applicant, agreed that was a fair summary. Although Mr Turney reminded that this is a grid scale solar project, therefore electricity is to be added into the national transmission system. Therefore, the Scheme will reduce energy costs at a national level, but not differently in the local area.
- 3.3.2 The ExA referred to paragraph 2 of the Equality Impact Assessment [REP3-020] which suggests that the Scheme's contribution to the generation of renewable energy may reduce poverty amongst underrepresented groups, such as younger people or ethnic minorities. The ExA struggled to see how those with such protected characteristics will be particularly advantaged over the wider community. Richard Turney, on behalf of the Applicant, clarified that it is the same benefit in terms of the reduction in energy costs. However, for those

suffering with fuel poverty (i.e. those who are constrained due to input required for energy), that benefit of reduced energy costs will be felt more keenly.

## 4. Agenda Item 3 – Socio-economic and land use

### 4.1 Agricultural land classification (ALC)

4.1.1 This sub-section of the Agenda sought to discuss the following:

- (a) Adequacy of ALC surveys, relevance of irrigation needs; and
- (b) Whether the assessment of BMB agricultural land accords with planning policy.

4.1.2 John Steel KC, on behalf of SNTS and NHG, made extensive submissions in the hearing in relation to this sub-section of the Agenda. Given the limited time available for the Applicant to respond through oral submissions at the hearing, Richard Turney (on behalf of the Applicant) confirmed that the Applicant would provide its response in writing. Please see below.

#### **The Applicant's written response to the oral submissions made by John Steel KC, on behalf of SNTS and NHG, in relation to ALC**

4.1.3 The Applicant has provided a technical note on the assumptions made by the Applicant in the ALC assessment in response to a request from Natural England (NE) at **Appendix A** to this Summary. In addition, the following are appended:

- (a) Appendix B: Defra Project SP08016 (2009)
- (b) Appendix C: Countryside Stewardship SW7: Arable Reversion to Grassland
- (c) Appendix D: Solar Research Soil Quality – WUR
- (d) Appendix E: NE Explanatory Note for Likelihood of BMV Land
- (e) Appendix F: EA Cam and Ely Ouse ALS

4.1.4 The Applicant has attached as **Appendix B** to this written summary a copy of the Summary Report for Defra project SP08016: Best Practice for Managing Soil Organic Matter in Agriculture (July 2009). At the hearing this was referred to by the Applicant in error as project number SP04018 and the correct project number is SP08016.

4.1.5 Applicant's Position on Benefit to Soil Health:

- (a) Turning to the SP08016 Summary Report, Table 1 on page 2 gives a matrix of relative benefits/disbenefits of best practice methods for managing Soil Organic Matter (SOM) in agriculture. The first method presented is 'Convert tillage land to permanent grassland'. This receives the highest score of **Very Effective** for Carbon Storage Effectiveness for both light textured (as found at the Sunnica sites) and medium to heavy textured tillage land. It also receives the highest score for Environmental Impact, being **Highly**

**Beneficial** with an impact over a large area. The only disbenefit is cost of turning arable land over to grassland.

- (b) On page four, the summary report states "*It is envisaged that these methods would most likely be delivered via Cross Compliance measures and incorporated into the requirement to maintain soils in Good Agricultural and Environmental Condition (GAEC).*" Subsequently, a Countryside Stewardship Grant has been offered. Details of Countryside Stewardship Grant SW7: Arable Reversion to Grassland with low fertiliser input are given as **Appendix C** to this Summary. The benefit of this Countryside Stewardship Grant is described as follows "*A dense grass sward in arable fields at risk of soil erosion or surface runoff will stabilise the soil, reduce nutrient losses, and buffer sensitive habitats, such as designated aquatic habitats or terrestrial habitats sensitive to atmospheric nitrogen. It will also reduce surface runoff, which may help to reduce the risk of flooding.*"
- (c) At the Hearing, Mr Danks, on behalf of the SNTS, stated that he was familiar with the Defra project but in his view it was not analogous to a solar farm. In **[REP2-240d]**, Reading Agricultural Consultants (RAC) make reference to research from Wageningen University in the Netherlands as evidence of solar farms that are not succeeding in delivering soil health or biodiversity benefits. The footnote reference to this has been redacted along with several other references in this RAC document. However, Mr Baird (on behalf of the Applicant) is familiar with the Wageningen University research programme on Solar and Soil Quality. **Appendix D** to this written summary gives the English language Wageningen University Solar Research Programme webpage on their Soil Quality topic. The first paragraph states "*Some solar parks are designed in such a way that the soil is completely covered, so no light or water reaches the surface and no vegetation grows under the solar panels. This reduces life in the soil, because soil life cannot feed on new organic material. The soil then no longer stores carbon and instead emits CO<sub>2</sub>.*" In the UK we do not use this design of solar farm common in the Netherlands, where there is a complete cover over the site and no penetration of sunlight or rain. Claims about UK solar farms based upon experience from the Netherlands with this design should be disregarded.
- (d) Solar farms in the UK can be and are managed to maintain a year-round vegetated cover both between and below rows of solar panels. The presence of this year-round vegetation and the suspension of cultivation are the factors that provide the clear and unambiguous benefits identified in SP08016 and delivered through Countryside Stewardship Grant SW7. There is no legitimate concern that the same land management below a solar farm will not deliver the similar benefits. These benefits derive from the presence of perennial vegetation with no periods of bare soil, and the suspension of all cultivation. These two factors allow soil organic matter to recover toward a high equilibrium. With cultivation and periods of bare soil, arable soil organic matter content will always fall toward a low equilibrium regardless of the rate of return of organic matter. Therefore, contrary to Mr Danks' assertion, the change of land use from arable to pasture assessed

by Defra project SP08016 is analogous to the change from arable to a 40-year fallow under pasture that will take place in the Sunnica solar farm. Mr Danks has no evidence to suggest that the perennial grassland under a solar farm will not deliver the same soil health benefits as arable reversion to pasture where no solar farm is present.

#### 4.1.6 Response to SNTS Remarks Regarding Soil Inspection Pits:

- (a) At the Hearing, it was claimed that Baird Soil had passed off archaeological trial trenches as soil inspection pits dug to inform ALC Grading. This is not the case. As can be seen in Annex F of Appendix 12B of the Environmental Statement (ES) [**APP-115**], the two photographs of archaeological trial trenches are accompanied with the following text:

*“Archaeological trenches open south west of Lee Farm (September 2021) illustrate the shallow nature of the soil over chalk common over much of the site. The photos below also illustrate the abrupt hollows that can be present in this chalk geology, that give rise to small areas of deeper soil profiles with a subsoil.”*

- (b) Annex F of Appendix 12B of the ES [**APP-115**] gives soil inspection pit descriptions for six representative locations across the Sites. None of these were in the same field as the photographed archaeological trial trenches. Soil Inspection Pits 1, 2 and 4 are shallow soils over chalk, a soil type found across much of the Sites and clearly visible in the photographed archaeological trenches.

#### 4.1.7 Applicant's Response to SNTS Assertions on Agricultural Land Quality:

- (a) The MAFF 1988 Agricultural Land Classification Guidelines are clear that ALC Grades are defined by reference to physical characteristics of the land and that the subsequent general descriptions given of typical cropping and yield should not be used to grade land (Section 2, page 9, first paragraph). Whilst the SNTS devoted a lot of time to describing cropping history and claimed that this countered the ALC grades set by physical characteristics of the land (as directed by the MAFF 1988 ALC guidelines), the approach advocated on behalf of SNTS (allowing cropping history to influence the ALC grade) is clearly not consistent with the MAFF guidance. In [**REP2-240d**], RAC gives considerable space to cropping history and yield, see pages 28 to 33. As above, and as made clear from the MAFF guidance cited, this is not relevant to ALC Grade. The RAC analysis of historic place names in paragraphs 7.32 and 7.33 is similarly irrelevant to ALC grades.
- (b) Provisional ALC plans (as referenced and relied upon by SNTS) pre-date the current ALC guidelines. TIN049 describes the plans as follows, *“After the introduction of the ALC system in 1966 the whole of England and Wales was mapped from reconnaissance field surveys, to provide general strategic guidance on land quality for planners. This Provisional Series of maps was published on an Ordnance Survey base at a scale of One Inch to One Mile in the period 1967 to 1974. These maps are not sufficiently accurate for use in assessment of individual fields or development sites,*

*and should not be used other than as general guidance. They show only five grades: their preparation preceded the subdivision of Grade 3 and the refinement of criteria, which occurred after 1976. They have not been updated and are out of print. A 1:250 000 scale map series based on the same information is available. These are more appropriate for the strategic use originally intended and can be downloaded from the Natural England website.”* Accordingly, these plans cannot be a substitute for the Applicant's assessment.

- (c) RAC also made reference to the more recent Likelihood of Best and Most Versatile Agricultural Land plans from Natural England (NE) – the pink and purple plans. NE make these available online on their website along with an explanatory note for these strategic scale maps. This explanatory note is given as **Appendix E** to this written summary. The first paragraph of this explanatory note states *“The predictions [in the plans] use soil associations (which are the mapping unit of the published 1:250 000 scale national soil map) as the main basis of the assessment. The map is intended for strategic planning purposes only and is not suitable for use below scale 1:250 000 or for the definitive classification of any local area or site.”* (NE's emphasis). Again, these plans cannot be a substitute for the Applicant's assessment.
- (d) As briefly discussed at the Hearing 3 and outlined in Paragraph 5.3.2 of Appendix 12B of the ES ([**APP-115**]), the soil association maps noted above and used by RAC for their ALC appraisal of the Sites, map units of soils that may be found together in a landscape, but do not necessarily share similar characteristics. These are strategic scale plans and should not replace site assessment of soil characteristics and ALC Grade.
- (e) Patrick Stephenson Ltd have produced an ALC report [**REP3A-063**] for the Sunnica site on behalf of SNTS. There are several problems with this assessment as briefly noted in the time available at the Hearing. The assessment attempts to give a drought limitation to ALC grade but does not appear to have made the drought calculations required to assess ALC drought limitation. The ALC drought calculation requires inputs for climate (Moisture Deficits), soil depth, soil particle size distribution, subsoil packing density, stone volume and type of stone. The Patrick Stephenson report does not provide the Moisture Deficits for the location, does not record the stone content (all stones greater than 2mm) and omits data needed on the particle size density (sand fraction). In addition to not noting these factors in the report, the laboratory analysis does not include stone content or sand fraction. There is therefore no confidence that the ALC Drought limitation has been calculated as per the ALC Guidelines and therefore the suite of laboratory analysis undertaken is deficient for informing an ALC Drought limitation. The laboratory analysis reports do include nutrients which are not applicable to an ALC assessment, indicating that Patrick Stephenson Ltd have limited knowledge and experience of undertaking ALC assessment work.
- (f) The Patrick Stephenson Ltd report attempts to infer ALC grade within the Sites from a small number of locations outside of the Sites, and as detailed

above, does not follow MAFF guidelines on ALC assessment for these external locations. These deficiencies should have been immediately apparent to RAC.

#### 4.1.8 RAC ALC Survey Work Within the Sunnica Sites:

- (a) RAC have conducted ALC survey work of their own in respect of land that adjoins and overlaps the Sunnica Sites. This is referred to in the ES, and the RAC ALC report is presented as Annex A to Appendix 12B [APP-115]. This survey report was dated February 2004 and was prepared by RAC in support of the Bay Farm sand and gravel quarry that was subsequently consented. This RAC report at paragraph 11.20 notes that the land was irrigated, and used to grow high value irrigated crops including potato, onion, carrot and parsnip.
- (b) RAC correctly assigned ALC grade according to the physical characteristics of the land as per the MAFF ALC guidelines. The land was placed in Grade 4 because of the limitation imposed by droughtiness. RAC correctly did not apply any upgrade on this drought limited land for the availability of irrigation.
- (c) Bay Farm has not lost access to any of its abstraction licence volume as a result of the development of the opencast mineral site on what was irrigated land growing high value irrigated crops.
- (d) This RAC ALC assessment work therefore contradicts a number of claims that RAC made at the Hearing on behalf of SNTS. These claims include:
  - (i) *Land growing high value crops is unlikely to be in ALC Grades 3b and 4* – Their assessment work at Bay Farm found all agricultural land to be Grade 4, and noted that the land was used for high value crops (potato, onion, carrot and parsnip).
  - (ii) *An upgrade for drought limited land should be applied where irrigation is available* – Their assessment noted that high value crops were irrigated, drought limits ALC Grade and no allowance for irrigation was made in the ALC Grading.
  - (iii) *Desktop assessment and sampling outside of the Sites by Patrick Stephenson Ltd demonstrates that the ALC assessment by Baird Soil is unsound* – RAC's own survey work within the Sites found land limited to ALC Grade 4 by drought, agreeing with the site assessment work by MAFF and Baird Soil.
- (e) These claims by RAC on behalf of SNTS should therefore be dismissed as they are incompatible with RAC's own reported findings on soils and ALC grade at the Sunnica Sites.

#### 4.1.9 SNTS Claims Regarding Access to Irrigation Abstraction Licences:

- (a) A claim was made at the Hearing by Counsel for SNTS that overwinter abstraction to reservoirs could benefit flood prevention works. The Applicant's view is that this was a nonsensical and unsupported claim. Farmers will not withhold permitted overwinter abstraction from surface water until a potential flood event that may not even occur in any given year. They will also not have pumps and piping of sufficient capacity to make a meaningful intervention in a flood event. Farmers are more likely to move expensive and vulnerable equipment such as pumps and generators away from the watercourse if a flood is likely.
- (b) Reference was made by RAC to the Cam and Ely Ouse Abstraction Licensing Strategy. This online document published by the Environment Agency on 22 December 2020 is given as Appendix F to this Summary. Map 1 of the Cam and Ely Ouse Abstraction Licensing Strategy shows that for surface water availability under the highest water flow category (Q30) the best case is yellow – *"No new consumptive licences would be granted. It is likely we'll be taking action to reduce full licensed risks."*
- (c) This document was produced prior to the 2022 drought, and notes that many of the watercourses are predominantly chalk fed. It is likely therefore that overwinter abstraction licences from surface waters will continue to need to be restricted to prevent harmful falls in water levels, until there has been sufficient recharge of the aquifer. The document makes no mention of granting additional water abstraction volumes for irrigation to combat flood events.
- (d) The claim made on behalf of the SNTS, that additional irrigation water volumes were available to growers in this area, is dismissed by the Environment Agency's Cam and Ely Ouse Abstraction Licensing Strategy. Regardless, as Natural England correspondence makes clear, access to irrigation water should not be used to raise the ALC grade of drought limited land. See Annex C of Appendix 12B of the Sunnica ES [**APP-115**].

4.1.10 On a more specific note, Peter Danks (on behalf of SNTS and NHG), suggested at the Hearing that where the survey results submitted by the Applicant differ from those which would be expected, access to the site would be sought to verify the assessment conclusions. Mr Danks suggested that SNTS had made various approaches to the farmers and the Applicant but access was denied on three occasions. Richard Turney, on behalf of the

Applicant, responded that the Applicant had not prevented access as the Applicant currently does not control the land. Therefore, any refusal is by the landowners.

#### 4.2 **The effects of the Proposed Development on the local community and economy**

4.2.1 This sub-section of the Agenda sought to discuss the following:

- (a) Horse Racing Industry (HRI); and
- (b) Generally: employment assumptions; effects on local economy and compensation package for local communities

4.2.2 The ExA asked whether the Hatchfield Farm decisions, as referred to in the Lichfields report [REP2-039], have been received in full. Richard Turney, on behalf of the Applicant, responded that the decisions had not been submitted yet, but the Applicant will provide both decisions by Deadline 4.

**Post-hearing submission:** the Applicant has attached a full copy of the Hatchfield Farm (2020) decision at **Appendix G** of this written summary. Where the 2015 Hatchfield Farm decision is relevant, it is quoted in full within the 2020 decision, so the Applicant does not consider it necessary to submit both.

4.2.3 The ExA summarised the conclusions in the Lichfields report [REP2-039] as follows:

- (a) The Scheme does not adversely impact the operational use of an existing HRI site. This includes no significant adverse highway impacts, glint and glare impacts, or noise impacts on any HRI site. Whilst there was some adverse landscape impact, primarily to the Limekilns gallops, these would not adversely impact its operational use.
- (b) Newmarket has a strong and robust HRI and therefore it would be unlikely for investors to relocate their existing investment.

4.2.4 The Applicant expects that SNTS and/or NHG will make its own written submission(s) at Deadline 4 summarising the oral submissions made by John Steel KC at the Hearing, therefore the Applicant does not intend to set them out in full here. However, in summary, John Steel KC (on behalf of SNTS and NHG) set out the following in his oral submissions:

- (a) The Hatchfield Farm decisions relate to the high-speed impacts on traffic which was the main objection of the HRI.
- (b) The Limekilns gallops are the 'showpiece' of Newmarket in terms of HRI. Namely, investors and owners are taken there as a showcase to demonstrate that Newmarket is not just for horseracing itself, but that it is a place of 'emotion, culture and history'. This is particularly important given the reliance on footloose investors with discretionary spend. Mr Steel proposed that the Scheme would have a negative impact on this showpiece.

#### 4.2.5 Richard Turney, on behalf of the Applicant, responded:

- (a) The Applicant disagrees with Mr Steel's interpretation of the relevance and applicability of the Hatchfield Farm decisions. It is common ground that Newmarket is one of, if not the best place for the British horseracing industry, which leads to the assumption of all parties that HRI is important and relevant for this DCO application. However, even though the Hatchfield Farm decisions were dealing with different schemes, the Inspector's report sets a framework against which the development proposals can be assessed and conclusions can be reached. On this basis, such assessment leads to the identification of certain impacts on the views mentioned but that the showpiece proposition is not going to be altered for the purposes of HRI. The role of the Limekilns and the strength of the Newmarket HRI has not been affected by new development, for example, the arrival of the A14 road and (earlier) the railway.
- (b) The Applicant is surprised that the Rapleys "*Assessment of impact of proposed energy farm on the horseracing industry in Newmarket and the immediate surrounding area*"<sup>1</sup> (Rapleys Impact Assessment) did not seek to deal with the Hatchfield Farm case at all, including no consideration of the methodology or logic applied by the Inspector. Bethan Haynes, on behalf of the Applicant, added that the case is a recent decision based on existing policy, whereby the Inspector has considered such policy, listened to witnesses, and considered evidence provided by others based on secondary sources. This led to a determination of how the alleged development may affect the industry and how this should be considered in the decision. For example, it considered how wealthy owners and the wider HRI may react, taking into account the viability of the industry as a whole.

4.2.6 The ExA queried how the different context, namely Hatchfield Farm relating to a housing development, impacts these views. Ms Haynes responded that a clear similarity between the Hatchfield Farm case and the Scheme is the perceived harm to the HRI from new development around Newmarket. On this basis, there are direct parallels between the Scheme and Hatchfield Farm in considering whether perceptions of harm may impact the wider view of HRI.

4.2.7 Ms Haynes continued that, in relation to the Limekilns gallops, much of the content of the Rapleys Impact Assessment is based on interviews with members of the HRI, whereas the policy tests for the purposes of the Examination is whether there are any adverse impacts on the *use* of the relevant site. The policy test is not whether the setting has changed. Ms Haynes referred to section 5 of the Lichfields report [REP2-039], which deals with the specific impacts at the site and noted that the Hatchfield Farm decision held that the unique selling point was the horses moving across the town. In other words, not the Limekilns gallops. Therefore, the selling point cannot be solely attributed to the Limekilns gallops as it incorporates everything else offered as part of Newmarket, including the racehorses, trainers, history, veterinary hospitals, association with monarchy, prestige and many others.

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<sup>1</sup> Appendix to Rapleys Summary assessment of impact on the horseracing industry in Newmarket & connected planning policy assessment [REP2-240f]

As a result, investors will decide whether to invest based on all the evidence and what is on offer on the whole.

- 4.2.8 The ExA queried how much of the landscape character can be attributed to the Limekilns gallops. Ms Haynes responded that, looking at the Hatchfield Farm Inspector's own assessment (paragraph 463), the focus is on what Newmarket has in comparison to other facilities. Newmarket has many supporting facilities and so much more than the Limekilns.
- 4.2.9 Mr Turney added that there are some recreational permissive uses at the Limekilns but that it is also a functional place of work. Therefore, too much emphasis should not be put on the contribution of the view for the purpose of training horses.
- 4.2.10 Ms Haynes then responded to Mr Steel's comments regarding other locations, which was covered in length in the Hatchfield Farm decisions whereby the Inspectors found no locations could rival Newmarket. The Rapleys Impact Assessment also supports the unique nature of Newmarket. This is an evidence-based report showing the locations of the Top 250 ranked locations at three points in time over the last decade, and demonstrates that Great Britain has broadly maintained its top position. The Hatchfield Farm Inspectors report also sets out at 4.7.7 that the HRI recognises that investment fluctuates. There is no evidence the UK's HRI, to which Newmarket is central, has lost out to other areas. In other words, fluctuations in HRI have not been at the expense of Newmarket.
- 4.2.11 Richard Sykes Popham, on behalf of SNTS and NHG, responded to the points raised by Ms Haynes. Mr Sykes Popham disagreed with Ms Haynes and suggested that Hatchfield Farm and the Scheme are not comparable due to the impacts being considered. Mr Sykes Popham also suggested it would be incorrect to make a decision without obtaining the views of the HRI. The concern was that the focus should be on long term viability as opposed to immediate impact on operational use, as the removal of the attractiveness of the 'shop window' at the Limekilns gallops may significantly impact the abilities to attract investment.
- 4.2.12 Richard Turney, on behalf of the Applicant, summarised that the Applicant is aware of the focus of the Hatchfield Farm decisions being on transport impacts, although reiterated that the points within those decisions being focused on by the Applicant, are not around transport impacts. The Applicant is willing and eager to engage with Mr Sykes Popham to identify the relevant parts of the Hatchfield Farm decisions.

**Post-hearing submission:** the Applicant notes the request made by the ExA in the Hearing for the Applicant and Mr Sykes Popham to discuss which paragraphs of the Hatchfield Farm decision are relevant, with agreed paragraphs to be submitted at Deadline 4. An email from Lichfields (sent on behalf of the Applicant) to Mr Sykes Popham dated 15 December 2022 proposed that paragraphs 438 to 487 of the decision are relevant, as these are the conclusions reached by the Inspector on the impact on the HRI, which are referred to at paragraph 16 of the Secretary of State's decision. We understand that Mr Sykes Popham has requested an extension of time to agree which paragraphs are relevant to Deadline 5. The Applicant therefore continue to seek agreement of the relevant paragraphs with Mr Sykes Popham by Deadline 5.

In the meantime, a full copy of the Hatchfield Farm (2020) decision is included at **Appendix G** of this written summary of the Applicant's oral submissions but, despite the Applicant's efforts, does not identify relevant paragraphs as agreed between the parties.

4.2.13 In relation to the effects of the Scheme on the general economy, Michael Bedford KC on behalf of SCC suggested that this may be dealt with by written submissions. The ExA highlighted the noticeable difference between the detail of the compensation package requested and what may or may not be indicated as available from the Applicant. The Applicant's view is that it is willing to engage with any detailed proposals that the LPAs may wish to provide which can then be set out in a section 106 agreement. The ExA suggested that if there is a serious and viable proposal, then the LPAs should provide more detail to the Applicant.

## 5. Agenda Item 4 – Air quality and human health

### 5.1 BESS – safety

5.1.1 This sub-section of the Agenda sought to discuss the following:

- (a) Fire risk, potential effects and mitigation;
- (b) Explosion and effects; and
- (c) Health implications.

5.1.2 The ExA indicated it had five topic areas it wished to explore: battery chemistry, fire risk, gas emissions, the Outline Battery Fire Safety Management Plan (OBFSMP), and health and safety related consents. In the time available for this agenda item, the first four proposed topics were discussed, and the ExA indicated it would ask any questions with respect to health and safety related consents in writing.

5.1.3 The ExA referred to the Applicant's response to written question 1.1.6 [REP2-037] in which it identified the chemistries selected for the BESS as being Nickel Manganese Cobalt (NMC) and Lithium Ion Phosphate (LFP) and set out the reasons for this selection. The ExA queried why safety was not mentioned as a consideration in this context. Paul Gregory, on behalf of the Applicant, explained that BESS is a system safety process, which is impacted by chemistry, composition as well as other factors. Mr Gregory gave the example of testing he has been involved with comparing three different cell types with the same chemistry (NMC & LFP) which generate significantly different levels of hydrogen, hydrocarbon gases and carbon monoxide during thermal runaway. Mr Gregory explained that the point being made in the Applicant's response to written question 1.1.6 was that general points can be made about chemistries, but other factors such as design, geometry of the cell, the integration of the battery module and battery rack, all have an influence. It was noted that at detailed design, there would be very specific detail about the types of failure responses.

5.1.4 The ExA asked what the severity of any fire reaction would be influenced by. Mr Gregory explained that as a general rule, across all battery chemistries (at 50% state of charge), rather than seeing a burning flaming reaction, you would see a venting reaction – he noted that the composition of the gases released is different in a venting reaction to a burning reaction. Mr Gregory explained that a lot of the testing is done at 100% state of charge as that's the most energetic venting (that state of charge can only be exceeded by overcharging). Heating initiation is used as applied to any chemistry make up or design. Mr Gregory noted that LFP has a higher thermal point for thermal runaway. It was further explained by Mr Gregory that the only way to know the risk is to test the cell at each level,

and the module and then the whole system. Mr Gregory noted that he is involved in testing BESS coming to market in 18 months' time, and that all he is seeing coming forward is LFP or NMC batteries.

- 5.1.5 Mr Turney, on behalf of the Applicant, confirmed that design is fixed post consent. The ExA noted that it understood this, as clearly there is an outline plan to ensure things are considered in the final detail, which allows things to be improved upon. Mr Turney agreed, noting that it is only appropriate to get into that level of detail at that stage (the stage of detailed design, post consent), when the design is fixed.
- 5.1.6 The ExA asked what components of the battery system pose a fire risk.
- 5.1.7 Mr Gregory explained that at cell level it is the burn velocity and overpressure generation, and at module level it is the combustible module materials that significantly add to the fire risk. The fire risk is influenced by cell propagation rates during thermal runaway, this is driven by internal heating through current flow, damaged circuitry and wiring plus external heat from vented gases and flames. Module and rack combustibles such as plastics add significant fuel loads to heat release rates and toxicity, significantly impacting the rate of cell propagation.
- 5.1.8 Mr Gregory further noted that the venting design can help manage that propagation and the heat produced within the battery. The ExA asked whether the testing shows which aspects are likely to cause an issue. Mr Gregory explained that modelling has been done from cell level data over the years and sufficient pre-burn testing was not carried out to validate the module / rack design. The ExA accepted this and noted it was aware of the difference between the cell level and things needing to be understood at a system level. Mr Gregory agreed with this and emphasised that there's a need to understand all the components to know how they work together.
- 5.1.9 Dr Fordham made submissions relating to the difference between metal oxide chemistries and the LFP chemistries and referenced a paper submitted by Professor Christensen, on behalf of SNTS.
- 5.1.10 Mr Gregory responded noting his preference was to avoid generalities. He noted that with respect to nickel cells the portion of nickel in the cells varies and would be a detailed design point. He noted that nickel can link to some aggressive thermal events. However, there has been testing of various cells with nickel chemistries, in particular following the Arizona fire that has been referenced, and as a result, protection features and mitigation solutions and the architecture within those modules was improved. Mr Gregory noted that he had seen nickel chemistry cells in modules not flaming initially – if not flaming then it will be producing more hydrogen like in a LFP cell. He further noted that in LFP cells he had seen multiple cells entering thermal runaway at the same time with high burning velocities. Mr Gregory explained that mitigation systems have to allow for all types of failure responses and you need to understand how those responses impact at cell, module and rack level. Mr Gregory noted that ventilation is one of the key mitigation factors to reduce fire and explosion risks. He explained that battery cooling systems are being tested, which have the capacity to stop and slow down thermal runaway.
- 5.1.11 Following comments made by SNTS, Mr Gregory explained that the fire and explosion risks are proportionate to the battery capacity, regardless of the chemistry. For the OBFSMP, Mr Gregory explained that it is not possible to talk about a mitigation suite without knowing what

the system is, and that there is a huge variation in risk at system level. He explained that at the moment you can see BESS containers with stored energy capacity from 700KWh through to 4MWh, so the variation within this range is significant. Given the number of factors at play, for example, venting deflagration designs, suppression design, spacing, ventilation, the BESS mitigation solutions have to deal with all failure reactions rather than a single reaction ascribed to a cell chemistry – and the general risk mitigation methods outlined in the OBFSMP are guidelines not prescribed solutions, mitigation solutions will be dependent upon the selected BESS design.

5.1.12 Mr Turney explained that the BESS cannot come into operation until the approved BFSMP is in effect, and the approval of that plan is not possible without the detailed design; the two go hand in hand. Mr Turney explained that the question for the ExA is whether there is a case to say that in principle battery energy storage systems are so unsafe that they should not be given approval. Mr Turney noted that the many decisions approving battery energy storage systems in the UK to date do not indicate that there should be any concern in this respect.

5.1.13 The ExA asked what factors will be significant at detailed design. Mr Gregory noted that system design is not known at this stage, but will be in line with new codes and standards coming on board, plus there has been important input from the fire and rescue service. The indicative site plans included with the revised OBFSMP has integrated their general response requirements, for example through the inclusion of observation areas, emergency access routes and water tanks. Mr Gregory explained that the space requirements of the UK National Fire Chiefs Council and FM Global had been adopted for the indicative plans, and that there would be 6 metres spacing between each BESS container and any energy storage equipment. Mr Gregory explained that two generic designs / layouts had been prepared, to show what could be done with the design, based on what's available on the market at the moment. Mr Gregory confirmed that spacing was not expected to be an issue, given all the new fire and explosion testing requirements (UL 9540A 5<sup>th</sup> Edition + NFPA 855 recommended 3<sup>rd</sup> Party Fire & Explosion testing) where safe spacing distances should be validated through free burn testing, coupled with new BESS standards and updated codes that would be in place. Mr Gregory explained there would be requirements on the Applicant to prove that a fire could not propagate between one BESS container to another. The testing would validate what spacing is required. Mr Gregory noted that modelling can be very good, but you have to have tested at significant scale to have confidence in the data, rather than at a single cell level which is not reflective of the real world risks / consequences.

5.1.14 The ExA referred to the assessment approach and the Rochdale envelope, and asked for confirmation that as the technology improves, the effects would not get any worse. Mr Gregory agreed with this, and Mr Turney confirmed that the Rochdale envelope parameters have been imposed for other reasons (for example, landscape and visual impacts), rather than to restrict battery technology or chemistry, and confirmed that the Applicant would be limited by those parameters, which are fixed. The ExA confirmed this point was understood.

5.1.15 The ExA asked about the fire explosion risk. Mr Gregory explained the risk was directly proportionate to the battery capacity. He explained that there were different failure modes, and that the mitigation system at detailed design stage would look at 4 major areas to address this. Mr Gregory noted that it was important to avoid allowing an explosive atmosphere to build up within the BESS, and for this reason ventilation is key throughout the whole system. Within the module and rack design itself, it is important to integrate

passive barriers and spacing to reduce the propagation rate speed, plus any active cooling capability that can be integrated at module level – as a result the impact would be to cool and extract heat and gases from the environment, whether that be through cooling / extraction of flames or gas. The final element is detection and ensuring this occurs as early as possible. As the thermal runaway event continues incident monitoring capability and suppression system design and ability to stop explosive gas atmosphere build are key safety features. Mr Gregory explained that without adequate ventilation, explosive atmospheres can build up. If a really volatile burning reaction occurs, then the battery system can burn through the available oxygen in a short time frame resulting in a venting reaction occurring as a consequence – and Mr Gregory confirmed that the proportion of oxygen generation from NMC cells is not sufficient to sustain a flaming reaction once all oxygen is consumed within a BESS enclosure.

- 5.1.16 Mr Turney assured the Examination that the Applicant was aware of the need to undertake a consequence assessment and confirmed that this would be done at the detailed design stage and in order to approve the final form BFSMP. Mr Turney further explained that only when that assessment has an acceptable outcome would the BFSMP be approved. In response to a comment from the ExA, Mr Turney confirmed that the Applicant would ensure the OBFSMP secured that the consequence assessment is undertaken. **Post-hearing note:** the Applicant confirms that the OBFSMP will be updated at Deadline 5 in this respect.
- 5.1.17 In response to reference by Dr Fordham to an explosion in Beijing in April 2021, Mr Gregory explained that the BESS in question in that case was located on top of a shopping centre, using a layout that he would not expect to see at Sunnica. Mr Gregory noted that due to the layout, the fire fighters in that case were tackling the fire at very close quarters, and he further noted that the circumstances are unclear as to what led to an electrical incident to cause the fatalities. With regard to battery to battery propagation, Mr Gregory confirmed that this is very rare.
- 5.1.18 Mr Gregory explained that the overarching point was that in Q4 of 2022 we have an unprecedented level of new codes and standards coming into effect – there are 12 new standards in development next year, cyber security is being looked at, new codes are coming in, and standards for installation, maintenance, replacement and design construction of BESS enclosures are being introduced. Mr Gregory's view was that safety is the main focus of these new standards and codes, and he stated that by 2024, so many new standards will have emerged and the new testing in America at the moment will have further refined and improved batteries and the regulation of them.
- 5.1.19 The ExA asked Mr Gregory if his conclusion was that an air gap is better than a thermal barrier. Mr Gregory confirmed this was an area of major testing and research, but both are important protection features. He explained that concerns had been raised about the ability to emergency discharge BESS systems if there was an incident and referenced testing in North America in this respect. Mr Gregory also referenced direct suppression testing that was being undertaken. He explained that with bigger cell forms there are bigger gaps and better barriers between cells. Mr Gregory noted that in terms of the type of failure response, at some stage within the thermal runaway event passive barriers within the module can act as insulation reflecting / radiating heat back on to the cells. In certain failure modes it's effective but in other failure modes barriers will prove less effective Mr Gregory confirmed that with larger cells passive protection products and spacing configurations does provide

good mitigation capability compared to smaller cells which have minimum spacing and don't allow for passive protection barriers to be integrated within the modules.

5.1.20 At the Hearing, there were some detailed discussions between Dr Edmund Fordham and the Applicant regarding gas emissions in relation to the BESS. Although the Applicant provided various responses at the Hearing, it was also confirmed that the Applicant would provide further clarification in writing. Please see the below which sets out the Applicant's position on the matter:

- (a) Dr Fordham raised that Appendix 16D: Unplanned Atmospheric Emissions from BESS [REP2-264] ignored other pollutants aside from hydrogen fluoride (HF). He mentioned three in particular – carbon monoxide (CO), hydrogen cyanide (HCN) and “toxic smokes” (such as inhalable particulates of nickel oxide as a carcinogen).
- (b) Dr Fordham also stated that HCN is not produced from BESS cells themselves, rather the plastics in and around them. Indeed, The Public Health Risk Assessment Final Report for the Ventura Energy Storage Project (Annex 6 of the Deadline 4 submission with document reference EN010106/APP/8.69) states that:  
  
*“It was also found that the average emission rate of HF in a plastics fire can be higher than the average emission rate of a battery fire (DNVGL 2017), indicating that potentially a majority of the toxic emissions from a battery fire are a result of the combustion of the plastic components.”*
- (c) In response from the Applicant, this highlights a key point about Appendix 16D – it is a preliminary assessment of potential risks. Without a detailed design a full consequence model cannot be undertaken. As raised by Mr Turney at the Hearing, emissions from plastics which may not be present in large quantities would not be helpful.
- (d) The same applies to particulate matter. In order to be absorbed into the blood stream particulate matter needs to be of the size fraction PM<sub>2.5</sub> (particulate matter with an aerodynamic diameter of 2.5 microns or less). The amount of particulate matter produced in a fire is highly dependent on the type of ignition and fire, as well as the components of the system. It is for these reasons that the dispersion modelling undertaken was done to establish dilution rates rather than concentrations.
- (e) Carbon monoxide from fires can be an issue for firefighters, but as it is less dense than air, it disperses rapidly in ambient conditions. Therefore, it is not likely to be an issue off-site.
- (f) Regarding the HF emissions, Dr Fordham considered that the emission rate used by the Applicant has been “plucked out of the air”. The Applicant disagrees. The total HF load available for release has been taken from the Cleve Hill application (2kg in 5 racks), which has been through the DCO process and been granted consent. Appendix 16D does not state that this is the total HF load for the entire BESS, only that this is the load that could be released at any one moment in time. For more than 5 racks to be alight

at one time multiple ignition points must occur independently and simultaneously – which is not considered to be representative. The Public Health Risk Assessment Final Report for the Ventura Energy Storage Project (Annex 6 of the Deadline 4 submission with document reference EN010106/APP/8.69) states:

*“This analysis is limited to a reasonable worst-case event. A catastrophic event, such as an airplane impact, run-away vehicle impact, terrorist incident or nearby construction equipment collapse causing impact, could cause multiple megapacks to be destroyed, causing substantial emissions associated with a large-scale fire. A reasonable worst-case event is more limited in scope, defined as a control system failure or a puncture of a module, similar to that conducted as part of the UL 1973 testing, which could cause a runaway reaction in a group of cells. Generally, a reasonable worst-case scenario is more appropriate for a planning scenario as any development project could produce substantial fires and cause impacts to neighbouring facilities under the catastrophic scenario.”*

- (g) This is an important point, and one which should also hold for the Sunnica assessment. For the purposes of planning, a reasonable worst-case event is required to be assessed. As such the assumption of a fire starting at a single point is considered to be appropriate.
- (h) Dr Fordham referenced the Larsson (2017) report, estimating 20-200 mg/whr, but also noted that the storage capacity of the Scheme is not defined. The Applicant submits that this means that a rate dependant on the storage capacity is not an appropriate metric for this study. The Public Health Risk Assessment Final Report for the Ventura Energy Storage Project (Annex 6 of the Applicant's Response to BESS Safety Issues, document reference EN010106/APP/8.69) compiles a number of battery assessment reports (including Larsson 2017) and details the emissions documented. The metrics vary and are therefore not trivial to compare, considering many studies are proprietary and the necessary details for conversion between units are not available. However, it is clear that the HF emissions vary hugely, supporting the Ventura report's assertion that the plastic content of the battery is more indicative of HF emissions than any other factor. This also means that the assumptions used in Appendix 16D – which are based on a similar study that has been through DCO – are a robust assumption for a preliminary study.
- (i) While consequence modelling will follow the detailed design, the Applicant has submitted examples of what this may look like (see Annexes 6 to 9 of the Applicant's Response to BESS Safety Issues, document reference EN010106/APP/8.69). The Valley Centre Consequence report supports some of the assumptions made in Appendix 16D:
  - (i) Effects were assessed against AEGL-2 following US EPA guidelines. Appendix 16D uses the stricter exposure criteria AEGL-1.

- (ii) The Valley Centre assumed a fire lasting only 30 minutes, as opposed to 3 and 6 hour fires in Appendix 16D.
- (iii) The Valley Centre assumed 1.5 racks would burn, as opposed to 5 in Appendix 16D.
- (iv) The Valley Centre modelling used an emission rate rather than a total content, but converting the 30 min (kg/s) for 1.5 racks (7.83E-06) to total Kg released = 0.0141kg. In comparison Appendix 16D illustrated with 1, 2 and 3Kg.
- (j) Moving forward, fire and explosion testing is likely to stipulate that full freeburn testing of BESS containers are conducted. Battery OEM and UL 9540A test data will allow for precise consequence modelling based on realistic worse case scenarios based on BESS free burn testing.
- (k) In summary, the Applicant submits that Appendix 16D provides a reasonable worst-case assessment and should be read as intended – a preliminary assessment designed to show that AEGL-1 levels are not exceeded outside the site boundary, and not as a detailed consequence model.

5.1.21 In response to comments made by Mr Bedford KC on behalf of Suffolk County Council, Mr Turney confirmed that the Applicant was content for the relevant County Council to be the discharging authority in relation to Requirement 7 of the draft Development Consent Order (dDCO), which required approval of the OBFSMP (given this position as agreed by all the host authorities). **Post-hearing note:** this amendment has been made in the dDCO submitted at Deadline 4.

5.1.22 The ExA asked if the OBFSMP included measures such as requiring people to keep windows closed and responding to advice from the fire service. Mr Turney explained that this was more a consideration for others such as the fire service, noting that the Applicant could look at appropriate wording if this was required. Mr Gregory explained that typically the emergency response plan would be prepared at detailed design stage. He further explained that there has been a movement this year to develop global and national templates for emergency response plans, with guidelines of the National Fire Council for BESS to be released next year. Mr Turney confirmed that the need for an emergency response plan is in the OBFSMP, and in response to a query from the ExA, Mr Turney explained that Table 6 of the OBFSMP identifies the need to develop the emergency response plan, and envisages separate guidance and references the guidance referred to. It was confirmed that the emergency response plan would sit alongside the BFSMP.

5.1.23 **Post-hearing note:** Mr Gregory has commented further on the submissions made by various parties on battery safety and this has been submitted at Deadline 4 as the Applicant's Response to BESS Safety Issues, document reference EN010106/APP/8.69.

5.1.24 The ExA asked if an independent expert would deal with testing of the BESS to the identified standards. The ExA also asked about new technology to warn of maintenance requirements, or to respond if things go wrong, without needing people to do that. Mr Gregory explained that the battery integrator of the system would provide all that test data. He further confirmed that normally an independent engineer would be involved in reviewing

the system, and that this was a fairly standard at detailed design stage. Mr Gregory explained that some of the fire service intervention in past examples has been because they could not discern what was happening, however, now there is data that can be made available to first responders to inform their approach.

## 5.2 Emergency planning including evacuation plans

5.2.1 The ExA noted that this issue is to be revisited outside of the Hearing at a later date.

## 6. Agenda Item 5 – Water resources, flood risk and drainage

6.1 The ExA noted that a lot of the outstanding issues in relation to this Agenda Item seem to have been resolved, therefore in light of the time constraints at the Hearing, discussions are to be taken offline.

## 7. Agenda Item 6 – Public Rights of Way

7.1 The ExA set out the following summary and asked the Applicant to confirm whether it was correct and to clarify which documents the relevant information shall be put in:

7.1.1 The ExA referred to Chapter 13: Transport and Access of the ES [APP-045] which states that eight public rights of way (PRoW) are required to be closed during the construction period, for up to three weeks in the worst-case scenario. These are not expected to be closed at the same time. In addition, three permissive routes are being proposed as part of the Scheme post-construction as outlined in the Transport Assessment [APP-117].

7.1.2 Natural England has raised concerns in its relevant representation [RR-1291] in relation to people's connection with nature. The ExA are cognisant of the Applicant's response to relevant representations [REP1-016] which picks up the concern that footpaths and PRoWs may be temporarily closed but then may be unable to be restored properly. The ExA queried whether the Applicant could confirm that the Scheme proposes no permanent changes to PRoW but that short term temporary closures are required.

7.1.3 The ExA also queried what the Applicant is committed to restoring, which it understood to be in the next iteration of the Framework Construction Environmental Management Plan [REP3-015] (CEMP).

7.2 Richard Turney, on behalf of the Applicant, confirmed that the ExA's summary was correct. Although Mr Turney emphasised one point in relation to the Framework Construction Traffic Management Plan (CTMP) and the powers for temporary possession (TP) of PRoW, in that that there is a precaution whereby the Applicant would seek to limit TP as far as possible and seek to avoid any closure entirely where it can be ensured that the PRoW can be crossed safely without being closed or where a diversion within the Order limits could be provided. In other words, it is a worst-case assessment. This will be dealt with in the CEMP and CTMP. Mr Turney also confirmed that the PRoW would be restored to their original condition – a pre-construction condition survey would be undertaken with the Applicant restoring the PRoW to their original condition post construction.

7.3 The ExA asked for clarification on when the closures may arise and how it may impact the wider PRoW network:

- 7.3.1 Mr Turney responded that the Applicant has not produced a precise programme yet in any detail, however effectively it will be a sequential treatment. Mr Turney also added that the Applicant can provide an indicative programme of when one closure may be followed by further closures to indicate the potential impact.
- 7.3.2 The ExA responded that it is seeking to understand what the cumulative effects of the closures may be. Mr Turney suggested that the Applicant can provide further narrative post-hearing to assist in this regard. This would not be prescriptive but for the purposes of understanding spatially and sequentially how those two closures may fit together.
- 7.3.3 Mr Turney agreed that there would be liaison with the LPAs around the precise timing and arrangements with regards to diversion signage. The Communication Strategy in the CEMP will assist here. Table 3-7 and page 16C-43 of the Framework CEMP [REP3-015] states that *"Where possible, temporary closures of Public Rights of Way will be planned and programmed to minimise disruption to users"* and requires a Communication Strategy, noting changes to highways. Mr Turney confirmed to the ExA that is the appropriate mechanism for any details required to be communicated to the users of the right of way network to be inserted. Mr Turney emphasised though that the Applicant will seek liaison with the county council highways authorities to seek to avoid closures entirely.
- 7.4 Claire Dixon, on behalf of SCC, said that the highway authority strongly believe that the proposed temporary closures can be avoided in the most part. Ms Dixon also emphasised the need for the use of Banksman and signage. This has been done on cable corridors in the East of Suffolk (schemes EA1 and EA2).
- 7.5 Camilla Rhodes, on behalf of CCC, emphasised the importance on the placement of signage where temporary closures are required. Namely, to be placed at the beginning of the route so any alternative routes can be considered holistically. Ms Rhodes also raised concerns around the restoration of the boundary features in the event of temporary closures, so where crossings are proposed over rights of way which might involve certain works (such as hedge removal), CCC are concerned about how any damage will be restored.
- 7.6 Ms Rhodes continued that the county councils share the concern around permanent access and what the Scheme offers in terms of providing benefit for the local community a way of mitigating the negative impact of the development on local communities.
- 7.7 The ExA queried whether the package requested by the LPAs should be made using a section 106 agreement. Camilla Rhodes, on behalf of CCC, confirmed that it was usual for landowners to enter such commitments through section 106 agreements for land within the Scheme boundary, then a section 106 fund could be used for land outside of the Scheme boundary.
- 7.8 Michael Bedford KC, on behalf of SCC, submitted that SCC see no reason why the Applicant would not be able to provide diversionary routes if closure became necessary. Similarly, in relation to PRoW Post Construction [APP-245], which shows the indicative provision of permissive routes, SCC would welcome further discussion of additional routes within the site through the Applicant's own control or the potential for funding contributions to the LPAs.
- 7.9 Richard Turney, on behalf of the Applicant, responded on the following points:

- 7.9.1 In relation to temporary interference, there is a power at Article 11 of the dDCO **[REP2-012]** for the Applicant to divert. It may be possible for the Applicant to deliver localised diversions depending on the construction compound progressions, however the Applicant cannot divert in any area outside of the Order limits.
- 7.9.2 The Applicant is committed to agreeing signage with the relevant local highways authorities, which shall be reflected through tightened wording in the CEMP.
- 7.9.3 In relation to impacts during the operational life of the Scheme, Mr Turney emphasised that the key point is that the Scheme does not interfere with PRoW. They are retained during the operational phase. Further, the Applicant proposes further access to permissive routes, for example the Applicant is in discussions around a further route at E05 and are looking at the crash site to identify how this can be promoted and enjoyed through improved signage and information boards.
- 7.9.4 Mr Turney also welcomed further proposals from the LPAs so that the Applicant has a clear idea on how to contribute to PRoWs outside of the site. For example, providing funding or helping interconnectivity between communities. Such proposals can be captured in a section 106 agreement.
- 7.9.5 Finally, Mr Turney raised that the Applicant is happy to look at ensuring that a fund is available for the LPAs should they wish to seek further path creation orders later on in the Scheme's lifetime.

## 8. Agenda Item 7 – Next Steps

### 8.1 Actions for parties arising out of the Hearing

- 8.1.1 The ExA read out its list of actions from the Hearing, which were published on the PINS website following the Hearing.
- 8.1.2 The Applicant can confirm the position in respect of the Deadline 4 actions (i.e. where they can be found within the Applicant's Deadline 4 submissions) in the table below:

ExA Action	Response in Deadline 4 submissions
The Applicant to provide Report SP04018 Research Project for Soil Recovery of organic matter.	The Applicant has provided this report at Appendix B of this written summary of the Applicant's oral submissions. Please note, the correct document reference for this report is SP04016, not SP04018.
The Applicant to provide technical note in response to Natural England's comments and request in its additional submission <b>[AS-314]</b>	The Applicant has provided this report at Appendix A of this written summary of the Applicant's oral submissions.
To provide complete copy of the Hatchfield Farm appeal decision letter (with	The Applicant has provided the 2020 decision at Appendix G of this written

highlighted relevant passages agreed with SNTS / NHG)	summary of the Applicant's oral submissions.  An update is also provided at paragraph 4.2.12 of this written summary of the Applicant's oral submissions.
The Applicant to provide a reference for the Natural England Guidance Note which includes a table presenting predictive ALC plans.	The Applicant has provided the Natural England explanatory note at Appendix E.  Details are also provided at paragraph 4.1.7(c) of this written summary of the Applicant's oral submissions.
The Applicant to respond to the matters raised by John Steel KC on behalf of SNTS and NHG in relation to ALC.	A response is provided at paragraphs 4.1.2 to 4.1.9 of this written summary of the Applicant's oral submissions.
The Applicant to respond to the issues raised by Dr Fordham in relation to the emissions assessment of the Applicant, particularly the reliance on the Larsson (2017) report, effectively claiming an understatement of the factor of hydrogen fluoride.	A response is provided at paragraph 5.1.20(h) of this written summary of the Applicant's oral submissions.
The Applicant to confirm that the Battery Fire Safety Management Plan, as secured through the DCO, provides for the approval by the County Councils.	This confirmation is provided at paragraph 5.1.21 of this written summary of the Applicant's oral submissions.
The Applicant to consider and respond to the Dr Christensen report (submitted by SNTS) [REP2-240m].	The Applicant considers this issue has been answered within Response to BESS Safety Issues [EN010106/APP/8.69] and at paragraph 5.1 of this written summary of the Applicant's oral submissions.

## 9. Agenda Item 8 – Close of hearing

9.1 The ExA closed the hearing at 17:50pm.

## APPENDIX A

Technical note on the assumptions made by the Applicant in the ALC assessment in response to a request from Natural England [**AS-314**]

## Appendix B

### Best Practice for Managing Soil Organic Matter in Agriculture

#### Summary report for Defra project SP08016 (July 2009)

## Appendix C

### Countryside Stewardship SW7: Arable Reversion to Grassland

# Appendix D

## Solar Research Soil Quality – WUR

## Appendix E

### NE Explanatory Note for Likelihood of BMV Land

# Appendix F

## EA Cam and Ely Ouse ALS

## APPENDIX G

Full copy of the Hatchfield Farm (2020) decision



# SUNNICA ENERGY FARM

Technical Note: Clarification Requested by Natural England on  
Agricultural Land Classification



# Sunnica Energy Farm

## Technical Note:

### Clarification Requested by Natural England on Agricultural Land Classification

<b>Planning Inspectorate Scheme Reference</b>	EN010106
<b>Application Document Reference</b>	EN010106/APP/8.58-A
<b>Author</b>	Sunnica Energy Farm Project Team

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Rev 00	14/12/2022	First issue to Natural England

# 1 Introduction

- 1.1.1 This technical note has been prepared by Daniel Baird Soil Consultancy Limited (Baird Soil), working on behalf of Sunnica Energy Farm. It provides clarification on Agricultural Land Classification (ALC) grading decisions made by Baird Soil. The clarification was requested by Natural England (NE) following their review of the submitted Environmental Statement (ES), and in particular Appendix 12B – the Soils and Agriculture Baseline Report (EN010106/APP/6.2) [APP-115].

## 2 ALC Grading Interpretation

- 2.1.1 ALC grading at the Sunnica Energy Farm site is predominantly defined by soil droughtiness. The location is relatively warm and dry. This, in conjunction with the light textured and shallow soils that dominate in this area, results in the majority of the Sites being limited to ALC Grades 3b and 4 by soil droughtiness. There is however abrupt variation in the depth of soil for many areas, particularly over chalk. This variation can repeat within the 100m spacing of sample points for a detailed ALC field survey. Sample points were placed on 100m intersections of the Ordnance Survey National Grid, located using GPS. This is a systematic randomised survey that avoids surveyor bias in the selection of sample points.
- 2.1.2 Two photographs of Archaeological Trenches are given in Annex F of Appendix 12B of the ES (EN010106/APP/6.2) [APP-115]. These were included to illustrate the abrupt variation that can be present, but that is not apparent in a single auger point or soil inspection pit. The first trench shows a shallow soil over a consistent chalk parent material. The second trench a short distance away within the same field shows two abrupt areas of deeper soil found within the more extensive shallow soil over chalk. Sample points placed over these discrete areas of deeper soils would have a higher Moisture Balance than a point two meters away up or down the length of the trench. A sample point located on one such pocket of deeper soil would not be representative of the land at the detailed ALC survey scale. In addition to patches of deeper soil, localised domes and ridges of chalk are present with a shallower soil cover.
- 2.1.3 Two aerial photographs are included in Appendix 1. The first shows land at Lee Farm. Numerous variations in soil are clearly visible in fields where there is no emerging crop. The second photograph is a larger scale image of a field in the Elms Road area of the site. Again, abrupt darker bands are visible in the cultivated surface, with the NE – SW direction of cultivation being visible in these bands.
- 2.1.4 For the first aerial photograph, NE had asked if more Grade 4 land should have been mapped in the Lee Farm area. Baird Soils' interpretation is that the individual Grade 4 sample points located in this area are not representative of an area that is predominantly Grade 3b.
- 2.1.5 Similarly with the second aerial photograph, NE had asked if an area of Grade 3b should have been mapped within a large area of Grade 4. As above, Baird Soils' interpretation is that individual Grade 3b sample points located in this area are not representative of an area that is predominantly

Grade 4. Pit 2 was placed in this area to check the auger sample point record.

## Moisture Balance Calculation

- 2.1.6 As discussed at an online meeting between the Applicant and NE on 30<sup>th</sup> November, Moisture Balance calculations for determining soil drought limitations have been given an allowance of additional depth where a permeable parent material was found within the 1.2m appraisal depth and could not be penetrated by hand auger or spade. The allowance used was an estimated 20cm additional depth of the lowest soil horizon found, with an additional 20% by volume stone content. Soil inspection pits over the shallow chalk found this to be a generous additional allowance. Breaking into the chalk with a pick revealed little to no soil material and roots penetrating the surface of the chalk.

## Gaps in sample point data

- 2.1.7 A handful of gaps appear in the sample point data. Some of these have been omitted in the transfer from field notes to spreadsheet to GIS database where extraneous sample points from the wider survey area were clipped to the fixed red line boundary.
- 2.1.8 The sample point data for these locations is given below.

## Bay Farm

No. 19 TL69800 72900, 0°, winter cereal, MB 2/-1, 3a drought

30cm, MSL, 10YR3/2, 5% flint

40cm, MSL, 10YR4/3, 5% flint

75cm, MCL, 10YR4/4, 5% flint

No. 20 TL69900 72900, 0°, winter cereal, MB 2/-1, 3a drought

30cm, MSL, 10YR3/2, 5% flint

40cm, MSL, 10YR4/3, 5% flint

75cm, MCL, 10YR4/4, 5% flint

No. 21 Track

No. 27 and 28, present in sample point data table, but not transferred to plan.

No. 37 TL69800 72800, level, low hill top, Grade 4 drought

30cm, MCL, 10YR5/2, 15% chalk, stop for Chalk

No. 38 TL69900 72800, level, low hill top, Grade 4 drought

40cm, MCL, 10YR5/2, 15% chalk, stop for Chalk

No. 39 Track

No. 45 and 46, present in sample point data table, but not transferred to plan.

### **Manor Farm**

Sample Points 73, 74, 75, 76, 77, 83, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95, 96.

Area under outdoor pig rearing when originally surveyed. Still under pigs on return to site to survey Lee Farm area cleared of Pigs. Sample points placed on south eastern perimeter of area along with Reading Agricultural Consultants (RAC) survey of sand and gravel quarry to east considered to give sufficient confidence that land is part of the surrounding extensive area of consistent Grade 4 land.

### **Chippenham Park**

No. 47 TL 65700 67300, level, stubble, MB -34/-30, 3b Drought

30cm, MSL, 10YR4/2, 12% hard stone

40cm, MSL, 10YR4/4, 12% hard stone

45cm, MSL, 10YR6/6, 30% chalk. Stop for Chalk.

No. 48 TL 65800 67300, level, stubble, MB -34/-30, 3b Drought

30cm, MSL, 10YR4/2, 12% hard stone

40cm, MSL, 10YR4/4, 12% hard stone

45cm, MSL, 10YR6/6, 30% chalk. Stop for Chalk.

No. 65 TL 65700 67200, level, stubble, MB -34/-30, 3b Drought

30cm, MSL, 10YR4/2, 12% hard stone

40cm, MSL, 10YR4/4, 12% hard stone

45cm, MSL, 10YR6/6, 30% chalk. Stop for Chalk.

No. 66 TL65800 67200, level, stubble, MB -34/-30, 3b Drought

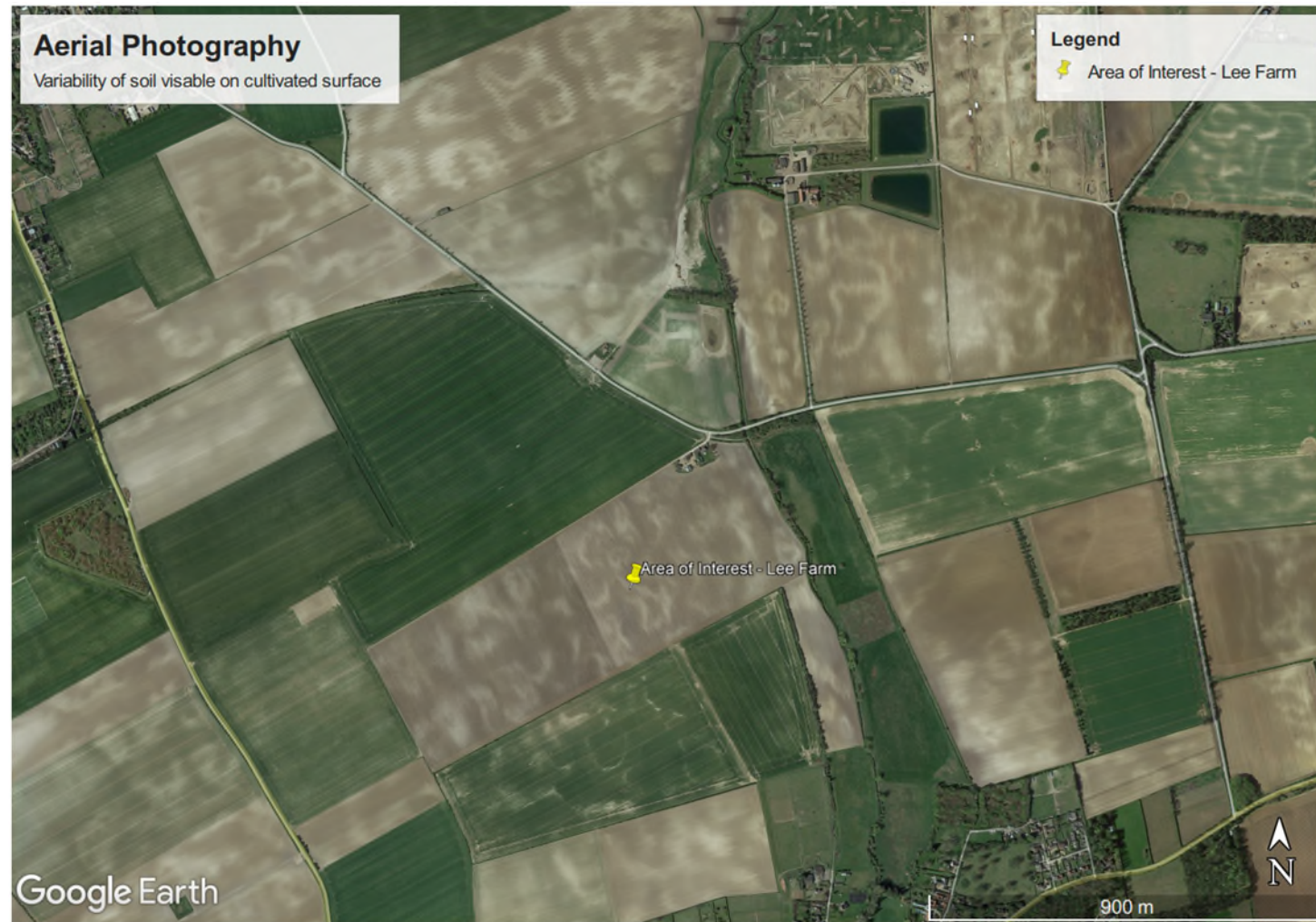
30cm, MSL, 10YR4/2, 12% hard stone

40cm, MSL, 10YR4/4, 12% hard stone

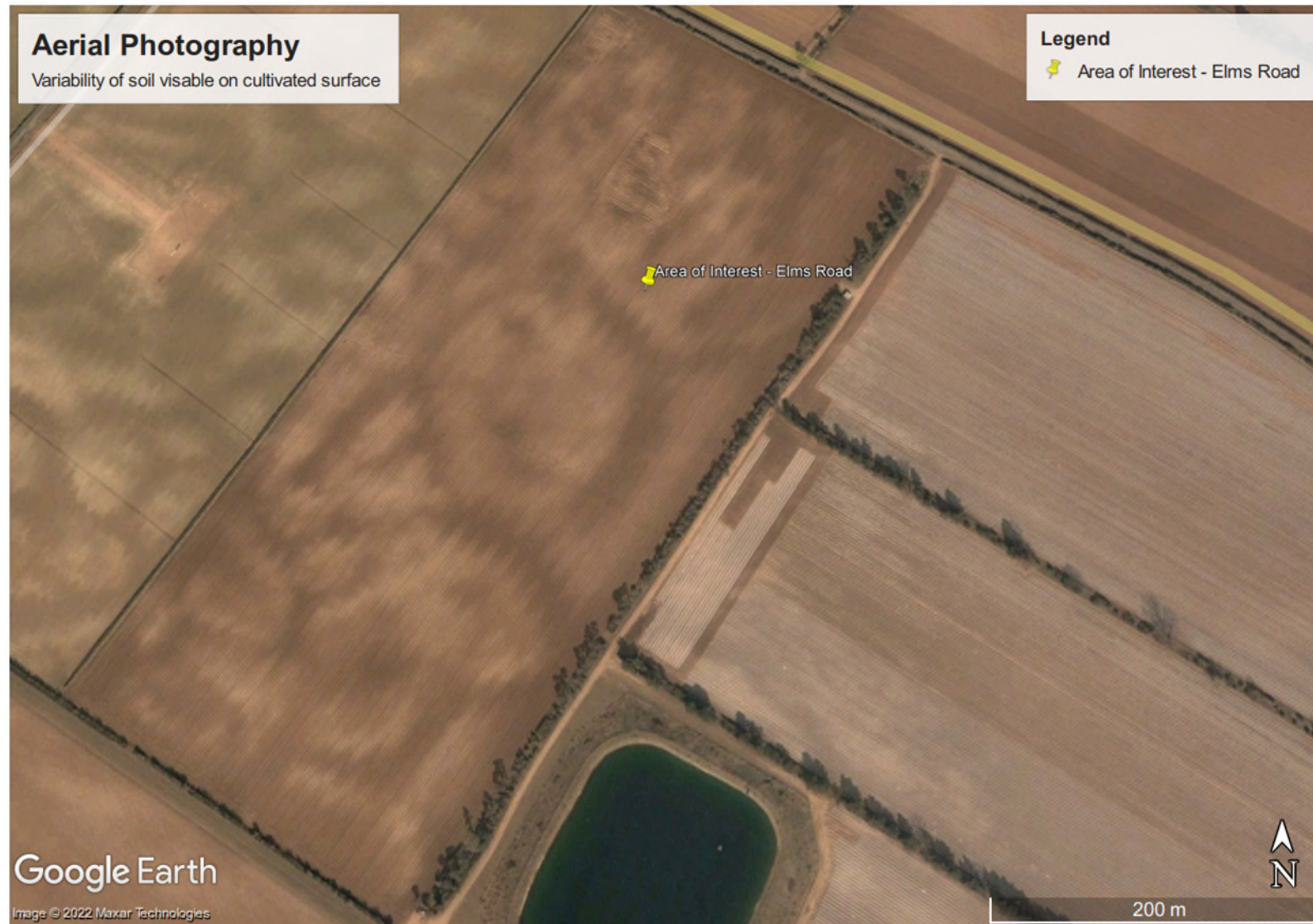
45cm, MSL, 10YR6/6, 30% chalk. Stop for Chalk.

# Appendix 1

## Land at Lee Farm



## Field in Elms Road Area



# Best Practice for Managing Soil Organic Matter in Agriculture

July 2009

Summary report for Defra project SP08016



## Prepared by:

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# 1. Introduction

Soil organic matter (SOM) is fundamental to the maintenance of soil fertility and functions, as well as being an important carbon store. However, there is some evidence that soils in the UK may be losing SOM/carbon, probably as a consequence of land-use change; particularly the drainage of peat soils and a legacy of ploughing out grasslands, and this could have implications for climate change. Protecting and enhancing soil organic matter (SOM) levels is a key objective of the draft Defra “Soil Strategy for England”, and will have beneficial effects for overall soil quality/fertility, carbon storage and erosion control. This report summarises results from a review of recent research on practices for managing SOM in both ‘lowland’ (defined as land below the intake wall) and upland (i.e. land above the intake wall) agriculture (Bhogal *et al.*, 2009; Worrall & Bell, 2009), where best practices have been identified.

## 2. Managing SOM in ‘lowland’ agriculture

Focusing largely on UK studies and reviews, practices that benefit SOM were identified and summarised in a *matrix of management options* (Table 1), taking into account variations in soil type, agricultural systems and cropping/land-use wherever possible. Detailed descriptions of each method are given in Bhogal *et al.* (2009). Table 1 provides an overview of the relative benefits (to SOM and C storage), cost, practicality, likely uptake and environmental impact of each of the methods. Both positive (e.g. a reduction in diffuse pollution, increased biodiversity) and negative (e.g. increased risk of soil erosion or gaseous emissions) environmental impacts were assessed, as there were some examples of ‘pollution swapping’. For example, reduced tillage has the potential to *decrease* soil erosion and diffuse nutrient pollution, but could potentially *increase* nitrous oxide emissions.

Two clear ‘drivers’ were identified for SOM management:

1. *Protection and maintenance* of existing SOM levels for their soil quality and fertility benefits.
2. *Enhancement* of SOM levels for soil carbon storage (to contribute to the mitigation of climate change)

Management practices (methods) could be broadly divided between these two categories, although some of the methods for the protection and maintenance of existing SOM levels could also potentially enhance levels.

- Methods that enhance SOM (and C storage) were largely associated with *land-use change*, typically taking land out of cultivation, thereby reducing SOM oxidation and increasing crop carbon returns, viz;
  - Convert tillage land to permanent grassland
  - Establish permanent woodlands
  - Grow biomass crops
  - Introduce rotational grass
  - Water table management (increase the height of the water table)

It is envisaged that these methods would most likely be incentivised via Environmental Stewardship (as there is an element of ‘income forgone’ to the farmer).

**Table 1. Summary matrix of the relative benefits/disbenefits of best practice methods for managing SOM in ‘lowland’ agriculture.**

Land use		Benefit to SOM (C storage) <sup>1</sup>				Cost	Practicality	Environmental impact <sup>2</sup>		
		Tillage		Grass						
Method	Soil texture	Light	Medium/ heavy	Light	Medium/ heavy	Organic/ peaty				
Methods that enhance SOM: A. Land-use change									+ ve	- ve
1a. Convert tillage land to permanent grassland		***	***	n/a	n/a	***	£££ <sup>3</sup>	+	↑↑	~
1b. Buffer strips		***	***	n/a	n/a	***	£	+++	↑	~
2a. Establish permanent woodlands		**	**	*	*	**	~ to +£ <sup>4</sup>	+	↑↑	~
2b. Hedges, shelter belts		**	**	*	*	**	£	+++	↑	~
3. Grow biomass crops		**	**	*	*	**	~ to +£	+	↑↑	~
4. Introduce rotational grass		*	*	n/a	n/a	**	~ to £	++	↑	↓
5. Water table management		n/a	n/a	**	**	***	£ to £££	+	↑	↓
Methods that maintain existing SOM: B. Reduce soil erosion										
6. i) Cultivate compacted tillage soil		**	*	n/a	n/a	*	£	+++	↑	~
6. ii) Leave autumn seedbeds rough		**	*	n/a	n/a	*	£	+	↑	↓ <sup>5</sup>
6. iii) Cultivate across the slope		**	*	n/a	n/a	*	£	+	↑	~
6. iv) Manage over-winter tramlines		**	*	n/a	n/a	*	£	++	↑	~
6. v) Early establishment of winter crops		**	*	n/a	n/a	*	£	+	↑	~
6. vi) Fence off rivers and streams from livestock		n/a	n/a	**	*	*	££	+	↑	~
6. vii) Move feed/water troughs at regular intervals		n/a	n/a	*	*	*	£	++	↑	~

Landuse	Benefit to SOM (C storage)					Cost	Practicality	Environmental impact	
	Tillage		Grass		Organic/peaty			+ve	-ve
Method	Soil type	Sandy/shallow	Medium/heavy	Sandy/shallow	Medium / heavy				
6. viii) Loosen compacted soil layers in grasslands		n/a	n/a	**	*	*	£	++	↑ ~
6. ix) Reduce stocking density		n/a	n/a	*	*	*	£££	+	↑ ~
<b>Methods that maintain existing SOM levels and potentially enhance C storage:</b>									
<b>C. Change tillage practices &amp; D. Increase organic matter additions</b>									
7. Reduced/zero tillage		*	*	n/a	n/a	*	~ to +£	++	↑ ↓
8. Establish cover crops/green manures		*	*	n/a	n/a	*	£	++ <sup>6</sup>	↑ ~
9. Straw/crop residue incorporation		*	*	n/a	n/a	*	£	+++	~ ~
10. Encourage use of livestock manures		**	**	*	*	*	~ to +£	+++	↑ <sup>7</sup> ↓
11. Import high OC materials		**	**	*	*	*	~ to +£	+++	↑ <sup>7</sup> ↓

Carbon storage effectiveness	Cost	Practicality (likely uptake)	Environmental impact
*** Very effective	£££ high	+++ high	↑↑ Highly beneficial (impact over large area); ↑ medium/low benefit
** Moderately effective	££ medium	++ medium	↓ risk of 'pollution swapping'
* Some effect	£ low	+ low	~ neutral (no benefit or risk)
n/a Not applicable	~neutral +£ saving		

<sup>1</sup> The relative benefit to SOM was broadly quantified using C storage estimates where available (see Bhogal *et al.*, 2009 for details).

<sup>2</sup> Environmental impact separated into positive (e.g. reduction in diffuse pollution, increased biodiversity), or negative (e.g. increased soil erosion or gaseous emissions), as in many cases there were clear examples of 'pollution swapping'.

<sup>3</sup> Cost estimates assume conversion to extensive grassland.

<sup>4</sup> Cost high in establishment phase, but potential for long-term income from selling wood products.

<sup>5</sup> Possible increased need for herbicides and slug damage.

<sup>6</sup> Not practical on many medium/heavy soils.

<sup>7</sup> The *overall* environmental benefit will only be positive under 'best practice' management.

- Methods that protect and maintain existing SOM levels (and potentially enhance SOM) could be divided into 3 *categories*, viz:
  - Reduce soil erosion and hence soil C losses (9 methods)
  - Change tillage practices to reduce SOM oxidation and erosion (adopt reduced or zero tillage systems)
  - Increase organic matter additions via cover cropping, incorporation of crop residues, addition of livestock manures and importing materials high in OC (e.g. composts, biosolids, paper crumble, industrial ‘wastes’ etc.).

It is envisaged that these methods would most likely be delivered via Cross Compliance measures and incorporated into the requirement to maintain soils in Good Agricultural and Environmental Condition (GAEC).

A further 6 potential methods for SOM management were cited by Bhogal *et al.* (2009), but these were largely speculative and therefore deemed to be *insufficiently robust* to promote to farmers/land managers without further investigation and evidence.

A key knowledge gap was the *lack of field measurements* (under UK conditions) of the potential C storage/saving benefits of many of the proposed methods, across a range of soil types i.e. *the evidence base to support policy implementation is weak*.

### 3. Managing SOM in ‘upland’ agriculture

The effect of a range of land-uses/management practices on the C budget of peat soils was evaluated using a combination of literature analysis and computer modelling. The following practices were considered and compared with a pristine case: drainage, drain-blocking, managed burning, suppression of wildfire, afforestation, deforestation, grazing removal, re-vegetation, vegetation change and vegetation cutting. The potential for these management practices to improve the C and greenhouse gas (GHG) budget was expressed as a probability based on the number of studies reporting a definitive outcome (Table 2). Table 2 also gives an estimate of the magnitude of the effect (t C/km<sup>2</sup>/yr), timescale and potential cost.

The results highlighted that *afforestation* would improve the carbon budget of peat soils over that achievable for the same soil under pristine conditions, due to a shift of carbon from soil to biomass. However, the benefit would be limited to the growth phase of the vegetation, unless harvesting and product substitution were considered.

Additionally, the following management practices could also potentially bring a carbon benefit wherever they are possible:

- *Drain-blocking*; this would lead to increases in the C budget, but results suggest that rises in other GHG emissions may also occur.
- *Re-vegetation*; this would improve both C and GHG budgets.
- *Cessation of burning*; current evidence suggests this would lead to improvements in both C and GHG budgets. However, the issue of char production may alter this for some fires.

- *Grazing removal*; this would improve both C and GHG budgets.
- *Afforestation*; this would improve both C and GHG budgets (particularly on mineral soils).

In contrast, the following management/land-uses could potentially bring disbenefits:

- *Deforestation*; this may be constrained depending upon the re-use of the land after deforestation and what use the harvested product is put to.
- *Drainage*; may reduce other GHG emissions but could increase C losses.

There was little direct experimental evidence of the effect of *wildfire suppression*, *vegetation change* or *vegetation cutting* on the C budget of peat soils.

A key knowledge gap was the lack of studies that considered *complete* C and GHG budgets (particularly for managed environments), as well as a paucity of data on the potential change in C budgets before and after a management intervention.

**Table 2. Summary of: effective sample size; probability of success for both carbon budget and greenhouse gas (GHG) benefit (%); magnitude of effect in terms of carbon; the timescale of the effect; and estimated cost of implementation for each management type.** The values in the brackets are the variance in the probability estimate. The carbon budgets are expressed relative to the soil, i.e. +ve values express a gain of terrestrial carbon relative to the atmosphere. The timescale of change is given as a default value of 25 years, i.e. the time for *Caluna vulgaris* to achieve maturity, this value maybe lower in some regions of the country. See Worrall & Bell (2009) for details.

Management	Effective sample size	Effective sample size (GHG)	Probability of improvement (carbon)	Probability of improvement (GHG)	Magnitude of effect (tonnes C/km <sup>2</sup> /yr)	Timescale (yr)	Cost (£/km <sup>2</sup> or/km of ditch) x10 <sup>3</sup>
Afforestation	9.6	9.4	63 (±19)	81 (±28)	<b>+253</b>	Only up to 70 years after planting	?
Managed burning	5.6	4.1	7 (±0.4)	40 (±2)	<b>-83</b>	25	12.8 to 20.0
Cessation of burning	5.6	4.1	93 (±0.4)	60 (±2)	<b>+83</b>	25	-12.8 to -20.0
Deforestation	0.8	0.3	19 (±14)	14 (±13)	<b>Depends on re-vegetation and use of harvested products</b>	?	?
Drainage	12.1	14.7	19 (±1)	47 (±6)	<b>-5</b>	25	3
Drain-blocking	10.3	11.3	55 (±11)	34 (±5)	<b>+5</b>	25	3
Grazing	3	2.3	65 (±27)	78 (±32)	<b>-3</b>	?	?
Revegetation	5.8	6.4	70 (±28)	45 (±9)	<b>+210</b>	25	8.8 to 27.0
Vegetation cutting	0	0	50 (±50)	50 (±50)	<b>?</b>	25	12.8 to 20.0
Vegetation change	0	0	50 (±50)	50 (±50)	<b>?</b>	25	22.3 to 11.0
Wildfire suppression	0	0	50 (±50)	50 (±50)	<b>?</b>	?	?

## 4. Knowledge transfer

All potential management practices (both lowland and upland) were reviewed and revised (as appropriate) at an Expert Workshop held in London on 17<sup>th</sup> March 2009, by industry, research and policy representatives. Cross Compliance and Environmental Stewardship were identified as key 'drivers of change', with the former most suited to methods that aimed to protect and maintain existing SOM levels; and the latter more appropriate for methods where there was an element of 'income forgone'. Additionally, these methods could be promoted via the provision of farmer advice (e.g. alongside the England Catchment Sensitive Farming Delivery Initiative) and included in future updates of the Code of Good Agricultural Practice.

## 5. References

- Bhogal, A., Nicholson, F.A., Rollett, A. & Chambers, B.J. (2009) *Best Practice for Managing Soil Organic Matter in Agriculture. Manual of Methods for 'Lowland' Agriculture*. Final Report to Defra, Project SP08016. May 2009.
- Worrall, F. & Bell, M. (2009) *Best Practices for Managing Soil Organic Matter in Agriculture. Managing SOM in 'Upland' Agriculture*. Final Report to Defra, Project SP08016. May 2009.

[Home](#) > [Countryside Stewardship grants](#)

# SW7: Arable reversion to grassland with low fertiliser input

Find out about eligibility and requirements for the arable reversion to grassland with low fertiliser input option.

From: [Rural Payments Agency](#) and [Natural England](#)

Published 2 April 2015

Last updated 8 February 2022 — [See all updates](#)

Grant type: [Option](#)  
Land use: [Air quality](#), [Arable land](#), [Uplands](#), [Water quality](#)  
Tiers or standalone items: [Higher Tier](#), [Mid Tier](#)  
Funding (per unit per year): [£301 to £400](#)

## Contents

[How much will be paid](#)

[Where to use this option](#)

[Related Mid-Tier options](#)

[How this option will benefit the environment](#)

[Aims](#)

[Prohibited activities](#)

## Related content

[GS2: Permanent grassland with very low inputs \(outside SDAs\)](#)

[SW14: Nil fertiliser supplement](#)

[GS6: Management of species-rich grassland](#)

[GS1: Take small areas out of management](#)

[SW4: 12m to 24m watercourse buffer strip on cultivated land](#)

## Recommended management

### Keeping records

### Additional guidance and advice

- [How to choose the right location](#)
- [How to manage the sward](#)
- [What to sow](#)
- [Catchment Sensitive Farming](#)

### Further information

## How much will be paid

£321 per hectare (ha)

## Where to use this option

It's available for Countryside Stewardship Mid-Tier and Higher Tier on whole or part parcels but only on one of the following:

- cultivated land that is identified in the Farm Environment Record (FER) as at risk of soil erosion or surface runoff
- cultivated land that has been identified as important for buffering sensitive habitats

You must have support from a Catchment Sensitive Farming (CSF) officer to use this option and must meet **one** of the following conditions.

- You are following a recommended fertiliser management system to plan nutrient inputs across the farm
- You plan to adopt a recommended fertiliser management system within 18 months of the start of the agreement
- You qualify as a low intensity farmer

## Related Mid-Tier options

You can locate the following options and supplements on the same

area as this option.

- [OR1 - Organic conversion - improved permanent grassland](#)
- [OT1 - Organic land management - improved permanent grassland](#)
- [SW14 - Nil fertiliser supplement](#)

## How this option will benefit the environment

A dense grass sward in arable fields at risk of soil erosion or surface runoff will stabilise the soil, reduce nutrient losses, and buffer sensitive habitats, such as designated aquatic habitats or terrestrial habitats sensitive to atmospheric nitrogen. It will also reduce surface runoff, which may help to reduce the risk of flooding.

## Aims

If you're selected for a site visit, we will check that delivery of the aims is being met and the prohibited activities have not been carried out. This will ensure the environmental benefits are being delivered.

Throughout the year there will be a diverse grass sward, with at least 5 species in the seed mix, established if necessary in the first year of the agreement, with minimum bare ground.

During spring and summer, graze the sward and/or cut with cuttings removed in late summer after the bird breeding season.

There will be no livestock on the sward during the autumn and winter.

## Prohibited activities

To achieve the aims and deliver the environmental benefits, **do not** carry out any of the following activities.

- Use pesticides, except for herbicides to weed wipe or spot treat injurious weeds, invasive non-native species, nettles or bracken
- Apply any manure or fertiliser between 15 August and 1 February
- Apply any livestock manures with more than 100 kilograms (kg) of total nitrogen per ha per year- where you do not use livestock manures, you can use nitrogen fertiliser to supply no more than 50kg per ha of total nitrogen per year
- Supplementary feed except for mineral blocks (non-energy based)

On your annual claim you will be asked to declare that you **have not** carried out any prohibited activities.

## Recommended management

To assist you in achieving the aims and deliver the environmental benefits for this option we recommend that you use best practice.

We recommend that you:

- where it is necessary to reseed, establish a grass sward by 1 October using a seed mixture of at least 5 species (see the 'What to sow' section below)
- from year 2, manage the sward by grazing and/or cutting to achieve an average sward height of between 5 centimetres (cm) and 15cm in November - remove all cuttings
- exclude all livestock from 1 October to 15 March
- make sure that, by year 2, less than 10% of the area is bare ground
  - check for breeding birds before operating machinery or carrying out other activities which may disturb breeding birds

or damage their nests. The breeding season tends to run from mid-March until mid-July, but it can start earlier and finish later, depending on the species and the weather

## Keeping records

You must send the following with your application.

- Written support from a CSF officer

Where there is uncertainty about whether the aims of the options have been delivered, we will take into account any records or evidence you may have kept demonstrating delivery of the aims of the option. This will include any steps you've taken to follow the recommended management set out above. It's your responsibility to keep such records if you want to rely on these to support your claim.

- Field operations at the parcel level, including associated invoices
- Stock records to show grazing activity on parcels
- Evidence that you are using a recommended fertiliser management system or that you are at low intensity farmer

## Additional guidance and advice

The following advice is helpful, but they are not requirements for this item.

### How to choose the right location

Use this option in targeted areas to reduce diffuse water pollution. You can also use it to buffer sensitive habitats (such as aquatic habitats designated as Sites of Special Scientific Interest (SSSI)) that are under significant threat from diffuse water pollution. Or to buffer terrestrial sites which are sensitive to atmospheric nitrogen such as priority habitat grassland, heathland, wetland or woodland.

For further advice on where to use this option, refer to national and regional targeting guidelines. This option will not be suitable:

- if it will have a damaging effect on sites of archaeological interest
- on sites with pests (for example, rabbits, mink, thistles and ragwort) that are not under control, and that prevent land management or threaten the established vegetative cover

Where you use this option to buffer sensitive habitats, you can combine it with SW14 - Nil fertiliser supplement.

### **How to manage the sward**

- When preparing a seedbed, remove any subsoil compaction, except on archaeological features
- Control weeds and cut regularly in the first 12 to 24 months of establishment to encourage grasses to tiller
- Where cutting, avoid doing so when the soil is wet, to prevent compaction
- Remove any cuttings that will otherwise damage the sward
- Avoid supplementary feeding, except with mineral blocks

### **What to sow**

Tailor the choice of grass species to the soil type and cutting regime. The following species will grow in most conditions and can form part of a basic grass seed mixture:

- timothy (but use with care it is tussocky, vigorous and can become dominant)
- cocksfoot (but use with care it is tussocky, vigorous and can become dominant)
- crested dogstail
- red fescue
- smooth stalked meadow grass

You can increase the environmental benefits by adding wild flowers. Where you add wild flowers, make sure that the grass mixture is not too vigorous. Use fairly robust flower species, such as:

- ox-eye daisy
- black knapweed
- bird's-foot-trefoil
- common sorrel

## Catchment Sensitive Farming

Catchment Sensitive Farming (CSF) operates in parts of the country where there are water quality issues linked to farming. The scheme provides farmers with free advice and training. You can find more information on [CSF support](#) online.

## Further information

Read more information about Countryside Stewardship [Mid Tier](#) and [Higher Tier](#) to find out more about the scheme and how to apply.

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Published 2 April 2015

Last updated 8 February 2022 [+ show all updates](#)

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MENU



EN



# Solar Research: Soil Quality

Some solar parks are designed in such a way that the soil is completely covered, so no light or water reaches the surface and no vegetation grows under the solar panels. This reduces life in the soil, because soil life cannot feed on new organic material. The soil then no longer stores carbon and instead emits CO<sub>2</sub>.

WUR is investigating how solar parks can be designed in such a way that they do not damage the soil, so that it can continue to store carbon and provide room for biodiversity. To gain a good understanding of the effects of design and management under different conditions (soil types, previous land use and humidity), long-term observations of organic material at a large number of locations are needed.

With twenty developers and managers of solar parks, united in Holland Solar, two consultancies and eight provinces, WUR has set up an integrated research programme in the project EcoCertified Solar parks. This also includes the biodiversity above ground. In this project, twenty existing locations will be investigated over a period of four years, which will be treated in five different ways. Three PhD studies are linked to it: one for soil, one for insects and one for vertebrates.

TNO is investigating the economic aspects of nature-inclusive solar parks, while Wageningen Environmental Research is developing less labour-intensive innovative methods for monitoring biodiversity. Eelerwoude is looking into the best way to manage vegetation in the Netherlands and Green Label is developing a certificate to guarantee ecological design and management.

In order to involve citizens in the planning and monitoring of the solar parks, we are also including 'citizen science' in the research. A four-year study on this scale is exceptional, but follow-up is needed. Biodiversity and soils react very slowly, so effects will occur with a delay. Volunteers can play an important role in determining long-term effects.

## Projects

- ☐ Ecologische basiskwaliteit Land
- ☐ Waterwijzer natuur
- ☐ Nature-inclusive transitions

## Key publications

- ☐ Brief aan Ministerie van Binnenlandse Zaken en Koninkrijksrelaties

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### Go to

- ☐ Landscape and spatial quality
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- ☐ Participation and policy
- ☐ Meso and microclimate



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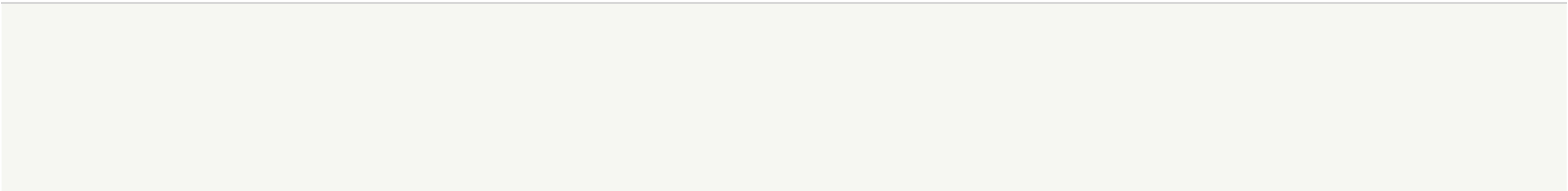
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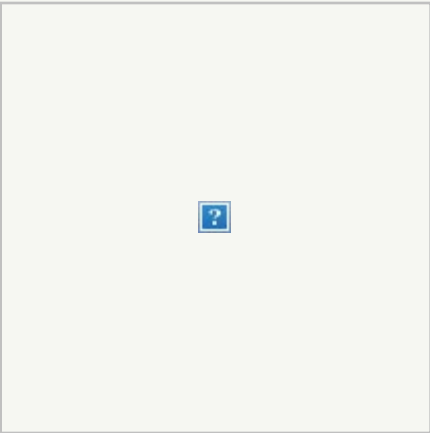
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## **AGRICULTURAL LAND CLASSIFICATION (ALC)** **LIKELIHOOD OF BMV AGRICULTURAL LAND - STRATEGIC SCALE MAP** **(DEFRA, 2001)**

1. Agricultural Land Classification (ALC) Strategic Map information is based on predicting the likelihood of 'best and most versatile' agricultural land (ALC Grades 1, 2 and 3a) when surveyed at the local level. This is important in a land use planning context as described in the National Planning Policy Framework<sup>1</sup>, particularly where large tracts of Grade 3 land are indicated on published Provisional ALC maps and the extent of 'best and most versatile' agricultural land is currently uncertain. The predictions use soil associations (which are the mapping unit<sup>2</sup> of the published 1:250 000 scale national soil map) as the main basis of the assessment. The map is intended for strategic planning purposes only and is **not** suitable for use below scale 1:250 000 or for the definitive classification of any local area or site.

2. The methodology involves each soil association being systematically assessed on a regional basis in accordance with the current classification criteria (MAFF, 1988<sup>3</sup>) using a combination of ALC data derived from site surveys (post 1988), provisional ALC map data, climatic data and published Soil Survey and Land Research Centre (now National Soil Resources Institute) information, to give an assessment for each of the likely proportion of 'best and most versatile' agricultural land to be encountered, according to the following categories

- Areas where more than 60% of the land is likely to be 'best and most versatile' agricultural land.

**(High likelihood of 'best and most versatile' agricultural land)**

- Areas where 20-60% of the land is likely to be 'best and most versatile' agricultural land.

**(Moderate likelihood of 'best and most versatile' agricultural land)**

- Areas where less than 20% of the land is likely to be 'best and most versatile' agricultural land.

**(Low likelihood of 'best and most versatile' agricultural land)**

3. In order to maintain consistency with the published series of 1:250,000 scale Provisional ALC maps land shown as Grades 1 and 2 are automatically placed in the high likelihood category. Land which cannot be 'best and most versatile' agricultural land due to overall climatic limitations is placed in the low likelihood category.

<sup>1</sup> National Planning Policy Framework (March 2012) .

<sup>2</sup> There are 296 soil associations in England and Wales. These are shown on a series of 6 regional soil maps produced in 1983 by the Soil Survey of England and Wales (now National Soil Resources Institute, Cranfield University)

<sup>3</sup> *Agricultural Land Classification of England and Wales* (MAFF, 1988)

4. The resulting assessments are mapped using GIS techniques to produce predictive land quality information at 1:250000 scale. The method is designed to allow improvements to the predictions as new data becomes available, for instance new digital datasets (e.g. geology or topography) or ALC site data. It should therefore be viewed as an evolving GIS based system rather than a single one-off map.

5. The data can be used as a companion to the published provisional ALC map series, as the latter will provide a guide to individual ALC grades within each category.

6. The Strategic Map data has a number of limitations which make it best suited for strategic planning rather than detailed site assessment purposes. These are:

- The soil association data at 1:250,000 scale is a relatively crude indicator of agricultural land quality
- The relative lack of (post 1988) ALC site data for some soil associations and its uneven spatial distribution means the allocation to 'best and most versatile' agricultural land categories cannot be completely objective.
- The combination of different data in the production of the Strategic Map, some with different resolutions, means that there may be some compromises with the presentation

7. Where post 1988 field survey data is available, allocation to one of the three categories of 'best and most versatile' agricultural land likelihood is depicted on the basis of actual grades determined from the field survey work. In these areas the 'best and most versatile' agricultural land category is not a prediction of the likelihood of 'best and most versatile' agricultural, but a generalised representation of the actual land quality in the surveyed area.

8. Where recent (post 1988) MAFF ALC field survey data is available<sup>4</sup>, this is the most reliable source of information on land quality. Where this is not available the predictive data provides the best available information on land quality. The data will be most useful at national and regional levels for indicating the general disposition of land quality within that region (e.g. comparing counties and districts with each other.) It will also enable an appreciation of the relative land qualities within districts and around major settlements at a crude level. **It is not suitable for site specific appraisals.** Site specific studies, including new ALC field surveys, will be needed to obtain definitive information on ALC grades for individual sites.

For further Information contact the Natural England Enquiries Service:

Telephone: 0845 600 3078 (local rate)

Email: [enquiries@naturalengland.org.uk](mailto:enquiries@naturalengland.org.uk)

Note: Licence restrictions mean that a digital version of this map may not be available to non-public body users.

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<sup>4</sup>or reliable third party ALC data

[Home](#) > [Environment](#) > [Water industry](#) > [Abstract \(take\) water](#)  
> [Cam and Ely Ouse abstraction licensing strategy \(ALS\)](#)



Policy paper

# Cam and Ely Ouse abstraction licensing strategy (ALS)

Published 22 December 2020

**Applies to England**

Contents

- 1. [About the licensing strategy](#)
- 2. [Catchment background](#)

## 1. About the licensing strategy

3. [Water resource availability in the Cam and Ely Ouse catchment](#)
4. [How we manage water availability in the Cam and Ely Ouse ALS area](#)
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## 1.1 Overview

This strategy sets out how we manage new and existing abstraction and impoundment within the Cam and Ely Ouse catchment in the Anglian river basin district.

It ensures that we:

- meet River Basin Management Plan (RBMP) objectives for water resources activities
- avoid deterioration within this catchment

We apply this approach to the water body in which the abstraction is located.

It also applies to:

- all downstream surface water bodies that may be affected by any reduction in abstraction related flow
- adjacent groundwater bodies affected by any reduction in groundwater level

The strategy also sets out local approaches to the sustainable management of water resources. This is in collaboration with partners.

[Managing water abstraction](#) describes the technical explanation, legal and policy requirements behind the Abstraction Licensing Strategy (ALS).

The [abstraction pages](#) advise on:

- who needs an abstraction or impoundment licence
- [how to apply for a licence](#)

## 1.2 How is the licensing strategy set out?

This ALS provides an overview of how water is sustainably managed in the Cam and Ely Ouse catchment to:

- provide water for abstraction
- protect the environment

The following is a summary of what each section covers:

[Catchment background](#) - sets out additional information about the catchment and the influences and pressures on water availability.

[Water resource availability](#) - explains how much water is available for abstraction in the catchment.

[How we manage water resource availability](#) - explains the local licensing approach for the catchment which is summarised in [Table 2](#). This includes the potential water available for licensing and the restrictions that would be required.

[Managing the catchment together](#) - details the actions we are taking where abstraction is currently unsustainable in the catchment. Approaches to ensure sustainable water management in the future are outlined, including information on licence trading.

[Related links](#) - are listed for further information on water resource management.

[Glossary](#) - of useful terms.

[Contact details](#) - on how to get in touch.

Note: whilst our assessment tools are continuously updated, we aim to update this document on a 3-year basis. Therefore some details within this document, for example Hands off Flow (HoF) values, may be outdated. Use this publication as a guide to water availability. For up to date and detailed advice see the section [contact details](#).

### 1.3 Collaborative and sustainable water management

Our long-term goal is to develop a stronger catchment focus for water resources management. We are working with abstractors and catchment groups to:

- develop local solutions to existing pressures
- prepare for the future

Catchment groups may include a variety of different partnership groups such as:

- abstractor groups
- local catchment partnerships
- priority catchment groups
- environmental groups

Since the autumn of 2018, we have been collaborating with local partners. In several priority catchments across England we have explored:

- modern and innovative ways of improving access to water
- alternative ways to achieving sustainable abstraction

The Cam and Ely Ouse catchment was selected as a [priority catchment](#) in the [Defra water abstraction plan](#).

We assessed water resource availability using our standard approach. We then have worked with partners to:

- identify local opportunities to modernise abstraction management
- share resources sustainably both now and in the future

Background information on the priority catchment project is available in the [catchment background](#) section. Further details and links on approaches trialled in this catchment are provided in the [managing the catchment together](#) section.

This strategy provides a tool to make informed decisions on the choices abstractors make about their use of water. We want this strategy to help abstractors:

- plan their water use and become more resilient in the face of climate change
- explore the opportunities offered by the priority catchments

## 2. Catchment background

### 2.1 Catchment overview

#### Landscape and land use

The catchment covers an area of approximately 3,664 km<sup>2</sup>. It is characterised by:

- East Anglian Chalklands in the south
- Brecklands in the north
- South Level Fenland to the west

Land use is predominantly arable agriculture. There is a strong rural feel to much of the area.

- population: 659,000 (estimated from ONS 2019 mid-year local authority estimates)
- 2,099 farms covering 280,042 hectares of farm land (Defra farm statistics)

Land use statistics based upon LCM2019 © NERC (UKCEH) 2020:

Land Use Type	Proportion of catchment (%)
---------------	-----------------------------

Permanent grassland	17.6%
Arable	60.5%
Urban	8.2%
Forested	12.5%



The photograph shows Soham lode, a typical high level drain in the Cam and Ely Ouse catchment.

**Water resources**

The catchment incorporates the following rivers and their tributaries:

- River Cam
- River Wissey
- Little Ouse
- River Lark

All drain to the Ely Ouse that discharges to tide at Denver. There is an extensive area of fenland (The South Level) which is level managed. Water levels are controlled using pumping stations to prevent flooding of land

during wet periods. Water is transferred into the system during drier periods to facilitate crop production.

There are 2 important aquifers in this catchment:

- the larger Chalk underlies the eastern and central part of the area - it is mainly utilised for public water supply and spray irrigation
- the Lower Greensand outcrops further west and is separated from the chalk by a layer of gault clay

341 million m3

of water abstracted/year (based on 2013-18 average)

- 826 licensed abstractions
- 115 licences with Hands off Flow (HoF) restrictions at 26 gauging stations
- 79.9% of the catchment underlain by principal aquifer

Proportion of different sectors based on licensed abstraction quantity:

Abstraction licence sector	Proportion of total licensed quantity (%)
Public water supply and other potable uses	32%
Agriculture	14.6%
Industry	3.1%
Amenity/environmental	50.2%

## Climate change

Climate change will impact on the quantity and seasonal availability of water resources within the catchment.

The projected climate change impacts on rainfall and river flow for the East Anglia region by the 2050s are for:

- rainfall to decrease by 39% in the summer but increase by 35% in the winter
- low flows to be 81% lower but peak river flows to be 35% higher

Climate change projections are estimated using data from UKCP09, consistent with a 4°C rise by 2100. The [Environment Agency Climate impacts tool](#) provides further details on the assumptions used.

## Environment and sustainability

The Cam and Ely Ouse ALS area has sites of both international and national importance. The Habitats Directive is a major European initiative that aims to protect biodiversity through the conservation of:

- natural habitats
- wild plants
- animals

Any abstraction we permit must not negatively impact on these sites. More information on protected sites and the implications for abstraction licensing is available in section 4.3.

We must also ensure that abstraction does not impact on the ecology of rivers and streams. Under the Water Framework Directive several of the Cam and Ely Ouse water bodies are not achieving good ecological status. Actions we are taking to reduce unsustainable abstraction are detailed in section 5.1.

167 designated protected areas (SACs, SPAs, SSSIs, LNRs and Ramsar)

Licence reductions:

- Restoring Sustainable Abstraction (RSA) programme:  
18,433,006 m<sup>3</sup>/year
- unused and underused licence project: 333,957 m<sup>3</sup>/year

Water Framework Directive (WFD):

- 73 water bodies (includes 4 lake water bodies)
- 5% water bodies at good status or higher
- 35% water bodies where flow pressure does not support good status

## 2.2 The priority catchment initiative and partnership working

The Cam and Ely Ouse catchment was selected as a priority catchment in the [Defra water abstraction plan](#).

Since the autumn of 2018, we have been working with water users and other partners exploring modern ways of managing water. We are working together across sectors including:

- public water supply
- agriculture
- environment
- flood risk management
- navigation

This delivers multi-functional outcomes which are good for:

- the environment

- people and business

Our focus was to bring together all water users. Together they:

- identified the challenges and pressures
- investigated how to improve the water situation

This catchment was chosen for a number of reasons including:

- current levels of abstraction may be negatively affecting the ecology
- there is unmet demand for water due to low rainfall and a large agricultural sector
- there is potential to share water amongst abstractors
- stakeholders who were keen to trial innovative approaches

With our stakeholders we have trialled different ways of managing water. These are covered in section 5.2. Some trials are finished and some are continuing with the support of our local catchment partnerships.

The Cam & Ely Ouse (CamEO) catchment partnership is active in this catchment which brings together stakeholders from a range of backgrounds to address issues in the catchment. There are also several water resources themed groups which feed into the partnership.

The [CamEO partnership website](#) has further information on:

- on-going activities in the Cam & Ely Ouse priority catchment
- how you can get involved

## **3. Water resource availability in the Cam and Ely Ouse catchment**

### **3.1 Surface water availability**

The method for calculating the water resource availability is explained in [Managing water abstraction](#). Water availability is calculated at selected Assessment Points (APs). The maps show the water availability calculated at the AP, local water availability may differ. There are 17 APs in the Cam and Ely Ouse ALS:

- AP 1: the Old West River, which follows an old course of the River Great Ouse, from Earith to its confluence with the Cam near Streatham, there is little flow apart from what is pumped in from the adjacent fenland system - the AP is at the confluence with the Ely Ouse which is the boundary between the Old West Level Dependent Management Unit (LDMU) and the Ely Ouse LDMU
- AP2: the River Granta, a tributary of the River Cam - the AP is just upstream of the confluence with the River Cam
- AP3: the chalk fed Upper River Cam is highly responsive to the prevailing groundwater conditions - the AP is just upstream of the confluence with the River Granta
- AP 4: the River Rhee is predominantly groundwater fed from chalk springs in its headwaters, with significant contributions from run-off - the AP is located just upstream of the confluence with the River Cam
- AP5: the Bourn Brook is predominantly runoff fed with some groundwater contribution from chalk to the south and greensand covered by till to the west - the AP is just upstream of the confluence with the River Cam
- AP 6: the lower River Cam, upstream of the confluence with the Old West River (originally the Great Ouse) is predominantly fed by chalk groundwater, with contributions from the Greensand to the west - the AP is downstream of the Lodes LDMU
- AP7: the River Snail is predominantly groundwater fed from chalk - the AP is just before the river joins the Ely Ouse LDMU
- AP8: the River Kennet is predominantly groundwater fed from chalk
- AP9: the Upper River Lark is underlain by chalk which provides significant base flow for the river
- AP10: the lower River Lark is underlain by chalk which provides significant base flow for the river - the AP is after the confluence with the River Kennet and just before the river becomes a high level carrier within the Ely Ouse LDMU
- AP11: the River Sapiston is underlain by chalk which provides significant

base flow for the river - the AP is just before the confluence with the Little Ouse at Rectory Bridge

- AP12: the upper Little Ouse is underlain by chalk which provides significant baseflow for the river - the AP is just before the confluence with the River Sapiston at County Bridge Euston
- AP13: the River Thet is underlain by chalk which provides significant baseflow for the river - the AP is just before the confluence with the Little Ouse at Melford Bridge
- AP14: the Little Ouse is underlain by chalk which provides significant baseflow for the river - the AP is just upstream of the Cut-Off Channel immediately before the Little Ouse becomes a high level carrier within the Ely Ouse LDMU
- AP15: the Upper River Wissey is underlain by chalk which provides significant baseflow for the river - the AP is at Northwold
- AP16: the River Wissey is underlain by chalk which provides significant baseflow for the river –the AP is just upstream of the Cut-Off Channel immediately before the Little Ouse becomes a high level carrier within the Ely Ouse LDMU
- AP 17: the Ely Ouse to Denver Sluice which is the critical AP for all sites in the Cam and Ely Ouse - between Denver Sluice and the upstream APs is the Ely Ouse Pond with the Ely Ouse and its tributaries acting as high level carriers within this LDMU, water is transferred to the Ely Ouse Pond during the summer and pumped out during the winter

The Cut-Off Channel runs from Tollgate on the Lark to Denver, going under the Little Ouse at Hockwold and the Wissey at Wissey Sluice. During high flows this acts as a flood relief channel with water diverted from the Lark, Little Ouse and Wissey into the Cut-Off Channel. Water is abstracted from the Cut-Off Channel at Blackdyke as part of the Ely Ouse Essex Transfer.

The major sources of this water are:

- the Diversion Sluice at Denver which can be used to transfer water from the Ely Ouse into the Cut-Off Channel
- seepage from the groundwater into the Cut-Off Channel
- water transferred from the Little Ouse at Hockwold as part of the Great Ouse Groundwater scheme see Section 4.5

Flows at Denver include:

- flows going into the tidal River Ouse from the Ely Ouse through the Little Eyes
- flow going into the Flood Relief Channel from the Ely Ouse through the Head Sluice
- flow going into the Flood Relief Channel from the Ely Ouse through the Residual Flow Sluice
- flow from the Cut-Off Channel into the Flood Relief Channel through the Impounding Sluice

**Water resource availability colours and implications for licensing**

We use colours to represent different surface water availability at a range of flows:

**Water available for licensing**



There is more water than required to meet the needs of the environment.

New licences can be considered depending on local and downstream impacts.

Some time-limited licence renewals may require changes to reflect historic annual usage in order to manage the risk of deterioration to the environment.

Abstractions for non-consumptive uses can still be permissible in catchments where there are sustainability issues.

**Restricted water available for licensing**



Licensed flows fall below the Environmental Flow Indicators (EFI) or there is no more water available for licensing at these flows.

If all licensed water is abstracted there will not be enough water left for the needs of the environment. In some catchments abstracting all licensed water would still support the needs of the environment, but there is no surplus left for new abstractions. No new consumptive licences would be granted. It is likely we'll be taking action to reduce full licensed risks. Water may be available if you can 'buy' (known as licence trading) the entitlement to abstract water from an existing licence holder. More details on water rights trading are available in section 5.3.

Abstractions for non-consumptive uses can still be permissible in catchments where there are sustainability issues.

**Water not available for licensing**



Recent actual flows are below the EFI.

This scenario highlights water bodies where flows are below the indicative flow requirement to help support a healthy ecology in our rivers. We call this 'Good Ecological Status' (GES) or 'Good Ecological Potential' (GEP) where a water body is heavily modified for reasons other than water resources.

Some time-limited licence renewals may require changes to reflect historic annual usage in order to manage the risk of deterioration to the environment.

Abstractions for non-consumptive uses can still be permissible in catchments where there are sustainability issues.

Note: we are currently taking action in water bodies that are not supporting GES or GEP. We will not grant further licences. Water may be available if you can buy (known as licence trading) the amount equivalent to recently abstracted from an existing licence holder.

## Heavily Modified Water Bodies (HMWBs) and/or discharge rich water bodies



Grey

These water bodies have a modified flow that is influenced by reservoir compensation releases or they have flows that are augmented. These are often known as ‘regulated rivers’. They may be managed through an operating agreement, often held by a water company. The availability of water is dependent on these operating agreements. A large proportion of the watercourses within the catchment have been classified as Heavily modified waterbodies (HMWBs), under the Water Framework Directive. This is due to the presence of flow control structures such as sluices and gauges. More detail if applicable can be found in the section 4.1.

The water resource availability is calculated and the colour assigned at 4 different flows:

- Q30 - the flow of a river which is exceeded on average for 30% of the time, therefore you would expect the river flow to be lower than Q30 on 256 days in an average year, that is, a higher flow
- Q50 - the flow of a river which is exceeded on average 50% of the time, therefore you would expect the river flow to be lower than Q50 on 183 days in an average year
- Q70 - the flow of a river which is exceeded on average for 70% of the time, therefore you would expect the river flow to be lower than Q70 on 110 days in an average year
- Q95 - the flow of a river which is exceeded on average for 95% of the time, therefore you would expect the river flow to be lower than Q95 on 18 days in an average year, that is, a low flow

### Water availability maps

The water availability colours for the Cam and Ely Ouse catchment are presented in Maps 1 to 4. Table 1 gives a summary of these maps. Note the water availability presented is based on assessment at the AP level. Refer to section 4 and Table 2 for more detailed information on water availability.

**Table 1: Summary of Maps 1 to 4 - water availability at each assessment point by flow category**

	Name	Q30	Q50	Q70	Q95
AP1	Old West	Available	Restricted	Not available	Not available
AP2	River Granta and Chalk	Not available	Not available	Not available	Not available
AP3	Upper River Granta and Chalk	Restricted	Not available	Not available	Not available
AP4	River Rhee and Chalk	Not available	Not available	Not available	Not available
AP5	Bourn Brook	Available	Restricted	Not available	Not available
AP6	Lower River Cam and Chalk	Available	Restricted	Not available	Not available
AP7	River Snail and Chalk	Restricted	Restricted	Not available	Not available
AP8	River Kennett and Chalk	Restricted	Restricted	Not available	Not available
AP9	Upper River Lark and Chalk	Restricted	Restricted	Not available	Not available
AP10	Lower River Lark and Chalk	Restricted	Restricted	Not available	Not available
AP11	River Sapiston and Chalk	Restricted	Restricted	Not available	Not available
AP12	Upper Little	Restricted	Restricted	Not	Not

Ouse and Chalk				available	available
AP13	River Thet and Chalk	Restricted	Restricted	Not available	Not available
AP14	Lower Little Ouse and Chalk	Restricted	Restricted	Not available	Not available
AP15	Upper River Wissey and Chalk	Available	Restricted	Not available	Not available
AP16	Lower River Wissey and Chalk	Available	Restricted	Not available	Not available
AP17	Denver Sluice	Available	Restricted	Not available	Not available

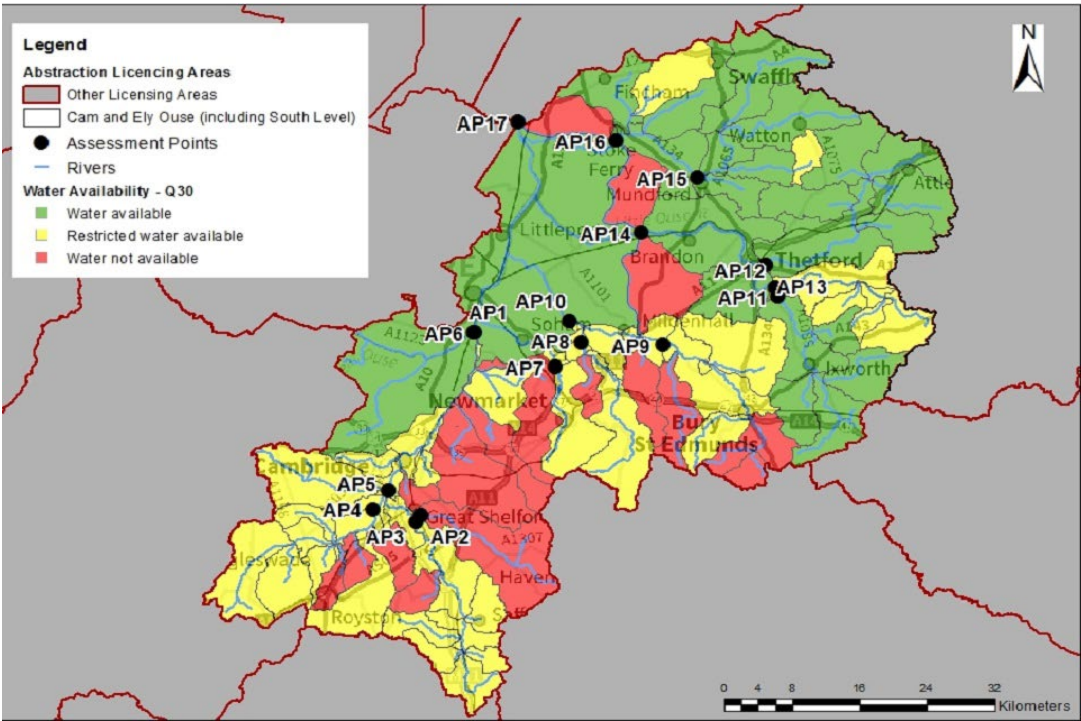
Our resource assessment system calculates water availability at the water body scale and translates to the larger (AP) availability. The maps in this section show the water body scale availability. Summaries within Table 1 and 2 present the overall water availability status at the (AP). Assessment at the water body scale will be considered for applications for new or varied licences.

Whilst Maps 1 to 4 may indicate that water is available at a catchment level this may not be the case locally. All proposals must be assessed on a case-by-case basis. We must take into account localised flows in the watercourse, and the impact of the proposed abstraction on designated sites and other abstractors. When considering applying for a new surface water abstraction applicants should take the following into account:

- we may consider the extension of the abstraction period of a winter licence into early summer - this may affect the subsistence charges associated with a licence
- a minimum Q95 (HoF) condition will apply to all new surface water abstractions
- the HoF required to protect surface water flows may be higher than

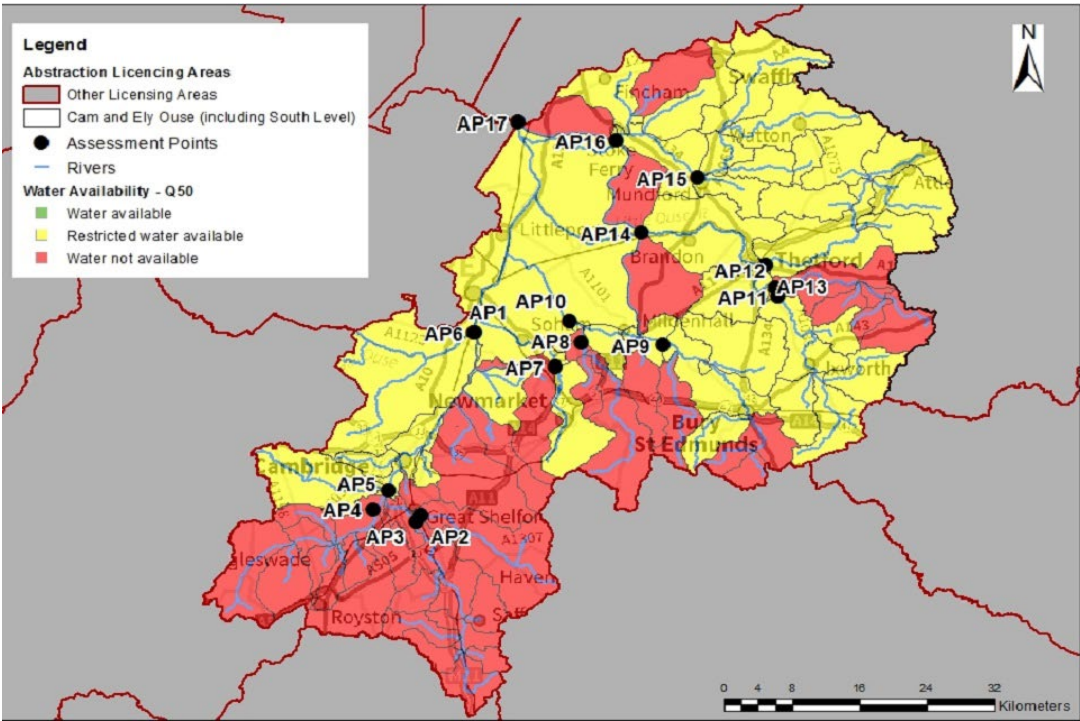
indicated in Maps 1 to 4 and Table 1 and 2, based on the local assessment of a proposal

**Map 1: Water resource availability colours at Q30 for Cam and Ely Ouse ALS**



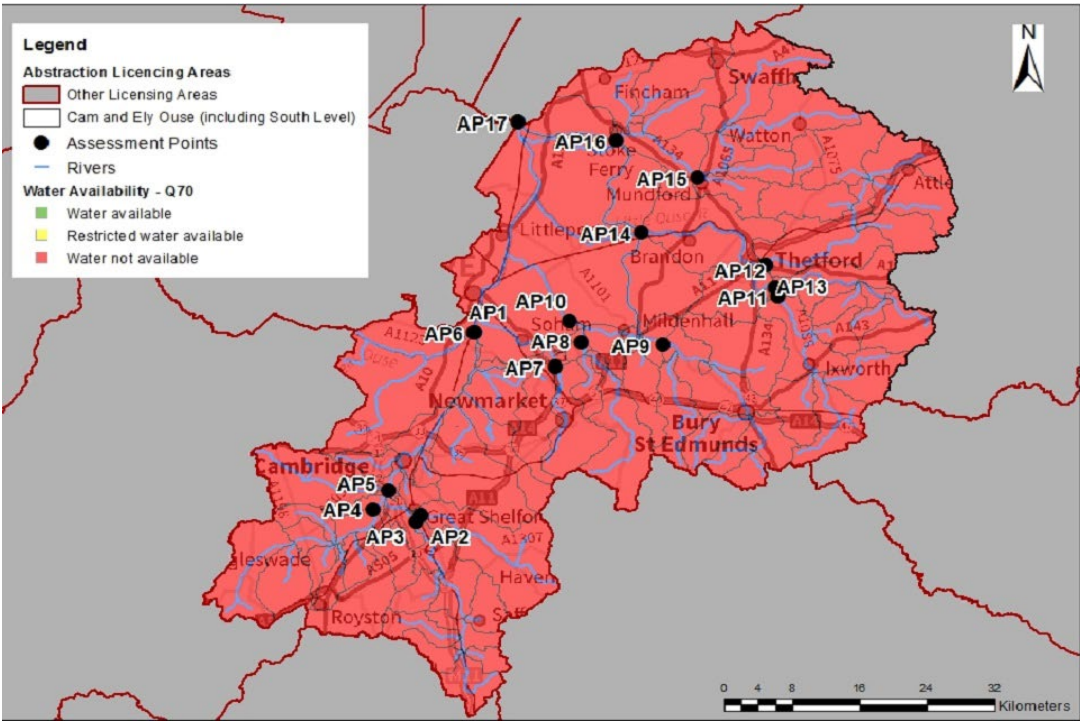
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**Map 2: Water resource availability colours at Q50 for Cam and Ely Ouse ALS**



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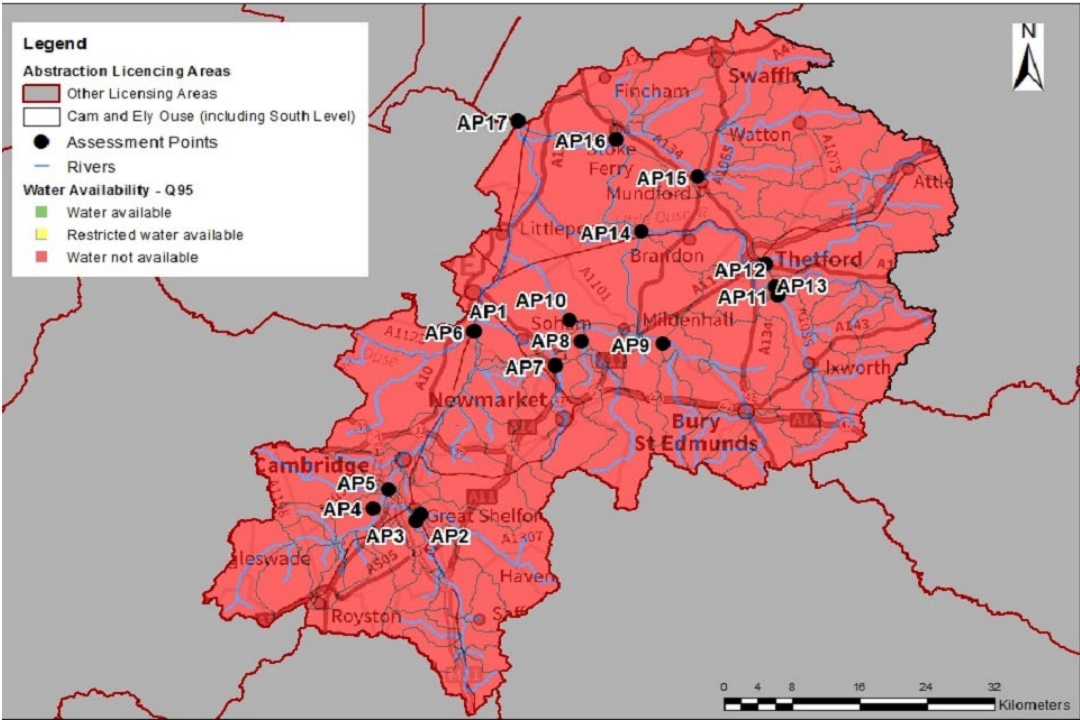
Map 3: Water resource availability colours at Q70 for Cam and Ely Ouse ALS



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Map 4: Water resource availability colours at Q95 for Cam and Ely Ouse ALS

Ouse ALS



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3.2 Groundwater resource availability


Water availability is guided by the surface water resource availability at low flows (Q95). This takes into account the impacts of groundwater abstraction on the surface water body. Where we have better information on principal aquifers or are aware of local issues we need to protect, we will use this information. In certain areas, resource concerns over groundwater mean that the standard water resource availability colours have been overridden.

Groundwater resource availability colours and implications for licensing

We use colours to represent different groundwater availability at a range of flows:

Water available for licensing





## Green

Groundwater unit balance shows groundwater available for licensing. New licences can be considered depending on impacts on other abstractors and on surface water.

### **Restricted water available for licensing**



## Yellow

Groundwater unit balance shows more water is licensed than the amount available. But the actual situation is sustainable because either:

- recent actual abstractions are lower than the amount available
- management options are in place to deal with known local impacts

In restricted groundwater units no new consumptive licences will be granted. We may also investigate the possibilities for reducing fully licensed risks. Water may be available if you can ‘buy’ (known as licence trading) the entitlement to abstract water from an existing licence holder. More details on water rights trading are available in section 5.3.

In other units there may be restrictions in some areas such as in relation to saline intrusion.

### **Water not available for licensing**



## Red

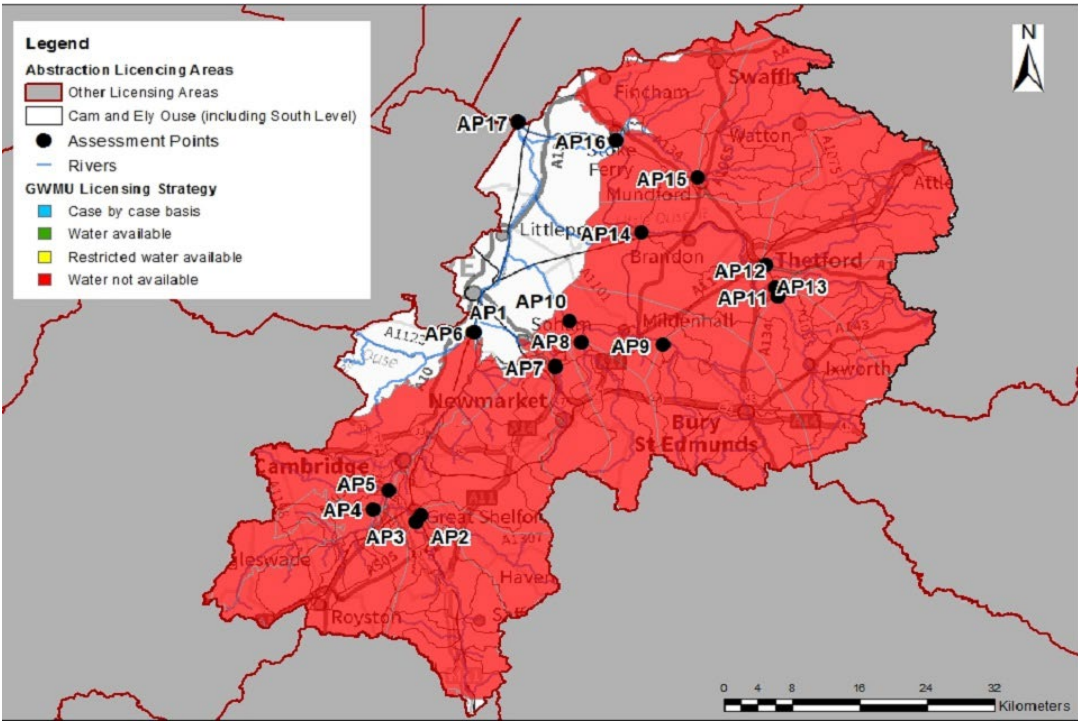
Groundwater unit balance shows more water has been abstracted based on recent amounts than the amount available.

We will not grant further licences.

### 3.3 Groundwater availability map

The groundwater availability map shows in this catchment that there is no water available for new consumptive abstraction across all groundwater units.

**Map 5: Groundwater resource availability colours for the Cam and Ely Ouse ALS**



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### 3.4 Resource reliability

If you want to apply for a licence, it's worth considering the reliability of your surface water abstraction.

By assessing the quantity of water available at different flows it's possible to see:

- when there is a surplus or deficit of water

the associated reliability of an abstraction

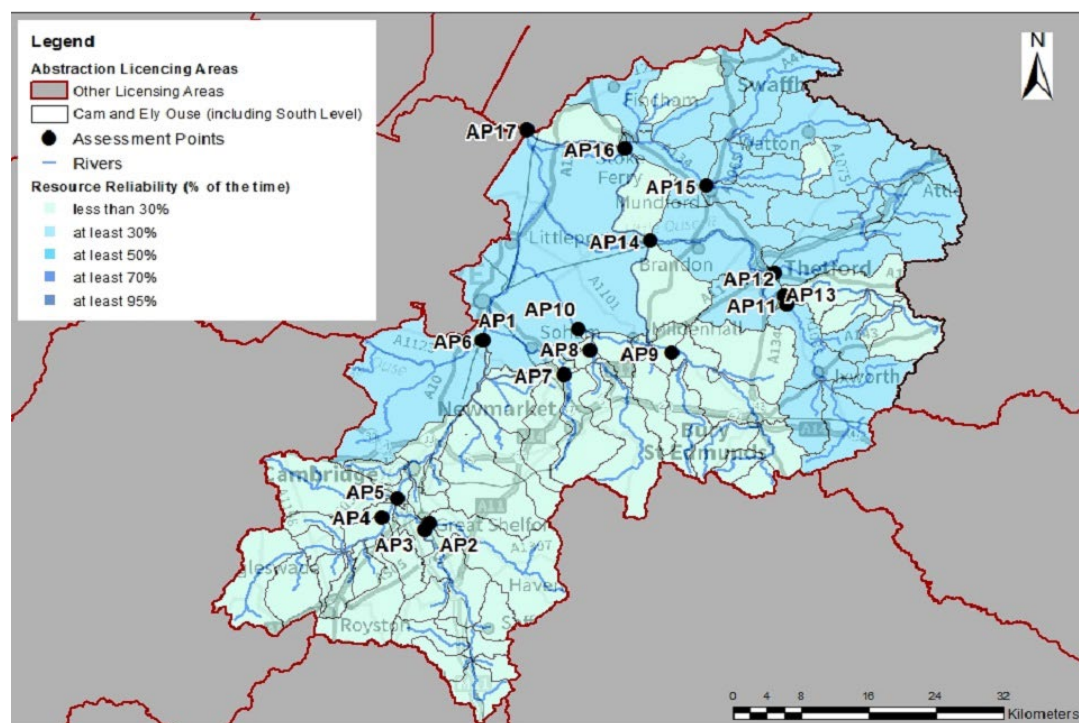
This is an indication only. Actual reliability of a licence will be discussed when you apply.

Map 6 gives an indication of the resource availability for consumptive abstraction in the Cam and Ely Ouse area expressed as a percentage of time.

In this catchment consumptive abstraction is available:

- less than 30% of the time at APs 2, 3, 4, 7, 8, 9, 10, 11, 12, 13 and 14 (pale blue on Map 6)
- at least 30% of the time at APs 1, 5, 6, 15, 16 and 17 (darker blue on Map 6)

**Map 6: Water resource reliability of the Cam and Ely Ouse ALS expressed as percentage of time available**



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### 3.5 Other considerations for resource availability and

## **reliability**

We may have to add constraints to licences such as hands off flow (HoF) conditions to protect:

- the environment
- the rights of other abstractors

As a result, when we grant a licence, it doesn't mean that we guarantee a supply of water. These conditions specify that if the flow in the river or groundwater level drops below what's needed to protect the environment, abstraction must reduce or stop. In dry years, restrictions are likely to apply more often. This will affect the reliability of supply.

In order to protect the valuable environmental effects of high flows in our rivers, we only normally consider issuing high flow (winter) abstraction licences. These should have a peak instantaneous rate (pump rate) of no more than 10% of the flow passing the abstraction point.

There is no guarantee that we will grant a licence, even where water is available for abstraction. This is because we have to determine each application on its own merits. Local factors may mean we're either unable to grant a licence as applied for, or even at all.

New licences within a catchment are usually given a Common End Date (CED). This allows them to be reviewed at the same time. The next CED for this ALS is 31 March 2027 and the subsequent one is 31 March 2039.

More information on our approach to licence renewals and variations is available in section 5.1

## **3.6 Impoundments**

Applications for impoundments will be dealt with on a case-by-case basis.

More information may be found on our [water management web pages](#).

## 4. How we manage water availability in the Cam and Ely Ouse ALS area

### 4.1 Surface water

We assess surface water flows at Assessment Points (APs). These are significant points on a river, often where 2 major rivers join or at a gauging station. APs cover multiple surface water bodies.

Where groundwater abstractions directly impact on surface water flows, we measure the impact at the surface water (AP). This occurs at all APs except AP1 and AP5. For AP8, parts of the River Kennett only flow:

- during the winter months
- in response to significant rainfall
- high groundwater levels

At AP17, the groundwater is limited to small areas of greensands with extremely limited resource availability.

Table 2 gives an indication of:

- how much water is available for further abstraction
- associated restrictions that may apply to new and varied abstraction licences from the main river

Depending on the nature of the catchment, tributaries to the main river may be subject to different restrictions and quantities. This may be assessed locally on a case-by-case basis.

Each HoF is linked to an AP and is dependent on the resource availability at that AP. In some cases additional restrictions may apply to licences where there is a more critical AP resource availability downstream. This is to protect the ecological requirements of the river and other water users. This is detailed in the last column of Table 2 if applicable.

All abstraction licence applications are subject to an assessment to take account of any local and downstream issues and may be subject to further restrictions.

Reading from top to bottom in Table 2 are the APs in the Cam and Ely Ouse ALS area. Reading across the columns you can see the:

- potential HoF that may be applied to a licence
- the number of days water may be available under this restriction
- the approximate volume of water in MI/d that may be available

In cases where there is water available at all flows we may apply a Minimum Residual Flow (MRF) to protect very low flows. We'll decide this on a case-by-case basis.

**Table 2: Summary of licensing approach for the assessment points of Cam and Ely Ouse ALS**

The information in this table is correct at the time of publishing but is subject to change.

AP	Name	AP National Grid Reference	Water Resource Availability	HO F Restriction (MI/d)	Number of days per annum abstraction may be available
1	Old West	553469 274576	Water Available at Q33 (AP17 Denver)	37	120

2	River Granta and Chalk	547182 251447	Water Available at Q20	23	73
3	Upper River Granta and Chalk	546582 250635	Water Available at Q23	78.5	84
4	River Rhee and Chalk	541504 252317	Water Available at Q22	96.2	80
5	Bourn Brook	543310 254718	Water Available at Q33 (AP17 Denver)	15.8	120
6	Lower River Cam and Chalk	553601 274506	Water Available at Q33 (AP17 Denver)	250.5	120
7	River Snail and Chalk	563096 270242	Water Available at Q8	46.3	29
8	River Kennett and Chalk	566231 273313	Water Available at Q19 (AP10 Lower	30.3	69

River Lark)

9	Upper River Lark and Chalk	575799 272593	Water Available at Q19 (AP10 Lower River Lark)	130.6	69
10	Lower River Lark and Chalk	564882 276041	Water Available at Q19	146.7	69
11	River Sapiston and Chalk	589536 279092	Water Available at Q22 (AP14 Lower Little Ouse)	73	80
12	Upper Little Ouse and Chalk	589179 280178	Water Available at Q18	38.9	66
13	River Thet and Chalk	587984 283020	Water Available at Q20	182.9	73

14	Lower Little Ouse and Chalk	573321 287106	Water Available at Q22	380.6	80
15	Upper River Wissey and Chalk	580011 294122	Water Available at Q33 (AP17 Denver)	168.3	120
16	Lower River Wissey and Chalk	570307 299047	Water Available at Q33 (AP17 Denver)	282.9	120
17	Denver	558877	Water	1040.3	120

Sluice            300947            Available at  
Q33

The Environment Agency undertook detailed flow and ecology monitoring in water bodies identified under WFD. This is where it was shown that actual flows were more than 50% less than the modelled EFI target flow. In some water bodies where the relationship between flow and ecology data was statistically significant, we have identified a bespoke or target flow needed for that particular water body to protect the ecology. This is shown in Table 3.

**Table 3: Bespoke flow targets**

Location	AP	Flow restriction	National Grid Reference
River Granta	2	26 l/s at Babraham gauging station	TL51039 50394
River Cam	3	195 l/s at Great Chesterford gauging station	TL50520 42632
River Cam	3	249 l/s at Dernford gauging station	TL46707 50664
Ashwell Springs	4	23.15 l/s at Ashwell gauging station	TL26645 40048
Hobson’s Brook at Ninewells Local Nature Reserve	6	20 l/s at Ninewells Local Nature Reserve	TL46067 54127
River Lark	9	91 l/s at Fornham St Martin gauging station	TL84768 67226

River Little Ouse	9	94 l/s at Euston County Bridge gauging station	TL89558 79049
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Note: these are alternative flow targets so would apply instead of adding an EFI Q95 HoF on an existing unconstrained licence.

## 4.2 Groundwater

For major aquifers we may divide the area into groundwater management units (GWMU). These are sub-divisions of the groundwater bodies. We use the information and assessments on these units to determine:

- water availability
- licence restrictions

Where groundwater abstractions directly impact on surface water flows the impact is measured at the surface water AP. This includes where the impact reduces baseflow. In these cases, restrictions may be applied to licences, such as Hands off Level (HoL) conditions. The HoL is a groundwater level below which an abstractor is required to reduce or stop abstraction.

This is the case for abstractions from unconfined groundwater sources. In confined sources, the impact of the abstraction is measured at the surface water AP where the rock outcrops. The interaction between the groundwater and the surface water occurs over a long timescale. This means the impact of groundwater abstraction does not occur at the time of abstraction. So there is only one groundwater status regardless of season or river flow. We take the water resource status at the low flows (Q95) as the groundwater status to ensure protection of the river environment when it is most vulnerable.

### Licence restrictions on groundwater abstractions in the Cam and Ely Ouse ALS area

There are localised areas of sand and gravel (secondary aquifer) in the

area. Where these overlie principle aquifers the licensing policy for the underlying principle aquifer GWMU will apply. Where these lie within areas classed as ‘unproductive strata’ they will be treated on a case-by-case basis. They are more likely to follow the surface water strategy for the catchment subject to local conditions and impacts. Table 4 sets out the groundwater management units and restrictions in the Cam and Ely Ouse catchment.

**Table 4 Groundwater managment units and restrictions in Cam and Ely Ouse**

Groundwater Management Units	Restrictions for groundwater abstractions
GWMU 1 – Chalk	No Water Available - for new consumptive abstractions
GWMU 2 – Greensands	No Water Available - for new consumptive abstractions
GWMU 3 – Unproductive including localised Sands and Gravels	No Water Available - for new consumptive abstractions

**4.3 Level dependent environments**

The Cam and Ely Ouse ALS contains level dependent environments (LDE).

Level dependent environments are characterised by a network of river channels flowing above the level of the surrounding land. Internal Drainage Boards (IDBs) manage the water levels in the LDEs. They pump out water into the main rivers in the winter months (when levels are high). During the summer months, when there are periods of high demand for water, it is drawn in to top up levels. Most of the land in the LDE is intensively managed for agriculture. Demand for water is for spray irrigation in summer months.

Within the Cam and Ely Ouse ALS area the level dependent fenland is called the South Level.

We have divided the area into units, known as level dependent management units (LDMU). We have completed an assessment on each of these units.

### The Old West LDMU

The Old West LDMU is an area of Fenland sourced by the Old West River. Five IDBs manage the LDMU:

- Caudle Fen IDB
- Waterbeach Level IDB
- Old West IDB
- Haddenham Level IDB
- Willingham and Over IDB

Each IDB manages low level drains through pumping regimes at several pumping stations.

### The Lodes LDMU

The Lodes LDMU is made up of the Swaffham IDB area and some additional land including Wicken Fen SSSI/SAC. The Lodes intersect the LDMU forming several distinct catchments which all drain to one pumping station at Upware.

### The Ely Ouse LDMU

The Ely Ouse LDMU covers the main area of the South Level. The main river is the Ely Ouse River. There are also tributaries contributing water to the low level system. From south to north, these are:

- Soham Lode
- River Lark
- Little Ouse River
- River Wissey
- Cut-Off Channel

The Denver Complex effectively ponds the Ely Ouse and its tributaries and controls the outflow of water from the LDMU. Various IDBs manage the drainage in the LDMU.

**Licence restrictions on abstractions in the relation to LDEs in the Cam and Ely Ouse ALS area**

The South Level is complex because there are various sources for the water, and policy may vary depending on the source. In general, water is sourced from:

- the rivers
- spring flow
- the Cut-Off Channel

In some places, the Hundred Foot River is the water source rather than the Ely Ouse system. This affects the cessation conditions that are applied.

LDM unit 1: Old West coloured yellow in map 7


No water available at low flows.

Water may be available at high flows subject to a Hands Off Flow (HoF) condition at AP17 (Denver Sluice).

LDM unit 2: Lodes coloured blue in map 7

No water available at low flows.

Water may be available at high flows subject to a Hands Off Flow (HoF) condition at AP6 (Lower River Cam and Chalk).



LDM unit 3: Ely Ouse coloured green in map 7

No water available at low flows.

Water may be available at high flows subject to a HoF condition at AP17 (Denver Sluice).

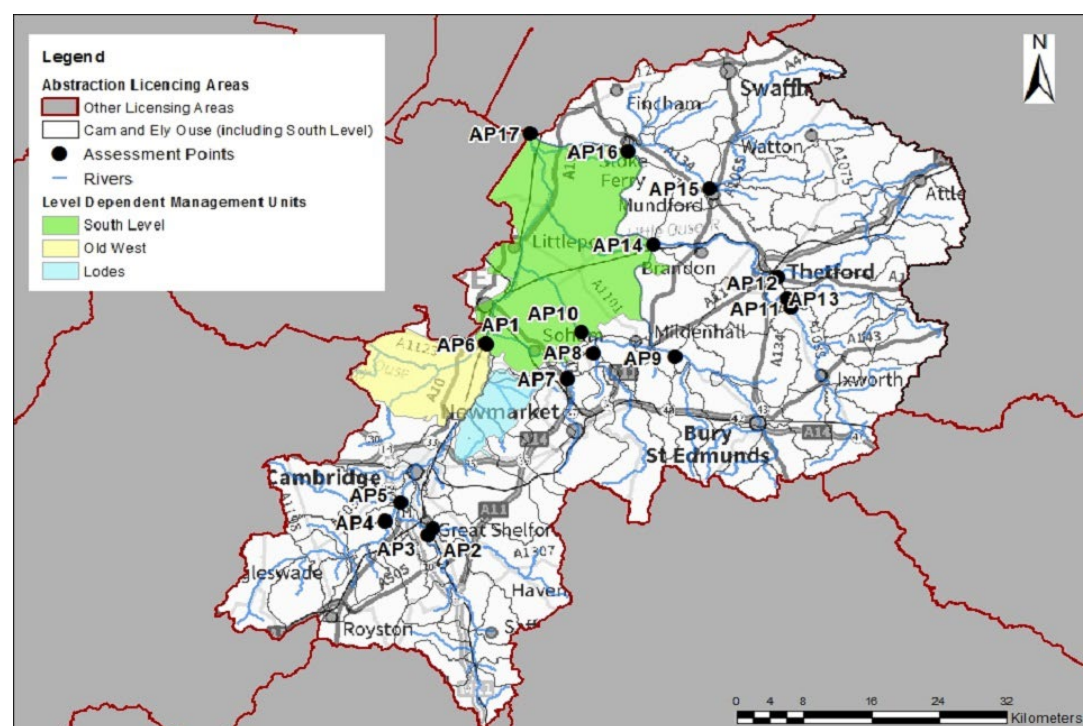


For all 3 LDMUs:

We may include a local level based cessation condition to protect Internal Drainage Board (IDB) drain levels. It may be possible to allow additional pumping when the HoF is enforced if the IDB are pumping water out (subject to IDB agreement).

Trading of recent actual quantities within IDB areas may be possible. We will consider proposals on a case-by-case basis in consultation with the relevant IDB.

### **Map 7: Level dependent environments in the Cam and Ely Ouse ALS**



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## 4.4 Heavily modified water bodies

Most watercourses within the catchment are classified under the Water Framework Directive as Heavily Modified Water Bodies (HMWBs). This is due to the presence of flow control structures such as sluices and gauges. You can find more information in our [River Basin Management Plan](#).

Several of the rivers are designated as HMWBs due to the presence of river support schemes. Groundwater support schemes support these rivers:

- River Granta
- Lodes
- River Thet
- River Little Ouse

## 4.5 Supported Rivers

## The Ely Ouse to Essex transfer Scheme (EOETS) and The Great Ouse Groundwater Scheme (GOGS)

The EOETS was developed to augment flows in Essex rivers for subsequent transfer into public water supply reservoirs. There are 2 main elements:

- a transfer of water to Essex
- the provision of groundwater to supplement the transfers via GOGS

Under EOETS water is:

- diverted at Denver from the Ely Ouse River into the Cut-Off Channel
- pumped through a series of pipelines into Essex

The transfer at Denver is limited by a minimum flow requirement to the Tidal Ouse.

GOGS was developed with the EOETS to pump water into the Little Ouse and Thet Rivers for transfer into the Cut-Off Channel and then to Essex. It was developed to provide water when there is insufficient water in the Ely Ouse to meet the demands of water users and the environment in Essex, particularly in drought years.

Flow from GOGS discharges in the Thet and Little Ouse. It is of benefit to licence holders who abstract from supported reaches of these rivers.

Abstractors who are supported by GOGS pay a premium rate for their licence. Usually the demand for water from Essex and local abstractors coincides.

But, this is not always the case. So, there is an agreement that a proportion of the GOGS water will be pumped when not required by EOETS. This supports the Thet and Little Ouse abstractors when flows are too low to meet their needs.

## The Lodes Granta Support Scheme

The Lodes Granta scheme comprises of 6 boreholes that discharge at 10 points to support the Lodes and the River Granta. The scheme mitigates the effects of abstraction in the catchment during dry periods. It is not designed to mitigate against drought when these watercourses would naturally dry up.

### The Rhee Groundwater Support Scheme

The Rhee scheme comprises of 8 boreholes that support 8 tributaries of the River Rhee. This includes 3 SSSIs:

- Ashwell Springs
- Fowlmere Watercress Beds
- Thriplow Meadows

Some of the tributaries are supported every year, others in times of drought.

### Other River Support

Some watercourses are supported by public water supply companies. Affinity Water support the River Cam and Ashwell Springs in consultation with the Environment Agency. They use a proportion of their abstraction allowance to mitigate the impact of their licences on the river and spring.

## 4.6 Protected areas

The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) provides a very high level of protection to 2 types of designated sites due to their special environment. These are:

- Special Areas of Conservation (SAC), which contribute to biodiversity by maintaining and restoring habitats and species
- Special Protection Area (SPA), which provides protection to birds and

their nests, eggs and habitats

As a matter of government policy Ramsar sites, internationally important wetland sites, are treated in the same way as SACs and SPAs. Ramsars, SACs and SPAs are referred to collectively as European sites. Sites of Special Scientific Interest (SSSI) also carry a high level of environmental importance.

Across the catchment there are 4 SACs and 120 SSSIs of which 57 are water dependent. The only SPA in the catchment is Breckland SPA. Abstraction licences within or near to these areas may be subject to additional measures to protect the species and habitats of each protected area.

Conservation objectives are the overarching objectives for European and SSSI protected sites to maintain or reach favourable condition. These are set by Natural England. The conservation objectives may consist of qualitative and quantitative descriptions. The process for setting targets that underpin the objectives, is described through JNCC approved [‘Common Standards Monitoring Guidance’ \(CSMG\)](#). These targets are used by Natural England in assessing the condition of European and SSSI protected sites. These quantitative targets are considered by Natural England as a pre-requisite for achieving the conservation objectives for European or SSSI designated sites.

## Projects and Plans

The Wicken Fen Vision plans to create a new nature reserve covering 53 square kilometres between Cambridge and Wicken Fen. Cambridge and Wicken Fen is a SSSI and component of Fenland SAC. The National Trust own and manage it. The plan is to create:

- a mosaic of different habitats for wildlife
- a variety of open spaces for people to enjoy including wetland habitat and areas of open water

For more information see the [Wicken Fen Vision website](#).

## 5. Managing the catchment together

### 5.1 Action on unsustainable abstraction

[Managing water abstraction](#) gives details on:

- what an unsustainable abstraction is
- the measures available to resolve environmental issues caused by abstraction

We have taken a number of actions to:

- reduce abstraction
- achieve objectives in this catchment

There are a series of other actions that we are taking to address unsustainable abstraction. These include:

#### **Revoking or reducing unused and underused licences**

We are contacting abstractors who have not used their licence or have only used a small portion of their licensed volumes. We are asking if they still require the water and for what purpose. Abstractors need to supply justification for retaining their licence, such as evidence of future use, contractual agreements to supply water or planning permission. We can revoke licences or reduce volumes where there is not sufficient evidence of need. The next phase of this project is due to begin December 2020 and will focus on licence holders previously contacted regarding lack of use or unused licences.

#### **Water Industry National Environment Programme (WINEP)**

We are working with Water Companies to investigate and address the impact of their abstractions on the environment. The WINEP identifies the actions required. Water companies are implementing changes through the Asset Management Plan (AMP) 6/7 process. For example:

- river restoration
- capping of licences
- river augmentation

### **Managing time limited licence renewals**

We are managing time limited licence renewals to ensure abstraction is not having a negative impact on the environment now or in the future. There is more information on our renewal policy later in this section.

### **Managing licence variations**

We are managing licence variations to ensure abstraction is not having a negative impact on the environment now or in the future. There is more information on our groundwater licence variation policy later in this section.

### **Water efficiency measures**

We encourage forward planning and water efficiency measures to prepare for peak demand periods. At times of limited resource we engage with spray irrigators and encourage them to use water as efficiently as possible. We also promote night time irrigation whenever possible to reduce evaporative losses.

### **Voluntary restrictions**

We use voluntary restrictions to reduce demand and prevent or delay formal licence restrictions.

### **Storage reservoirs**

We support and encourage licencing for storage reservoirs which are filled by winter high flows when water is available.

### **Water Rights Trading and Aggregation policy**

We have adapted our water rights trading and aggregation policy. This is to ensure we prevent deterioration in the status of water bodies. There is more information on our water rights trading policy in section 5.3.

### **Priority catchment collaboration**

Through the priority catchment we have been working with abstractors to highlight unsustainable abstraction. We are encouraging stakeholders to collaborate to find innovative ways to access water sustainably. There is more information on the priority catchment trials in section 5.2.

### **Managing renewals/variations of licences**

We have, and will continue, to change surface and groundwater licences by reviewing time limited licences.

We will adjust licence quantities as necessary if:

- abstraction quantities are no longer justified
- renewal may pose a risk of deterioration in ecological status

This may be by capping of licence quantities when they have come up for renewal as part of the renewal process.



#### **Surface water**

Licence renewals will be on the following broad principles around environmental sustainability.

As a minimum, all surface water licences will need a HoF to protect the ecological needs of a river at low flows. We define low flows as the Q95, which is the amount of flow in a river that is exceeded 95% of the time. To calculate the amount of water required to support the ecology of a river at low flows we use a tool called the Environmental Flow Indicator (EFI).

We will renew an application on same terms, subject to it having a HoF condition that protects low flows. We will renew to the relevant common end date. There must be no other sustainability issues in the surface water bodies influenced by the abstraction. The applicant must justify the quantities and demonstrate that the water is being used efficiently.

We will time-limit renewed licences to 31 March 2024 in surface water bodies where a low flow HoF doesn't resolve all of the sustainability issues in the catchment. We may need to make further changes after 2024 to

protect the ecology at higher flows.

## Groundwater

Licences will be renewed on the following broad principles around environmental sustainability.

We will consider renewing the licence at the same quantities. This is if the requirements of the following can be met:

- the aquifer
- overlying rivers
- associated wetland habitats

These must be met at current levels of abstraction and if all licensed water is abstracted.

We will reduce the licensed quantities if there is a risk that abstracting all the licensed water could impact on the ecology. The 2015 RBMP classifications of water body status are based on the level of annual average abstraction during 2007 to 2012. If average abstraction increases above this baseline level the status of water bodies may deteriorate. We cannot allow this. To reduce the risk of deterioration we are taking a risk-based approach. In the first instance we will reduce licensed volumes to the annual maximum quantity abstracted between 2005 and 2015. The period for spray irrigation purposes is the years 2000 to 2015. This reflects the annual differences in climate and cropping patterns for this abstraction purpose.

In some water bodies capping abstraction to the historic annual maximum volume may not be enough. This is because abstraction was already unsustainable in 2015. We may need to make further changes to licences to restore abstraction to sustainable levels, this could include additional volume reductions. Licences are being renewed until 31 March 2024 in water bodies where we are investigating what measures are required to restore abstraction to sustainable levels.

We will consider renewal of time limited licence with regard to:

- environmental sustainability
- justification of need
- efficient use of water

We must ensure that the licensing of abstraction:

- is sustainable
- won't cause deterioration in the ecology of our rivers, wetlands and estuaries
- won't deplete groundwater resources

### **Trading and aggregation**

If unconstrained, water rights trading could result in a rise in annual average abstraction increasing the risk of deterioration in water body status. Section 5.3 gives more information on our approach to trading in Cam and Ely Ouse.

Aggregation could also result in deterioration. It will involve similar restrictions as water rights trading. Aggregation could include:

- adding a new point of abstraction to the licence (subject to local assessment)
- adding an additional purpose to a licence
- combining multiple licences

To reduce the risk of deterioration from proposals to aggregate licences we will take the following measures:

Temporary single year aggregations:

- the annual volume of each individual licence will be reduced to the maximum annual volume abstracted between 2005 and 2015 or 2000-2015 for spray irrigation purposes
- this annual volume will then be increased by the annual average volume

abstracted by the “partner” licence between 2007 and 2012

- the annual volume that the 2 licences can abstract in combination will be limited to the combined maximum volume abstracted by the 2 licences in any year between 2005 and 2015 or 2000-2015 for spray irrigation purposes

#### Permanent aggregations:

- the annual volume of each individual licence will be reduced to the average annual volume abstracted between 2007 and 2012
- these historic average volumes are combined and applied to both licences to give the new maximum annual quantity for each licence
- the annual volume that the 2 licences can abstract in combination will be limited to the combined historic average volumes

Our full policy gives further details on our approach to water rights trading and aggregation in Cam and Ely Ouse. View this on the [Environment Agency priority catchments website](#).

## 5.2 Approaches to sustainable water management

We have undertaken a range of catchment focused initiatives. These have formed part of the Cam and Ely Ouse priority catchment project. Project summaries outline trials of future approaches to water management. Trials initiated in this catchment have taken a collaborative approach. These may be of interest to both new and existing abstractors.

### Water Abstraction Alert (WAA) - Digital Transformation

This trial aimed to improve access to water for existing abstractors. We worked in collaboration with the IDBs and National Farmers Union (NFU) to share WAAs in real time. WAAs were sent to the mobile phone numbers of participating abstractors. The trial ran in the Cambridgeshire Fenland Middle and South levels. It lasted over 2 abstraction seasons. Participants’ feedback was that the service was excellent and worked well. WAAs made

it easier to know when to abstract. Defra is exploring a wider roll out of WAA. For more information on the WAA contact the East Anglia - West Integrated Environmental Planning (IEP) Team.

## **Water Sharing & Aggregation of licences**

This project investigated water sharing options for the Lark Abstractors Group (LAG). Funding came from a Rivers Trust grant to the River Lark Catchment Partnership. It focussed on a group of 12 existing abstractors.

The project conducted technical investigations and hydrological modelling. Investigators based this on abstraction data and interviews. Cranfield University Water Science Institute (CWSI) carried out the study.

CWSI worked with the NFU and LAG to assess potential for water sharing based on:

- models
- spatial data
- connectivity of existing infrastructure (reservoirs) in the catchment

Project partners are scoping out further trials for the 2021 irrigation season. These will build on the findings of the study. For more information visit the [Cam and Ely Ouse catchment partnership website](#).

## **Groundwater recharge and working with natural processes (WWNP)**

This new study provides evidence for the benefits of working with natural processes. It focusses on improving resilience to drought and floods. Natural processes help to store water in the ground and slow down the rate at which it enters river systems.

In the Cam & Ely Ouse, the study focused on the Brecklands. This is an area characterised by heavy woodland cover. Results identified that vegetation density can have a strong influence on water budgets. Dense woodland can limit the proportion of water made available for recharging groundwater. The study proposes a reduction in woodland coverage and reversion to heath. This would significantly reduce the water budget deficit for the area. The maps show where these actions are most likely to be effective. Further details are available in the project report on the [priority](#)

[catchment webpage](#).

## **Understanding the sustainability of abstraction licences**

Abstraction is having a negative impact on many of our rivers and groundwater bodies. This includes the principle chalk groundwater aquifer. We are working in partnership with:

- Cam & Ely Ouse Partnership hosts
- National Rivers Trust

The project will develop a series of maps. The maps will show where we may need to reduce licence volumes to protect the environment. Find more information on the [Cam and Ely Ouse catchment partnership website](#).

## **Water Resource Advisory Farm Visits**

We are collaborating with partners to trial water resources visits. Our partners include:

- National Farmers Union (NFU)
- Norfolk Rivers Trust
- Natural England's Catchment Sensitive Farming programme

More than 40 farms in the Cam & Ely Ouse and 3 other priority catchments are part of the trial. The advice visits will help farmers to improve their water resource management systems. Visits are being conducted across various farm-types and sizes of operation.

The project reports will:

- identify areas of water resources efficiency
- share best practice
- offer potential solutions/interventions for farmers to make better use of available water

The NFU will deliver workshops to share best practice with other farmers. This will include lessons learnt on water efficiency.

Communications and engagement will remain important for management of

water resources. Future work should continue to raise awareness amongst water users. A continuation of stakeholder led trials is also needed.

The [priority catchment](#) initiative has also been running elsewhere in England. More information on work in these catchments can be found in the updated ALS for the:

- [Idle and Torne](#)
- [East Suffolk](#)
- [Witham](#)

### 5.3 Water rights trading

We want to make it easier to trade water rights. A water rights trade is where a person sells all or part of their water right, as defined by their abstraction licence(s), to another person on a permanent or temporary basis. In the majority of cases a trade will involve a change in abstraction location and/or use which we will need to approve through the issue or variation of abstraction licences.

In licensing trades, as with new abstraction licences, we need to make sure that we don't cause any deterioration in water body status.

This is both:

- within the water body / bodies where the trade will take place
- to downstream water bodies

This section provides a guide to the potential for trading in water bodies of a particular (ALS) water resource availability colour, as shown on Maps 1 to 4.

#### **Guide to the potential trading in water bodies of a particular ALS water resource availability colour**

 Green

There may be opportunities to allow trades of recent actual abstraction and licensed abstraction. But little demand for trading expected within water body as water available for new abstractions.

### **Restricted water available for licensing**



Yellow

There may be opportunities for licence holders to trade up to their full licensed quantities. But the quantities of water available to trade may be restricted once levels of actual abstraction reach sustainable limits. We will not permit licence trades in water bodies where we are taking action to prevent deterioration unless the trade is consistent with achieving water body objectives.

### **Water not available for licensing**



Red

We will only trade recent actual abstraction but no increase in recent actual abstraction is permitted in water body. Licensed abstraction will be recovered for the environment.

### **HMWBs**



Grey

Opportunities for trading will depend on local operating agreements and local management.

To find out more about licence trading go to our [water management web pages on gov.uk](#).

We have recently developed a new trading policy for the whole of the East Anglia Area which includes the Cam and Ely Ouse catchment. In licensing trades we need to make sure that we don't cause any deterioration in water body status. We will consider trades that meet the general criteria outlined below. We will assess each trading proposal on a case-by-case basis and further restrictions may apply.

The full trading policy can be:

- viewed on the Environment Agency [priority catchment website](#)
- viewed on the [Cam and Ely Ouse Catchment Partnership website](#)
- requested contacting the East Anglia - West Integrated Environmental Planning (IEP) Team

### **Surface water trades**

The donor (seller) and recipient (buyer) licences should be abstracting from the same watercourse.

The donor and recipient licences should have the same abstraction period:

- we will not consider applications to move abstraction to the summer period
- we may consider extension of abstraction periods on a case-by-case basis
- we will consider applications to trade summer water to winter
- traded water should be used for the same purpose - we may need to adjust the volume of water that can be traded if the trade involves a change in purpose
- we will usually limit the volume of water available for trade to the average annual volume abstracted by the donor licence during 2007 and 2012

### **Groundwater trades**

The donor and recipient licence need to abstract from the same aquifer and have comparable effects on surface water features. As a general rule, abstractions should be located in the same surface water body.

In general, the donor and recipient licences should have the same

abstraction season:

- we are unlikely to consider moving summer abstraction to winter
- we may consider extension of abstraction periods on a case-by-case basis

Traded water should be used for the same purpose. The volume of water being traded may need adjusting if the trade involves a change in purpose.

If the trading proposal includes an increase in rates of abstraction we may need a pumping test to be undertaken.

We will usually limit the volume of water available for trade to the average annual volume abstracted by the donor licence during 2007 and 2012.

We will reduce the volumes available for abstraction on the donor licence for the duration of the trade.

This will reduce the risk of deterioration:

- for temporary trades of a single year: we will cap the annual volumes on the donor licence to the annual maximum volume abstracted by the donor licence between 2005 and 2015, minus the traded volume - for spray irrigation purposes the annual maximum volume will be based on abstraction between 2000 and 2015
- for recurrent trades or trades that are greater than one year in duration: we will cap the donor licence to the annual average volume abstracted by the donor licence between 2007 and 2012, minus the traded volume
- for permanent licence trades: we will permanently reduce the annual volumes on the donor licence to the annual average volume abstracted between 2007 and 2012, minus the traded volumes - if all of the 2007-12 recent actual quantity was traded, then the donor licence would cease to exist

We are currently developing new initiatives to support trading in this catchment. These include:

- [help for trading water rights map](#): helps abstractors to identify potential trades - it provides information on nearby licences and an indication of the potential for a trade

- [temporary seasonal trades trial](#): is designed to help abstractors trade water over a single irrigation season - abstractors apply for these trades during a defined 'trading window' during the spring, after the publication of the initial irrigation prospects report

## 6. Related links

- [Agriculture and Horticulture Development Board \(AHDB\) website](#) - provides information on effective use of water on livestock farms
- [Catchment Based Approach community website](#) - provides further information on the catchment based approach
- [UK Centre for Ecology and Hydrology Drought Portal](#) - is an interactive portal presenting information on the latest hydrological situation across the UK
- [Environment Agency, how to apply for a water abstraction or impoundment licence web pages](#) - provide all the information needed to go through the application process to get a licence
- [Environment Agency manage your water abstraction or impoundment licence online web service](#) - allows abstractors to view and share licence information and submit abstraction returns
- [Environment Agency priority catchments website](#) - provides further information about the Priority Catchment work
- [The Environment Agency National Framework for Water Resources](#) explores England's long-term water needs and the importance of planning at the regional scale and link to the catchment scale
- [The charity Linking Environment and Farming \(LEAF\) Simply Sustainable Water guide](#) - explains 6 simple steps for managing water quality and industrial use
- [National Farmer's Union web pages on Irrigation and water resources](#) - provide useful information
- [Natural England's website](#) - provides further information on protected sites and species
- [Environment Agency and Cranfield University's guide to planning, designing, constructing and commissioning a water storage reservoir](#) - if

you are considering an irrigation reservoir

- [The UK Irrigation Association and Cranfield University](#) - provide a range of irrigation booklets that tackle key issues
- Waste and Resources Action Programme website has [guidance on water efficiency in the food and drink industry](#)
- Waste and Resources Action Programme website has a [guide to water saving devices and practices](#)

## 7. Glossary

Abstraction - removal of water from a source of supply (surface or groundwater).

Abstraction licence - the authorisation granted by the Environment Agency to allow the removal of water.

Assessment point - a significant point on a river, often where two major rivers join or at a gauging station.

Catchment - the area from which precipitation and groundwater will collect and contribute to the flow of a specific river.

Catchment based approach - partnership working at the river catchment scale to deliver a range of environmental, social and economic benefits while protecting our precious water environments for the benefit of all.

Consumptive abstraction - abstraction where a significant proportion of the water is not returned either directly or indirectly to the source of supply after use. For example for the use of spray irrigation.

Discharge - the release of substances (for example, water, treated sewage effluent) into surface waters.

Environmental flow indicator - flow indicator to prevent environmental deterioration of rivers, set in line with new UK standards set by UKTAG.

Groundwater - water that is contained in underground rocks.

Hands off flow - a condition attached to an abstraction licence which states that if flow (in the river) falls below the level specified on the licence, the abstractor will be required to reduce or stop the abstraction.

Impoundment - a structure that obstructs or impedes the flow of inland water, such as a dam, weir or other constructed works.

Surface water - this is a general term used to describe all water features such as rivers, streams, springs, ponds and lakes.

Water body - units of either surface water or groundwater which we use to assess water availability.

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## 9. Contact details for further information

For local water resources advice contact the East Anglia - West Integrated Environmental Planning (IEP) Team. You can either call or email the team:

- call 03708 506 506 (calls cost no more than a national rate call to an 01 or 02 number)
- email [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)

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Ministry of Housing,  
Communities &  
Local Government

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

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

12 March 2020

**By email:** [REDACTED]

Dear Sir

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

1. I am directed by the Secretary of State to say that consideration has been given to the report of Richard Schofield BA(Hons) MA MRTPI, who held a public local inquiry on 8-10 May, 14-17 May, 21-22 May and 5 June 2019, and undertook a site visit on 7 May 2019 into your client's application for planning permission for up to 400 dwellings plus associated open space (including allotments and areas of habitat enhancement) foul and surface water infrastructure, two accesses onto the A142, internal footpaths, cycle routes and estate roads, in accordance with application ref: DC/13/0408/OUT, dated 2 October 2013.
2. On 11 July 2014, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.
3. The Secretary of State initially issued his decision in respect of the above application by way of his letter dated 31 August 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 9 May 2017. The application has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the August 2016 decision letter.

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

4. The Inspector recommended that planning permission is granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to grant planning permission subject to the conditions set out in Annex B of this letter. A copy of the

Ministry of Housing, Communities & Local Government  
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Tel: 0303 444 41624  
Email: [PCC@communities.gov.uk](mailto:PCC@communities.gov.uk)

Inspector's report (IR) is enclosed as is his supplementary Addendum Report (AR) prepared due to the potential for impacts on the integrity of various European protected sites. All references to paragraph numbers, unless otherwise stated, are to the IR or AR.

### **Matters arising since the close of the inquiry**

5. On 19 September 2019 the Council adopted the 'Single Issue Review of Policy CS7' (also referred to as the 'SIR') and 'Site Allocations Local Plan' (also referred to as the 'SALP') into its Development Plan. On 10 February 2020 the Newmarket Neighbourhood Plan Steering Group wrote to inform the Secretary of State that the Newmarket Neighbourhood Plan had passed its referendum. It became part of the Development Plan on that date.
6. The Secretary of State also received post inquiry correspondence from the Pegasus Group on behalf of the Newmarket Horseman's Group dated 30 August 2019 and from the Rt Hon Matt Hancock MP in a letter of 10 September 2019. On 4 October 2019, the Secretary of State wrote to the main and interested parties to afford them an opportunity to comment on various matters raised in the post inquiry representations and on the adoption of the two plan documents. The resulting representations were circulated to the main parties on three occasions: 21 October, 13 November and 4 December 2019.
7. A list of all post inquiry representations including those received in response to the reference back exercise are at Annex A. The Secretary of State is satisfied that the issues raised in the other post-inquiry correspondence do not affect his decision, and no other new issues were raised to warrant further investigation or necessitate additional referrals back to parties. Copies of this correspondence may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

8. In reaching his decision, 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.
9. The development plan for the area consists of the Forest Heath Core Strategy (FHCS) (May 2010), the Joint Development Management Policies Document (JPMPD) (February 2015), the SIR (of the Forest Heath Core Strategy) and the SALP (both September 2019), and the Newmarket Neighbourhood Plan (NNP) (January 2020).
10. The Secretary of State considers that relevant development plan policies have altered considerably following the adoption of the SIR and SALP while also noting that the NNP policies leaves the location of strategic development to the SIR and SALP. The relevant policies therefore largely consist of JPMD policies DM48 and 45, SALP policy SA6 of which the application site is allocation (g), together with SIR policy CS7.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

### *Emerging plan*

12. The emerging West Suffolk Local Plan is at a very early stage with the evidence base being prepared, prior to and consulting on issues and options. Taking into account paragraph 48 of the Framework, the Secretary of State considers that the emerging plan carries very little weight.

### **Main issues**

#### *Adoption of the SIR and the SALP*

13. In light of the adoption of the SIR and the SALP which allocate the site for development and redraw the settlement boundary to include the site, the Secretary of State considers that the Inspector's analysis at IR503-508, IR512-514 and IR519-525 has been superseded. He considers that there are relevant development plan policies, that the policies that are the most important for determining the application are up to date and that the tilted balance does not apply. Given that the proposal accords with the development plan and the development plan is up to date, a decision to approve should be made without delay (see paragraph 11(c) of the NPPF).

#### *Housing land supply*

14. The Inspector confirmed that it is common ground between the parties that West Suffolk Council can demonstrate a five-year supply of deliverable housing sites (IR502). This scheme would deliver a substantial number of new dwellings, 30% of which would be affordable. For the reasons given at IR528 the Secretary of State agrees with the Inspector that there is no reason to depart from the position in the 2016 decision that the delivery of this housing would carry substantial weight in favour of the proposal.

#### *Sustainability of location*

15. The Secretary of State has carefully considered the Inspector's analysis at IR489-494 regarding the sustainability credentials of Newmarket. He agrees with the Inspector at IR529 that Newmarket is one of the most sustainable locations in the West Suffolk authority area. He further agrees that following the creation of the West Suffolk local authority, it may be that Newmarket will no longer be the largest settlement in its District, but there is no reason to consider that its role would change significantly from that which it plays now (IR493).

#### *Impact on Horse Racing Industry (HRI)*

16. The Secretary of State has carefully considered the Inspector's analysis of the evidence at IR438-487, noting that the main concerns relate to the potential impact of increased traffic levels upon the operations of the HRI and whether this may lead to the relocation of HRI trainers (IR438).
17. The Secretary of State has taken into account the evidence on what has changed for the HRI in Newmarket since the last inquiry (IR441-443). He agrees with the Inspector that current evidence does not indicate an industry in decline, or at risk (IR444), and he agrees with the Inspector that on the basis of current evidence, a tipping point is unlikely to be reached with the granting of planning permission for this application (IR469). He

notes that the NHG's representative concurred that the HRI had continued to prosper since 2015 (IR442).

18. The Secretary of State has further considered the issue of risk, whether real or perceived, to the HRI arising from congestion (from IR445) with a focus on the morning period. Like the Inspector he is not persuaded that the limited increase in journey times across the modelled network would give rise to any actual harm to the operations of the HRI (IR452). He notes that there was no evidence before the inquiry to suggest that any trainers would move out of Newmarket, or that owners would remove their horses from the town, if planning permission was granted for this scheme (IR465).
19. The Secretary of State agrees with the Inspector at IR470 that over and above the background growth that is likely to occur anyway, the traffic impacts would be *de minimis* at best, with the AM peak, the most important time for the HRI, seeing an improvement with the development in place (IR421). He is also satisfied that the development plan as a whole takes full account of the need for planning decisions to consider impacts upon the HRI (IR482). The Secretary of State further considers that the creation of adverse perceptions arising as a result of impacts at Rayes Lane can no longer be considered at all likely (IR485-486). Overall he agrees that the application proposal would not have an adverse impact (whether perceived or actual) on the HRI and its viability in Newmarket, either now or in the longer term (IR487), and would comply with policy DM45 (IR517). He therefore considers that these concerns do not weigh against the proposal.

#### *Highway impacts*

20. The Secretary of State has also considered the Inspector's analysis at IR396-437 of the impact of the proposals on the safety and efficiency of the local highway network. He agrees with the Inspector that the position of the Highways Agency and County Council (as the Highway Authority), neither of whom raised an objection to the proposals, is a matter of considerable weight (IR396 and 398). He further agrees that the current levels of congestion in the town centre do not come close to being severe and that the network is not operating at or over capacity (IR411).
21. The Secretary of State has taken into account the evidence put forward by the parties relating to traffic projections (IR412-428), and agrees with the Inspector at IR420 that the application proposal would not give rise to residual cumulative impacts, either during or without the peak periods, that could be considered severe. For the reasons given at IR429-437, he agrees with the Inspector at IR437 that the application proposal would not have an adverse impact upon the safety and efficiency of the local highway network. He further agrees that the proposal would not conflict with paragraph 109 of the Framework, and would not conflict with policy DM45 (IR526 and 517). He therefore considers that these concerns do not weigh against the proposal.
22. For the reasons given at IR399-402 and IR533, the Secretary of State agrees with the Inspector that the beneficial works to the A14/A142 junction attract significant weight alone (IR533). He further agrees, for the reasons given at IR431, 485-6 and 530-32, that the new horse crossing, proposed as part of the application scheme, would be a significant benefit (IR532). The Secretary of State considers that this carries significant weight.

### *Other matters*

23. The Secretary of State agrees with the Inspector at IR527 that some loss of best and most versatile agricultural (BMV) land is inevitable if the area's housing and employment development targets are to be met. He agrees with the Inspector that this attracts moderate weight against the proposal. He also agrees with the Inspector at IR534-535 that through increasing the town's working age population there are economic benefits and that these should also attract moderate weight in favour of the proposal.
24. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 and for the reasons set out at IR497-501 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives. Those sites are the Breckland Special Protection Area (SPA); Devil's Dyke Special Area of Conservation (SAC); Fenland SAC; Wicken Fen Ramsar site and Chippenham Fen Ramsar site. The Secretary of State agrees with the assessment and findings in the Inspector's AR. He therefore adopts the AR as the necessary Appropriate Assessment in his role as the Competent Authority on this matter, and agrees that there would be no adverse effect on the integrity of the designated sites.

### **Planning conditions**

25. The Secretary of State has given consideration to the Inspector's analysis at IR382-386, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision. For the reasons set out at IR383, the Secretary of State has adopted the Inspector's version of condition 20.

### **Planning obligations**

26. Having had regard to the Planning Obligation Agreement and Deed of Variation, the Inspector's analysis at IR387-391, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR391 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

### **Planning balance and overall conclusion**

27. For the reasons given above and in the light of the allocation in SALP policy SA6, the Secretary of State considers that the application is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
28. The Secretary of State considers the loss of BMV land carries modest weight against the proposal.
29. The Secretary of State considers that the delivery of homes including affordable units carries substantial weight and that the economic benefits of the proposal carry modest weight in favour of the proposal. The delivery of a new horse crossing and works to the A14/A142 junction each also attract significant weight in favour of the proposals.

30. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan. He therefore concludes that planning permission should be granted.

### **Formal decision**

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission subject to the conditions set out in Annex B of this decision letter for up to 400 dwellings plus associated open space (including allotments and areas of habitat enhancement) foul and surface water infrastructure, two accesses onto the A142, internal footpaths, cycle routes and estate roads, in accordance with application ref: DC/13/0408/OUT, dated 2 October 2013.

32. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

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

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

34. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

35. A copy of this letter has been sent to West Suffolk Council and the Rule 6 party, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully



Maria Stasiak  
Authorised by the Secretary of State to sign in that behalf

## ANNEX A – SCHEDULE OF REPRESENTATIONS

### General representations

Party	Date
West Suffolk Council attaching: <ul style="list-style-type: none"> <li>Inspector's final reports, appendices and PINS cover letter on the SIR and the SALP</li> </ul>	16 August 2019
Pegasus Group (on behalf of Newmarket Horsemen's Group (NHG))	30 August 2019
Rt Hon Matt Hancock MP attaching: <ul style="list-style-type: none"> <li>NHG closing submissions</li> <li>a letter from NHG to the MP</li> <li>a briefing note produced by NHG</li> </ul>	10 September 2019
West Suffolk Council attaching: <ul style="list-style-type: none"> <li>the final SIR</li> <li>the final SALP</li> </ul>	23 September 2019
Andrew Appleby, Newmarket Town Councillor	30 January, 24 February and 25 February 2020
Newmarket Neighbourhood Plan Steering Group	10 February 2020

### Representations received in response to the Secretary of State's letter of 4 October 2019

Party	Date
Rural Parish Alliance	14 October 2019
West Suffolk Council	17 October 2019
Cllr Andy Drummond attaching: <ul style="list-style-type: none"> <li>letter to Rt Hon Robert Jenrick MP from Cllrs Drummond, Hood, Lay and Nobbs</li> <li>letter from Bedford Lodge Hotel and Spa</li> <li>letter from Newmarket Equine Hospital</li> <li>letter from Jamie McCalmont</li> <li>letter from Meon Valley Stud</li> <li>letter from the Newmarket and District Conservative Association</li> <li>letter from the Newmarket Trainers' Federation</li> <li>letter from BBA Shipping and Transport Ltd</li> </ul>	18 October 2019
Save Historic Newmarket Action Group	18 October 2019
Pegasus Group (on behalf of NHG)	18 October 2019
Newmarket Neighbourhood Plan Steering Group attaching: <ul style="list-style-type: none"> <li>extracts from the emerging Newmarket Neighbourhood Plan</li> </ul>	18 October 2019
Trevor Blaney Planning attaching: <ul style="list-style-type: none"> <li>letter from Sansovino Developments Ltd to the Rt Hon Robert Jenrick MP and the Rt Hon Esther McVey MP</li> <li>article from the Newmarket Journal of 10 September</li> <li>the applicant's closing submissions</li> </ul>	18 October 2019
British Horseracing Authority	21 October 2019

Snapdragon Consulting attaching: <ul style="list-style-type: none"> <li>letter from Sansovino Developments Ltd (same as attached with Trevor Blaney planning rep of 18 October 2019)</li> </ul>	21 October 2019
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### **Representations received in response to the Secretary of State's letter of 21 October 2019**

<b>Party</b>	<b>Date</b>
Cllr Andy Drummond	28 October 2019
Trevor Blaney Planning attaching: <ul style="list-style-type: none"> <li>letter from Sellwood Planning</li> <li>Examiner's report into the Newmarket Neighbourhood Plan</li> </ul>	28 October 2019

### **Representations received in response to Secretary of State's letter of 13 November 2019**

<b>Party</b>	<b>Date</b>
Newmarket Neighbourhood Plan Steering Group attaching: <ul style="list-style-type: none"> <li>Newmarket Neighbourhood Plan Reg 18 Decision Statement</li> <li>Newmarket Neighbourhood Plan Reg 18 Compliance Check</li> </ul>	19 November 2019
Trevor Blaney Planning attaching: <ul style="list-style-type: none"> <li>Letter from Sansovino Developments Ltd to the Rt Hon Robert Jenrick MP and the Rt Hon Esther McVey MP</li> </ul>	25 November 2019

### **Annex B List of conditions**

- 1) Prior to the submission of any reserved matters application, a detailed Design Code for the development shall be submitted to and approved in writing by the local planning authority. The detailed Design Code shall demonstrate how the objectives of the Design and Access Statement and the adopted Masterplan for the wider site will be met. Subsequent reserved matters shall conform with the approved Design Code in all material respects.
- 2) Prior to the submission of any reserved matters application, and notwithstanding the particulars shown on the Land Use Plan (SS060854\_42), details of the types of new and existing open and green spaces within the site, their connectivity and a timetable for implementation shall be submitted to and approved in writing by the local planning authority. Subsequent reserved matters shall conform to the approved Land Use Plan and its timetable.
- 3) Prior to the submission of any reserved matters application, a Lighting Strategy shall be submitted to and approved in writing by the local planning authority. This shall identify which parts of the site are sensitive for the commuting, foraging or resting of bats and how external lighting will prevent disturbance in such areas. Subsequent reserved matters applications shall conform to the Lighting Strategy.

- 4) The number of dwellings to be constructed shall not exceed 400.
- 5) The mix of any market housing for any phase of development authorised by this planning permission, including details of size and type, shall be agreed in writing by the local planning authority as part of any relevant reserved matters application(s). Development of each phase shall thereafter be carried out in accordance with the approved mix.

**If the development is to be built in several phases, Conditions 6-9 apply:**

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

**If the development is to be built in a single phase, Conditions 10-12 apply:**

- 10) Details of the appearance, landscaping, layout, and scale (the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 11) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 12) The development hereby permitted shall begin no later than the expiration of 5 years from the date of this permission or before the expiration of 1 year from the date of approval of the last of the reserved matters, whichever is the later.
- 13) The development hereby permitted shall be carried out in accordance with the following approved plans: SS060854\_6A (Location Plan); SS060854\_42 (Land Use); 0719-GA-03B (Northern Development Access); 0719-GA-05B (A142/Willie Snaith Road/Southern Development Access Roundabout Improvements).
- 14) The first submission of Reserved Matters shall include details of a strategic drainage scheme for the provision and implementation of surface water drainage for the entire site, based on sustainable drainage principles in accordance with the SuDS Manual (CIRIA C697). All submissions of Reserved Matters shall include a detailed

surface water drainage scheme for that phase (including details of how the scheme will relate to other phases).

- 15) The strategic drainage scheme shall demonstrate the surface water run-off generated up to and including the 100-year event. Critical storm run-off, with an allowance for climate change, shall not exceed the run-off from the undeveloped site following the corresponding rainfall event and shall demonstrate the exceedance flow paths. The details shall include:
- Provisions to be made for the management and maintenance of the scheme for the lifetime of the development; and
  - A timetable for implementation to take account of any phasing of the construction of development.

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

- 16) No development shall take place until a scheme for improvements to the A14 Junction 37 has been submitted to and approved in writing by the local planning authority. This shall be in general conformity with the signalised arrangements shown on Drawing Nos: 07-SK-39; 0719-GA-01B; 0719-GA-02B; 0719-GA03B. The approved junction improvements shall be carried out before the first dwelling is occupied.
- 17) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- The parking of vehicles of site operatives and visitors;
  - Loading and unloading of plant and materials;
  - Storage of plant and materials used in constructing the development and the provision of temporary offices;
  - Wheel washing facilities;
  - Measures to control the emission of dust and dirt during construction;
  - Access and protection measures around the site for pedestrians, cyclists and other road users, including arrangements for diversions and the provision of associated directional signage;
  - Measures to be taken to prevent pollution of the received ground and surface water;
  - Details of the hours that construction may take place;
  - Details of the routes to be taken by construction traffic; and
  - A lighting scheme (if any) for the construction site and any compounds.
- 18) No development shall take place until an Ecological Mitigation Scheme (EMS) has been submitted to and approved in writing by the local planning authority. The EMS shall set out details of the mitigation, conservation and enhancement measures for habitats, fine leaved fumitory, reptiles, bats, badgers and birds based on Wardell Armstrong's Updated Environmental Report (December 2018) and appended ecological surveys. The EMS shall include the following:

- Purpose and conservation objectives of the proposed works;
- Detailed designs and/ or working methods necessary to achieve stated objectives;
- Extent and location of proposed works shown on appropriate scale maps and plans;
- Timetable for implementation, demonstrating that works are aligned with any phasing of construction;
- Persons responsible for implementing the works;
- Details of initial aftercare and long-term maintenance;
- Details of the disposal of any wastes arising from the works; and
- Details of monitoring and remedial measures.

The EMS shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.

- 19) No development shall take place until details, which show how the existing trees and hedgerows that are to be retained will be protected during the course of construction, have been submitted to and approved in writing by the local planning authority. The details shall accord with BS 5837: Trees in Relation to Construction. All approved tree and hedge protection measures shall be in place prior to the commencement of construction and shall be retained thereafter until construction has been completed.
- 20) No development shall take place within each development phase until the implementation of a programme of archaeological work has been secured in accordance with a Written Scheme of Investigation (WSI), which has been first submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions and:

- The programme and methodology of site investigation and recording (a minimum of 3% trenching of the application site will need to be included in the scheme to complement the 2% site area trenching carried out and agreed previously);
- The programme for post investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The site investigation shall be completed prior to development and/or in accordance with such phased arrangements set out in the approved WSI. No development shall take place other than in accordance with the WSI.

- 21) No other development shall take place until the proposed access from Fordham Road has been provided in accordance with either Drawing No 0719-GA-03B or Drawing No 0719-GA-05B with the first 20 metres of the access road from Fordham Road being finished to surface level and retained in that condition until and unless the road is adopted as highway maintainable at public expense.
- 22) No development shall take place until details of how construction waste will be recovered and re-used on the application site or elsewhere has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details for the duration of the construction period.
- 23) No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include the following:
- Description and evaluation of features to be managed;
  - Ecological trends and constraints on site that might influence management;
  - Aims and objectives of management;
  - Appropriate management options for achieving aims and objectives;
  - Prescriptions for management actions;
  - Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - Details of the body or organisation responsible for implementation of the plan;
  - Ongoing monitoring and remedial measures;
  - Details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer and the management body responsible for its delivery;
  - How contingencies or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme; and
  - Details of the areas and features to be managed, both on and off the site;
  - The aims and objectives of the management regime and how they will be achieved;
  - The arrangements for monitoring and any necessary remedial action;
  - The funding mechanism for the long-term implementation of the LEMP and who will be responsible for its delivery and ongoing operation; and
  - An implementation programme.

The LEMP shall be implemented in accordance with the approved details

- 24) No development shall take place until details of the layout, levels, gradients, surfacing and drainage of the estate roads and footpaths have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 25) No development shall take place until a scheme for the improvement of the Rayes Lane / Fordham Road horse crossing has been submitted to and approved in writing by the local planning authority. This scheme shall be in general accordance with the arrangements shown on Drawing No. 13115/18G (the signalised scheme by NHG in NHG/2/2 Appendix 8 of the evidence to the 2015 Planning Inquiry). The approved improvement works shall be complete and fully operational prior to the occupation of the first dwelling hereby permitted.
- 26) No development shall take place until a Travel Plan, including a timetable for its implementation, detailing the provision of measures to encourage non-car mode share to reduce the vehicle impact of traffic arising from the development hereby permitted has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented as approved.
- 27) No dwelling shall be occupied until details of the provision of fire hydrants served by mains water supply, including a timetable for their provision, have been submitted to and approved in writing by the local planning authority. The fire hydrants shall be provided in accordance with the approved details and timetable and retained thereafter.
- 28) No dwelling shall be occupied until the Puffin and Toucan crossings on Fordham Road have been provided in general accordance with Drawing Nos 0719-GA-04B and 0719-GA-05B.
- 29) No dwelling shall be occupied until pedestrian and cycle improvements to provide improved links between the site and the Yellow Brick Road have been provided in general accordance with Drawing Nos 0719-GA-05B and 0719-GA-06B.
- 30) No dwelling shall be occupied until the carriageways and footways between that dwelling and Fordham Road have been constructed to binder course or surface course level.
- 31) No more than 150 dwellings shall be occupied until both vehicular accesses and associated crossing works between the site and Fordham Road have been laid out, completed and made available for use in accordance with Drawing Nos 0719-GA-03B and 0719-GA-05B. These works shall include the signalised crossing on the development site approach to the Willie Snaith roundabout.
- 32) No individual dwelling hereby approved shall be occupied until the optional requirement for wholesome water consumption (110 litres use per person per day) in Part G2 Regulation 36 of the Building Regulations 2016 has been complied with for that dwelling.
- 33) No development shall take place until a scheme for the provision of operational electric vehicle charge points at the dwellings hereby permitted has been submitted to and approved in writing by the local planning authority. The electrical supply to the charge point shall be capable of providing a 7kW charge. Development shall take place in accordance with the approved scheme, which shall be retained thereafter.



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

**by Richard Schofield BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 1 August 2019**

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**Town and Country Planning Act 1990**

**WEST SUFFOLK COUNCIL**

**Application made by**

**LORD DERBY**

Inquiry held on 8-10 May; 14-17 May; 21-22 May; and 5 June 2019  
Site visit undertaken 7 May 2019

Land at Hatchfield Farm, Fordham Road, Newmarket

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

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## List of Abbreviations

SoS	Secretary of State (Housing, Communities & Local Government)
IR2015	2015 Inquiry Inspector's Report
MSM	Microsimulation Modelling
UTA	Updated Transport Assessment
NHG	Newmarket Horsemen's Group
HRI	Horse Racing Industry
JCE	Jockey Club Estates
CS	Core Strategy
JDMPD	Joint Development Management Policies Document
SIR	Single Issue Review
SALP	Site Allocations Local Plan
The Framework	National Planning Policy Framework
PoE	Proof of Evidence
SoCG	Statement of Common Ground
XX	Cross Examination
EIC	Evidence in Chief
RX	Re-Examination

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

**Land At Hatchfield Farm, Fordham Road, Newmarket, Suffolk**

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

**Summary of Recommendation: That planning permission should be granted subject to conditions and planning obligations.**

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**PROCEDURAL MATTERS**

1. The application was made in outline form with all matters other than access reserved for consideration at a later date. I have considered the application on this basis. Although referenced in the original description of development, which is set out in the banner heading above, minor changes to the illustrative open space distribution resulted in the removal of the provision of allotments from the scheme. There has been no suggestion that anyone has been prejudiced by this change, which happened in advance of the previous Inquiry in 2015, and I have considered the scheme on this basis.
2. The application was called-in by the Secretary of State (SoS) for his own determination on 11 July 2014. Following an Inquiry in April 2015, and the submission to the SoS of a report by the Planning Inspector who led the Inquiry, the SoS determined, on 31 August 2016, to refuse planning permission for the proposed development<sup>1</sup>. This decision was challenged in the High Court and subsequently quashed<sup>2</sup>, being remitted back to the SoS, in 2017, for re-determination.
3. On 19 June 2018, the SoS wrote to the Applicant setting out his intention to re-open the Inquiry, as over three years had passed since the original event and he considered that there had been significant changes in circumstances since that time.
4. The planning application was made originally to Forest Heath District Council, as reflected in the banner heading above. On 1 April 2019, however, Forest Heath District Council merged with St Edmundsbury Council to become West Suffolk Council, which is now the relevant local planning authority.

**THE SITE AND ITS SURROUNDINGS**

5. The application site and its surroundings are described in the Updated Design and Access Statement<sup>3</sup> and in the Statement of Common Ground (SoCG) between The Earl of Derby and Forest Heath District Council on Planning Matters<sup>4</sup>. They are also summarised in paragraphs 10 to 13 of the 2015

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<sup>1</sup> CD/ADCL/2

<sup>2</sup> CD/ADCL/3

<sup>3</sup> CD/UP/3

<sup>4</sup> CD/SOCG/1

Inspector's Report (IR2015)<sup>5</sup>. As such, given that nothing of any significance has changed in this regard since the last Inquiry, I do not address the matter further here.

6. The parties agreed that an accompanied site visit was not necessary. Accordingly, I visited the site alone in advance of the Inquiry. During the event, I also took the opportunity to visit, or to note the location of, a number of features in and around Newmarket, at the request of the Newmarket Horsemen's Group (NHG), the Rule 6 party. These included: a number of the gallops around the town; the town's race courses; Tattersalls (auctioneers); Newmarket railway station; the Jockey Club<sup>6</sup>; Newmarket Equine Hospital; and Palace House (National Heritage Centre for Horseracing & Sporting Art). I also observed a number of training yards/studs; The British Racing School; and Philipps Close<sup>7</sup>.
7. I also spent a considerable amount of time walking around Newmarket, on many different days and at various times, observing traffic movements (particularly at Fordham Way/Fred Archer Way signals; the Clock Tower Roundabout; High Street; and on Fordham Road and Fred Archer Way more generally) and horse movements (notably at Rayes Lane and Bury Road horse crossings and on Fordham Road). I drove into and out of Newmarket in the morning and evening peak on a number of occasions, sometimes via the A14/A142 (Fordham Road) junction. I also took time to observe the operation of that junction.
8. In addition, my hotel room afforded me clear views of Fordham Road, Bury Road and the Clocktower Roundabout, as well as much of the Bury Side gallops, which I was able to observe for long periods of time both during and outside peak traffic times.
9. I walked between the site and the town centre on three occasions, along both Fordham Road and the so-called Yellow Brick Road<sup>8</sup>. I crossed and re-crossed High Street, Bury Road, Fordham Road, Old Station Road and Fred Archer Way at various locations and times on many occasions.

## THE APPLICATION PROPOSAL

10. The proposed development would provide up to 400 houses, including affordable housing. Off-site works, secured by condition and planning obligation, would include works to the A14/A142 junction; the Rayes Lane horse crossing and Fordham Road horse walk; the Yellow Brick Road; and improvements to local rights of way.
11. A site adjacent to the eastern site boundary, and within the control of the Applicant, would be available for a new primary school should this be required by Suffolk County Council as Education Authority. For the avoidance of doubt, such a proposal is not part of the application and the land is not within the application site.

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<sup>5</sup> CD/ADCL/2

<sup>6</sup> For the sake of clarity, I noted its location rather than entering it or parking there.

<sup>7</sup> For which Jockey Club Estates has submitted a planning application for new housing. The relevance of this is addressed elsewhere in this report.

<sup>8</sup> An off-road pedestrian and cycle route to the town centre (see UTA fig 6 [CD/UP/4]).

## RELEVANT PLANNING HISTORY

12. The SoS will be familiar with the site's earlier planning history, but for reference this may be found in paragraphs 19 and 20 of IR2015 and in the SoCG between the Applicant and Forest Heath District Council (as was) on Planning Matters<sup>9</sup>.

## PLANNING POLICY AND GUIDANCE

13. It remains common ground between all parties that the Development Plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 includes the saved policies of the 1995 Local Plan<sup>10</sup>, the 2010 Forest Heath Core Strategy (CS) (minus those parts quashed by the High Court in 2011)<sup>11</sup> and the 2015 Joint Development Management Policies Document (JDMPD)<sup>12</sup>. Greater specificity on relevant policies can still be found in IR2015<sup>13</sup> and, thus, I do not repeat it here.
14. At the time of the previous Inquiry, Forest Heath District Council was preparing a Single Issue Review (SIR) of its CS, along with a Site Allocations Local Plan (SALP). Given the relatively early stage of their production, the relevant policies in these two documents, hereafter referred to as SIR<sup>14</sup> and SALP<sup>15</sup>, were afforded "*little weight*" by the SoS<sup>16</sup>.
15. Since that time, the SIR/SALP have been produced and are under examination together. The hearings stages have been completed and the report of the Inspectors is expected in the near future. One of the Main Modifications (MM17) proposed for the SALP was the allocation of the application site, under emerging policy SA6<sup>17</sup>, for "*... mixed use to include 400 dwellings, 5ha of employment land and a 2.2ha school site.*"
16. All of the allocations proposed for Newmarket are required to meet certain criteria, including impact upon horse movements and general highways matters, thus:

*"Permission will only be granted for development proposals where applicants can demonstrate that the transport impact of each proposal (including cumulative impacts where appropriate) on horse movements in the town, together with other users of the highway, has been assessed to:*

*(i) determine whether the proposal results in material adverse impacts; and*

*(ii) where necessary, to identify any measures necessary to mitigate the individual (and where appropriate, cumulative) transport impacts of development (which may include contributions to upgrading horse crossings)*

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<sup>9</sup> CD/SOCG/1

<sup>10</sup> CD/LP/1.

<sup>11</sup> CD/LP/2 and CD/LP/2A.

<sup>12</sup> CD/LP/3.

<sup>13</sup> CD/ADCL/2 IR14-IR17

<sup>14</sup> CD/LP/7A together with the Additional and Main Modifications at CD/LP/12 and CD/LP/14.

<sup>15</sup> CD/LP/7B together with the Additional and Main Modifications at CD/LP/13 and CD/LP/15 and Further Main Modifications at ID6.

<sup>16</sup> CD/ADCL/2 DL12

<sup>17</sup> CD/LP/15

*and measures to raise awareness of the special circumstances and highway safety issues in Newmarket where appropriate”.*

17. The Newmarket Neighbourhood Plan (NNP) was being prepared at the time of the previous Inquiry. Again, it was at a very early stage and the SoS considered that “*very little weight*”<sup>18</sup> attached to it.
18. A pre-submission version of the NNP was sent out for consultation in January 2019<sup>19</sup>, with a submission version due for consultation by the time that this Report is complete. No date has been put to me for when the NNP may be examined.
19. The NNP does not make reference to the application site, other than in passing, and there has not been any substantive argument that the application proposal would conflict with the policies of the NNP. NHG do not rely upon it to support their case<sup>20</sup>. As such, at this point in time, its relevance to my considerations is very limited.
20. Turning to national planning policy, although the content of the revised National Planning Policy Framework (the Framework) will be well-known to the SoS, it is nonetheless helpful to draw attention to the following relevant paragraphs referred to by the parties.
21. Paragraph 11 requires, among other things, that development proposals that accord with the development plan should be approved without delay. Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
22. Paragraph 109 is clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

## **AGREED MATTERS**

23. There are five SoCGs<sup>21</sup>. One is between the Council and the Applicant in relation to general planning matters. It confirms that both parties are of the view that planning permission should be granted for the application scheme. Two are between Suffolk County Council and the Applicant; one in relation to highways and one in relation to other infrastructure requirements. The former confirms that the County Council is satisfied with the transport assessment work provided by the Applicant and, overall, has no objection to the application scheme. The latter addresses matters in relation to education and libraries, albeit that the detail is addressed further in the Council's submissions about the Planning Obligations [387-391].

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<sup>18</sup> CD/ADCL/2 DL13

<sup>19</sup> CD/LP/6

<sup>20</sup> See Ms Parsons' Proof paragraph 1.31

<sup>21</sup> CD/SOCG/1 to CD/SOCG/5

24. There is also a SoCG between the Council, the Applicant and Natural England. This confirms that there is no dispute between them in relation to the (lack of) impacts upon on-site ecology, non-statutory sites of importance for nature conservation and statutorily protected sites (subject to relevant mitigation and safeguarding measures), other than in relation to Chippenham Fen SSSI. The Council's view is that, because of potential uncertainty about whether certain factors affecting Chippenham Fen could be regarded as mitigation, an Appropriate Assessment would be required if the grant of planning permission were to be considered. There is no dispute between the signatories that such an assessment should conclude, based on the available evidence, that there would be no adverse effects arising to the integrity of European sites.
25. Although not a signatory to the SoCG, NHG no longer pursues an objection in relation to ecological matters. This was confirmed formally at the Inquiry<sup>22</sup>.
26. The final SoCG, between the three main parties, confirms that West Suffolk Council has a housing land supply in excess of five years.

### **MATTERS NOT AGREED**

27. The substantive matters of disagreement between NHG, objecting to the proposal, and the Council and Applicant supporting it, are whether the application proposal would a) give rise to severe highways impacts and b) adversely affect the Horse Racing Industry (HRI) in Newmarket.

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

28. The case for NHG is set out fully in its evidence, being summarised in its opening and closing submissions to the Inquiry<sup>23</sup>. The main points are set out under a series of headings below.

#### *Development plan and emerging policy*

29. Until the SIR and SALP are finally adopted, it is common ground between all parties that the tilted balance in paragraph 11(d) of the Framework applies<sup>24</sup>. However, the extant development plan still falls to be considered having regard to the statutory duty under s. 38(6) of the Planning and Compulsory Purchase Act (2004) and paragraphs 11(c) and 12 of the Framework.
30. It is also common ground between NHG and the Council<sup>25</sup> that the proposal is contrary to the development plan taken as a whole, as the proposals are contrary to DM5 and DM27 (at least). To this NHG would add DM48, though the breach of DM5 and DM27 would be likely to end once the SALP is adopted as it would redraw the Newmarket settlement boundary on which the application of DM5 and DM27 turn. Adoption would not, however, resolve any breach of DM48.

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<sup>22</sup> Ms Parsons in response to my question.

<sup>23</sup> ID4 and ID39

<sup>24</sup> This results from the absence of housing allocation policies, rather than because any part of the extant development plan is out of date or because of an inadequate housing land supply (the latter being the basis upon which Members resolved to support the proposal in 2014).

<sup>25</sup> Confirmed by Mr Durrant in XX. See also his PoE para. 5.1.13, where this view is re-affirmed by reference to the Proposal's conflict with the "dominant operative" policies of the development plan.

31. DM48 provides that:

*"Any development within or around Newmarket which is likely to have a material adverse impact on the operational use of an existing site within the Horse Racing Industry (such as noise, volume of traffic, loss of paddocks or other open space, access and/or servicing requirements), or which would threaten the long term viability of the horse racing industry as a whole, will not be permitted unless the benefits would significantly outweigh the harm to the horse racing industry."*

32. The focus of DM48 is on "long-term" risks. It does not matter, therefore, that an identified risk may not manifest itself immediately, or even in the medium-term. The introduction of a threat which impacts in the long-term is itself contrary to this policy.

33. DM48 reflects the third bullet of CS Policy CS1, which states that:

*"The importance of the Horse Racing industry and Newmarket's associated local heritage and character will be protected and conserved throughout the plan period."*

34. In his 2016 decision letter, the SoS regarded DM48 as a precautionary policy, which did not require a finding of a specific and identifiable adverse impact on the Horse Racing Industry (HRI). It was enough, in the SoS's view, for the proposal to threaten the HRI for DM48 to be breached<sup>26</sup>. He found that:

*"...the policy takes a precautionary approach, by requiring consideration of whether development would 'threaten' the long-term viability of the industry – it does not require a finding that there would be specific and identifiable adverse impacts on the industry arising from this development. He considers that the question of risk is highly relevant."*

35. Mr Justice Gilbert upheld this interpretation of DM48 as a matter of law at paragraph 174 of his judgment<sup>27</sup>, thus:

*"I accept Mr Moules' submission that the creation of a risk of adverse perception can be relied on as a threat in the terms described by the policy. I therefore reject this ground if it stands without the support of Ground 2. The Inspector, unsurprisingly given her conclusions, and the levels of traffic involved, took the view having heard the evidence that the claims of adverse perception were without substance. I am just persuaded that the SSCLG was entitled legally to take a different view."*

36. Contrary therefore to Mr Durrant's PoE (paragraph 5.3.32), this issue of perception of harm is not merely a material consideration but also applies through DM48 (as he accepted in XX).

37. Mr Sellwood's approach in his PoE has been to ignore the interpretation by the SoS and the High Court, although he agreed in XX that there was a precautionary approach in the policy.

38. It is common ground that the HRI is of very considerable importance in economic,

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<sup>26</sup> 2016 DL paragraph 21 [CD/ADCL/2].

<sup>27</sup> CD/ADCL/3 p. 55

heritage and tourism terms. Its economic contribution, however, extends much wider than Newmarket and the immediate area. The HRI is a "*jewel in the crown of British sport*", as Mr Anderson put it in Evidence in Chief.

39. Mr Sellwood, strangely, does not address in his PoE the issue of compliance with the development plan as a whole as it currently stands. Nor does he grapple with the conflict between his view and that of the Council. He suggested that it was implicit in his analysis of the development plan's policies that he considered that the application proposal complied with the extant development plan overall. He accepted in XX, however, that in terms of DM5 he had only considered it from a "*post-SALP*" adoption perspective. He also accepted in XX that DM5 was, as a matter of principle, up to date and entitled to full weight in Framework terms<sup>28</sup>. He also agreed in XX that, as the development plan stands, the proposal conflicts with DM5; a point not reflected anywhere in his PoE. Given his failure properly to consider DM5, or indeed the meaning of DM48, his views on development plan compliance are of little assistance.
40. There was a difference in view between the planning witnesses as to the relevance of DM27. That policy provides that:

*"Proposals for new dwellings will be permitted in the countryside subject to satisfying the following criteria:*

- *the development is within a closely knit 'cluster' of 10 or more existing dwellings adjacent to or fronting an existing highway;*
- *the scale of development consists of infilling a small undeveloped plot by one dwelling or a pair of semidetached dwellings commensurate with the scale and character of existing dwellings within an otherwise continuous built up frontage.*

*Permission will not be granted where a proposal harms or undermines a visually important gap that contributes to the character and distinctiveness of the rural scene, or where development would have an adverse impact on the environment or highway safety".*

41. NHG and the Council both consider the policy to be relevant, fully up-to-date in Framework terms, and in conflict with the application proposal. Mr Sellwood considered that, as the policy was concerned with small sites, it was irrelevant. The view of NHG and the Council is to be preferred. DM27 (which is expressly referred to in DM5 itself) provides the policy framework for the circumstances in which the development plan will justify departure from the DM5 approach to housing in the countryside. DM5 and DM27 thus go together, and the application proposal conflicts with both. In any event, in his 2016 decision letter, the SoS agreed with his Inspector that DM27 was one of the policies of most relevance to the resolution of the application<sup>29</sup>.
42. Mr Sellwood's approach to the extant position, in so far as it can be understood, is to place reliance on the attachment of significant (upgraded in his evidence in chief to "*very significant*") weight on the emerging SIR/SALP. It is not common ground that the SIR/SALP should attract very significant weight. Mr Durrant

<sup>28</sup> Indeed, he accepted, as did Mr Durrant, that the omission of DM5 from the planning SoCG entered into between them [CD/SOCG/1] was an omission.

<sup>29</sup> CD/ADCL/2 DL8 and IR17.1.

accepted that the plan process was still continuing, there was an outstanding consultation on habitats, further evidence had been received on highways, and that there were outstanding objections to the Main Modifications including to the Hatchfield Farm allocation. Thus, it would be inappropriate to give very significant weight to the emerging policies. They carry modest weight at best.

43. It remains the case that paragraph 11(d) is engaged and the tilted balance applies unless and until the new elements of the development plan are adopted, finally filling the gap caused by the quashing of part of the Core Strategy in 2011. If the SIR/SALP are adopted before the decision on this application then, at that point, the tilted balance will cease to apply. At that stage, consideration will need to be given to compliance with the development plan overall, including DM48 and SALP SA6(g) criterion B. The adoption of the new plans would not, of itself, mean that planning permission should be granted. Mr Sellwood accepted the point in XX.
44. Therefore, in summary:
- as the development plan stands, the proposal is in conflict with it, and both the s. 38(6) presumption and the Framework paragraph 12 presumption are against the grant of planning permission unless material considerations suggest otherwise; and
  - if the SIR/SALP is adopted in its current form, the tilted balance will cease to apply and development plan compliance will itself depend on the resolution of the highways and HRI issues raised in evidence to the Inquiry.

*Other material considerations*

45. So far as other material considerations are concerned, namely the benefits and emerging policy, which are said to be material to the determination of the application, these are insufficient to outweigh the breaches of development plan in s. 38(6) terms or the tilted balance in Framework paragraph 11(d) terms.
46. The primary benefit arising from the proposal is the provision of housing (both market and affordable<sup>30</sup>). Housing provision is, of course, a benefit, and Ms Parsons accepted that it carried weight as such. The prevailing circumstances, however, are such that the weight is lower than it might otherwise be, as:
- it is common ground between all three parties that the Council has in excess of five years' housing land supply. The Council considers that it has a supply of 6.3 years<sup>31</sup>, which is on any view very healthy<sup>32</sup>. This contrasts with the position when Members supported the proposal<sup>33</sup>;

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<sup>30</sup> Mr Durrant did not, however, identify market housing as a benefit in his evidence.

<sup>31</sup> CD/SOCG/5.

<sup>32</sup> The strength of the land supply position resulting from the creation of West Suffolk Council is a highly material change to that which existed previously. This must be borne in mind when considering the concerns expressed by Mr Rampling [ID30] about housing development in villages surrounding Newmarket. Put simply, the creation of West Suffolk Council has changed the context in which those concerns arose.

<sup>33</sup> Mr Durrant in XX – he said that members have not been asked for their views since prior to call-in in 2014 and even though a new authority has come into existence and been through an election, no views have been sought. The support of the Council must therefore be viewed with some caution.

- the supply is not dependent on the application site coming forward<sup>34</sup>. The proposal's housing provision would thus be on top of an already strong supply position; and
  - the delivery rate of housing at the application site is unlikely to be speedy. There is no current evidence of developer interest in the site and, given the need for securing both the Rayes Lane horse crossing and the A14/A142 works, NHG consider that it would be about 18 months from the grant of any permission before development could begin. Taken together with a build-out rate of 50-60 dwellings per year, that results in only 100-150 units being delivered within 5 years<sup>35</sup>.
47. The other key benefit said to arise from the proposal is the provision of the Rayes Lane horse crossing and widening of the Fordham Road horse walk (alongside improvements to the A14/A142 junction). The Rayes Lane horse crossing and horse walk works are provided for in the s.106 agreement as varied. The mere fact of inclusion of those works in a s.106 agreement does not mean, however, that they carry weight in support of the proposal.
48. In order to be able to take account of the provision of those improvements as factors in support of the proposal, the obligation must comply with CIL regulation 122. One of the elements of such compliance is that the works are necessary. Where works will be provided irrespective of the outcome of a planning application, however, the provision of those works by the Applicant is not necessary (in the CIL sense) for the proposal to be acceptable. Put simply, it is not a benefit of a planning application that it commits to do something which is going to be done in any event.
49. That is the case in respect of the Rayes Lane horse crossing. Jockey Club Estates (JCE) has committed to providing the funding for this work to be carried out irrespective of the outcome of this Inquiry. The Applicant made much of the absence of a legal document binding JCE to the works. Mr Gittus explained, however, that for the last 20 years JCE has funded, and Suffolk County Council has executed, works of this kind in Newmarket, without the need for any such agreement. Given that the highway authority has been content to take JCE at its word over that period of time, there is no reason for the SoS to do otherwise. The Inquiry can and should, therefore, proceed on the basis that the Rayes Lane crossing works will be provided by JCE in any event. The works are not, therefore, necessary for the proposal to be acceptable. No weight should be given to this element of the s.106 agreement in the proposal's favour.
50. The second element of works contained in the s.106 agreement is the widening of the Fordham Road horse walk. What is proposed is a widening of some 50-60cm. As Mr Gittus explained in XX, a widening of that kind would not resolve the long-standing difficulty with that horse walk, which is that it is not wide enough for two horses to pass one another when approaching from opposite directions. Mr Plumb pointed out in XX that the main benefit would result in any event from the Rayes Lane crossing improvement and only a small proportion of the benefit

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<sup>34</sup> This was put to Ms Parsons in XX, and she agreed.

<sup>35</sup> Ms Parsons' PoE paragraphs 1.39-1.42.

from the horse walk<sup>36</sup>. In terms of the safety benefits of that, as Mr Plumb accepted, there is a physical division between horses and pedestrians already in place. What the Applicant proposes, therefore, has very limited weight as a benefit. Mr Durrant confirmed in XX that the widening of the horse walk alone would not be sufficient to tip the scales in favour of the proposal.

51. Mr Spry sought to identify a range of economic benefits which are said to arise from the proposal<sup>37</sup>, and to argue that in the absence of development at the application site, a necessary economic contraction would occur in Newmarket. His basis for those assertions, however, was an approach to economic modelling which he described as *ceteris paribus* i.e. which assumed the continuation, unmodified, of current observed patterns in a wide range of areas, including household size, migration rates and labour force ratios. His model assumed e.g. that the presence or absence of housing development in Newmarket (including the application proposal) would have no effect whatsoever on issues like household size. Such an assumption is unrealistic, and he accepted that his approach could not be described as a forecast. He accepted that he had not tested the robustness of these assumptions in preparing his economics evidence. Such a limited approach is of little assistance to the Inquiry.
52. It is also notable that the scale of the economic benefits identified are, in the context of the wider HRI, so small as to be virtually negligible. If the application proposal caused even a 2% contraction in the HRI in terms of FTE employment, for instance, that would result in a net *loss* of jobs from the proposal. That is relevant to the analysis of the HRI issue.
53. Turning to emerging policy, SALP Policy SA6(g)<sup>38</sup>, as proposed to be modified<sup>39</sup>, includes the application site. The MMs for that policy include the insertion of Criterion B, which the application proposal must satisfy to comply with the emerging allocation<sup>40</sup>. By virtue of that criterion, permission will only be granted where applicants:

*"can demonstrate that the transport impact of each proposal (including cumulative impacts where appropriate) on horse movements in the town, together with impacts on other users of the highway, has been assessed to:*

- *determine whether the proposal results in material adverse impacts;*
- and*
- *where necessary, to identify any measures necessary to mitigate the individual (and, where appropriate, cumulative) transport impacts of development (which may include contributions to upgrading horse crossings and measures to raise awareness of the special circumstances and highway safety issues in Newmarket where appropriate)."*

54. Both Mr Spry and Mr Sellwood accepted that the compliance or otherwise of the

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<sup>36</sup> CD/T/20 para. 14.26 identified a 73% reduction in incidents from the RLC. BP gave evidence in Chief that he had calculated that, without the widening of the horse walk, that reduces to 65%, so that only 8% of the reduction is referable to the horse walk widening.

<sup>37</sup> MS PoE section 6.

<sup>38</sup> CD/LP/7B as modified to include Hatchfield Farm as SA6(g) (CD/LP/15).

<sup>39</sup> CD/LP/15 (MM18)

<sup>40</sup> *Ibid*

proposal with Criterion B will turn on much the same factors as those which inform compliance with DM48, as that policy applies to highways considerations. Criterion B explicitly acknowledges the relevance of highways impacts to the HRI but also recognises that they relate to all highway users.

### *Highways issues*

55. There are a number of key issues:

- the use by the Applicant's team of modelling that focuses on the standalone performance of the key town centre junctions and rejects the use of Micro Simulation Modelling (MSM) used by NHG;
- criticisms of the Systra MSM model used by NHG;
- significance of observed queues and delays at the 2018 base for assessments by the Applicant and NHG, and their significance when taken with increases in traffic expected in 2031 to which development traffic from the application proposal is added;
- whether an assessment of residual cumulative impact should include consideration of the impact of growth (including commitments) since 2018 or whether the comparison that should be undertaken is between the position in 2031 (with growth) with and without the application. In terms of the Systra scenarios advanced by NHG<sup>41</sup>:
  - the Applicant submits that the relevant comparison should be between Scenarios D and E; and
  - NHG submits that the comparison should be between A and E since otherwise the assessment would not be one of cumulative impact;
- whether the application proposal impacts on safety issues within the town centre; and
- whether, once the "*residual cumulative impact*" in Framework paragraph 109 terms has been ascertained, the impact of the proposal would be "*severe*" in such terms (including the issue of safety).

56. A summary of the delays, which NHG submits will be caused by the proposal, are set out in NHG's Summary Note (3 June 2019)<sup>42</sup>.

### *Assessment modelling*

57. One of the key differences between NHG and the Applicant is over the approach to determining whether the proposal would impact adversely on traffic in Newmarket. The standalone junction modelling, adopted by the Applicant, focusses only on the key junctions and assesses them without any assumptions as to their impact on other proximate junctions, whereas NHG focuses on the impact of the local network as a whole. NHG's MSM takes account of what is the obvious fact (not reflected in the Applicant's approach) that the junctions in

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<sup>41</sup> See Section 3 and Appendix C of Mr Neil's Newmarket Future Year Modelling Assessment CD/T/43

<sup>42</sup> ID37

Newmarket are both proximate to each other and their operation affects one another. As a result, the outputs are very different:

- the Applicant only provides modelling as to the capacity and delays at the junctions, which does not reflect the entirety of the queuing and delay within the local network;
- NHG considers the junctions in relation to each other and impacts on the performance of the network more generally.

58. The Applicant's team eschew microsimulation (except in respect of J37 on the A14) stating that it is disproportionate and that there is only a limited basis for considering there to be interaction between the key junctions in the town centre<sup>43</sup>.

59. However:

- there is plainly interaction between the key town centre junctions, which sit in close proximity to each other, and there is substantial queuing in both AM and PM peak hours. Those interactions were evident from the video footage presented to the Inquiry by Mr Neil<sup>44</sup>. Detailed analysis of the blocking back between junctions is set out in Mr Cottee's PoE Appendices MC9 and 10 (for the AM and PM peaks, respectively). Again, the observed position is unequivocal; the relevant junctions interact on a regular basis during both peaks. As Mr Cottee has demonstrated, the same position arises even using Mr Dimbylow's own methodology<sup>45</sup>;
- those junctions are more proximate than a number of the junctions that were subject to microsimulation modelling by WSP set out in the UTA<sup>46</sup>. This was confirmed by Mr Cottee in Chief and was not challenged by Mr Dimbylow. The basis on which the UTA used MSM for the A14 junction 37 was the proximity of the junctions included in the model<sup>47</sup>. Given that the town centre junctions are much closer together, the omission of MSM for the town centre junctions is surprising;
- MSM modelling has been undertaken by Systra for NHG, which takes account of network queuing, which occurs significantly beyond that considered by WSP. Mr Dimbylow accepted in XX that as a matter of principle a fit-for-purpose MSM provides a better picture of the relationships between interacting junctions than stand-alone modelling;
- Suffolk County Council accepts that MSM is a more precise method for modelling complex or closely located junctions than either ARCADY or LinSig<sup>48</sup>. It has not, however, presented any critique from Aecom who presented evidence for the SIR/SALP; and

<sup>43</sup> See Mr Plumb's PoE paragraph 7.2.2; Updated Transport Assessment paragraph 7.6.18 [CD/UP/4].

<sup>44</sup> Mr Neil PoE section 2.4.

<sup>45</sup> Mr Cottee response to Mr Plumb, App MCSS1.

<sup>46</sup> Mr Cottee PoE paragraph 6.10, which indicates that the town centre junctions are around 70m apart.

<sup>47</sup> CD/UP/4 App N paragraph 1.3.1.

<sup>48</sup> Mr Cottee supplementary PoE responding to Mr Dimbylow, para. 3.13.

- even if MSM were not necessary (which NHG dispute) it is both appropriate and a better measure of the likely impacts of the proposal. As MSM has in fact been undertaken, it is a weighty consideration for the SoS and, indeed, is the preferable approach to modelling a network of this nature.
60. A useful litmus is to have regard to the fact that, unlike the Applicant's approach, queues southbound down Fordham Road toward the Clocktower Roundabout frequently extend far beyond the Rayes Lane horse crossing. Mr Neil has included in his evidence videos of and around the PM peak (albeit speeded up) from which it can readily be appreciated that substantial queuing toward the roundabout well beyond Rayes Lane along Fordham Road already exists<sup>49</sup>. However, the RPS Technical Note on Traffic Assessment (Mr Plumb Appendix F) fig 3-3 shows, with short intervals, queuing for the whole peak hour only to Rayes Lane.
61. The Applicant appears reluctant to acknowledge the longer queues, since they have not been taken into account in the modelling or the assessments of delay in the network<sup>50</sup> (as opposed to at the stop line of junctions), which also fails to take account of extended queuing. The queues and thus delays will be extended beyond those already occurring.
62. Note also that it has been confirmed in the assessment by WSP that:
- "During the AM peak 14 journey times in each direction were recorded. During the PM Peak 13 journey times in each direction were recorded."*
63. This small sample contrasts with the 180 journeys undertaken on behalf of NHG<sup>51</sup>, which, provides a much better picture of what occurs in reality.
64. As to the deficiencies in the modelling for the Applicant, Mr Dimbylow accepted in XX that his assessment (e.g. of the Clocktower Roundabout) in his Arcady modelling would not take account of traffic queuing, or stationary for a period, whilst sitting across the Roundabout itself (as self-evidently actually occurs).

#### *Criticisms of the Systra model*

65. Apart from the general complaint made by Mr Plumb that this marked a departure by the NHG from previous inquiries, it was put to Mr Neil in XX and raised by Mr Dimbylow that the model overstated the impacts by assuming less capacity.
66. However:
- all of the Systra outputs were within the statistical requirements of WEBTAG and well within them;
  - they were not uniformly below observed flows but a significant proportion were above existing; and
  - the outputs for the MSM in the UTA for the A14 junctions also showed a pattern of flows both above and below existing flows and showing in many places less statistical reliability than the Systra model used by Mr Neil.

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<sup>49</sup> See ID12 and ID14

<sup>50</sup> Mr Plumb PoE App F, fig 3-3. These delays are not reflected in CD/UP/4 tables 7-5 or 7-6 – see Mr Neil PoE para. 5.1.9.

<sup>51</sup> Mr Cottee supplementary PoE responding to Mr Plumb, para. 5.14; see also CD/T/19.

64. On that basis, Mr Neil's MSM is well within the range of acceptable variations, which occur in models of this kind, and the SoS can be satisfied that it provides a robust basis for analysing the traffic implications of the proposal on a cumulative basis (by comparing Scenario A with Scenario E).

*Significance of current actual queues and delays*

67. The baseline traffic position in central Newmarket was explored at length during the Inquiry. That baseline position during the PM peak includes significant queueing on Fordham Road propagating back from the Clocktower Roundabout to beyond Rayes Lane, and with considerable congestion on the High Street.
68. The current state of the network, both in terms of queues and delays, is significant for a number of reasons:
- it is highly relevant to the assessment of residual cumulative impact. The more congested the network currently is, the less scope there is to add any additional traffic burden to it without causing a severe impact. If (as is the case here) the network is already congested, with key junctions already operating at over-capacity, then that is itself a reason to refuse any development which would add even slightly to the existing position (this is explored in detail below). This is likely to be manifested in additional queue length and delays through the network rather than delays modelled just at the junctions<sup>52</sup>;
  - the actual, observed condition of the network highlights the lack of realism in the Applicant's modelling methodology. By selecting a methodology which does not and cannot reflect junction interactions or impacts on the wider network, the Applicant's model has produced an output showing that traffic conditions in 2031 will be *better* than the existing conditions as they are actually observed on the ground, without any junction alterations or other mitigation<sup>53</sup>. The unsuitability of such an approach is self-evident;
  - as a related point, the observed current conditions reveal extensive junction interactions in central Newmarket at both the AM and PM peaks<sup>54</sup>. Despite such interactions existing and being observable, and remaining highly likely for the future, both the Applicant and Suffolk County Council regarded MSM as unsuitable because of what they regard as the limited nature of the interactions of these junctions<sup>55</sup>. Given the limitation on stand-alone modelling, the reluctance of the Applicant's team even to consider a broader picture of the affected network using MSM is remarkable. Again, the unreality of the approach adopted by the Applicant and Suffolk County Council shows its unsuitability to make the relevant assessment here; and
  - it shows the extent of the difficulties caused by Suffolk County Council's lack of meaningful engagement with the traffic situation in Newmarket. Where a network is already severely congested, and where junctions already interact, what is required is a systemic response by the highway authority, rather

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<sup>52</sup> Mr Neil PoE para. 5.1.16; Mr Cottee PoE para. 6.25.

<sup>53</sup> Mr Neil PoE para. 4.6.4 and App A section 1.17.

<sup>54</sup> Mr Cottee PoE App MC9 and 10.

<sup>55</sup> UTA para. 7.5.2.

than a piecemeal approach through individual development control decisions. Suffolk County Council's response to NHG's identification of these systemic network issues has been dismissive, and at times flippant<sup>56</sup>. That disregard, combined with Suffolk County Council's decision to attend the Inquiry, but not to give evidence and have its position tested by examination<sup>57</sup>, seriously undermines the credibility and weight of the County Council's highway contributions to the Inquiry process.

#### *Residual cumulative impact*

69. In considering the highways impacts of the proposal, the test which the SoS must adopt is that set out in paragraph 109 of the Framework, which states that:

*"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."*

70. As is evident, the focus is not merely on the residual (i.e. after mitigation) impact of the proposal itself, but on the residual *cumulative* impact. As a matter of logic and language cumulative must mean the impact accumulated with the other impacts from development and general growth between today and the year of assessment i.e. 2031.

71. The SoS's decision in the *Kidnappers Lane* appeal<sup>58</sup> indicates the proper approach that should be taken to identifying cumulative impact in these circumstances. This was not addressed by any of the Applicant's witnesses, though dealt with in the NHG proofs<sup>59</sup>. In that decision, the SoS agreed with his Inspector in a manner which makes it clear how the SoS expects to approach the issue of residual cumulative impact.

72. In the Kidnapper's Lane Inspector's Report, the Inspector emphasised (IR 223) that:

*"it is the cumulative effect of all expected development which must be taken into account, rather than the individual contribution of each development in turn, which is likely to be (as in the present case) marginal."*

73. It is thus no defence for the Applicant to say that the traffic contribution of the proposal is small (even very small) when taken in isolation. That is not the test. Even a marginal contribution can give rise to a severe residual cumulative impact, if the baseline is an already congested network and there are a number of other development commitments.

74. The Inspector added (IR 225) that:

*"Whilst I can agree therefore, that the development should not need to solve all existing unrelated transport problems, the existing or future "in any event"*

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<sup>56</sup> See e.g. the suggestion that a solution to congestion is the increased use of horses for journeys [Mr Cottee PoE App p. 84].

<sup>57</sup> SCC officers were present throughout but only spoke in respect of health and education contributions. Even then, SCC had not acted assiduously to update its figures from those used in 2015.

<sup>58</sup> CD/ADCL/5.

<sup>59</sup> Mr Cottee PoE paras. 2.17 ff; Mr Plumb PoE para. 1.97.

*situation on the highway network, is not an unrelated problem which evaluation of the proposed development should ignore. It is a related problem which is highly pertinent to the evaluation of the current appeal proposal."*

75. It is evident, therefore, that an assessment which focuses on the contribution of the proposal to the state of the network is not suitable. A cumulative assessment, properly understood, requires an assessment of the severity of impact of contributors to traffic on the network as a whole, including those produced by developments other than the proposal (i.e. a comparison between Mr Neil's Scenarios A and E).

76. The Inspector went on to apply to the general road network the principles set out in the Department for Transport circular related to the strategic road network, to the effect (IR 226) that:

*"development proposals are likely to be acceptable if they can be accommodated within the existing capacity of a section (link or junction) of the strategic road network, or they do not increase demand for use of a section that is already operating at over-capacity levels, taking account of any travel plan, traffic management and/or capacity enhancement measures that may be agreed."*

77. At IR 227, the Inspector noted that there was already congestion in the relevant part of the network, with several junctions operating at over-capacity levels. That *alone*, the Inspector said, indicated that permission should be refused unless the situation was resolved through mitigation.

78. As to identifying the correct Systra scenarios for comparison in a proper cumulative impact analysis, the position can be seen by considering the approach of the *Kidnappers Lane* Inspector to the mitigation proposed in that appeal (IR 235):

*"even the County highway authority expects the measures proposed in this appeal to be effective only in reducing the residual cumulative impact of the development to less than severe compared with what would happen anyway by 2023. That is not the correct test, since the A46 Shurdington Road is already overloaded; applying the principles of DfT Circular 02/2013, the development should not be permitted unless effective measures are taken to relieve or counter the existing overloading of Shurdington Road."*

79. The Applicant submits that the comparison is between Scenario D (i.e. Scenario A plus growth to 2031) and Scenario E (i.e. Scenario A plus growth to 2031 plus the application scheme). It will be immediately apparent that the exercise proposed by the Applicant is *precisely* that which the Inspector considered, and rejected, in the *Kidnappers Lane* appeal. The Applicant's approach only compares the situation in 2031 with and without the application scheme. It is not a cumulative impact assessment at all.

80. The correct approach is, therefore, to consider the impacts of general growth plus commitments between the base year 2018 and 2031. That is the only approach which can enable the cumulative impact of all relevant development to be taken into account by reference to the existing baseline (plus proposed mitigation i.e. Scenario A), including any existing congestion.

81. The correct approach is thus typified by comparison of Systra's Scenario A and Scenario E<sup>60</sup>. To compare merely D with E is to ignore the cumulative effects caused to the assessment date and involves simply comparing the traffic in 2031 with and without the application scheme. That is no different in effect from the older approach which simply examined the effect of the proposals on the network at the assessment date and only if its addition caused problems with the network to regard them as of concern. To do that here would be to misunderstand and misapply the Framework and would also be inconsistent with the SoS's decision in *Kidnapper's Lane*.

#### *Highways safety issues*

82. In addition to addressing severe cumulative residual impacts, the Framework also recognises that permission should be refused where unacceptable impacts on highway safety would arise as a result of the proposals under consideration. As with network performance, considerations of highway safety, and the impact of a scheme on highway safety, will be informed by the existing position at the relevant points in the network. Again, the more dangerous the existing safety position, the less additional impact is needed from a development before that development will give rise to unacceptable impacts. If a network is already at or near to an unacceptable position in respect of safety, then even a marginal increase in traffic from a development will be unacceptable.
83. Mr Cottee presented detailed evidence, including video evidence, to the Inquiry, which demonstrates existing unacceptable safety conditions in respect of a number of locations in Newmarket<sup>61</sup>. In particular, Mr Cottee's evidence showed pedestrians crossing busy roads on Fred Archer Way and Fordham Road (which have desire lines going in both directions), at the bottom of Bury Road close to Clocktower Roundabout, and by that roundabout at the mouth of Fordham Road. Pedestrians were observed, on numerous occasions, to enter traffic flows and have to 'retreat', or to wait in between two moving streams of traffic in the middle of the road, because of an inability to proceed (or in some cases either to proceed or retreat). This is an accident waiting to happen.
84. The Applicant focused in XX on the fact that these concerns were not raised by Mr Cottee during the 2015 Inquiry, on the absence of any accidents to date, and on the absence of safety concerns on the part of the County Council. However:
- as Mr Cottee explained in XX, the evidence base on which he formed his view of the unacceptable safety situation on the road network in Newmarket was

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<sup>60</sup> It was suggested to Mr Neil in XX that he had adopted a different approach in the TA for a development at Hartshill, in Warwickshire [Mr Dimbylow rebuttal PoE App G]. Mr Neil explained in RX that Mr Dimbylow had misunderstood the nature of the exercise being carried out at para. 6.2.5 of that TA. It was not a cumulative residual impact assessment in the Framework sense but was, rather, an analysis of the extent of mitigation required for development in a context where there was little impact having assessed the network using MSM and with mitigation (see e.g. paras. 7.6.2, 8.13.2, 10.8.3). Little if any assistance can therefore be derived from the Hartshill approach. The full TA shows also that Mr Neil was not the author or approver of the TA. Without examination of the wider application documents it is not possible to say whether the Framework approach was applied correctly and in any event, there has been no decision on the application as yet.

<sup>61</sup> Mr Cottee PoE section 7, and in particular the videos referenced therein at paragraphs 7.11, 7.19 and 7.22.

not available to him in 2015. Having now reviewed the available evidence, he formed the clear view that the situation would be unacceptable;

- the absence of accidents is not a good reason to regard the network as currently safe. As Mr Cottee stressed, it would not be appropriate to ignore an unsafe highway situation until a fatality or serious injury arises. This is an issue for which prevention is much better than cure; and
- The County Council's position on highway safety is summarised by Mr Cottee at paragraph 7.21 of his Proof. As can be seen from that paragraph, the County Council's engagement with safety is as perfunctory as its engagement with severity. Indeed, it is notable that, in its formal response to NHG's transport evidence, the County Council does not engage with Mr Cottee's safety evidence at all<sup>62</sup>. Mr Plumb thought that a safety audit may have been carried out by the County Council in 2009 or thereabouts, but he was unsure on the point, and no evidence of any such audit (or, if it occurred, its results) is before the Inquiry.

83. NHG submits that there is clear evidence of an existing unacceptable highway safety situation in Newmarket. That position will only get worse if the appeal proposal, and its additional contributions to the traffic on the network, is permitted.

*Compliance with Paragraph 109 of the Framework and the issue of severity*

85. Where the residual cumulative impact of a proposal on the highway network is severe, then the Framework provides that this amounts to a good reason to refuse permission.
86. The nature of cumulative impact has already been addressed. As to the meaning of severity in this context, the NHG has provided assistance to the Inquiry on the elements to be taken into account. Whilst severity is highly fact-sensitive, considerations such as capacity, congestion and highway safety<sup>63</sup>, alongside sustainability and the suitability of access<sup>64</sup>, are all relevant to the assessment.
87. Given the particular policy imperatives which exist to protect the HRI in Newmarket, the assessment of severity in this particular factual context should consider the HRI impact of traffic as a component of severity as well<sup>65</sup>. As Mr Neil explained in evidence in chief, that is particularly important in the context of the AM peak, where interactions of horses and traffic are most likely to occur. It is not, however, limited to that time. Mr Achner gave evidence that emergencies requiring medical assistance can and do occur during the PM peak. The same applies to ambulatory call-outs for vets and, as Mr Crowhurst confirmed, such call-outs can and do occur at any time of day. This is not surprising since the need for medical and veterinary assistance can arise at any time and such assistance will have to get through town to the point of demand for the service.
88. By contrast, neither Mr Plumb nor Mr Dimbylow attempted to identify the factors relevant to severity. Mr Sellwood did not engage with this issue at all, despite Mr

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<sup>62</sup> Mr Durrant supplementary PoE App 1.

<sup>63</sup> Ms Parsons PoE para. 1.95.

<sup>64</sup> Mr Cottee PoE para. 2.4.

<sup>65</sup> Ms Parsons PoE para. 1.96.

Boyle's insistence in XX of Ms Parsons that severity was an issue of planning judgment. Mr Durrant relied on Suffolk County Council on severity, but the County Council too provided no assistance to the Inquiry as to what the term means, or the factors to be taken into consideration or even how it generally approached the issues. The only meaningful engagement with the concept of severity, therefore, comes from the NHG.

89. As to the assessment of severity, Mr Neil explained in evidence that:

- during the PM peak, existing conditions show significant queuing on Fordham Road, propagating back from the Clocktower Roundabout, significant congestion, and significant junction interactions. Extensive queuing existed on the High Street, as well as from the Fred Archer Way junction. These, Mr Neil considered, indicated that the existing network conditions are very severe even before any development traffic is added; and
- during the AM peak, lower flows and less congestion are observed, but there is still clear evidence of junction interactions. The network also has to contend both with school traffic and with traffic interactions with horses. Mr Neil considered that these conditions were also severe, though for slightly different reasons to those at the PM peak.

90. Mr Cottee reached a similar view of existing conditions<sup>66</sup>. He confirmed in evidence in chief that, given these conditions, he regards the network in central Newmarket as being at capacity. He explained in evidence that, where a network is at capacity, the effect of pushing more traffic through it is to increase both queue lengths and journey delays, as well as increasing traffic levels at adjacent peak periods and on alternative routes. Mr Cottee explained that Newmarket does not have alternative routes through the town centre which avoid the use of residential streets<sup>67</sup>.

91. The views of NHG's highways experts are consistent with the day to day experiences relayed to the Inquiry by NHG's industry witnesses, all of whom expressed concern about the current traffic situation in the town centre.

92. The introduction of the proposed Rayes Lane horse crossing signalisation (i.e. Mr Neil's Scenario A) makes little difference to this issue; average journey times are reduced by three seconds in the AM peak (the horse crossing will only be 'called up' during the AM peak).

93. Given those base conditions, and applying the approach to cumulative impact assessment set out by the SoS in *Kidnappers Lane*, it is clear that *any* increase in traffic to the network from development (including the application scheme) will have a severe impact, even if that increase, assessed in isolation, is marginal.

94. Comparing Scenarios A and E of Mr Neil's MSM, the cumulative impact of the proposal together with other development is an *average* increase in journey times across the modelled town centre network of 29 seconds in the AM peak, and 8 minutes 6 seconds in the PM peak<sup>68</sup>. A number of the links perform significantly worse when considered individually. For example, in the PM peak there will be an

<sup>66</sup> Mr Cottee PoE from para. 10.19.

<sup>67</sup> Mr Cottee supplementary PoE in response to BP.

<sup>68</sup> See the NHG Summary Traffic Note ID37

additional delay on Fordham Road of c. 15 minutes and in the High Street (eastbound) of c. 9 minutes<sup>69</sup>. In the particular circumstances of the heavily congested, overcapacity network in Newmarket town centre, those increases are themselves severe.

95. Suffolk County Council has suggested that a severe impact (whatever it considers that term to mean) will not occur because drivers will use alternative routes, travel at different times, or use alternative modes of transport<sup>70</sup>. However, in making that suggestion the County Council has not considered either the likelihood of this occurring, to what extent it would have any significant effect on traffic flows, or the consequences of it not occurring. Given the existence of significant congestion for many years<sup>71</sup>, it appears highly likely that such displacement, as can occur, will be occurring in any event and, if it has not despite those conditions, it seems unlikely that it will provide a realistic solution in 2031.
96. Further, the implications of such shifts in behaviours were considered by the Inspector in *Kidnappers Lane* at paragraph 231:

*"The way displacement would work in practice needs to be understood. It means that traffic conditions on the A46 Shurdington Road would have to be so unacceptable to drivers that they would change their behaviour. ... Notwithstanding the County highway authority's blithe assertion that congestion would be short-lived, of short duration and confined to the peak hours, those are the hours when the greatest number of people would be affected. It would cause not just displacement onto other roads but also to other times, to less preferred destinations, or to a decision not to travel and so it would affect all three dimensions of sustainable development."*

97. Far from being an answer to the NHG's severity case, therefore, the County Council's stance is, on the *Kidnappers Lane* approach, evidence of severity of impact. Such alternative approaches are in any event unavailable to many critical HRI businesses, including veterinary, medical and horse transportation services, all of which are dependent on vehicle use, and none of which is able to dictate the time of their attendance at HRI sites<sup>72</sup>. It is notable that the seriousness of the congestion was mentioned by both the Inspectors in 2011 and 2015, although at those times no issue was taken or (in the case of 2011) the policy was different.
98. The result is that paragraph 109 of the Framework supports the refusal of the proposal on severity grounds. The existence of unmitigated impact on highway users in Newmarket is also a breach of Criterion B of the emerging site allocation policy (SA6(g)) for the application site.
99. In addition, the unacceptable safety situation identified by Mr Cottee provides a separate, free-standing reason to refuse permission for the proposal under Framework paragraph 109, irrespective of the SoS's conclusions on severity.

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<sup>69</sup> *Ibid*

<sup>70</sup> Mr Cottee PoE App p. 84.

<sup>71</sup> see CD/ADCL/4: 2011 IR paragraphs 12.3.4, 12.3.5 and 12.3.45

<sup>72</sup> These points were confirmed by Mr Crowhurst, Mr Achner and Mr Needham, respectively.

### *Impact on the HRI*

100. The HRI benefits from the following protective policies:

- JDMPD DM48<sup>73</sup>. Both Mr Spry and Mr Sellwood accepted in XX that the policy has been interpreted by the SoS as precautionary<sup>74</sup>, and that that interpretation, though challenged by the Applicant in the High Court, was not found to be unlawful. There is thus no need for a finding that an identified, specific effect of the proposal would cause harm to the HRI for DM48 to be breached. The risk of such a harm arising is sufficient; and
- SALP emerging policy SA6(g) criterion B (see SALP MMs<sup>75</sup>). Criterion B is focused on avoiding unmitigated impacts on horse movements in Newmarket (together with any other use of the highway).

101. It is common ground that the HRI is of very considerable importance in economic, heritage and tourism terms. Its economic contribution extends much wider than Newmarket and the local area.

102. The nature of the HRI's contribution to Newmarket is, however, in some respects fragile. The HRI is heavily dependent, for its success, on the existence of a perception that its needs and requirements are understood and supported as a matter of public policy. Those who invest in the HRI in Newmarket do not have to do so. Given the importance to the sector of a small number of very wealthy, international owners, and the ease with which such owners could relocate in the event that a perception of harm arises, there is a need for particular caution in approaching any development which undermines the sense that the HRI has the support of public authorities. This may or may not be a good business model, viewed in terms of other forms of economic generators, but it is of the nature of the HRI and must be approached as such.

103. One of the key risks to any major HRI venue is urbanisation. Mr Gittus explains why that is so, with reference to the decline of Epsom, which is a salutary tale<sup>76</sup>. Planning decisions which create a sense of increased urbanisation are, in and of themselves, a risk to the long-term viability of Newmarket. In this particular industry, with its unusual economic characteristics, a perception of risk can easily become a self-fulfilling prophecy. For these reasons the SoS was right to approach DM48 on a precautionary basis in 2015.

104. Contrary to the Applicant's position<sup>77</sup>, frequently repeated, the perception of harm to the HRI arising from the proposal is not simply concerned with the Rayes Lane horse crossing, as Mr Cottee emphasised in XX. Other threats to the HRI exist:

- the general traffic situation, and the resultant impact on the ability of key HRI personnel (including vets and medics responding to emergencies) to move safely and speedily around Newmarket, is present irrespective of the Rayes Lane horse crossing works. The combination of the additional traffic, the concerns regarding the safety of racehorses and their riders travelling

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<sup>73</sup> CD/LP/3 at p. 59.

<sup>74</sup> CD/ADCL/2 at DL21.

<sup>75</sup> CD/LP/15 at pp. 8 and 9.

<sup>76</sup> Mr Gittus' PoE section 8.

<sup>77</sup> The Applicant's Statement of Case para. 4.5.

between locations, and the impact on movement of those connected with the HRI around the town combine to create a set of circumstances that give rise to a perception of significant harm that threatens the long-term viability of the HRI in this location<sup>78</sup>;

- even with the signalised Rayes Lane horse crossing in place, the uncontested evidence about the nature and behavioural characteristics of young, thoroughbred racehorses<sup>79</sup>, combined with the increase in traffic in Newmarket to which the proposal would contribute, risks increasing the number of incidents between animals and traffic and a consequential increased risk of injury to rider, horse, driver/vehicle and pedestrian<sup>80</sup>. The adverse implications of such a state of affairs for the HRI is obvious;
- the value of thoroughbred racehorses is very high. The result of a perception of an increased threat to these valuable assets from increased development in Newmarket is an increased likelihood that owners will withdraw their horses from the area<sup>81</sup>; and
- the result of a planning decision which sets aside the HRI's concerns, and the development plan's protective policies for the HRI, in favour of permitting generalised housing development, will send a clear and negative signal to the HRI regarding the importance it has in the planning process. It will undermine the faith that the industry has in the adopted planning policies and increase the perception of harm to the industry that it feels<sup>82</sup>. Again, in the special context of the HRI, a perception of a risk is *itself* a risk to the HRI's viability in the long-term.

105. The Applicant relies primarily on the evidence of Mr Spry for his position that the proposal would not create a harm to the HRI. Mr Spry's evidence is, however, unreliable for a number of reasons:

- it is evident from his Proof that Mr Spry approached his analysis of harm on the assumption that an effect is only of relevance if it *will*, rather than *might*, come about<sup>83</sup>. That is not the correct approach to DM48, which requires consideration of risk. A risk is by definition something which *may* happen;
- Mr Spry's assessment of the current and anticipated conditions in Newmarket is based on a *ceteris paribus* model which, by his own admission, cannot be treated as a forecast. The problems inherent in this approach have already been described;
- Mr Spry recognised the strengths of a "*cluster*" such as the Newmarket HRI. He did not, however, take account of the countervailing weaknesses inherent in such structures, which can (as Mr Wicksteed explained) result in a weakening of a cluster where a "*core*" activity is undermined;

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<sup>78</sup> Ms Parsons' PoE para. 3.42.

<sup>79</sup> See the uncontested evidence of Professor Waran on behalf of NHG in 2015 (Ms Parsons' PoE App NP3).

<sup>80</sup> Ms Parsons PoE para. 3.53.

<sup>81</sup> *Ibid* para. 3.55.

<sup>82</sup> *Ibid* para. 3.61.

<sup>83</sup> See e.g. Mr Spry PoE para. 8.6(a).

- much of Mr Spry's evidence was based on assertions and assumptions about how horse owners would behave in various situations, and on how trainers would advise owners to behave. Given the importance of those assumptions and assertions to his analysis, and given his lack of personal expertise in HRI matters, it is surprising that (as he admitted in XX) he did not see fit to interview any owners, or any trainers, or anyone else involved in the HRI (with the apparent exception of his own client) about the realities of the HRI, despite his involvement in the proposal for several years. Mr Spry's assertions are not anchored in the reality of the HRI;
- Mr Spry's views about how owners would react to the rejection of the NHG's case through the planning process was that no rational owner could maintain a concern if the SoS grants permission. Mr Spry's view fails to recognise that, whilst their activities are conducted in a business-like manner (as Mr Wicksteed confirmed in Chief), owners are not primarily motivated by business considerations. Owners have no shareholder pressures, are not involved in the HRI as a form of financial investment<sup>84</sup>, and are involved mainly for pleasure. Mr Spry had, in short, used the wrong yardstick to measure rationality in this context. What may be irrational for a company may be entirely reasonable for a concerned individual following a personal passion. Owners are of the latter, not the former, kind. In any event, Mr Spry's unevidenced assertions were directly and clearly contradicted by Mr Anderson, who explained Godolphin's concerns about the threats to Newmarket's HRI, and the importance of avoiding a harm arising rather than finding out in the future that damage has arisen (in other words, a precautionary approach). The view of Mr Anderson, grounded as it is in extensive day to day experience of the HRI, and supported as it was by other HRI witnesses<sup>85</sup>, is clearly preferable to Mr Spry's paper analysis;
- Mr Spry did not consider that owners' delight in having their horses trained at Newmarket was under threat. His view in this regard is contrary to the industry evidence (the evidence of Mr Jarvis in particular) about owners' frustrations if traffic prevents them from reaching their horses. Mr Spry also failed to consider the impacts other than owners' personal attendance at the gallops. An owner's delight would obviously be affected if a vet were delayed in attending to an injured horse, or medics to injured staff, for instance, or which caused issues in travelling around Newmarket at other times of day. However, Mr Spry's focus in re-examination was exclusively on owners' personal attendance.

106. In addition to these points, the conduct of the public authorities in respect of the HRI in Newmarket has not been such as to engender confidence for owners. As Mr Anderson explained in re-examination, the behaviour of the Council does not match the content of its written policies. The Council does not, at a strategic level, understand or appreciate the importance of the HRI. As for the County Council, its lack of interest in the preservation of the HRI in Newmarket is amply demonstrated by its lack of meaningful engagement in this Inquiry.

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<sup>84</sup> Mr Gittus indicated this in evidence.

<sup>85</sup> As well as other non-NHG speakers such as Mr Cumani and Mr Gosden.

107. Both the Applicant<sup>86</sup> and the Council<sup>87</sup> suggest that the proposal would be beneficial for the HRI, on the basis that the proposal would secure the delivery of improvements to the Rayes Lane horse crossing, which was the subject of much debate at the 2015 Inquiry. As already explained, however, JCE has committed to funding the Rayes Lane horse crossing works in any event, and the Fordham Road horse walk widening is of little benefit (as it is proposed by the Applicant). Properly understood, therefore, this is not a benefit of the proposal at all. Whilst something has sought to be made as to the absence of a legally binding obligation, there was no evidence to suggest that Mr Gittus' evidence that JCE was funding the works was unrealistic or that similar projects had not been undertaken between JCE and the County Council on a similar basis.
108. Mr Durrant suggested that the NHG's concerns are contradicted by its own application for residential development at Philipps Close<sup>88</sup>. In expressing those views, he has misunderstood the nature of the Philipps Close proposal. As Mr Gittus explains in his rebuttal, it is proposed to develop affordable housing specifically for the HRI, and the nature of the resulting restrictions means that it is not comparable to the proposal in traffic impact terms. In any event, the Council appears likely to refuse it. Importantly, this is not an Inquiry into Philipps Close, and the traffic impacts of that proposal have not been fully or properly explored. It is telling that Mr Durrant's only real answer to the HRI's concerns is to attack a proposal designed specifically for providing housing for HRI employees. Mr Durrant's stance itself demonstrates the HRI's concerns about a disconnect between the Council's policy aspirations to protect the HRI, and the reality of its behaviour.
109. Drawing those threads together, the NHG submits that there is clear evidence that, if permitted, the application would give rise to a risk of an adverse perception about the HRI's position in Newmarket together with an increase in queuing and delays within Newmarket and its further urbanisation. Such an adverse perception is itself harmful, and contrary to the long-term viability of the HRI in Newmarket. DM48 requires a precautionary approach, and a precautionary approach would be to avoid the risk of such adverse perceptions arising.
110. The proposal thus conflicts with policy DM48 and the third bullet of policy CS1. The impact of traffic would also be in conflict with policy DM45, which is concerned with "*significant traffic implications*"<sup>89</sup> and, in the light of our submissions on traffic, the proposal would not satisfactorily mitigate the impact of the proposal.

#### *Changes since the previous inquiries*

111. The position before the current Inquiry is different in a number of significant respects from that which previous Inspectors faced in 2011 and 2015<sup>90</sup>. Since the 2011 Inquiry:

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<sup>86</sup> Applicant SoC para. 4.5(1).

<sup>87</sup> Mr Durrant PoE para. 5.3.7.

<sup>88</sup> *Ibid* para. 5.3.17 et seq.

<sup>89</sup> "*Where a Transport Assessment and/or Travel Plan does not demonstrate that the travel impacts arising from the development will be satisfactorily mitigated or that adequate measures are in place to promote the use of more sustainable modes of transport, then planning permission will not be granted.*"

<sup>90</sup> Ms Parsons PoE para. 1.55 – 1.93.

- the JDMPD (including DM48 and its precautionary approach) has been adopted;
- detailed (and essentially unchallenged) evidence on equine behaviour was submitted by NHG, including from Professor Waran<sup>91</sup>;
- the SQW and Deloitte reports into the economic importance of the HRI were commissioned<sup>92</sup>; and
- much more extensive highways and traffic evidence has been prepared, resulting in a much improved understanding of the traffic position in Newmarket than was available to the 2012 Inspector and SoS.

112. Since the 2015 Inquiry:

- a further report on the economics of the HRI was prepared by SQW<sup>93</sup>;
- the SIR/SALP were submitted for examination, the process for which included undertaking traffic impact analysis by the Council as part of the SIR/SALP examination process. The examining Inspectors of the SIR/SALP are yet to report on the emerging plans;
- the extensive additional investigations into highway and traffic conditions undertaken by the Applicant's team and by Messrs Cottee and Neil on behalf of the NHG, which followed their requests for further evidence at the examination which were not met. Messrs Cottee and Neil's work includes, for the first time, MSM of the junction interactions within Newmarket. The Applicant has also produced the UTA, together with its revised traffic flows;
- the SoS's decision in *Kidnappers Lane* postdates the last Inquiry; and
- the Ely bypass opened in late 2018. The County Council has identified an increase in traffic to junction 37 of the A14 as a consequence<sup>94</sup>. There has been recent correspondence on this issue following questions put to Mr Plumb in XX, including a note submitted by Mr Cottee<sup>95</sup>.

113. In the light of the considerable new information available, the SoS is, NHG says, entitled to form his view on the traffic and HRI impacts of the proposal afresh. Whilst the findings of the 2012 and 2015 inquiries remain of some relevance, they are considerably out of date given how much has changed.

#### *Planning balance and conclusion*

114. The starting point for any assessment of the planning balance is the development plan. The proposal is in conflict with the development plan as it stands. NHG and the Council agreed that point. The Applicant's view to the contrary was based on a confused and incomplete consideration of the position. It should be rejected for that reason.

115. Unless there are material considerations which suggest otherwise, therefore, the proposal should be refused by virtue of that conflict. It is important to stress that

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<sup>91</sup> *Ibid* PoE App NP3.

<sup>92</sup> CD/E/1 and CD/E/5, respectively.

<sup>93</sup> CD/E/2.

<sup>94</sup> Ms Parsons PoE para. 1.73.

<sup>95</sup> ID38

the conflict arises *irrespective* of the outcome of the highways or HRI main issues. It is the conflict with Policies DM5 and DM27 which give rise to the overall conflict. The NHG also says that DM45 and DM48 are breached by the proposal, for the reasons set out above. DM48 is a particularly weighty policy in the balance and is further strengthened by draft SA6(g) criterion B.

116. It is common ground that the extant development plan is absent a number of housing policies, so that the tilted balance in paragraph 11 of the Framework applies. The tilted balance is itself no more than a material consideration to be set against the development plan conflict, however<sup>96</sup>.
117. NHG recognises that there is an emerging site allocation in the SALP. However, the traffic implications of the application proposal, and the resultant conflict with SA6(g) Criterion B of the emerging SALP, means that the proposal does not have the benefit of the emerging allocation as a material consideration.
118. The proposal has benefits, both in the provision of housing (though the weight to be given to that factor is reduced by the very healthy land supply position in West Suffolk, together with the prolonged delivery rates for the proposal) and in the proposed works to the A14/A142 junction. The benefits of the works to Rayes Lane crossing have been overstated for the reasons we have given, as it is to be provided in any event.
119. Set against those benefits, however, are the severe residual cumulative impacts on the highway, unacceptable highway safety impacts (each of which is a free-standing reason to refuse permission in Framework terms), and the impact on the HRI<sup>97</sup>, as well as the associated conflict with relevant and up-to-date policies in the development plan (including DM48). Those factors are sufficient significantly and demonstrably to outweigh the benefits of the proposal in Framework paragraph 11(d) terms. There are, thus, no material considerations which outweigh the conflict with the development plan for s. 38(6) purposes.
120. If the SIR/SALP are adopted in their current form (taking the Main Modifications into account), then the compliance of the proposal with the resulting, altered development plan will (because of SA6(g) Criterion B and DM48 and DM45) depend on the resolution of the highways and HRI main issues. In addition, should the SIR/SALP be adopted, the development plan will no longer have absent policies, and the tilted balance will cease to apply. For the reasons given above, in such a scenario the development plan will be breached by the proposal, and no material considerations will exist capable of outweighing that conflict.

### **The Case for the Council: West Suffolk Council**

121. The case for the Council is set out fully in its evidence, being summarised in its opening and closing submissions to the Inquiry<sup>98</sup>. The main points are set out under a series of headings below.

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<sup>96</sup> See the Framework paragraph 12

<sup>97</sup> As explained above, even a slight impact on the HRI is sufficient to remove the entirety of the economic benefits of the Proposal

<sup>98</sup> ID3 and ID40

## Introduction

122. It will come as no surprise to hear that the Council concludes that the Main Issues should be determined in favour of the Applicant and planning permission granted.

## Highway Safety and Residual Cumulative Impact

123. The Inspector for the 2015 Inquiry said at paragraph 369 of her report that:

*"...in the circumstances it is not considered that the application development would result in an unacceptable increase in congestion or harm to highway safety. The Residual Transport Impact of the development would not be severe. The scheme would comply with Development Plan policy in this respect, in particular, Spatial Objective T3 in the CS and Policy DM45 in the JDMPD".*

124. She reached this conclusion with the benefit of a full transport assessment prepared by the Applicant and with the benefit of NHG's critique of it.
125. She thus concluded that paragraph 32 (now paragraph 109) of the Framework was not offended. The SoS agreed. The SoS was concluding, therefore, that the road network could accommodate the additional traffic that would be generated by the proposal. The SoS's letter also stated that:
- "...he agrees with the Inspector at IR495 that the improvements to the A14/A142 junction would result in wider benefits to those travelling on this part of the road network in peak periods, and that the significant improvement to southbound queues along this part of Fordham Road, and the reduction in rat running along Snailwell Road, carries significant weight in favour of the proposal".*
126. These benefits remain part of the proposal or are a consequence of it. In so far as there are found to be any disbenefits they would have to be weighed against these benefits.
127. Against this background it is appropriate to consider what, if anything, has changed. It appears to be undisputed evidence that traffic levels on Fordham Road itself have not increased to any material extent. Similarly, there does not appear to be any evidence to show that traffic levels on the various arms to the Clocktower Roundabout have increased. There is, therefore, a strong argument that nothing has changed, although NHG now allege that the road network is operating over capacity and that this, in part at least, is demonstrated by excessive queuing. Equally the evidence shows that there are fluctuations in daily flows and peaks within the peak hours themselves, both of which tend to suggest that the road network is not operating over capacity. This is not to say that there is no congestion. The Council has always accepted that there is some congestion, particularly at peak hours, within Newmarket.
128. West Suffolk Council is not a Highway Authority and relies for Highways advice on Suffolk County Council. It is appreciated that both the Applicant and NHG have sought, using different models, to predict possible outcomes primarily in 2031. From listening to the evidence there is clearly considerable dispute between these parties as to which model is correct and whether either model had been appropriately calibrated.

129. In respect of the AM peak, it is NHG's evidence that average journey times across the town centre network in 2031, on the A to E scenario, will increase by 29 seconds (ID26). In contrast the Applicant, adopting a slightly different approach, says that from the base date until 2031 journey times will increase by 53 seconds. The Council would simply say that in their judgement this cannot possibly result or give rise to a severe residual cumulative impact. The morning traffic is not, therefore, a reason for refusing the application.
130. Turning to the PM peak, again average journey times can be drawn from ID26. NHG, utilising their A to E scenario, claim average journey times across the town centre network will increase by 8.06 minutes. This differs significantly from the Applicant's additional journey time, which on a Base to E scenario is only 1.07 minutes. It is therefore at this juncture that I look briefly at the Bovis Homes judgement<sup>99</sup>.
131. The circumstances in Bovis are not directly mirrored here, in that neither the Council nor the Applicant asserts that the existing traffic situation is already severe. In any event, whilst it is said that it is the cumulative impact of all expected development which must be taken into account, rather than the individual contribution of each development to a future year scenario, it is clear in Bovis that a judgement had to be made "*in context*". Put another way, the proposed development could not be divorced from the "*existing context*" in which it was going to appear<sup>100</sup>.
132. This does not mean, therefore, that the first development which comes forward has to remedy or provide a highway solution for all future growth. This would be unfair and would not meet the CIL Regulations.
133. The development of the application site has to be seen in context. It has to be seen, in part at least, in the light of the traffic which the proposal itself generates. Thus, using the evidence of Mr Plumb<sup>101</sup>, there will be 65 two-way movements in the AM peak and 81 two-way movements in the PM peak. But it should be noted that within the town centre itself the traffic generation is even less, being 31 and 41 two-way movements respectively<sup>102</sup>. These latter figures amount to a circa 1.3% increase in the AM peak and 1.5% in the PM peak. They are clearly very low figures on anyone's assessment.
134. These figures of themselves are not decisive. Indeed, they cannot be as that would be ignoring the cumulative impact, but it does help put matters into perspective or into context. Moreover, the overall situation needs also to take into account the highway benefits.
135. The worst case scenario of some additional eight or so minutes takes no account of:
- The potential for the loss of some traffic *en route* e.g. to an office or school;
  - Any potential re-routing by drivers to avoid delay;

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<sup>99</sup> CD/ADCL/6

<sup>100</sup> *Ibid* paragraphs 26 & 27

<sup>101</sup> Proof paragraph 6.7

<sup>102</sup> *Ibid* paragraph 6.13

- Further peak hour spreading;
- Modal shift; and
- Saved journey times resulting from the A14/A142 junction improvements.

136. The above will all help reduce congestion and, potentially, journey times.

137. Furthermore, to put NHG's case in perspective, one of their key members, namely the Jockey Club Estate (JCE), is promoting a not insubstantial development at Philipps Close in Newmarket. This development, if permitted, may be occupied substantially or mainly by persons employed within the HRI. Even so, it will generate traffic and some of that will be during the peak hours. It must follow that JCE, when looking at the traffic situation in context, have concluded that some additional traffic is acceptable. There is, therefore, a certain degree of inconsistency to their approach in respect of potential development at the application site.

138. The Council would contend that the views of Suffolk County Council should carry significant weight and, in this regard, highlight the final paragraph in their letter of 15 April 2019<sup>103</sup>, in which they say:

*"...SCC do not accept that the existing traffic situation is 'severe' as set out in the revised framework. Having considered the traffic evidence provided by Systra and WSP in the round, SCC do not consider that the projected traffic impacts in future years (with the Hatchfield Farm scenario) would be severe, either, therefore we are not proposing to change the view set out in our letter dated 23 January 2019. Therefore, SCC would not recommend Planning Permission is refused on highway grounds..."*

139. In addition to the issue of residual cumulative impact, NHG also raised the question of pedestrian safety. This was not an issue raised by them in either the 2012 or 2015 Inquiries. There is, even now, little or no evidence of pedestrians becoming involved in accidents and it is not a matter supported by the County Council. It cannot on the evidence be a reason for refusal.

140. The Council's overall conclusion, therefore, is that paragraph 109 of the Framework is not offended. This proposal will not compromise, but will be to the benefit of, highway safety and, further, it will not result in a severe residual cumulative impact on the road network.

#### *Transport Impacts*

141. This issue has largely been dealt with in considering whether the residual cumulative impact on the road network would be severe, but emerging Policy SA6B introduces perhaps a slightly different test.

142. It is important to appreciate the second limb of the policy, which seeks mitigation "*where appropriate*". In this regard it is important to look at the traffic situation in the round.

143. It is appropriate to also have regard to the various improvements or benefits which would result if planning permission was granted. These are well known:

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<sup>103</sup> Mr Durrant Supplementary Proof of Evidence

- Improvements to the A14/A142 junction resulting in reduced journey times and safety improvements;
  - Reduction in rat running on Snailwell Road giving rise to a benefit to the HRI, in part at least, and in particular to its largest 'asset', the Goldolphin Stables;
  - A signalised junction at the Rayes Lane horse crossing with Fordham Road, substantially increasing safety at that crossing; and
  - Improvements to the Yellow Brick Road and associated or linked footpath/cycle ways to encourage modal shift.
144. The Council does not agree that provision of the signalised Rayes Lane horse crossing should be ignored on the basis that JCE will provide it anyway. JCE has no binding legal commitment to provide it and, indeed, do not even appear to have the full authority of the County Council to provide it. In contrast the Applicant's proposal, through the s. 106 agreement and the conditions, imposes a binding obligation on the Applicant to pay for a signalised crossing. It is only this proposal which gives absolute certainty of delivery. Moreover, its delivery results in significant safety benefits and would potentially free up JCE funds, which could be utilised elsewhere to assist the HRI.
145. These improvements will benefit the wider public and significant weight should be attached to them.
146. This proposal would not have a materially adverse effect, but in any event substantial measures have been put forward to mitigate the traffic arising from this development. Moreover, these benefits have wider public benefits and the Applicant's proposals are fully appropriate in all the circumstances. The proposal would not therefore breach the requirements of emerging policy SA6B.

#### *Horse Racing Industry (HRI)*

147. The scene is admirably set by paragraphs 9.1 and 9.2 of the JDMDPD, which provide that:

*"Newmarket is recognised as the international home of horse riding. This arises from the unique assembly of horse racing interests within and around the town that cover all aspects of the Horse Racing Industry (HRI). It is the only place in the country offering such facilities.*

*The town is the historic headquarters of the Jockey Club and is the location of the Tattersall's Sales Paddocks and a wide variety of closely related specialist bloodstock services, including veterinary health and research units, commercial and financial services and specialist suppliers. Newmarket is also home to the National Stud and the National Horseracing Museum. This presence of training yards, studs, two racecourses, training grounds and sales facilities and other organisations for trainers and breeders gives Newmarket its unique status."*

148. It is, therefore, hardly surprising that the policies within Section 9 seek to protect the HRI from adverse impacts. Further, these policies show the Council's commitment to the HRI. The relevant policy to the issues at this Inquiry is Policy DM48. It provides that any development:

*"which would threaten the long-term viability of the horseracing industry as a whole, will not be permitted unless the benefits which significantly outweigh the harm to the horseracing industry".*

149. The policy is concerned with the "*long term viability*" of the HRI "*as a whole*". The perception of harm to the industry can be taken into account when determining compliance or otherwise with Policy DM48 and, furthermore, the precautionary approach may be adopted. However, having reached a conclusion about harm or potential harm to the HRI, DM48 still requires the decision maker to balance that harm against the benefits of the development. That is not an approach on a precautionary principle.
150. It would appear that NHG, having regard to their Opening Submissions, allege that DM48 would not be complied with (i) owing to the general traffic situation hindering the day to day operation of the industry, (ii) the increase of risk of injury to riders and horses resulting from additional traffic and (iii) that the mere grant of planning permission would be likely to be interpreted by the industry as evidence of the Council simply ignoring their own policies. The Council rejects all these contentions, in particular the last.
151. The Inspector at the 2015 Inquiry said at paragraph 395 of her Report<sup>104</sup> that:
- "it is not unreasonable to surmise that most will base their decisions on a shrewd and rational consideration of whether or not Newmarket will continue to offer the advantages that attract the investment in the first place".*
152. This has been confirmed, or indeed reinforced, by Mr Wicksteed's (NHG's economics witness) evidence to the Inquiry, namely that owners become involved in the first instance due to their enthusiasm but subsequently they operated as shrewd, sensible business managers. There must, therefore, even adopting a precautionary approach and accepting that a perception can be taken into account, be a rational decision-making process.
153. Since 2015:
- There has been no significant drop in the number of horses using the training grounds and the small reduction has been easily explained. Furthermore, there is no evidence that the total number of horses in training in Newmarket has dropped;
  - In the last five years, 16 new trainers have come to Newmarket;
  - The stud farms have maintained numbers and, more importantly, quality;
  - Tattersalls has increased auction sales values and, in the words of Mr Wicksteed, has shown a "*strong performance*"<sup>105</sup>;
  - Similarly, in the judgement of Mr Wicksteed, the racecourses have been "*performing strongly*"<sup>106</sup>;
  - There have been some improvements to existing horse crossings; and

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<sup>104</sup> CD/ADCL/2

<sup>105</sup> Mr Wicksteed oral evidence to the Inquiry

<sup>106</sup> *Ibid*

- There is very little evidence of accidents between horses and motor vehicles<sup>107</sup>.

154. It can be concluded, therefore, that the HRI is currently in good health or certainly has not declined. Indeed, Mr Wicksteed referred to the industry as being "*robust and not about to implode*"<sup>108</sup>. Newmarket, with the various components of the overall cluster, remains highly attractive to owners and there is simply no real evidence to suggest that any component part is under significant threat or that the industry as a whole is fragile.

155. Turning to the future:

- JCE has plans for a Sky Gallop and also an all-weather racing track;
- The trainer, Mr Fellowes, despite initially showing some reluctance, has now made what he has described as a once in a lifetime investment and decided that Newmarket is the best location for his operation. Moreover, he hopes to expand the number of horses in training with him;
- Mr Wicksteed indicated that the industry was not about to implode and, indeed, went on further to say that whilst a loss of a major owner would be damaging, it would not be fatal;
- Mr Byrne explained how Review Hotels Limited's income was in part generated from the HRI but, more importantly, explained that they had invested significant sums in the past and were looking to do the same in the future as well. He agreed that he was confident as to the future of Newmarket. Moreover, he also welcomed the trade the occupiers of new housing might bring; and
- There was no real evidence from Godolphin that they were seriously looking to relocate. Indeed, it was the opposite. At present they will continue to invest as necessary.

156. The future of the industry appears on the evidence to be secure. Moreover, Lambourn is not, with regard to the evidence, a significant competitor to Newmarket and is unlikely to cause it significant harm. Lambourn simply does not have the same overall facilities and is less attractive to owners, particularly overseas owners. Mr Wicksteed said that Lambourn was not really a threat in respect of flat racing.

157. Turning now to the elements of concern raised by NHG. First, in respect of traffic, the industry is primarily utilising the horse walks and horse crossings during the morning. They are not, therefore, unduly affected by traffic in the PM period. With regard to the AM, as already indicated, the additional time for travel is minimal. Furthermore, with regard to horses moving around the town, it is clear from the evidence that most trainers take out four or five strings during a morning and the majority of these would not be during the peak hour. Whilst we heard a lot about owners potentially not being able to see their horses on the gallops, no such owners have given evidence to this Inquiry.

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<sup>107</sup> See schedules to the evidence of Mr Achner

<sup>108</sup> Mr Wicksteed oral evidence to the Inquiry

158. With regard to additional traffic and the danger to horses and/or riders at the horse crossings, the amount of additional traffic arising from this development itself is relatively small and, therefore, the increase in risk is miniscule. However, that is ignoring one very important point. This development will procure a signalised junction for the Rayes Lane horse crossing, which will significantly reduce risk for the benefit of all future growth in Newmarket. Further, as regards the horse walks on Fordham Road, there is little or no evidence that their operation will be significantly impaired by additional traffic.
159. Finally, the Council addresses the assertion that there would be an adverse perception from the HRI on the basis that the Council does not apply its own policies. This is simply not the case. The Council has an obligation to look at competing demands for development and, as a consequence, is required to make planning judgements. Its judgement, in respect of DM48, is unimpeachable.
160. This proposal will not threaten or adversely affect the HRI as a whole in the long term and there is no breach of policy DM48. It is not, therefore, a reason for refusing planning permission.

#### *Overall Position*

161. Notwithstanding the presumption in favour of sustainable development, the development plan itself is a starting point for decision making.
162. The 1995 Local Plan contains little if anything of relevance to the application proposal, but this cannot be said of the CS. This seeks, among other things, to provide enough homes to meet the needs of the District in the most sustainable location (Spatial Objective H1). It makes provision for additional housing to 2031 and this housing is located where there are the best opportunities for sustainable travel and the least dependency on car travel (Spatial Objective T1). Equally, the CS seeks to preserve and enhance Newmarket's position as the international home of horseracing (Vision 1 and Policy CS1).
163. Thus, the CS makes plans for housing growth and, if that growth is to be accommodated in the most sustainable locations, a proportion of that growth has to occur in Newmarket. Newmarket is the biggest town in the former Forest Heath district (Vision 2) and, hence, the most sustainable. In any event there has been evidence and discussion on the sustainability credentials of Newmarket and a decision can be made. To permit residential development would in principle accord with the CS and hence an important element of the development plan.
164. The development plan must nevertheless be considered as a whole and hence one has to have regard also to the JDMPD, in particular policies DM5 and DM48. In the judgement of the Council there is no threat to the long-term viability of the HRI as a whole and, hence, no breach of DM48.
165. With regard to DM5, this development is outside the defined development boundary. This boundary was established in the Local Plan 1995, which had an end date of 2001. It takes no account of subsequent growth requirements, which of themselves were prepared on the assumption that a Site Allocations Document would be forthcoming. Furthermore, in evidence, Mr Durrant explained that little or no weight was being given to the old development

boundaries in order to ensure that the Council maintained at least a five-year supply of land for housing.

166. Some may argue that as the Council has a five-year supply of land for housing, full weight should be given to DM5. The Council would not agree. This policy is aimed at countryside protection. It is not a policy for the allocation of land for housing. In this regard, the Council has an ongoing requirement within the development plan to see growth and to maintain a five-year supply of land for housing. This proposal aims to provide for that growth. On this basis, therefore, the weight to be applied to this policy must be tempered in the overall planning balance. Such a view would also be consistent with the Framework.
167. In any event, the breach of DM5 is further tempered by the emerging SIR and SALP. The SIR brings up to date the required housing growth to 2031 and shows the need to make additional provision for circa 4000 dwellings, of which a significant proportion (704 or 17%) are to be in Newmarket. Moreover, it would appear that this level of provision in Newmarket can only be met if the application site is developed. This is perhaps a low percentage given that Newmarket is the largest town in the plan area.
168. Turning to the SALP, the application site was not an allocation in the Regulation 19 version of the plan. It was introduced as a Main Modification. There is no evidence to suggest that the Local Plan Inspectors are unhappy with this allocation. Moreover, the Inspectors have required a very detailed policy (SA6), which specifically requires consideration of the impact on the HRI and other road users. Thus, the Inspectors appear content to allow detailed consideration to be undertaken within the context of planning decisions. This is the right approach.
169. In light of the advanced stage that the SIR/SALP have reached, substantial weight should be given to both emerging documents. NHG's assertions that relatively little weight should be given to them on the basis that there are many unresolved objections are not correct. They may be unresolved in so far as the Inspectors have not issued their final reports, but there is no evidence to suggest that the Inspectors are not going to support the allocation of the application site. There is, therefore, significant existing policy and emerging policy which supports this proposal.
170. One must also have regard to the Framework, which is an important material consideration. This states that "*there is a presumption in favour of sustainable development*". The proposed development is sustainable in the context of Newmarket and the district as a whole.
171. Further, for decision making, this means where there are no relevant development plan policies or the policies which are most important to determine the application are out of date, granting permission unless any adverse impacts of doing so were significantly and demonstrably outweighing the benefits, when assessed against the policies in the Framework taken as a whole.
172. There are no relevant site allocation policy documents and, hence, relevant Development Plan policies are absent. Further, the delineation of countryside by Policy DM5 based on the Local Plan 1995 is clearly out of date. What is known as the tilted balance is, therefore, engaged.

173. It is government policy to boost significantly the supply of land for housing. Provision should be available for affordable housing. Provision should be made for sustainable traffic modes.

174. Having regard to all the above and applying the tilted balance this proposal would have the following benefits. It would:

- boost supply of land for housing and a significant proportion of that housing will be affordable;
- deliver substantial highway improvements;
- improve safety at the Rayes Lane horse crossing;
- be a sustainable housing development in a sustainable location;
- be broadly supported by adopted policy and fully supported by emerging policy at an advanced stage;
- not breach policy DM48 of the JDMPD or SALP Policy SA6B;
- secure the site for a primary school.

175. There would be some disadvantages, namely a breach of policy DM5, to which relatively little weight should be given for the reasons explained, and loss of some current countryside.

176. The Council firmly believes that these adverse impacts do not significantly and demonstrably come anywhere near close to outweighing the benefits.

### **The Case for the Applicant: Lord Derby**

177. The case for the Applicant is set out fully in their evidence and summarised in their opening and closing submissions to the Inquiry<sup>109</sup>. The main points are set out under a series of headings below.

#### *Introduction*

178. This is an application for much needed residential development (including 30% affordable housing) on the only significant site available in the most sustainable settlement in the Forest Heath plan area. It is development that has the full support of the democratically elected local planning authority, which has been trying to plan for it for nearly a decade, and which has recently re-iterated its support for the development by allocating the application site for 400 units through its SIR/SALP process. The development has been delayed by objections from one element of one-interest group, notwithstanding that on its own evidence the application would provide a direct and tangible benefit to the HRI.

179. As directed by the Inspector<sup>110</sup> these submissions focus on what has changed since the SoS's now quashed decision of 31 August 2016. In truth, the case for the development is even stronger now than it was at the last Inquiry in 2015,

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<sup>109</sup> ID2 and ID41

<sup>110</sup> See email from Helen Skinner dated 1<sup>st</sup> May 2019

when NHG's objection was described by Mr Justice Gilbert as being "*very weak*" and "*very close*" to being irrational<sup>111</sup>.

180. At the last Inquiry, the principal focus of NHG's case was the safety of horses at the Rayes Lane horse crossing, together with an objection alleging harm to European Protected Sites. The SoS dismissed the latter objection but upheld that founded on horse safety at Rayes Lane (albeit unlawfully).
181. Since then, the NHG's primary objection to the application, which centred previously on horse safety at the Rayes Lane horse crossing, has been overcome by the provision through this application of the NHG-promoted signalisation of the crossing. Consequently, NHG's objection on this matter has been withdrawn<sup>112</sup>. It is now common ground that the application improves the existing safety position at the crossing<sup>113</sup>. NHG is no longer concerned about the impact of the development on arable weeds, etc, nor the impact on European Sites; the ecological objection has also been withdrawn<sup>114</sup>.
182. Therefore, the two main issues at the previous Inquiry, including the reason why the SoS refused permission (albeit unlawfully) have been overcome. The positive planning merits of the scheme remain as compelling as ever. Further, the application site will imminently be allocated in an up-to-date development plan, following the recommendation of the two SIR/SALP Inspectors who heard extensive debate about the merits of its inclusion.
183. Faced with the above, the NHG case has had to shift to one of congestion impeding the proper functioning of the town centre highway network and the HRI upon it. This is a proposition already twice rejected in the clearest terms by two Inspectors and the SoS, and which Mr Cottee (NHG's highways witness) felt unable to support at the previous Inquiry<sup>115</sup>. It is pursued notwithstanding that, on NHG's own evidence, the application would improve congestion during the AM Peak, which is the period of principal importance to the HRI<sup>116</sup>.
184. At the same time, familiar complaints, which have been repeatedly rejected by Inspectors and the SoS, have been trotted out again, including the sustainability of the site; prematurity (this time to a plan that does not exist even in draft form) and the stark proposition that the mere fact of the SoS having the audacity to make a decision against the HRI's expressed wishes would threaten its long-term viability in Newmarket; together with a new addition, raised now for the first time in the seven years that these elements of the HRI have opposed this application (i.e. pedestrian safety at the Clocktower Roundabout and Fred Archer Way).

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<sup>111</sup> CD/ADCL/3 at paragraph 170.

<sup>112</sup> Ms Parsons in response to question from the Inspector. The impact on horse crossings is "*no longer a concern that arises from this development*".

<sup>113</sup> See Mr Cottee's Proof of Evidence at the previous Inquiry (CD/T/20) at para. 10.1.13, which records a potential 73% reduction in the existing incidents with the signalised horse crossing.

<sup>114</sup> ID2 at paragraph 12 and also Ms Parsons in XX accepted that there was no continued ecological issue, and that the Secretary of State had sufficient information to carry out an Appropriate Assessment if it was judged that one was needed.

<sup>115</sup> CD/ADCL/2 at IR72.

<sup>116</sup> Or, on NHG's preferred (but erroneous) approach to assessing the impact of the scheme, add less than 30 seconds increase in average journey times over a period of 13 years.

*The Development Plan, local and national policy*

185. The SIR and SALP are currently at an advanced stage of preparation with adoption expected later this year. Once these plans are adopted, the 1995 Local Plan will be entirely superseded. Given this, it is necessary to consider the development plan context both prior to, and subsequent to, the adoption of the SIR and SALP.
186. If, as is anticipated, the SIR and SALP have been adopted before the SoS has determined the application, the suite of development plan documents for the former Forest Heath District Council area will be complete. The purpose of the SIR is to replace those parts of the 2010 Core Strategy which had been quashed by the High Court in 2011<sup>117</sup>. It focusses on the overall housing provision to 2031 and its distribution amongst the settlements<sup>118</sup>. The role of the SALP is to identify sufficient development allocations to fulfil the requirements of both the 2010 Core Strategy and the SIR<sup>119</sup>.
187. In the case of Newmarket, the sites allocated for development are set out in Policy SA6. The Hatchfield Farm site is allocated for 400 dwellings, 5ha of employment land and a 2.2ha school site (at Policy SA6(g))<sup>120</sup>. There is no dispute that the application proposal complies with all of the site-specific criteria set out in the proposed allocation<sup>121</sup>. In addition, all of the proposed Newmarket SA6 allocations are subject to two general criteria. Criterion B is particularly relevant<sup>122</sup>. This states that:

*"Permission will only be granted for development proposals where Applicants can demonstrate that the transport impact of each proposal (including cumulative impacts where appropriate) on horse movements in the town, together with other users of the highway, has been assessed to:*

- (i) determine whether the proposal results in material adverse impacts; and*
- (ii) where necessary, to identify any measures necessary to mitigate the individual (and where appropriate, cumulative) transport impacts of development (which may include contributions to upgrading horse crossings) and measures to raise awareness of the special circumstances and highway safety issues in Newmarket where appropriate".*

188. The allocation at SA6(g) also states that:

*"The site must, notwithstanding (B) above, provide for the signalisation of the A14 / A142 junction, or other agreed measure and the signalisation of Rayes Lane horse crossing."*

Both are delivered as part of this application.

189. Given that (for the reasons set out below) criterion B is satisfied, on the adoption of the SIR/SALP the application will benefit from the statutory

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<sup>117</sup> CD/LP/7A at para. 1.2.

<sup>118</sup> See policy CS7 at CD/LP/7A, read together with MM3 at CD/LP/14.

<sup>119</sup> CD/LP/7B at p8.

<sup>120</sup> See MM17 and MM18 at CD/LP/15.

<sup>121</sup> See also the summary of compliance against this policy in Mr Sellwood's PoE at para. 6.3.42.

<sup>122</sup> See MM18 at CD/LP/15.

requirement, as expressed in s. 38(6) of the 2004 Act, that the determination of planning applications *"must be made in accordance with the plan, unless material considerations indicate otherwise"*. It will also benefit from the presumption in favour of sustainable development in paragraph 11(c) of the Framework, which states that applications which are made in accordance with an *"up to date development plan"* should be *"approved without delay"*.

190. Prior to the adoption of the SIR and SALP, the position largely remains as it was at the time of the SoS's previous decision.
191. The 1995 Local Plan establishes settlement boundaries, land outside of which is in the designated countryside for the purposes of Policy DM5 and DM27 of the JDMPD. These settlement boundaries were drawn up in order to meet the development needs perceived as a result of the 1992 Structure Plan to the period to 2001. They do not provide for development needs beyond this date<sup>123</sup>. Development needs arising under the CS, based on a Framework compliant assessment, are to be provided through the SIR<sup>124</sup>. The SALP will shortly adjust the settlement boundaries to reflect these higher figures<sup>125</sup>.
192. Therefore, whilst policies DM5 and DM27 may be in a recently updated development plan, and phrased in a Framework consistent manner, the spatial application of those policies is based on out-of-date settlement boundaries. Therefore, it was found by the 2015 Inspector that, by reference to paragraph 215 of the Framework (now paragraph 213), the 1995 settlement boundaries were *"out of date"* for the purposes of paragraph 14 (now 11) of the Framework<sup>126</sup> (and indeed this was common ground at the previous Inquiry)<sup>127</sup>. As she concluded:

*"...the fact that the application site is designated as countryside for policy purposes does not necessarily mean that the principle of development would be unacceptable."*<sup>128</sup>

193. In any event, the CS does not have any housing allocations or policies setting out the spatial distribution of housing in the District<sup>129</sup>. As such the

<sup>123</sup> Mr Sellwood EIC and CD/LP/1 at 4.1: *"As the Local Plan is intended just to cover the period from 1992 to 2001, it will only make provision for new development specifically for the period 1992 to 2001."*

<sup>124</sup> See CD/LP/7A at para. 2.4. Ms Parsons accepted in XX that the existing settlement boundaries are not based on a Framework compliant assessment.

<sup>125</sup> Policy SA1 of the SALP at CD/LP/7B. Settlement boundaries are defined on the policies map (Amended to include Hatchfield Farm within the settlement boundary at MM15 at CD/LP/15).

<sup>126</sup> CD/ADCL/2 at IR/486.

<sup>127</sup> CD/ADCL/2 at IR/361. This approach was also subsequently endorsed by the Supreme Court in Suffolk Coastal District Council v Hopkins Homes [2017] 1 W.L.R. 1865 at para. 63.

<sup>128</sup> CD/ADCL/2 at IR/361.

<sup>129</sup> Mr Durrant in response to question from the Inspector. It was also common ground at the previous Inquiry that the development plan was *"silent"* on housing distribution (CD/ADCL/2 at IR/486). The Inspectors examining SIR/SALP at CD/LP/16 note: *"the argument made [by FHDC] appears to be that Policy CS1 does not purport to set out a strategy for growth or to indicate any particular spatial distribution for new housing save for ... the implication that Policy CS1 does not seek to change the relative order of the settlements by promotion or demotion from one tier to another. We accept this point. Policy CS1 itself is high on silent in this regard. It was the now quashed parts of the policy that gave explicit direction."* [emphasis added]

Development Plan, subject to the still-extant spatial hierarchy, contains “*no relevant development plan policies*” relating to the spatial distribution of housing for the purposes of paragraph 11(d) of the Framework. Again, this is common ground<sup>130</sup>.

194. As such, pending the adoption of the SIR/SALP, the application must be determined in accordance with the ‘tilted balance’ in paragraph 11(d)(ii) of the Framework. It is common ground that the tilted balance applies in this case<sup>131</sup>. It applies either because (a) the site lies outside the (out-of-date) 1995 settlement boundaries or (b) as is common ground, because there are no relevant development plan policies relating to the spatial distribution of housing. That is the case even though the Council has a five-year housing land supply<sup>132</sup>.
195. There is, however, one important policy matter which has changed, this being the fact that the emerging SIR/SALP has progressed significantly since the SoS’s previous decision. In the event that the plans have not been adopted at the time of the SoS’s decision, the emerging SIR/SALP should still be given very significant weight when the tests in paragraph 48 of the Framework are applied.
196. First, the SIR/SALP are at an advanced stage of preparation. They have been through their main public examination; main modifications have been published and examined;<sup>133</sup> and the Inspectors are shortly due to publish their report following consultation on further modifications dealing with the assessment of European Sites.<sup>134</sup> Those modifications are minor, and do not affect Newmarket or the proposed allocation at Hatchfield Farm<sup>135</sup>.
197. Second, whilst NHG objected to the inclusion of Hatchfield Farm in the SALP (and the addition of 400 units at Newmarket in the SIR), the Inspectors heard those objections and proposed further development in Newmarket, which led to the allocation of Hatchfield Farm being proposed as a main modification<sup>136</sup>. NHG’s subsequent objection in relation to habitats issues does not affect Newmarket (and, therefore, in terms of paragraph 48(b) of the Framework, is not an unresolved objection to a “*relevant policy*”). Finally, NHG’s last ditch attempt to delay publication of the Inspectors’ Report by providing to the examination a copy of their highways evidence to this Inquiry cannot conceivably reduce the weight to be attached to the plans, given that (i) Mr Neil’s evidence simply confirms that NHG’s highways case to the SIR/SALP Inspectors was unfounded (see further below); and (ii) in any event, the highways impact of a particular scheme is a matter to be resolved at the planning application stage through the operation of Policy SA6(B); it does not affect the soundness of that policy as a matter of plan-making.

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<sup>130</sup> Accepted by Ms Parsons in XX.

<sup>131</sup> Accepted by Ms Parsons in XX.

<sup>132</sup> CD/ADCL/3 para. 140, per Mr Justice Gilbart: “*this was a case of silence/absence which brought NPPF [14] in to play, which did not depend on the finding of a shortfall relevant to the policy in NPPF [49]*”

<sup>133</sup> CD/LP/14 and CD/LP/15.

<sup>134</sup> ID6.

<sup>135</sup> Accepted by Ms Parsons in XX.

<sup>136</sup> Letter from Inspectors, 10 January 2018 [CD/LP/16] and the Main Modifications [CD/LP/15].

198. Third, the SIR/SALP, with the inclusion of Hatchfield Farm, are highly consistent with the Framework. Indeed, the Inspectors specifically requested that further development be directed to Newmarket in order to ensure that development was focussed in the most sustainable locations<sup>137</sup>.
199. Finally, a word on the emerging Newmarket Neighbourhood Plan (NNP)<sup>138</sup>. The second Regulation 14 version of the NNP was placed in consultation in February 2019<sup>139</sup>. It does not reflect the strategic housing policies within the SIR/SALP, as neither includes the proposed SALP allocations nor amends the settlement boundary for Newmarket. Therefore, if the NNP proceeds to examination after the SIR/SALP is adopted, plainly it will fail to meet the required "*basic conditions*" (in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990), not least because (as is prohibited by paragraph 29 of the Framework) it "*promote[s] less development than set out in the strategic policies for the area, or undermine those strategic policies*"<sup>140</sup>.
200. In the unlikely event that the NNP is made prior to the adoption of the SIR/SALP, it will immediately become out of date on the adoption of those plans by virtue of section 38(5) of the 2004 Act<sup>141</sup>. Accordingly, it should be given very limited weight.

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<sup>137</sup> As the Inspectors put it in their letter of 10 January 2018 at CD/LP/16: "*[the submission SIR, which excluded the additional 400 units at Newmarket] places too few homes in the most sustainable places and too many in less sustainable settlements. In our judgement, in this regard the SIR does not do enough to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. Neither does it adequately focus significant development in locations which are suitably sustainable or can be made so, notwithstanding the existing and proposed facilities in Lakenheath and Red Lodge.*"

<sup>138</sup> It is notable that the Neighbourhood Plan Forum was chaired by Rachel Hood, a veteran opponent of Hatchfield Farm. In her appearance before the Inquiry, she sought to cloak herself in the mantle of democratic legitimacy. No one should be taken in by this. It was she who founded the HRI pressure-group, Save Historic Newmarket Limited ("SHNL"), which was responsible for the High Court challenge to the 1,200 unit Hatchfield Farm allocation (see CD/ADCL/8, as Mr Justice Gilbert put it, "*the claim was made by those apparently representing the horseracing industry*" – CD/ADCL8 at para. 8); and which (represented by Mr Elvin QC at the 2011 Inquiry – see CD/ADCL/4 at page 246) called her husband, Mr John Gosden as a witness. By the time of the 2015 Inquiry, "NHG" had emerged, again represented by Mr Elvin QC; the "cast list" of NHG at this Inquiry, and the last, is an amalgamation of the witnesses called by SHNL and the Tattersalls Group at the 2011 Inquiry (see CD/ADCL/4 at pgs. 245-6). Ms Hood admitted that she had subsequently sought election to various councils in order to give herself (and her opposition to Hatchfield Farm) "*a voice*".

<sup>139</sup> CD/LP/6.

<sup>140</sup> As such, it would inappropriate to make the order "*having regard to national policies and advice*" (basic condition (a)); further, the making of the NNP would not "*contribute to the achievement of sustainable development*" (basic condition (d)); and neither is the NNP in "*general conformity with the strategic policies contained in the development plan for the area of the authority*" (basic condition (e)).

<sup>141</sup> This states: "*If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.*"

### *Need for housing*

201. Hatchfield Farm is the only significant site available for development within Newmarket<sup>142</sup>, which sits at the top tier of Policy CS1 of the Core Strategy.<sup>143</sup> The delay in delivering the Council's aspirations to deliver planned-for housing on the site has meant that development has been forced forward in less sustainable locations. Between 2011 and 2017, completions and existing commitments accounted for only 386 units in Newmarket compared to 1129 in the primary villages<sup>144</sup>. Mr Spry has calculated that there is a need for around 400-510 dwellings in Newmarket to 2031 simply to maintain the existing number of jobs in the town<sup>145</sup>, and approximately 730-830 homes to support forecast job growth<sup>146</sup>.
202. Both the Council and the Inspectors into the SIR/SALP recognise that there is a need to provide additional housing in Newmarket, both to meet its own housing and economic needs, but also to address the lop-sided, unsustainable, approach to housing delivery that has arisen as a result of the delayed development of this site.
203. The need for this development becomes even more stark when one considers the urgent need for affordable housing in the district as a whole, and Newmarket in particular. The Council has calculated that, to meet its affordable housing need, 142 affordable homes a year are needed in the Forest Heath plan area to 2031. Past trends show an average completion rate of 69 affordable homes per year, well short of the assessed need. Indeed, in the past five years, only 409 affordable dwellings have been completed in the Forest Heath plan area (61% of the assessed need). Of these, only 29 were built in Newmarket.
204. There are 316 households registered on the Council's waiting list for affordable housing who have a preference to live in Newmarket. The provision of 120 affordable homes as part of the development would represent a significant benefit in meeting part of this urgent need<sup>147</sup>.
205. On the other hand, as Mr Spry demonstrates<sup>148</sup>, failing to deliver the 400 additional homes provided through this application<sup>149</sup>, would result in the working age population of Newmarket declining by 2038 and (on the best-case

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<sup>142</sup> Mr Sellwood PoE at para. 2.2.2 (and not disputed either at this Inquiry, or the 2015 Inquiry).

<sup>143</sup> As the Examination Inspectors put it, Policy CS1 may not set out a formal settlement hierarchy but *"each settlement has been allocated to a category on the basis of its sustainability credentials relative to those of other settlements"* (see CD/T/16).

<sup>144</sup> ID15, Table at 3.1.6.

<sup>145</sup> Mr Spry PoE, Table 11.

<sup>146</sup> Mr Spry PoE, Table 12.

<sup>147</sup> Statistics in this paragraph from paras. 7.2.4 to 7.2.7 of Mr Sellwood's PoE and were unchallenged by NHG.

<sup>148</sup> Mr Spry's evidence was not challenged by either Ms Parsons or Mr Wicksteed, who described his conclusions as *"fair"*. He was challenged on some points of detail in XX (principally his use of official 2016-based ONS projections for headship rates), and the Inspector is referred to Mr Spry's answers to these points, but either way his evidence remains the best (and only) evidence on the economic impact of refusing planning permission.

<sup>149</sup> i.e. by simply delivering the number of homes proposed in the submission version of the SIR, without the main modification adding Hatchfield Farm.

scenario) a loss of 150 jobs to 2031 and around 400 jobs by 2038<sup>150</sup>.

Alternatively, in order to maintain existing employment levels (on the best-case scenario) an additional 130-260 people would be required to in-commute by car to 2031, or between 300-500 additional in-commuters by 2038<sup>151</sup>.

206. Ms Parsons accepted that it would be "*irresponsible and bad planning*" to plan for a shrinking population or work-force<sup>152</sup>. However, a decline in Newmarket's population is inevitable by 2038 without this development. Without significant in-commuting (contrary to the HRI's concerns about congestion) a declining workforce (to the detriment of the HRI, which aspires to grow<sup>153</sup>) is exactly what NHG's opposition to development on this site would achieve. This is just one of the "*inherent inconsistencies*"<sup>154</sup> in the case advanced by NHG<sup>155</sup>.
207. Overall, whilst the Council does not rely on the site as part of its five-year housing land supply<sup>156</sup>, the proposal would deliver between 100-200 homes within that period<sup>157</sup> as part of a plan-led delivery of housing at the top of the "settlement hierarchy" in Policy CS1. This is a matter to which the SoS afforded "*substantial*" weight in his previous decision,<sup>158</sup> notwithstanding his finding that the Council had a five-year housing land supply.<sup>159</sup> There is no basis to reach a different conclusion now.

#### *Background and the Secretary of State's previous decisions*

208. The history of this site is important. In 2009, in line with the then draft CS, the Applicant submitted a scheme for 1,200 houses, 36000 sqm of employment and the site of a school. In 2010, a High Court challenge, led by certain representatives of the HRI<sup>160</sup>, quashed the housing distribution policies of the CS<sup>161</sup>. Importantly, the quashing was on the basis of the adequacy of the reasons contained within the Sustainability Appraisal of the CS. The Court made no criticism of the suitability of the application site as a location for strategic residential development<sup>162</sup>.
209. In the subsequent 2011 Inquiry, various manifestations of the HRI mounted a wide-ranging attack on the scheme, embracing such matters as the Conservation Area, on-site and off-site ecology, and danger to horses on horse

<sup>150</sup> Mr Spry PoE, Table 7.

<sup>151</sup> Mr Spry PoE, Table 10.

<sup>152</sup> Accepted by Miss Parsons in XX.

<sup>153</sup> Mr Gittus PoE, at paras. 7.1-7.8.

<sup>154</sup> Per Mr Justice Gilbert at CD/ADCL/3 at paragraph 167.

<sup>155</sup> For example, Ms Parsons accepted in XX that NHG's position was that (a) Newmarket's population should grow (b) that this means that traffic will grow and (c) that this meant that it would not be possible to achieve the 38% reduction in existing traffic levels that Mr Neil considers is necessary to stop existing traffic conditions being severe.

<sup>156</sup> Simply because of the uncertainty that has been generated through the call-in. As stated earlier, this does not affect the applicability of paragraph 11(d)(ii) of the Framework

<sup>157</sup> See Ms Parsons PoE at 1.41-1.42 and not disputed by Mr Sellwood. These figures are not new, they were before Ms Downes in 2015: see, for example, CD/ADCL/2 at IR271-272.

<sup>158</sup> CD/ADCL/2 at DL/17.

<sup>159</sup> CD/ADCL/2 at DL/16.

<sup>160</sup> Note the parties to the challenge.

<sup>161</sup> CD/ADCL/8.

<sup>162</sup> CD/ADCL/8 at para. 40.

crossings. Congestion was cited, albeit at that stage more in conjunction with fostering adverse driver behaviour. The argument was also put that, given the nature of the owners, an adverse perception might be created simply by the fact of permission being granted against the wishes of the HRI.

210. It is highly instructive to read the conclusions of the 2011 Inspector, Mr McPherson, in respect of a scheme over three times the size of this application<sup>163</sup>. He found that:

- Road safety impact would not amount to a reason to dismiss the appeal;<sup>164</sup>
- A significant increase in congestion and delay was unlikely;<sup>165</sup>
- The risk to the horseracing industry was very small;<sup>166</sup>
- From the assessment of (horse) owners' perceptions, it seems most unlikely that the appeal development would cause a material decline in horse numbers;<sup>167</sup>
- If there was no material reduction in horse numbers, there would be no effect upon the local economy or the historic character of Newmarket.<sup>168</sup>

211. The SoS agreed with these propositions in a decision dated 22 March 2012 ("the 2012 Decision")<sup>169</sup>. In the very apposite words of Mr Justice Gilbart:

*"What emerges... is that the case advanced by the horse racing interests against the larger proposals then put forward had been analysed with care by the first Inspector, and had failed in every principal effect, not least with regard to the safety of the crossing at Rayes Lane. That robust conclusion was accepted and adopted by the [Secretary of State], and for the reasons given by the Inspector" [emphasis added].*<sup>170</sup>

212. The 1,200 house scheme foundered on prematurity<sup>171</sup>. Save Historic Newmarket Limited's successful action to quash the housing policies on procedural grounds had left a policy vacuum, which the Council said it would swiftly remedy with a Single Issue Review (SIR). In those circumstances, the Inspector considered that a site of the size then under consideration should be released through the forward planning process<sup>172</sup>.

213. Again, there was no suggestion that, on the merits, the site was unsuitable for strategic development. And there was an express finding, agreed by the SoS, that traffic from 1,200 dwellings and 36,000 sqm of employment would not damage the racing industry, either through safety or congestion<sup>173</sup>.

<sup>163</sup> CD/ADCL/4 at paras 12.2.1-12.10.1, and in particular 12.4.1-12.4.40.

<sup>164</sup> *Ibid* at para. 12.3.45.

<sup>165</sup> *Ibid* at para. 12.4.22.

<sup>166</sup> *Ibid* at para. 12.4.25.

<sup>167</sup> *Ibid* para. 12.4.30.

<sup>168</sup> *Ibid* para. 12.4.40.

<sup>169</sup> CD/ADCL/1.

<sup>170</sup> CD/ADCL/3 at para. 43.

<sup>171</sup> CD/ADCL/1 at para. 29.

<sup>172</sup> CD/ADCL/4 at IR/12.14.21 and IR/12.5.5.

<sup>173</sup> CD/ADCL/1 at para. 14.

214. It was in the context of that prematurity finding that the Applicant decided to submit the current application for 400 units. In parallel, the Council proceeded with its SIR and SALP, proposing to allocate the site for the 400 dwellings being sought in the planning application<sup>174</sup>. Following a brief skirmish, where racing interests sought (and failed) to persuade the High Court that the application was EIA development, the Council proceeded to resolve, in line with its officers' recommendations and its own emerging allocation documents, to grant planning permission. That was on 2 July 2014.
215. On 11 July 2014, however, the Secretary of State acceded to a request from the local MP to call the application in. An Inquiry was set up, and Ms Christina Downes was appointed as the Inspector. As with Mr McPherson (and the SoS) on the 1,200 house scheme, Ms Downes rejected each and every part of the NHG case<sup>175</sup>, be it impact upon the fine-leaved fumitory, upon Chippenham Fen, or indeed upon the safety of racehorses or the wellbeing of the HRI more widely. She did so explicitly while recognising the nature of racehorses, the nature of Newmarket and the nature of the HRI, the existing level of congestion in the town and the concerns about it, expressed by trainers and others.
216. While Ms Downes was satisfied that the benefits of the improvements then proposed for the Rayes Lane horse crossing (which did not then include signalisation) would adequately mitigate increased traffic at that crossing, the SoS disagreed. Whilst rejecting the congestion concern, he concluded (i) that there were "*additional risks*" associated with increased traffic over the Rayes Lane horse crossing<sup>176</sup> and (ii) that these risks gave rise to a risk of a perception of a more negative context for the HRI<sup>177</sup>.
217. Those linked findings were the subject matter of Ground 2 of the High Court challenge heard by Mr Justice Gilbart: that the Secretary of State unlawfully failed to explain why he was reaching an inconsistent decision in relation to horse safety at the Rayes Lane horse crossing compared to his finding in the 2012 Decision<sup>178</sup>.
218. Mr Justice Gilbart upheld the challenge, finding that no explanation had been given for the "*stark inconsistency*" in finding 1,200 dwellings and 36,000 sqm of employment acceptable in highways safety terms at Rayes Lane, but that 400 dwellings would not be so<sup>179</sup>. While a separate Ground of 'irrationality' was rejected, he observed "[the decision was not] *irrational and thus unlawful, although the NHG case on this, accepted by the SSCLG, was so weak that it came very close*"<sup>180</sup>.

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<sup>174</sup> As Mr Sellwood explained in EIC, the Hatchfield Farm site was in the Council's emerging plan at every stage since 2005/6 up to regulation 19 stage in January 2019, when it was removed from the plan solely because of the uncertainty created by the SoS's previous decision (which had not then been quashed): see CD/LP/7B at para. 4.9.

<sup>175</sup> See her conclusions at CD/ADCL/2 at IR355-500.

<sup>176</sup> CD/ADCL/2 at DL19.

<sup>177</sup> *Ibid* at DL21.

<sup>178</sup> CD/ADCL/3 at paras. 105-107.

<sup>179</sup> *Ibid* para. 161.

<sup>180</sup> *Ibid* para. 170.

219. Mr Justice Gilbert provided a helpful summary of the consistency principle in planning decision making at paragraphs 136(ix) to (xi) of his Judgment<sup>181</sup>. In short, for each of the NHG's objections, the SoS will have to ask himself: "*what new consideration now justifies me reaching a different conclusion for the 400 house scheme from the one that I reached in respect of the 1,200 house scheme?*"<sup>182</sup>
220. Ms Downes posed that question as the framework for her consideration of the evidence<sup>183</sup> and the Inspector has posed a similar question (what has changed since Ms Downes' report and the SoS's now quashed decision) as the framework for this Inquiry<sup>184</sup>.

### *Main Issues*

221. There are three complaints made by NHG: (i) the sustainability of the site (ii) road safety, in particular pedestrian safety at the Clocktower Roundabout and Fred Archer Way/Fordham Road junction and (iii) congestion, i.e. the residual cumulative impacts of the development on the road network, particularly as it affects the HRI. We deal with these in turn.
222. Sustainability: Given that the focus of this Inquiry should be on any change in circumstances since the SoS's previous decision (and indeed the 2012 Decision), it is not clear why this is even an issue. Ms Downes concluded (as did Mr McPherson)<sup>185</sup> that "*this is a sustainable location*"<sup>186</sup>. The SoS did not depart from that conclusion. There is no basis to reach a different conclusion now. The location of the scheme has not changed, neither has its relationship to services and facilities in Newmarket. Nor has the package of measures proposed through the section 106 agreement to improve the connectivity of the development<sup>187</sup>. If anything, the sustainability credentials of the site have been further endorsed, as it was added to the SALP following concerns raised by the examining Inspectors that the SIR did not direct enough development to Newmarket, the most sustainable location in the former Forest Heath district<sup>188</sup>.
223. Road safety: paragraph 109 of the Framework states that development should only be refused on highways grounds if there would be an "*unacceptable impact on highway safety*". In this Inquiry, Mr Cottee has raised a concern about pedestrian safety at the Clocktower Roundabout and Fred Archer Way junction. This is the first time that this issue has been raised (either by Mr Cottee or by third parties), notwithstanding the two previous lengthy inquiries, and a local plan examination, into the site. No sensible explanation was given for this<sup>189</sup>.
224. The situation which exists at these junctions has existed since the Clocktower Roundabout was reconfigured in 2009 as an urban realm and safety feature<sup>190</sup>.

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<sup>181</sup> *Ibid*

<sup>182</sup> Or, indeed, the unchallenged findings in the (now quashed) decision on the 400 unit scheme.

<sup>183</sup> CD/ADCL/2 at IR/371.

<sup>184</sup> Email from Helen Skinner dated 1 May 2019.

<sup>185</sup> CD/ADCL/4 at paras. 12.13.28-12.13.30.

<sup>186</sup> CD/ADCL/2 at IR/491.

<sup>187</sup> All accepted by Mr Cottee in XX.

<sup>188</sup> CD/LP/16.

<sup>189</sup> Either in Mr Cottee's proof or in EIC.

<sup>190</sup> Mr Plumb in EIC.

Since that date, there have been no accidents involving pedestrians at these locations<sup>191</sup>. Suffolk County Council, as local highway authority, does not consider the existing situation to be unsafe<sup>192</sup>. This is not surprising. As Mr Plumb explained, the roundabout provides safe places where people are focussed to cross<sup>193</sup>. In any event, the development does not materially increase the prospect of an accident; still less does it have an “*unacceptable impact*” on pedestrian safety.

225. By contrast, on the former issue of *horse safety*, there *is* a material change since the last Inquiry. It is now common ground that there is no objection to the scheme on horse safety grounds. Emerging policy SA6 specifically requires that the proposed allocation delivers signalisation of the Rayes Lane horse crossing through delivery of the “Cottee signalisation scheme”, proposed by NHG at the last Inquiry. It is common ground that the development would have the potential to reduce the number of potential horse related traffic incidents by 73% (the figure provided by Mr Cottee at the previous Inquiry).
226. As such, NHG has confirmed that it does not raise any objection to the proposal based on its impact on horse safety, either at the Rayes Lane horse crossing or elsewhere. This is a hugely significant change since the SoS’s previous decision, where it was concluded<sup>194</sup> that the interaction between horses and traffic at the crossing created the additional risk of an accident<sup>195</sup> because the effectiveness of the mitigation measures previously proposed was uncertain<sup>196</sup>. The Applicant is now providing NHG’s preferred mitigation measure<sup>197</sup> and, therefore, this concern has been resolved.
227. The importance of this for the decision-making process cannot be overstated. As the development will not increase the risk of accidents at the Rayes Lane horse crossing (it will reduce it), the basis on which the SoS refused permission falls away in its entirety, both in relation to horse safety directly and in relation to the “*risk of adverse perception*” to the HRI. That is because, as explained below, the SoS’s finding of non-compliance with Policy 48 of the JDMPD<sup>198</sup> relied solely

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<sup>191</sup> Accepted by Mr Cottee in XX.

<sup>192</sup> CD/SOCG/2 at para. 1.7.2, it being common ground that “*the development proposals provide safe and suitable access to the site*”.

<sup>193</sup> Mr Plumb in EIC.

<sup>194</sup> Albeit unlawfully, and against the recommendation of the Inspector, Ms Downes.

<sup>195</sup> CD/ADCL/2 at DL/ 19.

<sup>196</sup> See explanation given for the finding by Counsel by the Secretary of State at CD/ADCL/3 at para. 122.

<sup>197</sup> The s.106 agreement (as amended) requires the Applicant to deliver the same plans as those drawn up by Mr Cottee at the 2015 Inquiry, prior to commencement of the development.

<sup>198</sup> This is the HRI-protective policy applicable to the scheme (it being common ground that DM47, DM49 and DM50 are not offended by the proposals). This policy provides that “*Development...which would threaten the long-term viability of the horse racing industry as a whole, will not be permitted unless the benefits would significantly outweigh the harm to the horse racing industry.*” Thus, although it protects the racing industry, the policy does not preclude development even if there is some harm; it permits the grant of permission if the benefits significantly outweigh the harm. But, before that test is reached, there must be a finding that the development would threaten the HRI. Mr Justice Gilbert concluded that “*the creation of a risk of adverse perception can be relied on as a threat in the terms described by the policy.*” (see CD/ADCL/3 at para. 174 - although see below for the reason why the Secretary

upon his finding of a risk of increased accidents at the Rayes Lane horse crossing. Without that finding, NHG's primary case for opposing development at the application site (rejected by Ms Downes but accepted by the Secretary of State (however unlawfully)), has completely collapsed<sup>199</sup>.

228. Not only this, but the resolution of this issue in fact represents a significant *benefit* of the proposal, particularly to the HRI itself. Self-evidently, a scheme which *improves* safety is a scheme which creates a benefit in planning terms.
229. Somewhat surprisingly, NHG has sought to place itself in a position where it can argue that the weight to be attached to this benefit should be reduced, by claiming that the JCE will signalise the crossing. It will incur a substantial cost (£292,000)<sup>200</sup> to deliver an inferior scheme (i.e. without a widening of the Fordham Road horsewalk)<sup>201</sup> when a superior (and therefore more expensive) scheme would otherwise come forward at no cost to the HRI, freeing up additional money to spend on improvements to horse crossings elsewhere.
230. Regardless of the NHG's motives for suggesting that it would take such an odd approach, contrary to its (and the HRI's) own interests, there is no binding contract or agreement requiring the JCE to deliver the crossing.<sup>202</sup> It may happen, or it may not; there is nothing enforceable to make it happen at the JCE's expense. Unless such a contract is entered into, or until the crossing is actually delivered, there is no certainty of delivery. Given the importance of improving horse safety in Newmarket, the enforceable delivery of the Rayes Lane improvements remains a tangible and significant benefit of the proposal.
231. In any event, the 'cut price' proposal that the JCE claims that it intends to deliver, in fact reduces the number of potential incident savings by 8% compared to the full Cottee signalisation scheme advocated for by NHG at the previous Inquiry and now delivered by the Applicant<sup>203</sup>. Given the importance placed by the NHG on the risk of conflict between horses and vehicles<sup>204</sup>, this is again a surprising stance by NHG<sup>205</sup>. Either way, the benefit as a result of reducing incidents, and hence risk of accidents, by an additional 8% should still be accorded significant positive weight.

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of State found a risk of adverse perception; which has now been resolved). The threat must be to the "*long-term viability*" of the HRI, and it must be to the viability of the HRI "*as a whole*".

<sup>199</sup> Ms Parsons accepted in XX that the point upon which the SoS had refused permission last time had been replaced by a benefit. The question was whether there were any other impacts.

<sup>200</sup> See ID11.

<sup>201</sup> Mr Gittus confirmed in XX that the JCE proposal did not include the widening of the horsewalk, as the added cost of this would (he considered) be better spent elsewhere.

<sup>202</sup> Accepted by Mr Gittus in XX.

<sup>203</sup> Figure given by Mr Plumb in EIC, and not disputed (it is derived from Mr Cottee's own evidence to the previous Inquiry, identifying the existing incidents caused by the horsewalk). One wonders if NHG would be so relaxed about these lost savings had their 'cut price' scheme been proposed by the Applicant.

<sup>204</sup> Indeed, NHG's case at the 2015 Inquiry criticised the Applicant for not widening the horsewalk (see CD/ADCL/2 at IR204: "*No funding is proposed to upgrade the horse walk in Fordham Road, which also presents risks.*")

<sup>205</sup> As Mr Cottee put it in his PoE at the last Inquiry (at CD/T/20, para. 12.6): "*..due to the severity of the existing conditions at the Rayes Lane crossing and on the Fordham Road corridor no more development should be permitted before one or other of the options has been examined in further detail and an appropriate solution implemented*".

232. Congestion and residual cumulative impact: So far as the strategic road network is concerned, a scheme of improvements has been agreed with Highways England<sup>206</sup> for the A14/A142 junction. This will not only adequately mitigate the impact of the development but will, thereby, have the additional benefit of easing congestion at that junction significantly, substantially reducing the southbound queues on the A142 as it approaches the A14 and reducing the amount of rat running on Snailwell Road.
233. This was accepted by the SoS in the previous decision. It was a benefit to which he attached "*significant weight*"<sup>207</sup>. Consequently, the impact of the development for the trunk road network is beneficial and should still be given significant weight in favour of the proposal.
234. The town centre, in the absence of a horse safety point, has now become the primary focus of NHG's objection to the scheme. Paragraph 109 of the Framework states that development should only be prevented or refused on highways grounds if the "*residual cumulative impacts on the road network would be severe*". This is mirrored in the test in Policy SA6(B) of the SALP, which requires an assessment of the transport impact of each proposal (including its cumulative impacts) on horse movements in the town, together with other users of the highway, to determine whether the proposal results in material adverse impacts.

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<sup>206</sup> See email from Mr Abbott of Highways England dated 31 May 2019. Mr Cottee put in ID38, raising some concerns. These are all unfounded:

Survey data: the survey data was representative and has not changed over a number of years despite the number of completions in housing within East Cambridgeshire District Council ("ECDC"): see Mr. Plumb PoE at para. 5.13 identifying 1,346 completions. However, the future assessments provided for an increase growth rate at this junction above those used for Newmarket (see Table 7.1 of the UTA) and show growth rates of 18.7% for the AM peak and 19.1% for the PM peak compared to the figures for Newmarket of 11.9% and 12.4%. These increased percentages were applied to the flows between the A14 and the A142 north of the junction, reflecting the potential for growth in ECDC which included traffic not affecting Newmarket but accessing the A14. Hence the effect of the Ely Bypass would have been accounted for in these figures.

Junction 37 design: the A14 junction improvements are identified at paras 6.10-6.11 of Mr Plumb's PoE. SCC has accepted the scheme of works proposed, and the email from Highways England states that "*It is likely that with both the development and the proposed mitigation scheme in place the network could perform better in the assessment year than it would without.*" Thus the scheme goes beyond the requirements of NPPF para. 109 and Circular 02/13.

Growth rates: the differences in the increases in flows between those used by AECOM for the local plan and those adopted by WSP for the Hatchfield Farm assessment are explained in Mr. Plumb's PoE at paras 5.12 to 5.23. In essence the growth rates are similar but AECOM have also included all the committed and allocated development which in effect double counts the figures. However as identified above the figures for growth affecting the traffic between the A14 and A142 north of the junction were higher than those applied to Newmarket.

Re-routing effects external to the WSP model: This is accounted for by the use of the robust growth rates identified above and the robust trip rates identified in para 6.8 of Mr. Plumb's PoE.

<sup>207</sup> CD/ADCL/2 at DL18.

235. It is common ground that the reference to “severe” in paragraph 109 is a measurement of change or impact (as the test is one of “*residual cumulative impact*”)<sup>208</sup>. To understand the impact of the development, however, it is necessary to understand the operation of the network without the development<sup>209</sup>. This is common ground, but also clear from the judgment in *Bovis Homes v Secretary of State for Communities and Local Government* [2016] EWHC 2952<sup>210</sup>, where Mr Justice Holgate stated that the reference to “*cumulative effects*” in paragraph 109 of the Framework means that:

*“...it is the cumulative effect of all expected development which must be taken into account in context rather than just the individual contribution of each development in turn which is likely to be, as in the present case, marginal”*<sup>211</sup>

and that

*“...the effects of the proposed development could not be divorced from the existing context into which it was going to be inserted”*<sup>212</sup> [emphasis added].

236. Provided that this context is understood, a development can (acceptably) make the situation worse, so long as it does not make it “severely” worse. How much worse the development can make the situation before the impact can be classed as severe is a matter of planning judgment (having regard both to the existing conditions, and also the network performance at the relevant design year). But, self-evidently, unless there is a material exacerbation in conditions, there cannot be a severe impact<sup>213</sup>.

237. NHG’s approach is to compare the base conditions (Scenario A) with the conditions in 2031, the design year together with the development (Scenario E in Mr Neil’s model).<sup>214</sup> This is contrary to the approach taken by the Inspector and the Secretary of State both in 2012<sup>215</sup> and at the previous Inquiry<sup>216</sup>, where the same test in (then) paragraph 32 of the Framework applied<sup>217</sup>. It is contrary to the well-established approach to assessing the highways impact of a development (where the comparison is between the design year, taking into account background growth, both with and without development), including by Mr Neil himself on other schemes<sup>218</sup>.

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<sup>208</sup> Accepted by Mr Neil in XX.

<sup>209</sup> Ditto

<sup>210</sup> CD/ADCL/6.

<sup>211</sup> *Ibid* para. 26.

<sup>212</sup> *Ibid* para. 27.

<sup>213</sup> This paragraph all agreed by Mr Neil in XX.

<sup>214</sup> See Mr Cottee PoE at para. 6.22: “*It is the comparison of Scenario E and Scenario A in Mr Neil’s evidence that is the appropriate test to make decisions regarding of [sic] the severity of residual cumulative impacts*”.

<sup>215</sup> CD/ADCL/2 at para. 12.3.30.

<sup>216</sup> *Ibid* IR366: “*the question to be answered is whether the addition of the development traffic would make matters materially worse.*”

<sup>217</sup> CD/ADCL/4 at IR366 and DL18. Contrary to the assertions made by Mr Cottee (based on a couple of references where the Inspector omitted the word “cumulative”), the Inspector clearly applied the correct test, setting out the policy accurately at IR366.

<sup>218</sup> See Mr Dimbylow rebuttal on modelling at para. 3.6.3 and at Appendix G. Indeed, it is also contrary to the approach taken by Mr Cottee at the previous Inquiry (see CD/T/20 at para. 5.4,

238. Importantly, it is not the approach required by paragraph 109 of the Framework. That is because background growth to the design year will occur regardless of the development. Therefore, the change between Scenario A and Scenario E is not an assessment of the impact of the development as required by paragraph 109 of the Framework (and, indeed, Criterion B in the SALP policy). The impact is the change from Scenario D to E, in the context of the network performance as at Scenario D.
239. Consequently, the correct approach, endorsed in Bovis, is to start by looking at conditions in the relevant design year without the development (Scenario D in Mr Neil's modelling). Two dates have been agreed between the parties for the design year, the later being 2031<sup>219</sup>. Looking at conditions in 2031 is a cumulative assessment, since the "*cumulative effect of all expected development*" (Bovis) is included within the background growth figure.
240. This figure for background growth is agreed between the parties<sup>220</sup> and includes known commitments, allocations and employment growth<sup>221</sup>. A judgment can be made about the acceptability of these conditions (i.e. the "*existing context into which [the development is] going to be inserted*" (Bovis)). With this context in mind, a planning judgment must be made about whether the impact of the development (i.e. the difference between Scenario D and E) results in a severe residual cumulative impact.
241. NHG's position is that in order to avoid a severe residual cumulative impact, it is necessary for the network to be operating within capacity (even in the peak hours) and that unless this is predicted to occur (both in the existing and future scenarios), planning permission should be refused<sup>222</sup>. This is not the approach required by national policy, and its application leads to self-evident nonsense.
242. As Mr Neil explained, it would mean that NHG's case is that, before any future development could be permitted in Newmarket, existing junctions must be brought to and maintained within capacity, which on NHG's evidence means that a future scheme must ensure that the network will have 930 vehicles fewer in the PM peak than would otherwise be the case<sup>223</sup>. As Ms Parsons accepted, an approach which would result in the population of Newmarket shrinking would be "*bad*" and "*irresponsible*" planning<sup>224</sup>.
243. It is also a proposition that the HRI has not subscribed to before this Inquiry. The JCE's own planning application for Philipps Close would undoubtedly not reduce the level of traffic on the network<sup>225</sup> (and would almost certainly increase the amount of traffic). If NHG really believed the case it was putting forward at

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"At the 2011 Inquiry the Inspector referred to the appropriate test to consider the proposals, i.e. "*with*" and "*without*" the development proposals (the difference)".

<sup>219</sup> Confirmed by Mr Neil in XX.

<sup>220</sup> Mr Cottee XX – see further below.

<sup>221</sup> Mr Cottee XX. See CD/UP/4 at section 7.2 and in particular at 7.28-7.2.11.

<sup>222</sup> Ms Parsons XX.

<sup>223</sup> Accepted by Mr Neil and Ms Parsons in XX. Figures derived from the 38% reduction in PM Peak trips cited at Mr Neil PoE, para. 4.4.6, which amounts to 930 vehicles in the PM Peak at the town centre junctions (see Mr Cottee Supplementary Proof at para. 1.17).

<sup>224</sup> Accepted by Ms Parsons in XX.

<sup>225</sup> Accepted by Mr Gittus in XX.

this Inquiry, it would be urging the Council to refuse the Philipps Close application, rather than be promoting it.

244. What has changed since the SoS's previous decision? Complaints about congestion from those associated with the HRI are not new. As Ms Downes concluded in respect of the previous Inquiry<sup>226</sup>:

*"It is recognised that there is considerable congestion within Newmarket, especially at peak times and also on race days. This can make moving about the town difficult and result in considerable delays for road users. This was highlighted in letters from local people as well as representatives of the horse racing industry. However, this is an existing problem and the evidence shows that the additional traffic from the application development would not make matters materially worse. There is no dispute about the Applicant's traffic modelling, including trip generation and distribution. Overall there would be an increase in traffic of about 5%. The previous scheme would have resulted in an increase of about 15% but was still to be found acceptable in this respect."* [emphasis added]

245. Again, the SoS agreed with her in his previous decision, stating:

*"the Secretary of State does not consider that the application development would result in an unacceptable increase in congestion, and that the residual transport impact of the development would not be severe".*<sup>227</sup>

This was the same conclusion reached by the SoS in respect of the 1,200 unit scheme in the 2012 Decision<sup>228</sup>.

246. What is new is this becoming part of the technical case presented by the NHG<sup>229</sup>. Although at the previous Inquiry lay HRI witnesses complained of congestion interfering with their activities<sup>230</sup> (which extended well beyond the AM peak) it was not part of Mr Cottee's evidence at the previous Inquiry to support them from a highways congestion perspective<sup>231</sup>. As Ms Downes noted, he did not challenge the Applicant's traffic modelling, including trip generation and distribution. Increased congestion affecting owners and others in the HRI going about their business was, as recorded by Ms Downes, *"not a matter to which the NHG highways witness [i.e. Mr Cottee] subscribed"*<sup>232</sup>.

247. So, what, if anything, has changed to justify this abrupt change in Mr Cottee's, and NHG's, position? The answer is nothing. Mr Cottee accepts that there *"hasn't been much change"* in existing flows compared to those before Ms Downes<sup>233</sup>. The (agreed) growth factor applied is virtually the same (and in fact

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<sup>226</sup> CD/ADCL/2 at IR/368.

<sup>227</sup> CD/ADCL/2 at DL18.

<sup>228</sup> CD/ADCL/1 at para. 13.

<sup>229</sup> Indeed, at the previous Inquiry, NHG's position was that: *"this case does not turn on the technical capacity of the highway network in and around Newmarket"* – CD/ADCL/2 at IR180.

<sup>230</sup> See summary of the evidence of Mr Drummond, Ms Hood, Ms Beckett, Mr Crowhurst (then appearing as a lay witness) at CD/ADCL/2 at IR/283-291.

<sup>231</sup> CD/ADCL/2 at IR72.

<sup>232</sup> *Ibid* IR396.

<sup>233</sup> Mr Cottee XX. Apparent from summary of the flows recorded at ID9.

marginally lower) than at the 2015 Inquiry<sup>234</sup>. The scheme and the amount of traffic it generates has not changed<sup>235</sup>. In short, all of the factors which go into a transport assessment (the base conditions, the growth factor to the design year, and the development traffic) are all unchanged. Faced with this, Mr Cottee has attempted to put forward four main purported changes<sup>236</sup> to explain why he sees a problem, where before he saw none. However, none of these supposed changes justifies departing from the conclusions reached by Ms Downes and the SoS. The first three can be dealt with briefly.

248. First, the SIR/SALP has progressed. This is, of course, correct as a matter of fact. However, the parties have agreed the relevant growth rates to be applied to the application<sup>237</sup>, and these do not differ from those used in 2015<sup>238</sup>. Importantly, they do not change if the SIR/SALP is subsequently adopted<sup>239</sup>. In short, this alleged 'change' is not relevant for the purpose of highway modelling.
249. Second, is the matter of the signalisation of the Rayes Lane Crossing. Both at the previous Inquiry<sup>240</sup>, and at the examination into the SIR/SALP, NHG objected to development in conjunction with the signalisation of the Rayes Lane Crossing on the basis that the signalisation might increase congestion in the town centre (indeed this was the centrepiece of NHG's objection to the allocation of Hatchfield Farm in the SALP)<sup>241</sup>. However, Mr Neil's evidence has demonstrated (doubtless at NHG's considerable expense) that the introduction of the Rayes Lane horse crossing in fact *improves* network performance, by improving journey times and speed across the AM and PM peaks in each of the scenarios; and that this registers as a benefit in each of Mr Neil's scenarios<sup>242</sup>. Therefore, far from representing an adverse change in circumstance, this change represents a benefit of the proposal in congestion terms.
250. Third, trip rates. Mr Cottee persisted in criticising the trip rates used, which are numerically the same as those used in the Transport Assessment for the previous Inquiry (and which Mr Cottee did not then dispute)<sup>243</sup>, despite Mr Plumb's repeated and patient explanation of the difference in their derivation, and that in fact he had chosen not to take advantage of lower TRICS rates from

<sup>234</sup> Mr Cottee XX. See Mr Plumb PoE at para. 5.12: 12.07% (2015) vs. 11.9% (2018) for the AM Peak and 12.74% (2015) vs. 12.04% (2018) for the PM Peak. This figure has been adopted in Mr Neil's modelling: see Mr Cottee proof at para. 6.15.

<sup>235</sup> Accepted by Mr Cottee XX. The increase in flow across the Rayes Lane crossing has marginally increased south of Rayes Lane from 48 to 65 in the AM Peak, but remains at 81 in the PM Peak (see Mr Cottee proof at para. 5.15 and Mr Plumb PoE at 6.7).

<sup>236</sup> See, e.g., Mr Cottee PoE at para. 5.4-5.18.

<sup>237</sup> Accepted by Mr Cottee in XX (and recorded at Mr Neil PoE at 4.4.1 and Mr Plumb PoE at para. 5.12). The growth rate is 11.9% for the AM Peak and 12.04% for the PM Peak (agreed also with SCC as highway authority). More detailed explanation for the choice of growth factor, and the comparison with that used by AECOM for the SIR/SALP is set out at paras. 5.12-5.23 of Mr Plumb's PoE.

<sup>238</sup> See fn. 234.

<sup>239</sup> Accepted by Mr Cottee in XX. See references in fn. 237 for more detail.

<sup>240</sup> See Mr Cottee's PoE at CD/T/20 at para. 10.6.

<sup>241</sup> See in Mr Cottee's PoE the quotation of his evidence to the examination highlighting "*one of NHG's particular concerns*".

<sup>242</sup> Accepted by Mr Neil in XX and see Mr Neil's response to Mr Plumb on modelling dated 6 May 2019 at para. 1.4.15.

<sup>243</sup> Mr Plumb PoE at paras. 6.6-6.8.

2018, to which he could then have applied a travel plan discount<sup>244</sup>. In any event, the point goes nowhere as Mr Cottee presents no alternative figure, and Mr Neil uses Mr Plumb's trip rates in his modelling<sup>245</sup>. This is not a change in circumstances, and certainly not one which should count against the application.

251. Finally, Mr Cottee has criticised (for the first time) the very basis of the modelling carried out by WSP on behalf of the Applicant<sup>246</sup> (which is based on the industry standard application of LinSig and ARCADY), claiming that the impact of the development on the highway network can only be assessed through MSM. There are two main criticisms advanced by Mr Cottee of WSP's modelling, neither of which stands up to any scrutiny<sup>247</sup>.
252. First, it is suggested by Mr Cottee that the level of interaction between the junctions of Fred Archer Way and the Clocktower Roundabout are not addressed by WSP's modelling in the UTA and that this can only be assessed through MSM.
253. If this concern were valid, it should have been raised by Mr Cottee at either of the previous Inquiries; junction interaction is a feature of the existing highway network (and there is no suggestion that it has increased since 2015). In any event, the modelling carried out by the Applicant recognises that some junction interaction does occur<sup>248</sup>. However, the key question is whether this reduces the capacity of the junctions to such a degree as to render the LinSig/ARCADY modelling tools no longer valid<sup>249</sup>. This is a matter of judgment<sup>250</sup>.
254. Mr Cottee appears to have included incidents where a vehicle is stationary within the junction area as an example of "*blocking back*" and, therefore, of junction interaction. However, as is clear from the videos relied on by Mr Neil, during many of these incidents no movements are being prevented, either because there is no green light during the period of blocking back, or because vehicles are able to move around the stationary vehicle. In short, whilst there are "*interactions*", they do not materially reduce the capacity of the junction<sup>251</sup>. After each incident occurs, the queuing dissipates and the total throughput of the junctions is not affected. Crucially, this is also the view of the County Council as statutory highway authority, which considers that Linsig/ARCADY are the appropriate modelling tools and that MSM is not necessary<sup>252</sup>.

<sup>244</sup> See Mr Plumb PoE at para. 6.8 and also the CD/UP/4 at section 6, and Table 6.1.

<sup>245</sup> Accepted by Mr Cottee in XX.

<sup>246</sup> See para. 7.3.1 and 7.5.1-7.5.4, and 7.5.9-7.5.14 of CD/UP/4. This approach assesses the changes in the extent of the queues and the delay in seconds per passenger car unit at each junction. Mr Plumb sums the average delay at each junction to assess the change in the overall delay with and without the development at paras. 6.12-6.17 and Table 6.1 of his PoE.

<sup>247</sup> See Mr Cottee PoE at para. 6.8.

<sup>248</sup> CD/UP/4 at para. 7.6.10-7.6.18 - in particular, para. 7.6.17: "*The analysis indicates that the impact of development traffic is a combined additional 12 seconds of time where traffic is interacting with Fred Archer Way exit at peak times. It is considered that this is not a material effect on the operation of the junction. This assessment is consistent with the evidence provided by AECOM on behalf of FHDC to the SALP Inquiry*".

<sup>249</sup> Accepted by Mr Cottee in XX.

<sup>250</sup> Compare the assessment of "*blocking back*" incidents in Mr Cottee's Appendices MC9 and MC10 with Mr Dimbylow's rebuttal at Appendix D.

<sup>251</sup> See detailed analysis at Mr Plumb's Appendix F, at paras. 3.2.3-3.2.9.

<sup>252</sup> Which it has maintained despite NHG's attempts to dissuade it over four meetings, including one which it wheeled in CILRs, including Ms Hood.

255. Second, and somewhat ironically given the model produced by Mr Neil, it was said that the Applicant's modelling fails to replicate existing traffic conditions (and therefore that WSP's model shows better traffic conditions in 2031 with the development as compared with existing conditions)<sup>253</sup>. This was on the basis that the queues modelled by WSP were alleged to be significantly lower than the observed queues<sup>254</sup>. However, it soon became apparent that this criticism revealed more about Mr Neil's lack of understanding about how LinSig and ARCADY work, rather than disclosing a problem with WSP's modelling<sup>255</sup>.
256. Rather than showing maximum queue lengths, as Mr Neil assumed, in fact the modelled queues in the UTA showed (as is always the case with LinSig and ARCADY) the mean maximum queue over the modelled period i.e. the average of the queues<sup>256</sup>. As such, as Mr Neil now accepts, his initial comparison between the existing and modelled queues was not a legitimate comparison<sup>257</sup>.
257. Undeterred, Mr Neil maintained that, even on a mean maximum basis, there was a disparity between the observed queues and the modelled queues<sup>258</sup>. Again, however, Mr Neil had failed to appreciate that the observed queues are recorded over a five-minute time period, whereas ARCADY produces an average over an hour<sup>259</sup>. This difference in time-scale accounts for the difference in results (the mean maximum of a queue over an hour is likely to be lower than the average over a five-minute period)<sup>260</sup>.
258. In any event, the guidance from the authors of ARCADY is not to adjust the model to match observed queues<sup>261</sup> because, as Mr Dimbylow explained, it is not the function of the model to replicate how queues form and dissipate on a particular day<sup>262</sup>. Rather, the purpose of ARCADY is to show the level of capacity in a junction and the change between different scenarios. The same is applicable to LinSig at the Fred Archer Way signals, where calibrating it to observed queue lengths (which may or may not be reflective of junction capacity) would underestimate the capacity of the junction, especially where (as here) the length of the queue north of Rayes Lane is a function of typical town centre interactions, rather than the capacity of the Fred Archer Way signals.
259. But the criticisms levelled by NHG also reveal a (further) fundamental misunderstanding about the nature of the modelling carried out by WSP. Repeated references were made, by Mr Cottee in particular, to the "*differences*"

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<sup>253</sup> Mr Cottee PoE at para. 6.8.

<sup>254</sup> See, for example, Mr Neil PoE at paras. 3.2.4-3.2.6 and his Appendix A and ID14.

<sup>255</sup> Mr Neil accepted in XX that he was more of an expert in microsimulation than ARCADY/LinSig.

<sup>256</sup> See Mr Dimbylow's Rebuttal on Modelling at section 2.3.

<sup>257</sup> Accepted by Mr Neil in XX. Section 1.9 of Mr Neil's proof and his Appendix A are therefore incorrect.

<sup>258</sup> Mr Neil EIC. A theme picked up by Mr Cottee: see ID14.

<sup>259</sup> Accepted by Mr Neil in XX.

<sup>260</sup> As explained by Mr Dimbylow both in EIC and in XX.

<sup>261</sup> See Appendix A and B of Mr Dimbylow's rebuttal. As the LinSig User Guide puts it: "*Due to the variability of queues and sensitivity to small changes in conditions both in models and in reality we recommend avoiding directly calibrating models to measured queues as unless done with extreme care and highly detailed data it has the potential for introducing significant inaccuracy into the model.*"

<sup>262</sup> Mr Dimbylow EIC.

between the 96 metre (observed) queue lengths southbound on Fordham Road, compared with the (modelled) length of 49 metres in 2031, with the development<sup>263</sup> demonstrating, so it was said, that WSP was predicting better outcomes in 2031 compared to those with the development.

260. However, as Mr Dimbylow explained, once the nature of LinSig modelling is understood, there is no inconsistency. The existing position is the observed queue length of 96 metres<sup>264</sup>. The purpose of LinSig modelling is to assess the *change* in queue length as a result of the development. This is 8 metres, or in effect a car and a half of growth at this location in the PM peak<sup>265</sup>. To assess the position in 2031, with the development, one simply adds the modelled 8 metres to the existing queue length of 96 metres i.e. LinSig is modelling a queue of 104 metres (96 metres plus 8 metres) in 2031 with the development, not a queue of 49 metres. Properly understood, as it is by the statutory highway authority who, as Mr Dimbylow explained, works with LinSig modelling outputs like this on a daily basis, WSP is *not* predicting improved outcomes in 2031. Rather the modelling predicts a small (i.e. very far from severe) increase in queue lengths.
261. Therefore, NHG's criticisms in relation to observed queue length compared to modelled length can also be put to one side, simply reflecting as they do fundamental misunderstandings by those advising NHG of the nature of the modelling carried out by WSP.
262. Overall, therefore, there is no basis to depart from the Applicant's approach. That approach has been agreed by the highway authority, which does not consider that MSM is required.<sup>266</sup> It is similar to that adopted by AECOM to assess the impact of the SIR/SALP. It has been used at two previous Inquiries and was not previously subject to any criticism by Mr Cottee. The findings of the modelling have been endorsed on two occasions, by an Inspector and the SoS. It continues to be the correct method to assess the impact of the development.
263. In any event, the MSM put forward by Mr Neil, in place of the modelling agreed with the highway authority (and which has not been independently audited), is not fit for purpose and cannot be relied on as a substitute for the standard approach endorsed by the highway authority. Clearly, a model is only reliable if it is set up to reflect accurately existing base conditions<sup>267</sup>. Loading on growth to a model that does not accurately reflect the existing conditions will not reliably predict future conditions.
264. As with all bespoke micro-simulation models, Mr Neil's base model is set up by 'tweaking' hundreds of parameters, both behavioural and physical (for example,

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<sup>263</sup> For the 96m figure, see Mr Dimbylow rebuttal at Figure 6. The 49 metre figure is derived from Tables 7-5 and 7-6 of CD/UP/4. Mr Cottee has summarised this at ID14.

<sup>264</sup> As Mr Dimbylow explained, queues beyond this point are not a function of junction capacity, but rather vehicular interactions further north on Fordham Road.

<sup>265</sup> This is the difference between the modelled queue length in 2031 without the development, of 41 metres and the modelled queue length of 49 metres with the development: see CD/UP/4 at Tables 7-5 and 7-6. Both of these figures take into account the agreed growth to 2031, and therefore represent a cumulative assessment.

<sup>266</sup> CD/SOCG/2 at para. 1.4.3.

<sup>267</sup> Mr Neil PoE at para. 1.1.6: *"...unless a traffic model can be shown to accurately reflect existing observed traffic conditions, it cannot therefore be deemed fit for purpose of accurately predicting the effects of additional traffic."*

the assumed spacing between vehicles), all of which are choices made by the modeller<sup>268</sup>. However, it is clear that Systra's 'original' model<sup>269</sup> (upon which NHG still relies<sup>270</sup>) has been set up in a way that is far more constrained than the network is in reality, failing to allow as many vehicles through the junction as compared with the actual observed situation.

265. For example, out of the 36 links on the model, 26 let through less traffic than Systra's own observed flow<sup>271</sup>. This includes the crucial southbound Fordham Road link and the entry onto the Clocktower Roundabout from Fordham Road<sup>272</sup>. In fact, the modelled average journey time per vehicle on Fordham Road southbound is nearly a minute slower in Mr Neil's base model compared to the observed time<sup>273</sup>. Indeed, the difference between the base model flows and the observed movements at Fred Archer Way and for the Clocktower Roundabout, compared with the modelled base flows, is greater than the impact of the application scheme's traffic<sup>274</sup>.
266. Of course, variance is not in of itself unusual. What is unusual is that in Mr Neil's model the differences are predominantly all in one direction<sup>275</sup>. Mr Neil's repeated defence that the model technically passes the WebTAG criteria<sup>276</sup> is of no assistance. As the guidance itself states, "*the achievement of the validation acceptability guidelines... does not guarantee that a model is 'fit for purpose'*"<sup>277</sup>.
267. Two practical examples clearly demonstrate the inbuilt constraints that Mr Neil has loaded into the model. His original (and relied on) model, and indeed his "sensitivity model", uses fixed timings for the Fred Archer Way signals rather than, as in reality, a Vehicle Actuated (VA) signal plan (which maximises the throughput at the Fred Archer Way junction, by moving onto the next phase if there is any unused 'green time'). Nor did it include a pedestrian crossing on the High Street in the PM Peak. It was accepted by Mr Neil that a model which has a VA in it is likely to be more efficient and in principle closer to reality; and also that the exclusion of the pedestrian crossing was a mistake and needs to be included to correct an error<sup>278</sup>.
268. However, because of the inbuilt constraints elsewhere in the model, bringing the model "closer to reality" and correcting an acknowledged error meant that it broke. It no longer passed the WebTAG criteria, and was therefore not "fit for purpose", failing validation on the vital Fordham Road southbound link<sup>279</sup>.
269. The 'acid test' for whether Mr Neil's base model accurately reflects existing conditions is the Base output of the model itself, compared to observed

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<sup>268</sup> Accepted by Mr Neil in XX. See also Mr Dimbylow's concerns with just some of the parameters at Appendix E of his rebuttal.

<sup>269</sup> CD/T/42 and CD/T/43.

<sup>270</sup> Mr Neil in XX.

<sup>271</sup> See Mr Dimbylow rebuttal on modelling at Appendix F.

<sup>272</sup> Link 9 and Link 15 at Appendix F.

<sup>273</sup> See Mr Dimbylow's rebuttal at para. 3.4.4.

<sup>274</sup> Mr Dimbylow in response to XX by Mr. Elvin.

<sup>275</sup> As Mr Dimbylow explained in response to XX by Mr. Elvin.

<sup>276</sup> WebTAG is the Department for Transport's web-based Transport Assessment Guidance.

<sup>277</sup> ID8 at para. 3.4.2.

<sup>278</sup> Accepted by Mr Neil in XX.

<sup>279</sup> ID7 at Table 3 (note the "FAIL" on Route 1 SB, which is the Fordham Road link).

reality<sup>280</sup>. The output of his model is the flows which pass through the various town centre junctions. However, for all of the key locations, it is common ground that Mr Neil's Base model lets through less traffic than Mr Cottee's own survey figures show actually pass through the network in the existing conditions<sup>281</sup>.

270. Indeed, Mr Neil's model is so constrained in the Base year that even once the agreed background growth and development traffic is added (Scenario E), the traffic flows modelled for future traffic conditions in 2031 are *less* than the *existing* conditions (for example, in the PM Peak at the Clocktower Roundabout, the modelled output in 2031, with Hatchfield Farm, is a two-way flow of 2621; compared with Mr Cottee's existing observed flow of 2693) but with significantly greater modelled queuing as a result<sup>282</sup>.
271. The consequence is that the model throughput is so constrained that its future predictions are rendered meaningless. Rather than relying on the modelled 2031 outputs of Mr Neil's model, it is empirically possible to see how the network operates on higher flows than those modelled by Mr Neil in 2031, by simply observing the existing position.
272. Based on Mr Cottee's survey data, the average two-way flow on Fordham Road in the PM peak is 804. However, within the surveyed week this flow can be as high as 997<sup>283</sup>. Indeed, the daily variation, as demonstrated by NHG, is approximately 20% higher or lower than the average<sup>284</sup>. For example, the difference between the flow on Friday 14 September and that on Wednesday 12 September is 22%. This increase is significantly more than the approximately 14% anticipated increase in flow in 2031 with the development<sup>285</sup>. At an observed flow of 997, well above the 2031 modelled levels, none of the modelled queues or delays manifest themselves in reality.
273. Therefore, if one wants to test the actual effect of increasing the level of traffic on Fordham Road, above that anticipated in 2031, one only needs to compare the videos for these two days. The two-kilometre queues and 19-minute increase in journey times, predicted in Mr Neil's model, simply do not materialise. They are a figment of his modelling, caused by the fact that his model is more constrained in capacity than the network is in reality. He has been unable to calibrate his model accurately to reflect observed realities at the Base date.
274. For all of the above reasons, the highways evidence called by NHG is fundamentally flawed. In particular:

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<sup>280</sup> See WebTAG guidance at ID8, para. 3.4.3: "*Standard output from the model such as assignment flows and journey times are important to check*". Mr Neil accepted in XX that the fact that the base model was within WebTAG guidelines does not mean that it is fit for purpose; it is necessary to look at the outcome.

<sup>281</sup> See ID9. Also accepted by Mr Neil in XX.

<sup>282</sup> ID9.

<sup>283</sup> See Mr Neil's Appendix, page 6.

<sup>284</sup> See figures in Mr Neil's Appendix, page 6. Accepted by Mr Cottee in XX.

<sup>285</sup> Taken from Mr Cottee Supplementary PoE at para. 8.18, which shows a cumulative increase of 13.1% at the Clocktower Roundabout and 15.4% at the Fred Archer Way signals. See also MSC1.

- The correct comparison for the purposes of paragraph 109 of the Framework and Criterion B of Policy SA6 of the SALP is not Scenario A (the base position) with Scenario E (the position in 2031 with growth and the development); rather, it is to compare the position in 2031, both with and without the development (i.e. comparing Scenario D with Scenario E); and
- Mr Neil's model is not "fit for purpose", as the model throughput in the base model is so constrained that its predictions in the future year model are wholly unreliable (as can be empirically proven by looking at actual videos of a higher flow than Mr Neil models for 2031, with the development, but without the additional queues and journey delays which he predicts).

275. That said, to avoid any scope for a tedious legal challenge on the correct 'legal interpretation' of paragraph 109, the Applicant invites the SoS to determine the application both on the (correct) position that it has put forward (i.e. the well-established approach to assessing highways impact (Scenario D vs. Scenario E), using the standard modelling methods (LinSig and ARCADY)) but also, in the alternative, on the (incorrect) basis put forward by NHG (i.e. Scenario A vs. Scenario E, and Mr. Neil's not fit for purpose model). That is because, even on the flawed basis put forward by NHG, there are no highways grounds for objecting to the application.
276. Whilst recognising that there was existing congestion, neither Ms Downes<sup>286</sup> nor the SoS<sup>287</sup> considered that the existing conditions in either the AM or the PM Peak were "severe". It is irrelevant that neither had the 'benefit' of Mr Neil's modelling. An assessment of existing conditions relies on observing the effects of existing flows. Unless there has been a material change in existing flows there is no basis to depart from this conclusion. It is clear that there has been no change, with flows at the Rayes Lane crossing at the previous Inquiry (1021 AM two-way flows) being marginally higher than existing flows (1009)<sup>288</sup>. Indeed, Mr Neil accepted that the existing flows surveyed in the UTA and by Mr Cottee are "*much of a muchness*" with those used in the TA for the 2012 and 2015 Inquiries<sup>289</sup>.
277. Indeed, all that the case put forward by NHG has demonstrated is that the highway authority is entirely correct to conclude that existing conditions are not "severe". There is no peak spreading, with a "peak within a peak" at 0830 lasting for just 15 minutes. This demonstrates that people are able to travel at the time that they want to and are not adjusting their behaviour to avoid unacceptable queues<sup>290</sup>. The fact that the daily variation can be as much as 20% above the average flow, on NHG's own figures (see above), shows that the junctions are not already operating at capacity.

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<sup>286</sup> CD/ADCL/2 at IR369.

<sup>287</sup> *Ibid* at DL18.

<sup>288</sup> See Appendix F of Mr Plumb's PoE, Table 2.3.

<sup>289</sup> Accepted by Mr Neil in XX.

<sup>290</sup> See Mr Plumb PoE, Appendix F at Figure 2.1. As Mr Plumb explains (see para. 5.10 of his PoE) a saturated network would typically see flows plateauing as the network capacity is reached, with the periods before and after the peak becoming busier as people try to avoid congestion.

278. Such queues that there are last for a limited duration and are moving (albeit slowly at times)<sup>291</sup>. Queues form and dissipate on the Fordham Road as the signals change at the Fred Archer Way junction<sup>292</sup> but vehicles move freely throughout the period. Whilst Mr Cottee considers that there are queues associated with the Fred Archer Way and Clocktower junctions extending significantly north of Rayes Lane<sup>293</sup>, much of the queuing on Fordham Road is a function not of the operation of the signals but of vehicles being let in and out (in particular to the school) and of pedestrians crossing the road<sup>294</sup>. What is seen in Newmarket is what is seen in similar sized towns up and down the country during the peak periods.
279. Turning next to the impact of the development, with reference to the note requested by the Inspector comparing the Applicant's and NHG's figures on delays in the town centre<sup>295</sup>.
280. On NHG's own figures, the proposal improves the position in the AM Peak, *reducing* average journey times across the modelled Town Centre network<sup>296</sup>. Mr Neil rightly (albeit reluctantly) accepted that it would be irrational to suggest that the residual impact was severe when it reduced journey times compared to those without the development in the design year<sup>297</sup>. Indeed, even on the erroneous comparison between Scenario A and Scenario E, the increase in journey times is less than 30 seconds;<sup>298</sup> a difference which Mr Neil accepted would not be "*discernible*".<sup>299</sup>
281. Therefore, using NHG's own figures, on whatever basis the assessment is carried out (Scenario D to Scenario E, where there is a reduction in journey times, or Scenario A to Scenario E where the change is not "*discernible*"), the residual cumulative impact of the development is not "*severe*" (Framework paragraph 109). Nor does it result in a "*material adverse impact*" (SALP, Criterion (B)).
282. In terms of the PM Peak, Mr Dimbylow's evidence is that, even on the erroneous Scenario A to Scenario E comparison, in the PM peak the growth in the southbound queue length at the Fred Archer Way/Fordham Road junction is just over one vehicle<sup>300</sup> with a 15 second delay per Passenger Car Unit. At the Clocktower roundabout, there is an increase in southbound queues in the PM peak of four vehicles and 13 seconds<sup>301</sup>. The overall delay in the PM peak across the entire modelled network, even on a Scenario A to Scenario E comparison, is

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<sup>291</sup> Mr Plumb EIC.

<sup>292</sup> See this illustrated at Appendix F to Mr Plumb's PoE at Figure 3.3.

<sup>293</sup> See ID12.

<sup>294</sup> See Mr Dimbylow EIC and XX.

<sup>295</sup> ID26. As explained in that note, the figures are taken from the Applicant's and NHG's own evidence. It has been updated by "NGH's [sic]" note submitted on 4<sup>th</sup> June 2019.

<sup>296</sup> Mr Neil's "not agreed" modelling outputs, 6<sup>th</sup> May 2019, Tables 1 and 2.

<sup>297</sup> Accepted by Mr Neil in XX.

<sup>298</sup> Mr Neil's "not agreed" modelling outputs, 6<sup>th</sup> May 2019, Tables 1 and 2

<sup>299</sup> Accepted by Mr Neil in XX (albeit in relation to a 58 second increase): "*Q. In terms of averaging across network, not suggesting 58 seconds discernible? A. No*"

<sup>300</sup> CD/UP/4, page 42 and 43, Table 7.5, comparison between base flows in 2018 and "base flows" in 2031 plus development.

<sup>301</sup> CD/UP/4, Table 7.6, comparison between base flows in 2018 and "base flows" in 2031 plus development.

- just over a minute<sup>302</sup>. On the, correct, Scenario D to E, WSP models an increase in delay of under 30 seconds, with NHG modelling a 58 second increase (which, again, Mr Neil accepted would not be "*discernible*").
283. None of this should be surprising. Only 31 additional vehicles pass through the Clocktower junction as a result of the development in the AM Peak, and 41 vehicles in the PM peak. This is a figure which amounts to approximately 1.3% in the AM Peak and 1.5% in the PM Peak of all traffic passing through the junction<sup>303</sup>. The result of this marginal increase is that in no rational sense can the not discernible increase in journey times in the PM peak be classified as "*severe*" nor could it be said that there is a "*material adverse impact*".
284. The "*NGH [sic] summary of figures on delay and queues*" note repeats the queue length graphs from CD/T/43. Naturally, all of the criticisms above apply equally well to the Systra model output on queue lengths as they do to the predicted future year delays in the model. The queues being predicted are simply a function of loading additional traffic onto a network which has been modelled as being more constrained than reality has shown it, through NHG's own surveys, to be<sup>304</sup> (i.e. less traffic gets through the model than it does in the real world, so more is shown as queueing than occurs in the empirical (observed) data).
285. In any event, however, it is worth observing that queue lengths are not a meaningful measurement of impact, particularly when, as here, the queues are observed to be 'moving queues'; that is platoons of slow-moving traffic passing through the network like any other market town at busy times of day. It is the consequent delay experienced by those travelling through the network which indicates the operation of that network and, particularly given the emphasis of the NHG case, the delays occasioned to owners and trainers interested in watching the horses train in the morning.
286. Much is made of the need to have regard to "*local conditions*" and the "*uniqueness*" of Newmarket, which is "*unlike any other similar market town*". What is being alluded to, however, is the phenomenon of large numbers of racehorses traversing the town from about 0600 to 1230, crossing and travelling alongside roads to do so. That is unique, certainly, but it is fair to say that it is not a phenomenon which impinges on the issues of "*severe residual cumulative*" congestion impacts.
287. This is because (i) it occurs in the morning, when even NHG's figures show an improvement in congestion with the development (ii) the existing congestion at the Clocktower and Fred Archer Way is not caused by horses, but by the operation of these junctions, where horses are not present at all (iii) the real "*unique*" issue regarding horses and traffic is not congestion, but one of safety, a matter now resolved by the introduction of the signalisation improvements and horsewalk extension at Rayes Lane; and (iv) the introduction of the works

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<sup>302</sup> See ID26, on WSP's modelling the increase in delay between Scenario A and Scenario E is 1:07. To place this in context, Mr Neil accepted that a 58 second increase in journey time was not discernible.

<sup>303</sup> Mr Plumb PoE at para. 6.13.

<sup>304</sup> Although, it is worth noting the closeness of the graph lines between Scenarios D and E.

at Rayes Lane, while done for safety reasons, has the effect, according to NHG's own modelling, of improving the network operation.

288. Finally, (without accepting that the figures are in any way valid) we draw attention to the table from the "*NGH [sic] summary of figures on delays and queues*" (page two), increases in delays between scenarios:

	AM	PM
Base-E	00:26	7:50
A-E	00:29	8:06
D-E	-00:01	00:58

289. This table is from Mr Neil's 'original' model (i.e. without the necessary corrections made in the 'sensitivity model' of April 2019), and without the necessary adjustments for VA and pedestrian crossings (which caused his model to break). It is the highest that NHG puts its highways case. It is expressed as change over the network in seconds over a 13-year period.

290. The Inquiry will also recall the repeated lament of NHG that the highway authority would not take their highways case seriously. Drawing the threads together, one must have sympathy for the patient, professional officers of Suffolk County Council when faced with NHG's very remarkable position:

- Mr Cottee steadfastly repeated that the trip rates used assumed travel plan reductions, failing to grasp (despite being told) that two figures can be numerically the same, but have different derivations;
- Mr Cottee erroneously asserted that the WSP modelling showed outputs in future queues less than currently observed, thereby demonstrating that neither he nor Mr Neil understood how to read the output of LinSig or ARCADY;
- Mr Cottee asserted that the existing highways conditions are "*severe*", when simply standing at the junctions in the AM and PM peaks (let alone for the rest of the day) shows them operating much as any other town centre in Suffolk would be expected to do;
- Mr Cottee insisted, through the evidence of Mr Neil, that no more development should be permitted until the network had its PM peak flows reduced by 930 vehicles, while the JCE and the wider HRI was busy promoting their own traffic-generating schemes;
- Mr Cottee, through the SIR/SALP process, demanded that no allocations should take place until the congestion impact of introducing signalised horse crossings were modelled by MSM, only to prove, via Mr Neil, that the Rayes Lane crossing works improved network performance;
- Mr Cottee demanded for this Inquiry that the application proposal traffic impact should be assessed through MSM, with NHG expressing its particular concern for the AM Peak interfering with the ability of owners and trainers to see their horses in the morning. Then, when he has done so, doubtless at a not inconsiderable cost, he gets the figures presented in the table above; and

- In countless technical notes and across four face to face meetings (the last one of which involved invoking the assistance of veteran Hatchfield Farm opponent and recent County Councillor Rachel Hood) Mr Cottee seeks to persuade the highway authority these figures as a *"severe residual cumulative impact"*.

291. None of the figures in the above table (being NHG's congestion case at its highest) justifies such an assertion. In the context of the HRI's particular interest in the morning movement of horses and trainers, when the County Council's officers are faced with the results in the AM column (Scenario A-E, let alone D-E) and an assertion by NHG that this represents a *"severe"* impact, is it any wonder they did not take the HRI case seriously?
292. Mr Justice Gilbert observed that NHG's previous horse safety case came close to being irrational. That case having been removed for them, this resort to a congestion case, given their own modelled figures, and whether on a Scenario A to E, or D to E basis, has plunged them over the line<sup>305</sup>.
293. For all of these reasons, it can be safely concluded that, in line with the conclusion reached by the highway authority, the SoS twice previously, and also two previous Inspectors, that the impact of the development on the highway network is not a basis to refuse the application.

*The effect on the horse racing industry in Newmarket*

294. The importance of horse racing to Newmarket, and the importance of Newmarket to horse racing, is a key area of common ground. The HRI in Newmarket is a thriving success-story and was resilient even through the recent global recession. Newmarket is the pre-eminent location for training and breeding flat race horses in the UK, Europe and, arguably, the world. As the 2015 Inspector, Ms Downes, put it:

*"there is no dispute from anyone about the importance of the horse racing industry to Newmarket. It is a pre-eminent centre for the breeding, training, racing and sale of thoroughbreds"*<sup>306</sup>.

295. This matches the Inspector's (Mr McPherson's) findings in 2011 that:

*"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. Newmarket provides the headquarters for the global thoroughbred breeding and training industry"*<sup>307</sup>.

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<sup>305</sup> Every parent will know the phenomenon of a toddler so caught up in his tantrum that he has forgotten what made him cross in the first place. Faced with the above, the brow-beaten officers at the County Council must have known they were faced with an objector group who could no longer be expected to be reasoned with.

<sup>306</sup> CD/ADCL/2 at IR370.

<sup>307</sup> CD/ADCL/4 at IR12.4.1.

296. The unique benefits of Newmarket as a "*cluster*" were set out in detail by Ms Downes at paragraphs 392-393 of her report<sup>308</sup> and by Mr McPherson at paragraphs 12.4.1 to 12.4.3 of his report<sup>309</sup>.
297. Nothing has changed since the previous Inquiry. Mr Wicksteed, for NHG, confirmed that the HRI in Newmarket had "*maintained*" its position since 2015<sup>310</sup> and "*remains the dominant UK location*"<sup>311</sup>; and that whilst it hadn't grown, "*given the economic context this isn't particularly surprising*".<sup>312</sup>
298. This is backed up by the figures provided by Mr Wicksteed, Mr Gittus and Mr Spry, who assesses the trends in a number of key indicators<sup>313</sup>. By way of example only, 15 new trainers have started up at Newmarket since 2014<sup>314</sup>; sales at Tattersalls reached a record high in 2017<sup>315</sup>; and as of 2018, 35 of the top world-ranked horses were trained in Newmarket, up from 26 in 2014<sup>316</sup>.
299. What is new is NHG's attempt to talk up the risk posed by the growing attraction of Lambourn<sup>317</sup>. Lambourn has undoubtedly grown in recent years. This has not, however, been at the expense of Newmarket. For example, in Lambourn the number of top ranked thoroughbreds increased from 1 in 2014 to 5 in 2018. The increase in Newmarket in the same period was even greater, from 26 to 35<sup>318</sup>. In the same period that 15 new trainers started up at Newmarket, only 1 started up at Lambourn<sup>319</sup>.
300. In fact, as Mr Spry explains, the increase in the GVA of the HRI in Newmarket since the last Inquiry is greater than the *total* GVA of Lambourn today.<sup>320</sup> Lambourn remains a minnow compared to Newmarket. Indeed, given that much of the growth of Lambourn is due to the significant amount of investment put in by the JCE (over £2.2m since 2006)<sup>321</sup>, it would be (a) surprising if Lambourn had not grown<sup>322</sup> and (b) reckless of the JCE to invest in a rival area that risked threatening the long-term viability of the HRI in Newmarket.

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<sup>308</sup> CD/ADCL/2.

<sup>309</sup> CD/ADCL/4.

<sup>310</sup> Mr Wicksteed EIC.

<sup>311</sup> Mr Wicksteed PoE at para. 7.

<sup>312</sup> Mr Wicksteed EIC.

<sup>313</sup> At paragraphs 7.10-7.42 of his proof

<sup>314</sup> Mr Gittus PoE at Figure 17.

<sup>315</sup> Mr Spry PoE, Table 7.4.

<sup>316</sup> *Ibid* para. 7.37(3).

<sup>317</sup> The purported "threat" from Chantilly, talked up at both the 2011 and 2015 Inquiries (see, for example, CD/ADCL/4 at IR6.5.15 which records Mr Gosden noting the "attractiveness" and competition posed by Chantilly) appears to have fallen away. Perhaps because, as Mr Spry explains at para. 7.89 of his PoE, contrary to the HRI's fears, the number of horses in training at Chantilly has in fact fallen by more than 20% in the past 10 years, compared to the 15% increase seen in Newmarket.

<sup>318</sup> Mr Spry PoE at 7.67.

<sup>319</sup> Mr Gittus PoE at para. 4.3.

<sup>320</sup> Mr Spry PoE at para. 7.71.

<sup>321</sup> *Ibid* para. 7.46.

<sup>322</sup> Mr Gittus accepted in XX that the JCE would hope to see Lambourn growing given its investment.

301. Ultimately, the purported threat of Lambourn is explained well by the NHG's own witnesses. Mr Gittus explained at the previous Inquiry that "*Lambourn could never operate on the scale (either nationally or internationally) that Newmarket does*"<sup>323</sup> and Mr Wicksteed gave expert evidence for NHG to confirm that this remains the case. He explained that the HRI in Newmarket was "*exceptionally robust*"<sup>324</sup> and that Lambourn was only a source of competition to Newmarket "*at the margin*".<sup>325</sup> As Mr Wicksteed put it, Lambourn was "*not really a threat*"<sup>326</sup> because it faced insurmountable barriers to ever becoming a rival to Newmarket. In response to a question from the Inspector, he summarised the position well:

*"I can't see that Lambourn would grow to rival Newmarket. Physically, it's not got the infrastructure to grow to the level of Newmarket. It has an equine hospital but of a lower grade, and less equipment than Newmarket. It doesn't have a racecourse; it won't have a racecourse. It doesn't have nearby stud farms and the symbiosis that this creates. It won't rival Newmarket, in so far as one can ever predict reliably..."*<sup>327</sup>

302. In short, as Mr. Spry put it, growth in Lambourn relative to Newmarket is not a zero-sum game<sup>328</sup>.

303. No potential international competitors were particularly put forward by the NHG. Mr Anderson helpfully explained that the unique selling point of Newmarket (the cluster of facilities) could never "*translate to other parts of the world*"<sup>329</sup>.

304. Overall, therefore, there is no dispute between the witnesses that Newmarket is the pre-eminent centre for the HRI in the UK; that this has not changed since the SoS's previous decision; and that Lambourn will not grow to rival Newmarket, even should it continue to grow in line with the JCE's strategy of investing in the area.

305. What is in dispute is the extent to which 400 houses at Hatchfield Farm would make any difference. This must surely be the core of the NHG's case. If it cannot make good its case that a 400-house scheme will threaten the HRI (although a 1,200-house scheme was found not to do so), the well-spring of its opposition to the wishes of the democratically elected representatives of the wider community is removed. That position becomes all the more stark if the evidence shows that the proposal in fact *benefits* the HRI. However, that is precisely what its evidence does show.

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<sup>323</sup> Cited at Spry PoE, at para. 7.86.

<sup>324</sup> Mr Wicksteed EIC.

<sup>325</sup> *Ibid*

<sup>326</sup> *Ibid*

<sup>327</sup> Mr Wicksteed's evidence is also borne out by Mr Spry's map of facilities at Lambourn at page 97 of his PoE, compared with Mr. Gittus' "A-S" list of the facilities and features in Newmarket. Mr Spry has calculated that there are some 111 supporting services to the HRI in Newmarket, compared to just 37 in Lambourn (PoE at para. 7.56). For more detail on the infrastructure difficulties put forward by Mr Wicksteed, see Mr. Spry PoE at paras. 7.73-7.80 and para. 7.85.

<sup>328</sup> See Mr Spry PoE at paras. 7.45-7.49.

<sup>329</sup> In response to a question from the Inspector: "*Q. Is that what the USP of Newmarket is - the hub and its inter-related parts? Does that not translate to other parts of the world? A. No it couldn't. In Kentucky they would not conceive of how you could move horses around.*" He also confirmed in RX that the features of Newmarket were "*very unusual*".

306. As noted earlier, the proposal would *improve* horse safety at the Rayes Lane horse crossing. Whether or not this is a benefit that the proposal alone would bring, and regardless of how much weight is attached to this benefit, the resolution of this issue overcomes the reason why the SoS refused planning permission. It was the potential for harm to horse safety at the Rayes Lane crossing that, in the SoS's words, would "*create perceptions*" of a "*more negative context for the industry*", which in turn would threaten its long-term viability<sup>330</sup>. The SoS did not accept that the development "*created perceptions*" or caused a "*threat*" to the HRI for any other reason. Therefore, remove the potential for harm at the Rayes Lane crossing, which it is common ground has been achieved, and there are no "*adverse perceptions*" or threat to viability. There is not, therefore, any basis on which to find conflict with Policy DM48.
307. Turning, then, to the alleged risk posed to the HRI by congestion. The starting point is that there is already some congestion in Newmarket, as recognised by the Inspector in 2015<sup>331</sup>. This is a historic problem. As far back as the 2011 Inquiry, the Inspector recorded the HRI's concerns that congestion was "*only just manageable*"<sup>332</sup> and the concern expressed then that "*worsening traffic conditions in the town would cause owners to send their horses to centres such as Chantilly*"<sup>333</sup>. Notwithstanding this, the industry has continued to grow. Indeed, one of the "*internal contradictions*" in NHG's case, as noted by Mr Justice Gilbert<sup>334</sup>, is that:
- "on the one hand, it urged that traffic levels had increased, yet also sought to argue that the industry was very successful, having attracted more horses since 2012. It is difficult to reconcile those arguments".*
308. The irreconcilable contradictions in NHG's case have, if anything, increased since the SoS's previous decision, with NHG now promoting development in Newmarket that will increase congestion in the town (not only at Philipps Close, but also the Sky Gallops, the racing museum and new racecourse) whilst simultaneously arguing that anything less than an overall reduction in vehicles (930 in the PM Peak) would imperil the HRI.
309. In any event, the key period for the HRI is in the morning (until approximately 1230). It is during this period that "*owners delight to see their horses traversing the town on their way to and from the gallops*"<sup>335</sup> and when the horses exercise on the gallops. Mr Gittus confirmed that this remains the case, and that owners visiting horses is a morning activity<sup>336</sup>. This period is not the same as the AM peak hour (which is between 0800 and 0900). Mr Jarvis explained that his first lot leaves the stables at 0730, and returned an hour later, with subsequent lots leaving in hour long intervals<sup>337</sup>. This was "*quite late*", with horses going out from other stables from six o'clock in the morning, but that the overall pattern

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<sup>330</sup> CD/ADCL/2 at DL/21.

<sup>331</sup> *Ibid* at IR/366.

<sup>332</sup> CD/ADCL/4 at para. 12.4.20.

<sup>333</sup> *Ibid* at para. 12.4.21.

<sup>334</sup> CD/ADCL/3 at para. 167.

<sup>335</sup> CD/ADCL/4 at para. 12.4.28.

<sup>336</sup> Mr Gittus XX.

<sup>337</sup> Mr Jarvis XX also his PoE at Appendix 1, para. 3.2.

was repeated across the town<sup>338</sup>. Given this, the key period of HRI activity extends well beyond either side of the highways AM peak (and only briefly overlaps)<sup>339</sup>.

310. Whilst there are some ancillary HRI related movements outside of the morning peak, these are minimal. Mr Achner, the JCE's lead medic (whose working hours end before the PM peak)<sup>340</sup> stated that he had been called out on only a couple of occasions after this time<sup>341</sup>. Mr Needham, who provides a road transport service for horses, explained that "*at least one or two*" of his trips would be in the peak time<sup>342</sup>. However, even if this was in the PM peak, the increase in delay in 2031 with the development (Scenario D vs Scenario E) is merely 58 seconds on the NHG's own figures (not "*discernible*", in the words of Mr Neil)<sup>343</sup>. Indeed, even taking the erroneous approach of comparing Scenario A with Scenario E, an increase (on the NHG's own figures) of just over eight minutes is hardly material in the context of an overall journey from Newmarket to elsewhere, which Mr Needham explains could take nine hours<sup>344</sup>.
311. Therefore, as Mr Gittus acknowledged, the "*most important period of the day*"<sup>345</sup> for the HRI is the morning. However, NHG's own modelling shows that for the period of HRI morning activity, which coincides with the AM peak, congestion in the design year would be lower with the development than without<sup>346</sup>. Indeed, even on the (erroneous) comparison of Scenario A with Scenario E, the largest increase in journey times as compared with the existing position is 58 seconds from the Bury Road to the end of Fordham Road<sup>347</sup>. Given that this is a change over a 13-year period, on an annualised basis it is less than five seconds a year and it is on a journey that most owners are unlikely to take.
312. On a more likely journey, High Street to Bury Road, NHG's own highways evidence predicts that the change is even less, at just 36 seconds<sup>348</sup>. It is beyond silly to suggest that an owner in 13 years' time would move from Newmarket, the "*pre-eminent centre for the breeding, training, racing and sale of thoroughbreds*", with a unique selling point that "*could not be translated elsewhere*" on the basis that, 13 years prior, this journey might have taken 30 seconds less.

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<sup>338</sup> Mr Jarvis in XX.

<sup>339</sup> Confirmed by Mr Gittus in XX.

<sup>340</sup> Mr Achner PoE at para. 2.12.

<sup>341</sup> *Ibid* at para. 2.12 and in XX. The list of incidents to which he has been called since the SoS's previous decision (at Appendix 2 of his PoE) shows that only 9% of incidents occurred in yards (14 out of 156 incidents) and, therefore, could potentially fall outside the morning period (we do not have the breakdown of how many of this 9% occurred in the afternoon, let alone how many occurred in the PM peak). In any event, he also confirmed that from the JCE's two depots, he could access the Racecourse side of town without going through the Clocktower Roundabout (see maps at Appendix 1 of his PoE).

<sup>342</sup> In response to XX by Mr Whipps.

<sup>343</sup> ID26, "*not perceptible*" – Mr Neil in XX.

<sup>344</sup> Mr Needham PoE at para. 2.2. He confirmed in XX by Mr Whipps that the congestion in the AM peak at the Clocktower was "*minimal*" compared to delays elsewhere on the wider network (albeit less predictable).

<sup>345</sup> Mr Gittus XX.

<sup>346</sup> ID26.

<sup>347</sup> See the (albeit not agreed) *SYSTRA modelling – Agreed Modelling Outputs* p 5/12.

<sup>348</sup> *Ibid*

313. In the absence of being able to demonstrate any *actual* harm, NHG are left with the strange argument that the industry will be harmed by the mere fact of approval. That the mere fact of a positive decision (taken on all the evidence, not least NHG's own modelling) would nevertheless indicate that the HRI was not valued by decision-makers and that its protective policies had been "*abandoned*". The suggestion is that the "*8-10 key, 'footloose' owners*" will then move away from Newmarket, forsaking its pre-eminent world-beating advantages, and go somewhere else.

314. This is not a new argument (although its prominence has increased as the actual harm alleged by the NHG has dwindled, and as it has begun increasingly to call expert evidence demonstrating the benefits of the proposal). A similar argument was made in 2012<sup>349</sup> and with more force in 2015<sup>350</sup>. It was comprehensively rejected by the Inspector in 2015. As she put it<sup>351</sup>:

*"It is appreciated that just because racehorse owners have invested heavily in training or stud facilities in Newmarket in the past they will not necessarily continue to do so if the conditions do not remain favourable. It is clearly impossible to know what future investment decisions a wealthy individual will make. They could be made on a whim in which case it seems unlikely that the application development would be a determinant. However even though the owning of thoroughbred racehorses may be a hobby or pastime it is also a business enterprise. It is not unreasonable to surmise that most will base their decisions on a shrewd and rational consideration of whether or not Newmarket will continue to offer the advantages that attracted the investment in the first place. The evidence of the trainers is important because they can be expected to have insight about how the owners of their racehorses behave. They will be important conduits of advice to their owners and it is inconceivable that a pessimistic picture would be painted if, on an assessment of the evidence, the Secretary of State considers that the application proposal would not be harmful to horse racing interests and decides to grant planning permission. [emphasis added]"*

315. The SoS did not dissent from this conclusion. It will be recalled that his finding of "*adverse perceptions*" followed from (and was directly connected to) his finding of an *actual* risk to horse safety<sup>352</sup>.

316. There is no basis to reach a different conclusion based on the evidence heard at this Inquiry. Mr Gittus accepted that trainers would be able to explain to owners that NHG's own evidence showed that congestion would improve during the period of the day most important to the HRI<sup>353</sup>. Further, it remains the case that there was no indication, in writing or otherwise, from any of these individuals that 400 dwellings at Hatchfield Farm would cause them either to take horses away from, or not bring horses to, Newmarket.

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<sup>349</sup> CD/ADCL/4 at para. 12.4.26.

<sup>350</sup> CD/ADCL/2 at IR168.7, 174-175, 178 and 394.

<sup>351</sup> *Ibid* at IR395.

<sup>352</sup> *Ibid* at DL19-21.

<sup>353</sup> Mr Gittus in XX.

317. The closest we got to this was in the proof of evidence of a trainer, Mr Fellowes, who said that if congestion got worse he would move from Newmarket<sup>354</sup>. That proof was signed and dated five days before Mr Fellowes confirmed his intention to move into new stables in Bury Road<sup>355</sup>, Newmarket; a move that with characteristic understatement Mr Gittus said was a "*pretty long way down the line*" when the proof was written<sup>356</sup>.
318. Mr Fellowes was (understandably) not called by NHG so that his apparent *volte face* could be explained. Rather, as in 2015, the nearest we got to a significant owner was Mr Anderson. However, as before, he was careful to say that it was *not* his evidence that 400 houses at the application site Farm would cause his boss, Sheikh Mohammed, to remove a single horse from Newmarket<sup>357</sup>. In fact, he confirmed that congestion was not a major problem for Godolphin, given its access to private facilities<sup>358</sup>.
319. There has been a vague suggestion that the owners may not in fact be rational, albeit that this suggestion was never made by the owners themselves, since horse-ownership is a "*hobby*".<sup>359</sup> A similar suggestion was made in 2015 (and rejected by the Inspector). However, again, Mr Wicksteed, for NHG, has given expert evidence to explain why this argument is flawed. His evidence was that although enthusiasm for horses may be the "*initial motivation*" for owners, "*it can subsequently be expected that they will then behave in a business-like manner*" and not be "*daft*" given the "*very shrewd business managers and advisers acting for them*"<sup>360</sup>.
320. We saw this for ourselves through the evidence of Mr Anderson, who carefully explained that the unique nature of Newmarket, and the fact that this could not be replicated elsewhere "*would be a significant factor for Godolphin's investment decisions*"<sup>361</sup>. The idea that, absent any actual harm, and in light of the irreplaceable benefits of Newmarket, an owner would disregard the significant levels of investment they had put in their business in Newmarket and relocate to an inferior location on a whim, is farcical. Unsurprisingly, it is without *any* evidential foundation. For all of these reasons, there is no basis to depart from the findings of Ms Downes on this issue.
321. Indeed, there is one change from 2015 that makes this argument even less compelling than it was before the previous Inspectors. It is now common ground that: there is an improvement to horse safety as a result of the works secured by the development; that the development would improve the level of congestion in the 2031 morning peak compared to the position without the development; and that the Rayes Lane Crossing signalisation will itself in fact reduce congestion.

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<sup>354</sup> Mr Gittus confirmed in XX that this is the only statement by a trainer who says that if things get worse he will move from Newmarket.

<sup>355</sup> ID5, in which he describes his new base as "*a home for life*".

<sup>356</sup> Mr Gittus in XX.

<sup>357</sup> Mr Anderson in XX.

<sup>358</sup> Mr Anderson in response to question from the Inspector.

<sup>359</sup> It was not even a proposition to which Ms Parsons appeared willing to subscribe, accepting in XX that it was no part of her evidence to suggest that owners are anything other than shrewd.

<sup>360</sup> Mr Wicksteed EIC.

<sup>361</sup> Mr Anderson in response to question from the Inspector.

322. This common ground is based on evidence called by NHG. Mr Cottee has provided the level of incident savings created by the signalisation of the Rayes Lane horse crossing and Mr Neil has demonstrated the reduction in average journey times, and the advantages of signalisation, through his model (for what it's worth). Therefore, to ignore the findings of the Inspector and the SoS would require the trainers, the "*very shrewd business managers and advisers*", and the 8-10 key owners not only to talk down their own industry (to their own detriment), but to do so in disregard of the evidence called by the HRI itself.
323. In conclusion, development of 400 houses at Hatchfield Farm would not threaten the HRI in Newmarket. Newmarket is thriving as the world-centre of flat racing. It has further potential to grow. The scheme improves the conditions in which the HRI has to operate. It certainly does not materially worsen them and there is no harm to the HRI. Policy DM48 is complied with and this head of objection is unfounded. Standing back, the obvious conclusion that the development would not harm the HRI is hardly surprising, given that the SoS found that there would be no harm to the HRI from 1,200 houses (three times the size and with a more modest highway improvement). Instead, given the state of the evidence, the HRI should positively welcome the grant of planning permission.

*Miscellaneous – Prematurity and Ecology*

324. Although not formally put forward as a prematurity objection, given the references made to the potential for a new Local Plan for West Suffolk we must briefly deal with this point. In any prematurity objection, the most significant question is: "premature to what?"<sup>362</sup>. The answer in this case is to a plan for which no formal document has ever been published, even in draft form. The contents of the plan are entirely unknown. Indeed, the Council estimates that it is almost two years away from being submitted for examination (which, if the progress of the SIR/SALP is anything to go by, is likely to be an underestimate)<sup>363</sup>.
325. The SoS has set out in the Framework how he goes about assessing weight to be given to emerging policy. Paragraph 48 sets out three factors. All three must be considered. None justifies any weight to be given to a document which does not exist even in draft. Similarly, the SoS has set out in paragraph 50 of the Framework how he goes about considering allegations of prematurity. He is of the view that arguments that an application is premature are unlikely to justify a refusal where a draft plan has yet to be submitted for examination. In any event, it would need to be demonstrated "*clearly*" how granting permission for the development concerned would prejudice the outcome of the plan-making process.
326. The current circumstances surmount none of those hurdles, and nor has NHG even attempted to do so. NHG need to argue, therefore, that the SoS must make an exception to his own policy (with no reason given for doing so); a profound exception that allows a scheme that accords with the most up-to-date expression of forward planning to be refused even though it is not central to a future policy document that does not yet exist. It stretches credulity to imagine

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<sup>362</sup> See e.g. Paterson J in Truro CC v Cornwall CC [2013] EWHC 2525 (Admin) at para. 64.

<sup>363</sup> Mr Sellwood PoE at para. 7.2.2.

the SoS doing so. Indeed, in his previous decision, the SoS found that the application was not premature to the SIR/SALP, which was then at Issues and Options stage<sup>364</sup>. It is, therefore, inconceivable that the application could be found to be premature to a plan that has not even reached this stage.

327. So far as ecology is concerned, the SoS in his previous decision concluded that the development would have no significant effect on the Chippenham Fen and Snailwell Poor's Fen SSSI, the Snailwell Meadows SSSI, the Breckland SPA, or on badgers or arable weeds<sup>365</sup>. This conclusion is unaffected by the subsequent quashing of his decision. The Applicant's Updated Environmental Report<sup>366</sup> explains why, on the basis of up to date information, there is no basis to depart from that conclusion<sup>367</sup>.
328. The Applicant's *Technical Report to inform Habitats Regulations Assessment*<sup>368</sup> explains that this conclusion is similarly unaffected by the recent People over Wind ruling, since the proposed development at Hatchfield Farm is not reliant on mitigation measures to screen out likely significant effects on European Sites<sup>369</sup>.
329. However, given the uncertain legal position on what can be classed as a mitigation measure, the SoS is urged to carry out an Appropriate Assessment in any event to avoid the risk of a legal challenge. It was accepted by Mr Elvin in opening, and Ms Parsons, that there is sufficient evidence before the Secretary of State for him to carry out an appropriate assessment on that basis. The information needed for the appropriate assessment is at Chapter 6 of the 2018 Technical Report to Inform Habitats Regulation Assessment<sup>370</sup>. The SoS can safely conclude, on the basis of this information, that there will be no adverse effects on the integrity of any European Sites (a conclusion shared by the Council and by Natural England).

### *Planning Balance*

330. The starting point is that, as matters currently stand, and until the adoption of the SIR/SALP, the application is to be determined in accordance with paragraph 11(d)(ii) of the Framework. This is common ground. Ms Downes carried out this balancing exercise<sup>371</sup>; the Secretary of State did not. This was one of the reasons why the previous decision was quashed.
331. The benefits of this development include: <sup>372</sup>
- Construction benefits: the scheme will inject c. £58 million of private sector investment into Newmarket. This will create 54 FTE jobs through direct

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<sup>364</sup> CD/ADCL/2 at DL27.

<sup>365</sup> *Ibid* DL22-26.

<sup>366</sup> CD/UP/8.

<sup>367</sup> See the "Summary of Ecology Issues" table, produced by Dr Simpson for a helpful summary of the (unchallenged) basis for this conclusion.

<sup>368</sup> CD/EC/1.

<sup>369</sup> See also Section 7 of the PoE of Dr Simpson.

<sup>370</sup> CD/EC/1.

<sup>371</sup> CD/ADCL/2 at IR/485-496.

<sup>372</sup> Ms Parsons accepted in XX that the economic benefits put forward by Mr Spry were not in dispute and that she did not suggest that the Inspector should depart from the SoS's conclusion in respect of the economic benefits.

employment and 81 FTE jobs from indirect/induced employment. This will generate £3.3m of direct GVA per annum during the construction phase<sup>373</sup>;

- Expenditure benefits: the scheme will deliver a significant boost to the local economy by generating a first occupation expenditure of £2.2 million and £3.9 million of new additional annual resident spending on shops and services. In total, the increased resident spending will support a further 35 FTE jobs<sup>374</sup>;
- Local authority revenue benefits: the scheme will deliver £612,000 of Council Tax receipts per year once the scheme is built out and occupied;<sup>375</sup>
- Employment benefits: the scheme would provide an increase in the Newmarket workforce to counteract demographic trends, which show a reduction in the working age population in Newmarket, and reduce the prospect of job losses in Newmarket<sup>376</sup>. This vital strategic role in sustaining the town's economy (including the HRI) also represents the substantive economic benefits of the scheme, not just the construction, expenditure and local authority revenue benefits identified above;
- Infrastructure/scheme benefits: the permission and associated section 106 would provide a number of benefits including (i) the option for the County Council to take up an adjoining site at Hatchfield Farm for a new Primary School (ii) ecological enhancements (iii) additional areas of open space (iv) off-site footpath and cycleway improvements (v) off-site horse crossing improvements;
- Social/housing benefits: the application proposal would deliver 400 new homes in a sustainable location, providing much needed housing in the district. 30% of the homes would be affordable and would be available to reduce the waiting list of households wishing to live in Newmarket. The development would not only provide a range of tenures (market, intermediate and affordable rent) but would offer a variety of house types and dwelling sizes in a sustainable location, near facilities and services for the everyday needs of residents. Whilst the Council is not reliant on the development to deliver a five-year housing land supply, given the importance that the SoS gives to boosting the supply of housing, this ought to be given "*substantial weight*", as the Secretary of State gave it in his previous decision, again made in the context of the Council having a five-year housing land supply;
- Benefits to the HRI: as explained, the scheme would lead to improved safety conditions at Rayes Lane. Given the acknowledged importance of horse safety, and given the importance of the HRI to Newmarket (as explained by Mr Gittus and Mr Wicksteed), the Applicant considers that this is a benefit to which the SoS should attach great weight. By only attaching limited weight to this benefit, the planning evidence led on behalf of NHG seeks to downplay the importance of improving equine safety at Rayes Lane. Further,

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<sup>373</sup> Mr. Spry PoE, page 69.

<sup>374</sup> *Ibid* page 70.

<sup>375</sup> *Ibid* page 70.

<sup>376</sup> *Ibid* pages 54 to 69.

the reduction in congestion in the AM peak should also be given great weight, given the acknowledged importance of this period of the day to the HRI.

332. As noted above, Mr Spry's evidence as to the adverse consequences of not permitting housing in Newmarket was not substantively challenged by Mr Wicksteed (who described his overall conclusion as being "*fair*")<sup>377</sup>. Thus, it is agreed that without additional housing Newmarket would suffer a reduction in jobs or, if jobs were to be maintained, would inevitably result in additional unsustainable in-commuting traffic.
333. Therefore, as the Framework indicates, the economic, social and environmental dimensions of sustainability are all interlinked. The position of the NHG in opposing the housing that Newmarket needs, cuts across, and causes detriment to, all three. In fact, the logical conclusion of the NHG's highways case goes even further. As explained earlier, Mr Cottee and Mr Neil consider that before any further development can take place in Newmarket, the highways system should see a net reduction in traffic and, therefore, a reduction in the population and/or economy of the most sustainable location for development of this size in the Forest Heath plan area (inevitably also to the detriment of the HRI itself).
334. There are only two points that can possibly be weighed on the negative side of the planning balance:
- Development outside the 1995 settlement boundaries: the application site is outside the existing settlement boundaries, but (i) the boundaries are out of date, based on housing requirements in 1995 (ii) there has already been a finding that the development is in a sustainable location (iii) the land on which the development will take place is not subject to any protective environmental or landscape designation;
  - Loss of best and most versatile agricultural land: an adverse effect given moderate weight by the SoS, but which Ms Parsons accepted that alone was not sufficient to mean that permission should be refused<sup>378</sup>.
335. As Ms Downes concluded, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the many benefits of the proposal. There is no basis to reach a different conclusion.
336. Of course, once the SIR/SALP are adopted, the application must be determined in accordance with an up-to-date development plan, which allocates the site. For the reasons set out above, the application accords with the development plan and therefore must be granted without delay in accordance with section 38(6) of the 2004 Act and paragraph 11(c) of the Framework.

### *Conclusion*

337. So, overall, what has changed since the Previous Decision?
338. The significant benefits of the application remain: the provision of much needed market and affordable housing; the economic and social benefits outlined by Mr

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<sup>377</sup> Mr Wicksteed in EIC.

<sup>378</sup> Accepted by Ms Parsons in XX.

Spry; the significant benefit of the works to the A14/A142 junction. To this can now be added the confirmed benefits to the HRI through the signalisation of the Rayes Lane crossing, and the reduction of congestion in the AM peak, the most important period of the day for the industry.

339. The local planning authority has confirmed its commitment to the site, which is shortly to be allocated in an up-to-date development plan. The HRI in Newmarket remains as robust and "*pre-eminent*" as ever and the NHG has provided expert evidence that any purported threat to the industry will not materialise in so far as one can ever reliably predict.
340. In turn, the reason why the SoS refused permission, horse safety at the Rayes Lane horse crossing (with the consequential impact on the HRI), has been resolved (and translated into an acknowledged benefit of the proposal).
341. Put against this, NHG points to congestion during the PM peak; a period of the day which has minimal impact on the HRI. Even here, however, the difference in the level of delay in 2031, with the development, is on NHG's own evidence not perceptible. NHG's case, already teetering on the edge of irrationality<sup>379</sup>, has finally crossed the line.

### **The Cases for Interested Parties Appearing at the Inquiry**

342. Oral representations made at the Inquiry, in addition to points made by the main parties, are summarised below:

#### *The case for Cllr Andy Drummond<sup>380</sup>*

343. The majority of councillors voting to support the Hatchfield Farm proposal were not Newmarket councillors. Nimbyism took over.
344. The A14/A142 junction has since become worse with traffic queuing dangerously on the slip roads. A major highways scheme is needed before any development is permitted.
345. There is no joined up thinking in place to consider how housing demand in Cambridgeshire will impact upon Newmarket.
346. Any decision should be deferred until a new West Suffolk Local Plan has been completed.

#### *The case for Mr John Gosden<sup>381</sup>*

347. He is the current Champion Flat Racehorse Trainer in the United Kingdom and have been a trainer for 40 years. His stables are located on Bury Road, Newmarket, where he has lived since 2006.
348. The pattern of urban development has led to a number of racecourses being closed across England. Newmarket itself has urbanised dramatically since he was last here in the mid-1970s, with development taking place on stud land and

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<sup>379</sup> CD/ADCL/3 at para. 170, per Mr Justice Gilbert: "*very weak*", "*very close*" to being irrational.

<sup>380</sup> Mr Drummond's Statement can be found at ID23. At the time of the Inquiry Mr Drummond was a Newmarket Town Councillor and West Suffolk District Councillor.

<sup>381</sup> Mr Gosden's Statement can be found at ID24.

racing stable land. Increased urbanisation will inevitably damage Newmarket's ability to function as the world leader for training and breeding that it is.

349. The town is unique and has been a centre of excellence for centuries. Housing needs, whether for Cambridge or locally, should not be allowed inadvertently to destroy Newmarket's viability and status.

*The case for Mr Luca Cumani*<sup>382</sup>

350. Before retiring last December, he lived and trained at Bedford House stables on Bury Road, Newmarket, for 43 years. He has raced horses all over the world and has never come across another training centre with facilities comparable to those in Newmarket. Everyone in other countries with a horse racing industry wishes that they had a place like this.
351. In the last 10 years, traffic in the town has become a major problem. Between 0730 and 0900 Bury Road and Fordham Road are so congested that HRI employees have great difficulty getting to their destinations.
352. Cars and horses are uncomfortable bedfellows and any increase in traffic could induce owners to look to more tranquil and suitable places for their horses to be trained.
353. 400 extra houses will bring irreparable damage to Newmarket's reputation as the best training centre worldwide.

*The case for Cllr Rachel Hood*<sup>383</sup>

354. She has lived in Newmarket for 25 years.
355. The Town Council has voted against any development at Hatchfield Farm on every occasion over the last 10 years.
356. At present there is a five-year supply of housing land; there will be ample land for development once Mildenhall airbase closes; and there are significant amounts of land available in Cambridge.
357. There is consistent evidence from the HRI that the development of Hatchfield Farm will damage the delicate infrastructure of Newmarket. The Town Council has supported and endorsed those views for over 10 years.
358. Forest Heath District Council (as was) and Suffolk County Council have shown a worrying absence of understanding of the economic and employment contribution of the HRI. She believes that this will now begin to change. She is a County Councillor, yet supports the NHG's criticisms of the highways department.
359. The Newmarket Neighbourhood Plan does not support Hatchfield Farm.
360. As Chair of Trustees of the National Heritage Centre for Horse Racing and Sporting Art, she can confirm that they rely on the vibrancy and success of the

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<sup>382</sup> Mr Cumani's Statement can be found at ID27

<sup>383</sup> Cllr Hood's Statement can be found at ID28. At the time of the Inquiry, Ms Hood was a Suffolk County Councillor, West Suffolk District Councillor, Newmarket Town Councillor and Mayor of Newmarket, as well as holding positions on other local groups.

HRI in Newmarket. Further urbanisation of Newmarket, worsening the already appalling traffic, would reduce the ability to attract visitors.

*The case for Ms Sara Beckett*<sup>384</sup>

- 361. She has lived in Newmarket for 15 years.
- 362. The town suffers from the high levels of vehicle movements associated with significant out commuting towards Cambridge. This impacts particularly on the A14/A142 junction. Signalisation of the junction would significantly improve the situation in the short term but will need to be combined with sustainable transport measures.
- 363. She is concerned about a number of factors. The economic impact of the HRI has not been properly considered. People will not walk into town from Hatchfield Farm. Hatchfield Farm cannot be sensibly compared to JCE's proposal for Philipps Close.
- 364. To approve this application with so much uncertainty about planning for the new West Suffolk District would be a mistake. Newmarket can wait for the right decisions about its future.
- 365. Newmarket has not been protected in the past, with housing gradually encroaching onto stud lands, paddocks and yards. It is not any other town and cannot be assessed using generic national guidelines and policies.
- 366. The town has reached a critical level of congestion at peak times and often at other times during the day. Various roads and junctions need to be considered together when talking about such congestion.

*The case for Mr Bill Rampling*<sup>385</sup>

- 367. He represents the Rural Parish Alliance (the Alliance), which is a group of 15 rural parishes within the former Forest Heath District area.
- 368. The Alliance works to ensure that development in the area occurs in the most sustainable locations and that new development in rural areas only occurs where there is adequate infrastructure in place.
- 369. They have always fully supported the Hatchfield Farm development and still feel that it is the most sustainable location in the whole District. It offers good access to employment, shops, healthcare, transport, leisure and schools. It would also offer a good proportion of affordable housing. It is the only site in the town that can be developed, as the rest is restricted by the HRI.
- 370. The Alliance considers that the increase in traffic from the site would be insignificant compared with the daily flows in and out of Tesco and Wickes, which are directly opposite. All towns experience increases in traffic. It is not something unique to Newmarket.

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<sup>384</sup> Ms Beckett's Statement can be found at ID29

<sup>385</sup> Mr Rampling's Statement can be found at ID30

371. The new horse racing museum, promoted by NHG, would generate high levels of tourism and traffic in town. This is in contrast to their attitude to Hatchfield Farm traffic.
372. He can recall the town when the A11 and A45 still ran through Newmarket. It was almost constant gridlock, but the horses still got trained. If anything, the volume of traffic has reduced with the introduction of the A14 bypass.
373. The Alliance acknowledges the contribution of the HRI to the District but believes that with careful thought, the horses and traffic can be managed. They have seen this with the new horse crossings on Barbara Stradbroke Avenue, giving safe passage across a busy road.

*The case for Cllr James Lay*

374. He has lived in Newmarket since 1960.
375. He objects to the application proposal and to the housing proposed for the villages around Newmarket, such as Kentford, Dullingham and Six Mile Bottom. There are currently just over one thousand houses available for sale or rent in the Newmarket area. The Council has a five-year supply of housing land.
376. If Hatchfield Farm is allowed then more facilities will be needed in Newmarket. The town needs a new hospital, as the A&E department is overloaded, which would cost £25m. The secondary school is full.
377. We need new towns, like Welwyn and Letchworth, not Hatchfield Farm or building in the villages.

**Written Representations**

378. The SoS will be aware of the written representations received in response to notification of the original application. For completeness, however, a summary of them may be found in the original officer's report to planning committee<sup>386</sup>. A summary of responses received in relation to the 2015 Inquiry may be found in IR2015<sup>387</sup>.
379. In relation to the reconvened Inquiry, letters/statements of support for, and objection to, the proposal were received.
380. The objections largely echo the points made by those who spoke at the Inquiry and/or by the NHG. As such, I do not repeat them here. Additional points made were that:
- Newmarket has insufficient infrastructure to support an increased population;
  - There would be damage to Newmarket's cultural and historic status;
  - There would be loss of "first class" farmland and environmental damage to Chippenham Fen;
  - Noise from the A14 would be intrusive for any future residents;

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<sup>386</sup> CD/P/1 paragraphs 66-67

<sup>387</sup> CD/ADCL/2 IR301-318

- There would be increased traffic on the Snailwell Road 'rat run'; and
- Surface water drainage would be a problem

381. In terms of support for the application, some factors were addressed by the Applicant or by Mr Rampling (above). Other matters raised were that:

- The application site is in a sustainable location, a long way from any training grounds and the development would have no impact on the open spaces around the town;
- The site is close to the A14 junction, which would receive a beneficial and needed upgrade from the proposal;
- The town is badly in need of more housing, especially high-quality affordable housing for those on lower incomes and for children who want to stay in the town in which they have grown up;
- The proposal would have the benefit of making land available for a new primary school;
- There must be progress in Newmarket, which has stagnated/declined, having been strangled by the HRI, despite being the largest town in the (former Forest Heath) district;
- The town needs a better balance and breadth of workers and residents, rather than relying on one industry, an industry that needs to adapt and rethink;
- A higher population is needed to sustain the town centre, which is dying, and local services;
- Residential development here would take the burden off small villages, where new housing has resulted in increased car use and commuting into Newmarket;
- The application is supported by many people but they do not have a voice as the Town Council is dominated by racing interests. Most residents have no connection with the HRI; and
- The heaviest traffic in town is actually during race days. The HRI has itself done nothing for many years to improve the safety of horses, riders and traffic at most of their crossings in spite of encouraging more trainers and horses into the town.

## **Planning Conditions**

382. With four exceptions (considered below) the conditions agreed between the Council and the Applicant substantially reflect those recommended by the Inspector at the 2015 Inquiry. On the basis of all that I have read and heard I see no reason to depart from them, other than where minor changes are needed to reflect changes in circumstance during the passage of time. Such changes do not alter the basic requirements of the conditions. As such, the

reasons for their necessity remain as they were at the time of the Inspector's report<sup>388</sup>. I endorse these reasons and see no need to repeat them here.

383. There was dispute between the Council and Applicant over the wording of an additional archaeological condition<sup>389</sup>. The Council's proposal appears merely to replicate, or to complicate, a requirement (criterion G) of the proposed Condition 20 and, as such, I do not consider it to be helpful. I have suggested a conflation of the conditions, as necessary, accordingly. Notwithstanding this, the parties' suggested alternatives are set out at the end of Annex C should the SoS decide to grant planning permission and deem either to be preferable to that which I have recommended.
384. Condition 29, as was, in relation to Exning Road roundabout, is no longer required as the works have been completed.
385. Two new conditions were agreed, relating to water consumption and electric vehicle charging. The first is necessary in the interests of compliance with JDMPD requirements in relation to water usage. The second is necessary in the interests of air quality preservation and the future proofing of the development (in line with paragraph 110(e) of the Framework).
386. In addition to the agreed conditions, I consider that the addition of a condition requiring the agreement of the dwelling mix for market housing at reserved matters stage is necessary in the interests of ensuring a development that is reflective of local needs. A condition specifying the maximum number of dwellings permitted on the application site is also necessary to provide certainty and clarity.

### **Planning Obligations**

387. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) requires that if planning obligations contained in s106 Agreements are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
388. A number of obligations are proposed, details of which may be found in the original Planning Obligation Agreement between the District Council, the County Council, the Applicant and the Mortgagee (C. Hoare and Co.). This should be read in conjunction with the Deed of Variation, submitted to the Inquiry<sup>390</sup>.
389. The obligations relate to the provision of:
- on-site affordable housing (30% of the total dwellings proposed);
  - a contribution towards Primary Education and Pre-School, including an option to secure land for a Primary School adjacent to the application site;
  - a Travel Plan (and associated Bond);
  - a contribution towards improvements to the Yellow Brick Road;

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<sup>388</sup> CD/ADCL/2 IR341-354; IR472-484

<sup>389</sup> And the justification for which remains the same as for the original condition 18

<sup>390</sup> ID35

- improvements to the Rayes Lane horse crossing and the widening of the horse walk on Fordham Road;
- a contribution towards improvements to local rights of way;
- a contribution towards improvements to Newmarket Library;
- on-site public open space (with commuted sum for maintenance); and
- a contribution towards local healthcare (being an increase in GP capacity in the relevant catchment).

390. Evidence of the necessity, relevance and proportionality of the obligations was set out in detailed submissions by the Council<sup>391</sup> and by Mr Chris Crisell<sup>392</sup> of West Suffolk Clinical Commissioning Group. These were discussed at the Inquiry.

391. Overall, the submissions and oral evidence demonstrate the basis for the obligations and how they relate to the development proposed; set out (or reference) how any financial contributions have been calculated and indicate whether the CIL Regulations' pooling limits have been breached. They set out the planning policy basis for the obligations. In my judgement they provide robust evidence that the above obligations meet the tests set out in the CIL Regulations.

## Conclusions

392. The following conclusions are based on the written evidence submitted, on my report of the oral and written representations to the Inquiry and on my inspection of the site and the wider area. The numbers in square brackets thus [] refer, as necessary, to paragraphs in other sections of this report.

393. As noted above [3] the SoS's reason for reconvening the Inquiry was his view that there had been significant changes in circumstances since the previous Inquiry. Thus, the focus of the re-opened Inquiry was on those matters that had changed since the 2015 Inquiry, and the SoS's previous decision, such that there was new evidence requiring scrutiny.

394. Of the Main Considerations at the previous Inquiry, it was common ground<sup>393</sup> between the main parties that those still of relevance related to highways and to impact upon the HRI. NHG confirmed that it no longer considered that impacts upon ecology or habitats presented a reason for refusal<sup>394</sup>.

395. This being so, the Main Considerations are the effect of the proposed development on:

- the safety and efficiency of the local highway network; and
- the horse racing industry (HRI) in Newmarket.

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<sup>391</sup> ID22 and ID36

<sup>392</sup> ID25 and ID32

<sup>393</sup> To wit the parties' concurrence with my Main Considerations

<sup>394</sup> See ID4 paragraph 12. Ms Parsons also confirmed the same in response to my questions.

### ***The safety and efficiency of the local highway network***

396. As at the previous Inquiry, neither the Highways Agency nor Suffolk County Council (as the Highways Authority) raised an objection to the proposal on grounds of either highway safety or efficiency.
397. Although the NHG was critical of the County Council's position and approach, there is no substantive evidence to suggest that it is fundamentally flawed. There is, rather, a difference in judgement between the County Council and the Applicant on the one hand, and the NHG on the other.
398. Indeed, I concur with the Inspector in the 2015 Inquiry that the position of the Highways Agency and County Council is a matter of considerable weight, given the bodies' respective responsibility for the strategic and local highways networks<sup>395</sup>.
399. Beginning with the strategic highway network, the focus is on the A14/A142 junction. The Highways Agency remains clear that the works proposed to this junction by the Applicant are acceptable and would provide sufficient capacity for the traffic arising from the proposal. It also states that:
- It is likely that with both the development and the proposed mitigation scheme in place the network could perform better in the assessment year than it would without.*<sup>396</sup>
400. Notwithstanding the NHG's view that its evidence in relation to this junction has not been addressed properly by Highways England, there is still no dispute from the NHG that the works proposed would be a benefit of the scheme<sup>397</sup>.
401. In addition, the SoS's acceptance of the previous Inspector's view that works to this junction would have the knock-on effect of reducing 'rat running' along Snailwell Road was not challenged by the NHG.
402. In short, the application scheme would appear to offer beneficial works to the A14/A142 junction, with some positive knock-on effects for the wider network. The SoS previously afforded this factor significant weight.<sup>398</sup>
403. Turning to the local highway network, the main focus of the NHG's objection had shifted from that at the 2015 Inquiry. It is particularly notable that the issue of adverse impacts upon the safety of horses (and their interaction with vehicles) was no longer pursued by NHG<sup>399</sup>. Certainly, the provision by the proposal of a new horse crossing at Rayes Lane, regarded as necessary for horse safety by NHG at the 2015 inquiry, would be a positive outcome of the application scheme [47; 114; 118; 225-228]. It would also address the previous concerns of the SoS<sup>400</sup> in this regard [180-182].
404. Concerns are now raised in relation to the impact upon the town centre road network, specifically the allegation that the application scheme would give rise

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<sup>395</sup> CD/ADCL/2 DL365

<sup>396</sup> See ID34

<sup>397</sup> NHG Closing Submissions paragraph 100

<sup>398</sup> CD/ADCL/2 DL18

<sup>399</sup> Ms Parsons in response to my questions

<sup>400</sup> As set out in his Decision Letter following the 2015 inquiry

to a severe residual cumulative impact (as per paragraph 109 of the Framework) and would have an adverse impact upon pedestrian safety.

405. As the SoS will be aware, there is no commonly used definition of what “severe” residual cumulative impacts on a road network may be. It is, therefore, a matter of judgement. Indeed, as Mr Cottee, for NHG, states in his evidence<sup>401</sup>:

*“There is no definitive queue length, level of road capacity or level of congestion available for use by decision makers to guide them on whether a particular situation exceeds the ‘severe’ threshold. This is because each set of circumstances is different and should be considered on its merits”.*

406. This is the approach that I have taken here, having regard, among other things, to journey times, queue lengths and junction interactions. Highway safety is, as noted in the Framework (paragraph 109), a discrete issue, which I address as such.
407. It is worth noting first that little, if anything, has changed in terms of the “base” level of traffic flows in the town since the last Inquiry, a point which NHG accepted<sup>402</sup>. In addition, the predicted (and agreed) growth factor has actually fallen slightly [247]. There is no difference in the amount of traffic predicted to be generated by the scheme, which is also the same.
408. Similarly, there is no dispute that there is congestion within Newmarket at certain times of day. Indeed, this was the view of the Inspector considering an appeal proposal for the application site in 2011, of the Inspector at the 2015 Inquiry and of the SoS<sup>403</sup>. It was also apparent from my lengthy observations of traffic flows in, and my drives through, the town centre.
409. There are defined peaks, as one would expect in any moderately sized town, but they are not excessive in length and appeared, from my observations and the evidence before me, to be remarkably regular in duration, with no peak spreading<sup>404</sup>. Traffic queues build but then disperse reasonably rapidly, as traffic signals change and, while there is some interaction between the Fordham Road/Fred Archer Way junction and the Clocktower Roundabout, it is limited and does not inhibit traffic flow to any significant degree or for significant amounts of time. Indeed, there are numerous instances of a vehicle being stationary on the roundabout without it blocking the passage of others on the circulating carriageway.
410. Southbound queues on Fordham Road can become lengthy at times, notably in the PM peak, but they tend to be rolling and/or broken-up queues, with “platoons” of vehicles moving along it and through its junctions, rather than single lines of standing traffic. The degree to which the queues extend back beyond Rayes Lane appeared to me to be governed largely by traffic interactions around the schools (and, in the morning, arising from horses crossing at Rayes Lane) rather than being a direct result of interactions between

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<sup>401</sup> Mr Cottee Proof paragraph 10.12

<sup>402</sup> Mr Cottee XX

<sup>403</sup> CD/ADCL/1 DL13; CD/ADCL/2 IR369 and DL18

<sup>404</sup> Nor was there any suggestion that peak spreading occurs.

the town centre junctions. As such, I do not consider the Applicant's approach to queue modelling beyond Rayes Lane to be inaccurate. [60; 258]

411. On the basis of all that I have read, viewed<sup>405</sup> and heard, I do not consider that the current levels of congestion in the town centre come close to being severe or that the network is operating at or over capacity. It is also notable that neither the Inspector at the 2015 Inquiry, nor the SoS in his Decision, found the base flows to be "severe" at the time. Others may, of course, disagree but this is, necessarily, an exercise in judgement, which both the Applicant and NHG acknowledged was involved in relation to observed conditions (and, indeed, in relation to whether specific types of modelling were appropriate or correct).
412. Considerable time was spent at the Inquiry debating the most appropriate means of modelling current and predicted traffic flows through the key town centre junctions (namely Fordham Road/Fred Archer Way and the Clocktower Roundabout, where Fordham Road, Bury Road and High Street converge<sup>406</sup>). I have some sympathy with the Applicant's frustration in this regard, given that neither the concerns now being expressed by NHG, nor its criticisms of the Applicant's modelling, have been raised in past Inquiries, in spite of the relevant junctions being readily observable and the Applicant taking the same approach to modelling. There is something of a sense of moving goalposts.
413. Notwithstanding this, the detailed arguments in relation to these points (which may be read in the summary of the parties' cases above) boil down to whether microsimulation modelling (MSM) or the use of industry standard LinSig/Arcady software is most appropriate. This, in turn, is predicated on a judgement about the degree to which the relevant junctions interact.
414. My views on this are set out above [409-410]. In short, I find that they do not interact to any significant degree and that any interaction that does occur does not compromise their operation to a level that would give rise to any concern. Thus, I do not consider that NHG's MSM, which may be appropriate when applied to complex or interacting junctions, offers any particular advantages, or reveals anything particularly helpful, over and above the Applicant's LinSig/Arcady modelling.
415. Indeed, by restricting the Base year flows on key links to below what observed flows appear to be, and over-egging queuing (notably on Fordham Road/Fred Archer Way), its predictions appear to be pessimistic in the extreme<sup>407</sup>. This is without having regard to the original model's failure to account for the Vehicle Actuated signal plan at the Fordham Road/Fred Archer Way junction and the pedestrian use of the faux zebra crossing on High Street, which call into question its accuracy and robustness. [267]

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<sup>405</sup> Including the video evidence presented by NHG and supplied by the Applicant

<sup>406</sup> Old Station Road also feeds in to the roundabout but no substantive issues were raised in relation to this route.

<sup>407</sup> I note the criticism of the Applicant's MSM work in the UTA in relation to the A14, but there is no compelling evidence that it is deficient. In any case, my focus is on the comparative work done in relation to the town centre network.

416. I also note the Validation failure of the MSM in relation to the Fordham Road southbound link, the focus of much of NHG's queuing concerns, once the pedestrian crossing is factored in. [268]
417. Additionally, many of the criticisms of the Applicant's modelling by NHG appear to arise from misunderstandings about its outputs and means of calibration/validation. [255-261]
418. Bringing this together, my preference is for the Applicant's modelling, which to me reflects more accurately that which one sees, and would see, in reality.
419. Ultimately, however, the debate<sup>408</sup> was moot. The Applicant was content to adopt the position that even if NHG's MSM derived summary figures are used (albeit that the Applicant disagrees with them), along with NHG's approach to establishing residual cumulative impact, they still fail to demonstrate severity<sup>409</sup>.
420. NHG has helpfully summarised the traffic data on which it relies<sup>410</sup> and, even using the figures derived from its favoured MSM approach, and comparison of Scenarios A (2018 base with the new Rayes Lane horse crossing in place) and E (residual cumulative impact at 2031, including the development and background growth (as per NHG's definition)), I do not consider that the application proposal would give rise to residual cumulative impacts, either during or without the peak periods, that could be considered severe.
421. First, NHG's own figures show that the application proposal actually improves (albeit very marginally) the average journey times across the modelled network in the AM peak<sup>411</sup> as against the times that would arise solely from predicted background growth. Given that this is the period of most concern to the HRI, this outcome is, in my view, very significant.
422. Even looking at the difference in times between Scenario A and Scenario E the change is just a 29 second increase over 13 years. In my view, such a *de minimis* increase in average AM peak journey times, to 3 minutes 17 seconds, across the modelled network, cannot, by any stretch, be considered indicative of a severe residual cumulative impact.
423. Turning to the PM peak, a time of much less significance for the movement of HRI vehicles, the A to E differential is just over 8 minutes<sup>412</sup>. Some arms may be predicting longer times but, overall, over a period of 13 years the average journey time in the PM peak through NHG's modelled network would increase by 8 minutes to 11 minutes 58 seconds. Others may come to a different conclusion, but I do not consider this to be reflective of a severe residual cumulative impact<sup>413</sup>.

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<sup>408</sup> Which also included a difference of opinion about how one established "*residual cumulative impact*". I have not seen the necessity to comment upon this, given my overall findings using the NHG's approach. They would not change if the Applicant's approach was taken.

<sup>409</sup> Applicant Closing Submissions paragraph 75

<sup>410</sup> ID37 and SYSTRA modelling – Agreed modelling outputs 6 May 2019

<sup>411</sup> ID37 as derived from SYSTRA modelling – Agreed modelling outputs 6 May 2019 Table 1

<sup>412</sup> *Ibid* Table 2

<sup>413</sup> For the sake of clarity, given that the Applicant's modelled traffic scenarios predict even lower times, I would not find them to be evidence of severe residual cumulative impact either.

424. It is also worth noting, by way of context, that the contribution of the application scheme to this increase in time would be just 53 seconds. Mr Neil (for NHG) accepted that, albeit in the context of the overall change, this contribution would not be a discernible or material exacerbation on the network as a whole<sup>414</sup>.
425. Looking at NHG's own five-day monitoring figures, it is evident that there can be significant variations in daily vehicle flows on Fordham Road, which is the main route into and out of the town to/from the A14 (and, in my experience, by far the busiest of the roads in question). They rise to 997 movements in the PM (on Friday 14 September 2018), from a five-day average of 804, and drop to a low of 606 (on Tuesday 11 September 2018). These variations are considerably greater than NHG's modelled levels for 2031 and yet do not give rise to their predicted outcomes<sup>415</sup> at key junctions<sup>416</sup>. [272-273]
426. The five-day monitoring may derive from two-way flows but, in my judgement, the comparison nonetheless throws into stark relief the lack of likelihood of NHG's predictions of significant increases in journey times, and lengthy queues, occurring on specific parts of the network (albeit during the PM peak) in 2031.
427. Indeed, the video evidence<sup>417</sup> shown by NHG for the monitored days further supports this view, as does the fact that this level of variation in flows, which does not compromise the integrity of the town centre network, would tend to indicate that the network is not operating over capacity. Yes, queues *may* become much longer in the PM peak, as one would expect, but traffic continues to move through the network at a reasonable pace, as I observed for myself on many occasions.
428. A number of witnesses made the point that Newmarket is unique, in as much as it has large numbers of racehorses 'interacting' with traffic during the mornings. The results of the traffic modelling work had to be taken in this context, it was argued. I do not consider, however, that the presence of horses around the town during the morning bears upon a determination of severity of residual cumulative highways impacts. The former has no impact upon the latter in the modelling work undertaken, other than in relation to the introduction of the Rayes Lane horse crossing, which actually improves matters (in terms of both horse safety and average journey times). [249]
429. In terms of horse safety more generally, although I did not witness any incidents, I have no reason to doubt that young, thoroughbred racehorses can react adversely to noisy vehicles. No compelling evidence was presented, however, to suggest that the limited amount of additional traffic arising during the AM peak would alter fundamentally the existing environment around the horse crossings and two key horse walks (in so far as the application scheme is concerned). Nor does the evidence suggest that this is a regular occurrence or a fundamental problem.

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<sup>414</sup> Mr Neil in response to Mr Boyle XX

<sup>415</sup> ID37 and *SYSTRA modelling – Agreed modelling outputs* 6 May 2019

<sup>416</sup> See Mr Cottee's Supplementary Proof, paragraph 8.18

<sup>417</sup> Please refer to Mr Cottee's Proof paras. 5.10; 7.11; 7.19; 7.22, and to Mr Neil's Proof Appx A, Section 1.3 for details of (and links to, as provided) the video evidence, which can also be found on the electronic file.

430. The horse walks are set away from the highway, behind hedging for most of Bury Road, and the application scheme proposes widening that on Fordham Road. Notably, the JCE's approach does not, with the reasonable inference being that the HRI has no fundamental concerns with this horse walk (beyond a wish that there was scope to widen it to allow for two way horse traffic). Indeed, the NHG seemed somewhat non-plussed with the Applicant's proposal to widen it, playing down any horse safety benefits arising from such work (given the greater distance created between horses and traffic). [50]
431. The improvements to the Rayes Lane horse crossing are agreed to be a benefit to horse safety<sup>418</sup> [118; 181; 225] and the design of that on Bury Road is such that there would not be any more vehicles facing the crossing than there are at present.
432. NHG also raised the issue of pedestrian safety around the town centre junctions. There is no doubt that pedestrians do cross at the Clocktower Roundabout and around the Fordham Road/Fred Archer Way junction (I did the same on several occasions during my time in Newmarket). The argument that, because of this, one should not wait for an accident to occur before one acts is not persuasive. It could be applied to any part of the highway network. The issue is whether there is evidence of a cause to be concerned in the first place.
433. The indicative crossing points (suggested by tactile paving) are not, generally, particularly helpfully placed nor especially obvious to motorists (albeit that visibility generally is very good). The only one that is clearly discernible is the *faux* zebra crossing at the top of High Street, which, in my experience, functioned well. Even so, at off peak times, one could cross both lanes of the various arms of the roundabout without difficulty.
434. When traffic is heavier, the process does become more difficult. NHG's video evidence shows pedestrians having to wait in the middle of the carriageway, notably on Fordham Road, and/or to retreat back to the pavement. I had to do the former on a couple of occasions. Even so, traffic in such circumstances is generally moving fairly slowly and most motorists showed a willingness to pause for pedestrians. Indeed, the roundabout appears to have been designed to encourage such behaviour (albeit that it is clearly not a 'proper' shared pedestrian/vehicle zone).
435. On the basis of my observations, and the video evidence, pedestrians do not cross at these points in large numbers. Most used the signalised crossing points on High Street and Fred Archer Way, and the refuge on Fordham Road near Rayes Lane, which is unsurprising given the location of the main retail area and the natural flows through it. The fact that there is no record of any accidents involving pedestrians at the locations of concern to NHG is, perhaps, reflective of this. It would certainly lead one to the reasonable conclusion that pedestrian safety is not an issue here.
436. Even if traffic were to increase considerably at the junctions in question, I can see no reason, on the basis of the current highway design and levels of

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<sup>418</sup> Albeit that NHG regards the weight to be afforded to them to be overstated.

pedestrian activity, to consider that this, or the current, situation would be "*an accident waiting to happen*"<sup>419</sup>.

437. I conclude that the application proposal would not have an adverse impact upon the safety and efficiency of the local highway network.

***Impact upon the horse racing industry (HRI) in Newmarket***

438. The focus of concern for NHG was the potential impact of increased traffic levels upon the operations of the HRI and the knock-on implications of that, to wit the relocation of owners and trainers to other towns. This concern had two prongs, being considerations of actual harm and a perception that harm could arise.
439. By way of context for my considerations it was common ground, unsurprisingly, that Newmarket is still very much the headquarters of horseracing in the United Kingdom and, arguably, the world, in terms of the breeding, sale and training of thoroughbred (flat) race horses.
440. Much was made, by various witnesses, of Newmarket's cluster of HRI facilities being second to none, with a unique set up that was not, and probably could not be, replicated elsewhere. These views on the importance of Newmarket to the HRI, and vice versa, reflect the conclusions of the Inspectors in the 2011 and 2015 inquiries. [294-296]
441. It is worth dwelling on what has changed for the HRI in Newmarket since the last Inquiry. 15 new trainers have moved to Newmarket since 2014 and 35 of the top ranked horses in the world were trained in the town, a rise from 26 in 2014 [153; 298]. Mr Wicksteed (for NHG) was emphatic that Tattersalls (bloodstock auctioneers) had shown very strong performance of late, that race meetings were performing strongly and that although the HRI as a whole hasn't grown particularly fast since 2015, this was not surprising given the wider economic environment. It had certainly maintained its position<sup>420</sup>. [153; 297-298]
442. Mr Gittus (for NHG) concurred that the HRI had continued to prosper since 2015<sup>421</sup> and that, although there has been a slight decline in horse numbers in the town from 2017<sup>422</sup>, he, like Mr Wicksteed, would expect some ups and downs as part of any economic cycle<sup>423</sup>.
443. Mr Crowhurst's (for NHG) updated Proof shows that the Newmarket Equine Hospital, of which he is a senior associate<sup>424</sup>, has employed an additional 12 vets and 46 staff<sup>425</sup> since the last Inquiry. Mr Byrne's proof speaks of considerable investments by Review Hotels Ltd, increasing the number of rooms at Bedford Lodge Hotel & Spa and recently purchasing The Rutland Arms Hotel on Newmarket High Street, reflective of a belief in the continued buoyancy of

<sup>419</sup> As suggested in NHG Closing Submissions

<sup>420</sup> All noted by Mr Wicksteed in Chief

<sup>421</sup> Mr Gittus XX by Mr Whipps

<sup>422</sup> Largely attributable to restructuring by "*a major player*", rather than a fundamental issue.

<sup>423</sup> Response to my questions.

<sup>424</sup> Having stepped down as Senior Partner since 2015

<sup>425</sup> The reference to "11" members of staff on p.3 of his proof being a typographical error. It was noted that it should read "111".

the bloodstock industry in the town and the need of auction attendees and race goers for hotel space. Mr Gittus also confirmed<sup>426</sup> that the British Racing School has recently completed additional works to its facilities.

444. Again, this is all far from indicative of an industry in decline, or at risk, in spite of the concerns about traffic levels in the town. In short, it appears that change in the industry since the last Inquiry has been for the better and that the HRI remains in rude health, in spite of operating within, what has been acknowledged as being, a congested town since the 2011 Inquiry. [97]
445. It is in this context that I turn to the issue of risk, whether real or perceived, to the HRI arising from congestion. The morning is the most important period of the day for the HRI and, thus, it is upon this period that I focus.
446. During the (notably early) morning, strings of horses make their way out to the gallops. I observed this happening on numerous occasions from as early as 0600 (although to reach my observation point, the horses must have left their stables even earlier), at which time traffic was extremely light. It tended to remain so until around 0800, when it began to build slowly before diminishing again by around 0900 or earlier. There was no dispute of Mr Plumb's evidence that there is a peak within this peak period.
447. Clearly, the degree to which the peak AM traffic flow overlaps with the lengthy (circa six and a half hours) key period of horse movements (and HRI activity more generally), up to around 1230<sup>427</sup>, is, overall, limited.
448. While there is, of course, a possibility of delays occurring to journeys being undertaken by vets, horse transporters and JCE medics in the peak hour, realistically this is (and would only be) for a small proportion of the overall time that horses are out on the gallops. There was no substantive evidence to suggest that this is a factor that has had significant, or indeed any, adverse consequences for the HRI in general, or individual outfits in particular, to date.
449. Clearly, horses do not remain out all morning. They are taken out for training and then return to the stables, when another string will head out. Even so, it is certainly difficult to see how within this lengthy morning period, trainers/owners would be unable to ensure that a specific horse could be viewed on the gallops within a given timeframe (outwith the peak hour as required).
450. On a more practical level, there was no suggestion that owners were incapable of doing what anyone seeking to visit a specific location within a specific timeframe must do, namely planning one's journey to take account of possible periods and areas of congestion, so as to arrive in a timely manner, or to travel to one's location the evening before.
451. Likewise, although I am sympathetic to what may be initial delays to journeys by horsebox, in the context of trips that can take several hours<sup>428</sup> NHG's predicted increases in average journey times are unlikely to be of any significance at all. I also note that the evidence of Mr Needham, in reference to

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<sup>426</sup> In response to my questions

<sup>427</sup> Mr Jarvis 2015 PoE paragraph 3.2

<sup>428</sup> Mr Needham talked of transporting horses abroad and to/from race courses in the north of England.

the heavy congestion on auction days, is that although his horseboxes cannot sometimes reach Tattersalls' sales complex, others can (*"with the consequent loss of business for us"*)<sup>429</sup>. This is indicative that a) the times of heaviest traffic congestion in Newmarket are generated by the HRI itself [456] and b) that such congestion is not an issue for all horse transport firms.

452. Overall, therefore, I am not persuaded that the limited increases in journey times across the modelled network would give rise to any actual harm to the operations of the HRI at all.
453. In this context, I also find it difficult to reconcile NHG's position that traffic conditions in Newmarket are already *"severe"*, notably in the PM peak, with the HRI's wider activities. First, much is made of the ability of the National Heritage Centre for Horse Racing and Sporting Art, which opened in 2016, to draw in substantial numbers of visitors to Newmarket. Similarly, the Discover Newmarket initiative, which is an HRI focused and supported attraction group, seeks actively to promote the town as a tourist destination<sup>430</sup>. As Mr Byrne's proof states<sup>431</sup>, its objective has been:
- "to increase visitor numbers in Newmarket ... significantly by promoting the history, culture and unique attractions of the town and its racing community".*
454. He states that the organisation and its activities have grown significantly in recent years and anticipates that it will continue to grow significantly.
455. Even if the majority of people drawn to the town by such promotion were to arrive by train or by coach it is not unreasonable to consider that a sizeable proportion would still travel into Newmarket by car, adding to existing flows.
456. Similarly, there is no dispute that it is race days and Tattersall's auction days that actually generate by far the heaviest amounts of traffic in the town<sup>432</sup>, resulting in heavy congestion. Yet this does not appear to have resulted in any diminution in the attractiveness of these events.
457. The JCE has ambitions to construct the so-called Sky Gallop (although funding for the project is not currently available) on the Racecourse Side and proposes an additional, all weather, race course for the town. Again, such facilities, notably the latter, which would host 50 plus meetings a year<sup>433</sup>, would be highly likely to increase traffic within the town.
458. Finally, JCE is promoting a planning application for up to 83 dwellings at Philipps Close in Newmarket [108; 137; 243]. Even noting JCE's desire for these dwellings to be restricted to those employed in, or retired from, the HRI in Newmarket, it seems highly likely that such a proposal would result in at least some increase in traffic movement in the town. Indeed, this was acknowledged by Mr Gittus<sup>434</sup>. Just taking this example alone rather calls into question NHG's

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<sup>429</sup> Mr Needham PoE paragraph 2.7

<sup>430</sup> See, for example, Cllr Hood's Statement and the proof of Mr Byrne.

<sup>431</sup> Paragraph 3.1, page 4

<sup>432</sup> See, for example, the proofs of Mr Gosden and Mr Needham

<sup>433</sup> Mr Gittus Proof paragraph 7.4

<sup>434</sup> Mr Gittus Supplementary Proof paragraph 2.19

explicit view that *any* development that would add even *slightly* to existing traffic levels should be refused<sup>435</sup> [68; 93].

459. It was suggested by NHG that Lambourn now posed a threat to Newmarket, which it did not in 2015, as a location that may draw trainers away from Newmarket in response to adverse impacts arising from increased congestion or, indeed, in its own right. There is not, however, any substantive evidence that this is the case.
460. Indeed, and perhaps ironically given the argument being advanced, Lambourn's growth appears in large part to be a result of investment by JCE. It is, I would suggest, implausible that JCE would invest in Lambourn if it felt that by so doing it would undermine Newmarket's pre-eminence. Even were that not the case, Mr Wicksteed was clear that Lambourn could never grow to rival Newmarket as it does not, and *could* not, have the infrastructure or facilities of the latter. [301]
461. I also note that the prominent trainer, Mr Charlie Fellowes, stated in his Proof that he was "*sufficiently concerned about the balance [between horses and urbanisation in Newmarket] moving in the wrong direction*" that he was seriously considering quitting Newmarket for Lambourn. In the full knowledge that planning permission for the application site could be granted, however, he has very recently purchased one of the town's most prestigious stables, on Bury Road, Newmarket, to which he has referred as a "*home for life*"<sup>436</sup>. Notably, Mr Fellowes was not called as a witness by NHG.
462. This would not suggest that Lambourn is seen as an increasingly preferable location to Newmarket for the top trainers or, indeed, that there is any real appetite to quit Newmarket in the face of the Hatchfield Farm planning application.
463. Concerns were still voiced about the potential for overseas locations to become more preferable than Newmarket. Again, however, there do not appear to be any locations that do, or could, realistically rival the agglomeration of equine services and facilities found in Newmarket. Mr Anderson (for NHG) was clear that Newmarket's offer was "*not replicated elsewhere*"<sup>437</sup>. Although Chantilly in France is similar, he noted, it does not have horse sales or the same level of veterinary support. Sites in Australia, such as Warwick Farm, Sydney, are much smaller, and in North America one has to travel considerable distances to access facilities beyond the race courses at which horses are typically based.
464. Mr Anderson did not state that Godolphin would move its operation elsewhere, in spite of his concerns. It was also clear that Godolphin would not be unduly affected even if there were to be severe congestion in the town, given that the outfit has its own facilities<sup>438</sup>. Patrons being unable to view their horses in training would not be a major problem for them, he noted. He was also clear

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<sup>435</sup> Mr Neil and Ms Parsons XX by Mr Boyle; NHG Closing Submissions paragraphs 46 and 73

<sup>436</sup> Please see ID5

<sup>437</sup> Response to my questions

<sup>438</sup> Godolphin Racing is not alone in this regard (see p.2 of Mr Wicksteed (hardcopy) response to Mr Spry's contextual information).

that Newmarket's unique cluster would remain a significant factor in investment decisions for Godolphin.<sup>439</sup>

465. Indeed, there is no evidence before the Inquiry to suggest that any trainers would move out of Newmarket, or that owners would remove their horses from the town, if planning permission was granted for the application scheme. Conversely, alongside Mr Fellowes' change of heart, owner Mr Bill Gredly's written representation<sup>440</sup> is clear that he would not be relocating any of his c.30 horses in training, and 100 horses on his two studs, away from Newmarket if planning consent was granted.
466. The views of Mr Anderson, coupled with the actions of Mr Fellowes and Mr Gredley are, arguably, supportive of the view of the Inspector at the 2015 Inquiry that:
- "It is not unreasonable to surmise that most [owners] will base their decisions on a shrewd and rational consideration of whether or not Newmarket will continue to offer the advantages that attracted the investment in the first place ... [Trainers] will be important conduits of advice to their owners and it is inconceivable that a pessimistic picture would be painted if, on an assessment of the evidence, the Secretary of State considers that the application proposal would not be harmful to horse racing interests and decides to grant planning permission."*
467. Certainly, Mr Wicksteed's evidence to the Inquiry was that race horse owners are "not daft", have "very shrewd buyers who act for them" and, once invested, "behave in a businesslike fashion". There is, in my judgement, little, if any, evidence of them acting, or being likely to act, upon whims.
468. In addition, I am mindful that the HRI in Newmarket has grown very considerably over a long period of time, while the settlement has become urbanised (with a commensurate rise in traffic levels). Development and the HRI have managed to co-exist with little difficulty. This has been achieved, one might consider, by balancing housing need against the needs of the HRI, whether consciously or not. The town and the HRI have adapted accordingly. There is no causal link between increased traffic growth and a diminishing HRI.
469. I fully appreciate that one cannot anticipate when a tipping point may be reached, whereby the two fail to prove compatible. It is a matter of judgment. I am not persuaded, on the basis of the evidence before me, however, that such a point would be reached with the granting of planning permission for the application scheme.
470. Over and above the background growth that is likely to occur anyway, the traffic impacts would be *de minimis* at best. Even considered in the round, assessing background growth and the application proposal against the base, using NHG's figures and approach, the impacts would be quite some way short of "severe" (even in the context of Newmarket), with the AM peak, the most important time for the HRI, seeing an improvement with the development in place.

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<sup>439</sup> Response to my questions

<sup>440</sup> Please see folder of letters from interested parties

471. In addition, the proposal would allow for the installation of an improved horse crossing at Rayes Lane. Given that there is no dispute about the highly-strung nature of thoroughbred racehorses, and the adverse reactions of some to noisy vehicles, this could, realistically, only be perceived to be a positive development for the HRI, providing safer passage for horses crossing Fordham Road in the morning. It is of further benefit in that it also improves the average journey times across the NHG's modelled town centre network.
472. Addressing the matter of urbanisation head-on, the application site is some distance from the huge swathes of gallops, which surround the town. It is difficult to see how it could be perceived as encroaching upon their semi-rural setting to any significant extent. Similarly, given the site's location, one would be hard pressed to come to a view that it would have any direct impact upon the town's local heritage and character.
473. In addition, the land in question is clearly in arable, rather than equine use. Thus, the scheme would not result in the loss of any functional stud land/buildings nor compromise the use of a race course or gallops. Indeed, it appeared to be remarkably free of constraints generally. It would not, therefore, result in the loss of facilities on which the HRI relies or which form an integral part of it.
474. Mr Gittus made reference to urbanisation as a contributor to the decline of Epsom. Notwithstanding that there was no suggestion that Epsom was ever comparable to Newmarket, it was the evidence of Mr Gosden<sup>441</sup> that it has been the loss of HRI land and facilities in other horse racing/breeding centres in England, which has contributed to their decline. In this context, the location of the application site *vis-à-vis* the effects of urbanisation on the HRI in Newmarket must be regarded as, at worst, benign. I contrast this with, for example, the adverse impacts upon the HRI of proposals referred to in oral evidence by Mr Gittus to re-develop Kempton Park race course (owned by the Jockey Club) for housing. [348]
475. Taking a worst-case scenario, even if, following the grant of planning permission, a significant investor relocated their horses<sup>442</sup> away from Newmarket, the view of Mr Wicksteed was very clearly that he could not see the town's HRI cluster "*imploding*", as it is "*exceptionally robust*". [301]
476. Even Mr Gittus was clear that, irrespective of whether the application scheme was granted permission, "*at some point it [overseas investment] will be less than it is now*". This, he noted, "*opens up opportunities for others*"<sup>443</sup>. Arguably, given Newmarket HRI's weighted reliance on a small number of very wealthy investors, which is a remarkably fragile state for any industry to be in, this could be no bad thing. Indeed, Mr Gittus referred several times to the collapse of the Detroit car industry as a salutary lesson. Given that, in simplistic terms, this was an example of a city being overly dependent upon a single industry, this is not far off the mark.

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<sup>441</sup> See ID24

<sup>442</sup> The evidence for the likelihood of such an action being thin, at best, and notwithstanding the point that an observer could not necessarily determine that one thing had occurred as a result of the other.

<sup>443</sup> Points made in response to my questions.

477. Both Mr Wicksteed and Mr Gittus noted that the HRI has had ups and downs even with overseas investment [442]. These do not appear to have affected it adversely, which suggests that the HRI can operate, and grow, successfully within certain tolerances anyway. Viewed in this context, any (albeit unlikely) adverse economic impacts that may arise from the application scheme would most likely be no more or less than the industry has experienced naturally in the past. Nor would they, in my view, adversely affect its viability in the long term.
478. There do not appear, therefore, to be any powerful push factors for owners/trainers arising from the application proposal such that there would be an adverse impact upon the HRI. Nor do there appear to be any strong pull factors, given that the offer of other potential training and/or breeding locations, whether in the United Kingdom or elsewhere, is not comparable to that of Newmarket [301; 303; 463-464].
479. Nor is there any real support for the view that there would be 'knee jerk' reactions on the part of owners or trainers, in response to perceptions on their part that planning permission being granted would create risks for the HRI in the long term. On the contrary, the evidence would, in my view, point towards owners and trainers taking a considered view of the impacts, if any, of some additional traffic versus the very clear benefits offered by the unique HRI cluster at Newmarket.
480. It was suggested that the mere fact of granting planning permission against the wishes of NHG could lead to a perception that the HRI is somehow sidelined, or not taken seriously, thus increasing any perception of harm that the industry feels. I cannot see how this could be the case. Paragraphs 9.1-9.2 of the JDMPD show awareness of Newmarket and the HRI's symbiosis. Policy DM48 of the JDMPD is explicitly and emphatically cognisant of the need to consider the effect of development upon the HRI in Newmarket, stating that:
- "Any development within or around Newmarket which is likely to have a material adverse impact on the operational use of an existing site within the Horse Racing Industry (such as noise, volume of traffic, loss of paddocks or other open space, access and/or servicing requirements), or which would threaten the long term viability of the horse racing industry as a whole, will not be permitted unless the benefits would significantly outweigh the harm to the horse racing industry."*
481. This reflects the recognition of the importance of the HRI, already set out in policy CS1 of the CS, which is clear that:
- "The importance of the Horse Racing industry and Newmarket's associated local heritage and character will be protected and conserved throughout the plan period."*
482. The development plan as a whole, therefore, takes full account of the need for planning decisions to consider impacts upon the HRI. It is not dismissive of the HRI, does not neglect it and does not fail to recognise its role.
483. A decision that goes against the views of the HRI is not somehow setting such protective policies aside. As anywhere, development proposals are assessed against a framework of planning policies, which are designed to ensure that

development, if permitted, meets defined criteria and/or provides mitigation where necessary and appropriate.

484. Consequently, the HRI should be assured that if planning permission for the application scheme was granted, it would stem from a reasoned judgement about the degree to which the proposal complied with relevant planning policies. Where it was found to have done so, and/or there had been a careful consideration of any benefits against any harm (perceived or actual), there cannot, in my judgement, be any grounds for the HRI to perceive that its concerns are not taken seriously. They most certainly are. The planning system does not, however, countenance the refusal of planning permission solely on the basis of the unexamined objections of a particular interest.
485. I am also mindful that the SoS's concerns following the previous Inquiry (that the application proposal, "...will create perceptions among owners and others in the industry of a more negative context for the industry in Newmarket"<sup>444</sup>) derived from risks that he considered would be associated with the potential adverse consequences of increased traffic at the Rayes Lane horse crossing.
486. The application scheme now proposes significant improvements to that crossing, replicating the scheme supported by the NHG at the previous Inquiry (and now), along with the widening of Fordham Road horse walk. Therefore, the creation of adverse perceptions arising as a result of impacts at Rayes Lane can no longer, in my view, be considered at all likely.
487. I conclude that the application proposal would not have an adverse impact (whether perceived or actual) upon the HRI and its viability in Newmarket, either now or in the long term.

### **Other Considerations**

#### *Prematurity*

488. A number of individuals argued that granting planning permission for the application scheme would be premature, given that West Suffolk Council is to begin work on a new local plan for its new administrative area. This argument has little merit. The Framework is clear that considerations of prematurity must be made in the context of an emerging plan that is at an advanced stage. As a local plan for West Suffolk has yet to manifest in any form, I do not consider that there would be any justifiable reason for refusing planning permission on grounds of prematurity.

#### *Sustainable location*

489. It was suggested that the application site is not in a sustainable location, in so far as a) its accessibility, chiefly to the town centre, is concerned and b) Newmarket's role in a settlement hierarchy is concerned.

490. These matters were addressed by the Inspector in her 2015 Report<sup>445</sup>:

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<sup>444</sup> CD/ADCL/2 DL21

<sup>445</sup> CD/ADCL/2 IR491

*"... the site is adjacent to the largest town in the district with its array of shops, facilities and services. There are thus opportunities for travel by modes other than the car and it can be concluded that this is a sustainable location".*

491. The SoS's Decision did not depart from her conclusions and I have not seen or heard anything that would lead me to demur. Indeed, I noted that the site is within very easy walking distance of a large supermarket, which could easily address day-to-day and weekly convenience shopping needs of any future residents at the application site (as well as many comparison goods needs).
492. If future residents wished to visit Newmarket town centre then the site is a straightforward walk or cycle ride into town, either down Fordham Road or via the so-called Yellow Brick Road off-road route, which would also be improved as part of the application proposal.
493. Following the creation of the West Suffolk local authority, it may be that Newmarket will no longer be the largest settlement in its District. It is still likely to be the second largest. As such, I see no reason to consider that its role would change significantly from that which it plays now, namely as one of the most sustainable settlements in the area. Indeed, it is notable that its credentials as such have been endorsed by the Inspectors examining the SIR/SALP, who expressed concerns about the disconnect between its evident sustainability and the levels of development initially proposed for it by the (Forest Heath) Council.
494. There is no reason to consider that the fairly modest (in the context of a town the size of Newmarket) level of residential development proposed for the application site would be at odds with the town's role either now or in the future. It is, in fact, reasonable to consider that it would still be a more preferable location for new development, in terms of access to services and facilities, than the villages around it.

#### *The Council's support for the proposal*

495. NHG argued that the Council's support for the proposal must be viewed with caution as Members have not been asked for their views since prior to the SoS call-in in 2014, even though a new local authority has come into existence and has been through an election.
496. This point is of little merit. Members are more than capable of requesting that specific items are put on to specific committee agendas for discussion. Given the time that has elapsed since the notification that the Inquiry was to be reconvened, this could easily have been actioned had there been a change of heart by Members. Similarly, it is entirely reasonable to consider that the Council would have made any change of heart clear, rather than sending a witness and advocate to the Inquiry in support of the application scheme.

#### *Ecology*

497. The SoS's previous decision concluded that the application scheme would have no significant effect on the Chippenham Fen and Snailwell Poor's Fen SSSI, the Snailwell Meadows SSSI, the Breckland SPA, or on protected species<sup>446</sup>. The Applicant's Updated Environmental Report explains their position that there is

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<sup>446</sup> CD/ADCL/2 DL22-26.

no basis to depart from that conclusion. NHG do not suggest that ecology or habitats present a reason for refusing the application scheme. [25; 327-329]

498. Nonetheless, the Council remains cautious about the implications of recent caselaw in relation to what can be defined as a mitigation measure. It is of the view, therefore, that an Appropriate Assessment should be carried out in relation to likely significant effects upon Chippenham Fen. [24]
499. Having considered the rationale for the Council's view<sup>447</sup>, I am of the opinion that it is being overly cautious. Nonetheless, precaution is often warranted with regard to these matters and, for the sake of completeness and prudence, the SoS may wish to carry out an Appropriate Assessment if he is minded to grant planning permission.
500. The Council, the Applicant and Natural England are of the view that there is sufficient evidence<sup>448</sup> before the SoS for him to carry out an Appropriate Assessment<sup>449</sup>. NHG have not gainsaid this<sup>450</sup> and I do not consider there to be any reason for me to do otherwise.
501. Nor do I see any reason why the SoS could not conclude (along with the Council, the Applicant and Natural England), on the basis of the evidence available, that there will be no adverse effects on the integrity of any European Sites. I address this in an Addendum Report.

## Planning Balance and Conclusion

502. It is common ground between all parties that West Suffolk Council can demonstrate a five-year supply of deliverable housing sites<sup>451</sup>. The supply is stated by the Council as being 6.3 years. Delivery from the application proposal is not factored into this supply. There is not, therefore, any immediate need for housing from the application scheme.
503. Even so, it also common ground that, regardless of the housing land supply situation, the Framework's so-called 'tilted balance' applies in this case. [29] This is because (as the Inspector at the last Inquiry found<sup>452</sup>, albeit in relation to definitions in the previous iteration of the Framework) it is felt that the 'relevant' parts of the development plan, setting out the allocations and phasing of residential development, in CS7<sup>453</sup>, were quashed<sup>454</sup> in 2011.
504. I have some doubts as to whether this factor meets the first criterion of paragraph 11(d) of the Framework, which brings the tilted balance into play in the event that there are "**no** [my emphasis] *relevant development plan policies*".
505. The development plan's spatial strategy in the CS remains extant, giving, with the assistance of its supporting text, a broad indication of the overall scale of

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<sup>447</sup> CD/SOCG/4 2.4.17-2.4.24

<sup>448</sup> CD/EC/1 - Chapter 6 Appropriate Assessment

<sup>449</sup> *Ibid* Section 4;

<sup>450</sup> NHG Opening Submissions paragraphs 12-13

<sup>451</sup> CD/SOCG/5

<sup>452</sup> CD/ADCL/2 IR486

<sup>453</sup> CD/LP/2 pp 57-59 (N.B. all of CS7 other than section 1 was quashed)

<sup>454</sup> ID20 and CD/LP/2A

development expected for specific types of settlement. There is also the JDMPD's suite of development management policies against which one can assess planning proposals. As such, there *are* relevant development plan policies against which one can consider the application scheme.

506. It was also argued that the settlement boundaries were out-of-date, as they were drawn up to meet development needs arising (out of the 1992 Structure Plan) to 2001. Again, I have doubts about this. The boundaries may be old, but the fact that West Suffolk Council is able to show a five-year supply of deliverable housing sites would suggest that the settlement boundaries are not constraining residential development. Consequently, their 'out-of-datedness' is debateable. Even if they were out-of-date, that alone would not be sufficient to trigger 11(d) as the rest of "*the policies which are most important for determining the application*" remain up-to-date.
507. I note that this view departs from that of the Inspector in the 2015 Inquiry, but she was making her assessment on the basis that the Council was unable to identify a five-year supply of deliverable housing sites and, as such, the boundaries were *de facto* out-of-date under the terms of the first edition of the Framework.
508. Nonetheless, for the purposes of this Report only, given the common ground between all three parties about the application of the "*tilted balance*", I undertake, below, a tilted balance exercise.
509. It is to the development plan that I turn first. The saved policies of the 1995 Local Plan are of little relevance and so I begin with the CS.
510. The application proposal would be at Newmarket, defined by policy CS1<sup>455</sup> as a "*market town*" and, thus, one of the three market towns in the former Forest Heath district to which "*the highest proportion of new development should be directed*". This being so, the quantum of development proposed appears to be entirely appropriate.
511. Likewise, given my findings above [472], I consider that the proposal would protect and conserve the importance of the HRI and Newmarket's associated local heritage and character. To this extent, therefore, there is no obvious conflict with CS1, which is one of the overarching spatial policies of the development plan.
512. Turning to the JDMPD, I first address DM5 and DM27. The former seeks to protect the countryside (being the area outside development boundaries) from unsustainable development, restricting new building to a limited range of circumstances. It cross refers to DM27.
513. DM27 sets out the circumstances when new dwellings in the countryside will be permitted, namely within a closely knit 'cluster' of 10 or more extant dwellings or the infilling of a small plot.
514. The application site is beyond the development boundary of Newmarket, as defined by the development plan Policies Map<sup>456</sup>. It is, therefore, for the

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<sup>455</sup> CD/LP/2 pp 26-33 (N.B. CS1 still contains the quashed sections thereof)

<sup>456</sup> CD/LP/4

purposes of planning policy, in the countryside. Given its scale and location it clearly fails to comply with either DM5 or DM27.

515. The full text of DM48 is set out above [31; 480]. The part relevant to the application scheme states that:

*"Any development within or around Newmarket ... which would threaten the long term viability of the horse racing industry as a whole, will not be permitted unless the benefits would significantly outweigh the harm to the horse racing industry."*

516. I have considered this matter carefully in my Conclusions and do not find that there is any real possibility that the application proposal would threaten the "long-term" viability of the HRI "as a whole". Nor do I consider that, in reality, given the benefits that the scheme would offer to the HRI (see below), the less than severe highways impacts that would arise from it, and the evident robustness of the HRI "as a whole", that there could be any perception of harm. Thus, I consider that the application scheme would comply with DM48.
517. Similarly, given my findings above, that the travel impacts of the proposal, such as they would be, could be satisfactorily mitigated<sup>457</sup>, I do not consider that there would be any conflict with policy DM45.
518. It is the view of the Council that the application proposal would be "contrary to the dominant operative policies of the development plan"<sup>458</sup>. NHG are of the view that the proposal would be contrary to the development plan taken as a whole. Although not stated explicitly in written evidence, it was the view of the Applicant that the application proposal complies with the development plan as a whole.
519. This matter is, in my view, fairly straightforward. Although none of CS1, DM45 or DM48 would be offended, the location of the application site is, nonetheless, at odds with the development plan's locational strategy for Newmarket, which seeks to retain new development within defined areas. The application scheme is at odds with this fundamental tenet of the development plan and thus, in my view, fails to comply with the development plan taken as a whole.
520. As the SoS will be very well aware, national planning policy seeks to boost significantly the supply of housing. This is not, however, its be all and end all. Considerable emphasis is placed upon a genuinely plan-led system, to actively manage patterns of growth. As such, this conflict is a matter that attracts very significant weight.
521. That weight is, however, tempered by the context created by the emerging SIR/SALP, which are no longer at the early stage that they were in 2015. At the time of writing, both plans have been through examination, with the Inspectors' report(s) expected shortly. The relevant section of the SALP, as examined, is set out above [15-16]. It establishes the principle of the development of the application site for up to 400 houses through policy SA6(g).

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<sup>457</sup> Including through the A14 junction works; the Rayes Lane horse crossing; off-site highways / PROW works; and Travel Plan.

<sup>458</sup> Mr Durrant Proof paragraph 5.1.12

522. It is clear that the Council was given a strong steer in a letter by the SIR/SALP Inspectors about, among other things, the need for Newmarket to take more housing development<sup>459</sup>. This led to the Council putting the application site forward as an allocation. On the basis of all that I have read and heard, I do not consider there to be any real prospect of this position changing or of the Council not moving to adopt the SIR/SALP on the basis of the Main Modifications proposed by them. Consequently, having regard to its advanced state and the clear direction of travel that it sets out for Newmarket, I consider that substantial weight may be afforded to the SIR/SALP.
523. Indeed, it is probable that by the time the SoS makes his determination, new parts of the development plan will have been endorsed by the examining Inspectors and, potentially, will have been adopted.
524. Any development on the site would also need to demonstrate, as per criterion B of SA6, that the transport impact (including cumulative impacts where appropriate) on horse movements in the town, together with other users of the highway, has been assessed to determine whether the proposal results in material adverse impacts; and to identify any measures necessary to mitigate the transport impacts of development (which may include contributions to upgrading horse crossings). On the basis of my considerations I can see no reason why the application scheme would not accord with this criterion.
525. Thus, while at present the application proposal fails to accord with the development plan taken as a whole, it seems to me that, in short order, this position will change fundamentally, to the extent that the application scheme would be very likely to *accord* with the development plan taken as a whole. This is a material consideration of significant weight.
526. Turning to the Framework (which is a material consideration of considerable weight) on the basis of my considerations I do not consider that the application proposal would conflict with paragraph 109. There would not be any severe residual cumulative impacts arising from the scheme, nor would there be any adverse highway safety implications, whether vehicular, ( or pedestrian.
527. There would be some loss of best and most versatile agricultural land. This is regrettable and not something to be downplayed. As the Council acknowledged, however, such loss is inevitable if the area's housing and employment development targets are to be met. It attracts moderate weight.
528. The application scheme would deliver a substantial number of new dwellings, 30% of which would be affordable dwellings. At the 2015 Inquiry, the SoS found this to be a "*substantial benefit*" that carried "*substantial weight*" <sup>460</sup>, even with his finding that the Council could demonstrate a five-year supply of deliverable housing sites. I see no reason to depart from this position, which was not challenged by NHG. Indeed, I note the NHG's case, expressed by Mr Gittus, that many HRI employees in more junior positions are in need of more affordable accommodation<sup>461</sup>.

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<sup>459</sup> CD/LP/16

<sup>460</sup> CD/ADCL/2 DL17

<sup>461</sup> Mr Gittus' Rebuttal Proof and Evidence in Chief

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529. I am also mindful of Newmarket's status as one of the most sustainable settlements in West Suffolk and of the application site's position as one of, if not the only, sustainably positioned large housing site at the town, both of which are factors that weigh in favour of the application scheme.
530. The scheme would also deliver a new horse crossing for Rayes Lane. On the basis of NHG's own assessment, this would have potential to reduce horse/traffic related "incidents" by 73% [225]. NHG questioned whether this provision could be regarded as a scheme benefit, given that JCE were proposing to deliver it anyway. In my view, it can be.
531. There is evidence of communication between Suffolk Highways and JCE but this is solely in relation to the commissioning of some design work for a crossing<sup>462</sup>. NHG stated that this level of informality had resulted in the delivery of other schemes in the past (albeit that little detail was provided). Nonetheless, given the apparent significance of the crossing I would expect there to be some substantive evidence of how, when and by whom the JCE scheme would be delivered.
532. In the absence of such detail, I do not consider that one can just assume delivery of the crossing by JCE irrespective of whether planning permission is granted for the application scheme. This being so, I consider that the new crossing, proposed as part of the application scheme, would be a significant benefit.
533. As noted, the application scheme would necessitate works to the A14/A142 junction, which in turn would improve what is commonly acknowledged as being a (long-standing) problem junction. The works would also lead to some positive knock-on effects for the wider network (notably in relation to the mitigation of rat-running on Snailwell Road). The SoS previously afforded this combination of factors "*significant weight*". In my judgement, the beneficial works to the A14/A142 junction attract significant weight alone. [232-233; 344; 362]
534. There would clearly be substantial construction investment in the scheme, which could provide some local construction, and associated, employment during its build out. Post-construction, there would be longer-term expenditure in the local economy.
535. The Applicant has provided figures that suggest that the scheme would increase Newmarket's workforce, thus counteracting demographic trends showing a reduction in the town's working age population. NHG were sceptical of the methodology used to derive the figures, but no alternative propositions were put to the Inquiry and Mr Wicksteed noted that Mr Spry was making a "*fair point*". I afford these factors moderate weight. [51; 332]
536. The development would generate Council Tax receipts for the Council. These are chiefly a means of offsetting increased public expenditure in a local area arising from an increased population. As such, I consider that this attracts very little weight as a benefit in the planning balance.

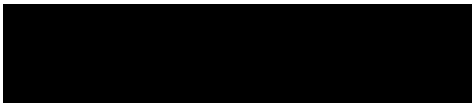
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<sup>462</sup> ID11

537. Some site specific and local off-site infrastructure works are highlighted as benefits. These are, however, chiefly policy requirements and/or mitigation. I consider that they attract very little weight. [331]
538. Overall, therefore, I conclude that the adverse impacts arising from the proposal's conflict with the adopted development plan (at present), and loss of best and most versatile agricultural land, would not significantly and demonstrably outweigh the benefits that the proposed scheme would deliver.
539. Even if I were to adopt the position that the tilted balance did not apply to the application scheme, I would still conclude that there is a weight of beneficial material considerations sufficient for a decision to be made other than in accordance with the development plan (as it stands).
540. Finally, in the event that the SIR/SALP are adopted by the time that the SoS makes his decision, I conclude that the application scheme would accord with the development plan taken as a whole, with no material considerations outweighing this compliance.

### **Recommendation**

541. For the reasons given above, and taking all other matters into consideration, I recommend that planning permission is granted subject to the planning conditions, set out in Annex C to this Report, and the accompanying planning obligations.



INSPECTOR

## **ANNEX A: APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr David Whipps, Solicitor

Instructed by Forest Heath District Council

*He called:*

Mr Gareth Durrant BA Dip TP

Principal Planning Officer (Major Projects)

*At conditions and obligations session:*

Mr Chris Crisell

Estates Planning and Support Project Manager, West Suffolk Clinical Commissioning Group

Mr James Cutting

Planning Strategy Manager, Suffolk County Council

### **FOR THE APPLICANT:**

Mr Christopher Boyle of Queen's Counsel

Instructed by Trevor Blaney Planning

Assisted by Mr Andrew Parkinson of Counsel

*He called:*

Mr Ian Dimbylow MEng CEng MICE MCIHT Technical Director, WSP

Mr Brian Plumb BSc CEng MICE MCIHT Senior Director, RPS Consulting

Mr Matthew Spry BSc DipTP MRTPI FRSA Senior Director, Lichfields

Mr Bob Sellwood BA DipTP MRTPI FRICS Managing Director, Sellwood Planning

### **FOR THE RULE 6 PARTY:**

Mr David Elvin of Queen's Counsel and Mr Luke Wilcox of Counsel

Instructed by Bracher Rawlins LLP

Assisted by Mr Nick Grant of Counsel

*They called:*

Ms Nicola Parsons BA (Hons) Dip UP MRTPI

Director, Pegasus Planning Group Ltd

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Mr William Gittus BSc Dip Surv MRICS	Group Property Director, The Jockey Club
Mr Hugh Anderson	Managing Director, Godolphin
Mr Kevin Needham	Owner and Managing Director, BBA Shipping and Transport Ltd
Mr James Crowhurst MA VetMB MVCVS	Senior Associate, Newmarket Equine Hospital
Mr Robert Achner	Links Manager and Lead Medic, Jockey Club Estates Ltd
Mr Malcolm Neil BEng (Hons) CENG MCIHT FCMI	Associate Director, SYSTRA Ltd
Mr Noel Byrne	Chief Executive, Review Hotels Ltd
Mr William Jarvis	Owner, Phantom House Stables
Mr Bill Wicksteed	SQW
Mr Michael Cottee BSc (Hons) TPP FCIHT CMILT MTPS	Managing Director, Cottee Transport Planning

**INTERESTED PERSONS:**

Cllr Andy Drummond	Newmarket Town Councillor and West Suffolk District Councillor
Mr John Gosden	Trainer, Clarehaven Stables
Mr Luca Cumani	Trainer, Bedford House (retired)
Cllr Rachel Hood	Mayor of Newmarket; West Suffolk District Councillor; and Suffolk County Councillor
Ms Sara Beckett	Local resident
Mr Bill Rampling	Rural Parishes Alliance
Cllr James Lay	West Suffolk District Councillor

## **ANNEX B: DOCUMENTS**

### **A. Core Documents**

These may be found electronically as part of the suite of appeal documents.

### **B. Documents Submitted to the Inquiry** (prefixed by 'ID' in the main report)

- ID1 Submission by Kris Mitchell (local resident)
- ID2 Opening Submissions on behalf of the Applicant
- ID3 Opening Submissions on behalf of West Suffolk Council
- ID4 Opening Submissions on behalf of the Newmarket Horsemen's Group
- ID5 Article from The Guardian newspaper about Mr Charlie Fellowes, 14 April 2019
- ID6 SALP Further Main Mods Schedule
- ID7 SYSTRA Modelling – Further Information 9 May 2019 (sometimes referred to by the parties as "*the May Note*")
- ID8 WebTAG extract
- ID9 RPS Traffic Flows Comparison Table
- ID10 SYSTRA modelling – VA clarification note 12 May 2019
- ID11 Emails between Suffolk Highways and Jockey Club Estates re design work for Rayes Lane horse crossing
- ID12 Mr Cottee response to Mr Plumb Proof of Evidence Figure 3-3 Appendix F
- ID13 Mr Cottee response to Mr Plumb response to matters raised in Mr Cottee Supplementary Statement Appendix MSC3 Para 3.3
- ID14 Mr Cottee comments on WSP Observed Queues vs Modelled Queues
- ID15 Council Statement on Matter 3 (Housing Land Supply) for Core Strategy Review examination and Report to Council Interim SA Report 21 Feb 2018
- ID16 Hartshill Planning Application Transport Assessment, including Paramics Report, by Systra, 16 January 2018
- ID17 Introduction to 2016-based housing projections for England
- ID18 Statement by Mr Andrew Appleby (local resident)
- ID19 Update of Table 6.1 to Mr Plumb's Proof of Evidence
- ID20 Copy of Court Order quashing parts of the Forest Heath District Council Core Strategy, 21 April 2011
- ID21 Note on S106 Document plus a composite annotated S106, submitted by the Applicant
- ID22 CIL Compliance Supplementary Statement and appendices for the Council
- ID23 Statement of Cllr Andrew Drummond

- ID24 Statement of Mr John Gosden
- ID25 Letter from West Suffolk Clinical Commissioning Group to Sellwood Planning, 6 December 2018
- ID26 Note Comparing Applicant's and NHG's figures on delays across town centre modelled junctions (submitted by the Applicant)
- ID27 Statement of Mr Luca Cumani
- ID28 Statement of Cllr Rachel Hood
- ID29 Statement of Ms Sara Beckett
- ID30 Statement of Mr Bill Rampling
- ID31 Statement of Ms Fiona Unwin
- ID32 Letter from West Suffolk Clinical Commissioning Group to Sellwood Planning (for the Applicant), re updated Healthcare Contributions, 28 May 2019
- ID33 Further bundle of information from the Council regarding required planning obligations
- ID34 Email from Highways England to RPS Group (for the Applicant) regarding works proposed for A14/A142 junction, 31 May 2019
- ID35 Final (certified copy) Deed of Variation to S106 agreement, dated 3 June 2019
- ID36 Updated CIL Compliance Statement for the Council
- ID37 NHG summary of figures on delays and queues
- ID38 NHG response to email from Highways England to Mr Plumb
- ID39 Closing Submissions on Behalf of NHG
- ID40 Closing Submissions on Behalf of the Council
- ID41 Closing Submissions on Behalf of the Applicant

## **APPENDIX C: RECOMMENDED CONDITIONS**

- 1) Prior to the submission of any reserved matters application, a detailed Design Code for the development shall be submitted to and approved in writing by the local planning authority. The detailed Design Code shall demonstrate how the objectives of the Design and Access Statement and the adopted Masterplan for the wider site will be met. Subsequent reserved matters shall conform with the approved Design Code in all material respects.
- 2) Prior to the submission of any reserved matters application, and notwithstanding the particulars shown on the Land Use Plan (SS060854\_42), details of the types of new and existing open and green spaces within the site, their connectivity and a timetable for implementation shall be submitted to and approved in writing by the local planning authority. Subsequent reserved matters shall conform to the approved Land Use Plan and its timetable.
- 3) Prior to the submission of any reserved matters application, a Lighting Strategy shall be submitted to and approved in writing by the local planning authority. This shall identify which parts of the site are sensitive for the commuting, foraging or resting of bats and how external lighting will prevent disturbance in such areas. Subsequent reserved matters applications shall conform to the Lighting Strategy.
- 4) The number of dwellings to be constructed shall not exceed 400.
- 5) The mix of any market housing for any phase of development authorised by this planning permission, including details of size and type, shall be agreed in writing by the local planning authority as part of any relevant reserved matters application(s). Development of each phase shall thereafter be carried out in accordance with the approved mix.

### **If the development is to be built in several phases, Conditions 6-9 apply:**

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

before the expiration of 1 year from the date of the approval of the last reserved matter for the Final Phase, whichever is the later.

**If the development is to be built in a single phase, Conditions 10-12 apply:**

- 10) Details of the appearance, landscaping, layout, and scale (the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 11) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 12) The development hereby permitted shall begin no later than the expiration of 5 years from the date of this permission or before the expiration of 1 year from the date of approval of the last of the reserved matters, whichever is the later.
- 13) The development hereby permitted shall be carried out in accordance with the following approved plans: SS060854\_6A (Location Plan); SS060854\_42 (Land Use); 0719-GA-03B (Northern Development Access); 0719-GA-05B (A142/Willie Snaith Road/Southern Development Access Roundabout Improvements).
- 14) The first submission of Reserved Matters shall include details of a strategic drainage scheme for the provision and implementation of surface water drainage for the entire site, based on sustainable drainage principles in accordance with the SuDS Manual (CIRIA C697). All submissions of Reserved Matters shall include a detailed surface water drainage scheme for that phase (including details of how the scheme will relate to other phases).
- 15) The strategic drainage scheme shall demonstrate the surface water run-off generated up to and including the 100-year event. Critical storm run-off, with an allowance for climate change, shall not exceed the run-off from the undeveloped site following the corresponding rainfall event and shall demonstrate the exceedance flow paths. The details shall include:
  - Provisions to be made for the management and maintenance of the scheme for the lifetime of the development; and
  - A timetable for implementation to take account of any phasing of the construction of development.

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

- 16) No development shall take place until a scheme for improvements to the A14 Junction 37 has been submitted to and approved in writing by the local planning authority. This shall be in general conformity with the signalised arrangements shown on Drawing Nos: 07-SK-39; 0719-GA-01B; 0719-GA-02B; 0719-GA03B. The approved junction improvements shall be carried out before the first dwelling is occupied.
- 17) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- The parking of vehicles of site operatives and visitors;
- Loading and unloading of plant and materials;
- Storage of plant and materials used in constructing the development and the provision of temporary offices;
- Wheel washing facilities;
- Measures to control the emission of dust and dirt during construction;
- Access and protection measures around the site for pedestrians, cyclists and other road users, including arrangements for diversions and the provision of associated directional signage;
- Measures to be taken to prevent pollution of the received ground and surface water;
- Details of the hours that construction may take place;
- Details of the routes to be taken by construction traffic; and
- A lighting scheme (if any) for the construction site and any compounds.

18) No development shall take place until an Ecological Mitigation Scheme (EMS) has been submitted to and approved in writing by the local planning authority. The EMS shall set out details of the mitigation, conservation and enhancement measures for habitats, fine leaved fumitory, reptiles, bats, badgers and birds based on Wardell Armstrong's Updated Environmental Report (December 2018) and appended ecological surveys. The EMS shall include the following:

- Purpose and conservation objectives of the proposed works;
- Detailed designs and/ or working methods necessary to achieve stated objectives;
- Extent and location of proposed works shown on appropriate scale maps and plans;
- Timetable for implementation, demonstrating that works are aligned with any phasing of construction;
- Persons responsible for implementing the works;
- Details of initial aftercare and long-term maintenance;
- Details of the disposal of any wastes arising from the works; and
- Details of monitoring and remedial measures.

The EMS shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.

19) No development shall take place until details, which show how the existing trees and hedgerows that are to be retained will be protected during the course of construction, have been submitted to and approved in writing by the local planning authority. The details shall accord with BS 5837: Trees in Relation to Construction. All approved tree and hedge protection measures shall be in place

prior to the commencement of construction and shall be retained thereafter until construction has been completed.

- 20) No development shall take place within each development phase until the implementation of a programme of archaeological work has been secured in accordance with a Written Scheme of Investigation (WSI), which has been first submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions and:

- The programme and methodology of site investigation and recording (a minimum of 3% trenching of the application site will need to be included in the scheme to complement the 2% site area trenching carried out and agreed previously);
- The programme for post investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The site investigation shall be completed prior to development and/or in accordance with such phased arrangements set out in the approved WSI. No development shall take place other than in accordance with the WSI.

- 21) No other development shall take place until the proposed access from Fordham Road has been provided in accordance with either Drawing No 0719-GA-03B or Drawing No 0719-GA-05B with the first 20 metres of the access road from Fordham Road being finished to surface level and retained in that condition until and unless the road is adopted as highway maintainable at public expense.
- 22) No development shall take place until details of how construction waste will be recovered and re-used on the application site or elsewhere has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details for the duration of the construction period.
- 23) No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include the following:
- Description and evaluation of features to be managed;
  - Ecological trends and constraints on site that might influence management;
  - Aims and objectives of management;
  - Appropriate management options for achieving aims and objectives;

- Prescriptions for management actions;
- Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- Details of the body or organisation responsible for implementation of the plan;
- Ongoing monitoring and remedial measures;
- Details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer and the management body responsible for its delivery;
- How contingencies or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme; and
- Details of the areas and features to be managed, both on and off the site;
- The aims and objectives of the management regime and how they will be achieved;
- The arrangements for monitoring and any necessary remedial action;
- The funding mechanism for the long-term implementation of the LEMP and who will be responsible for its delivery and ongoing operation; and
- An implementation programme.

The LEMP shall be implemented in accordance with the approved details

- 24) No development shall take place until details of the layout, levels, gradients, surfacing and drainage of the estate roads and footpaths have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 25) No development shall take place until a scheme for the improvement of the Rayes Lane / Fordham Road horse crossing has been submitted to and approved in writing by the local planning authority. This scheme shall be in general accordance with the arrangements shown on Drawing No. 13115/18G (the signalised scheme by NHG in NHG/2/2 Appendix 8 of the evidence to the 2015 Planning Inquiry). The approved improvement works shall be complete and fully operational prior to the occupation of the first dwelling hereby permitted.
- 26) No development shall take place until a Travel Plan, including a timetable for its implementation, detailing the provision of measures to encourage non-car mode share to reduce the vehicle impact of traffic arising from the development hereby permitted has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented as approved.
- 27) No dwelling shall be occupied until details of the provision of fire hydrants served by mains water supply, including a timetable for their provision, have been submitted to and approved in writing by the local planning authority. The fire hydrants shall be provided in accordance with the approved details and timetable and retained thereafter.

- 28) No dwelling shall be occupied until the Puffin and Toucan crossings on Fordham Road have been provided in general accordance with Drawing Nos 0719-GA-04B and 0719-GA-05B.
- 29) No dwelling shall be occupied until pedestrian and cycle improvements to provide improved links between the site and the Yellow Brick Road have been provided in general accordance with Drawing Nos 0719-GA-05B and 0719-GA-06B.
- 30) No dwelling shall be occupied until the carriageways and footways between that dwelling and Fordham Road have been constructed to binder course or surface course level.
- 31) No more than 150 dwellings shall be occupied until both vehicular accesses and associated crossing works between the site and Fordham Road have been laid out, completed and made available for use in accordance with Drawing Nos 0719-GA-03B and 0719-GA-05B. These works shall include the signalised crossing on the development site approach to the Willie Snaith roundabout.
- 32) No individual dwelling hereby approved shall be occupied until the optional requirement for wholesome water consumption (110 litres use per person per day) in Part G2 Regulation 36 of the Building Regulations 2016 has been complied with for that dwelling.
- 33) No development shall take place until a scheme for the provision of operational electric vehicle charge points at the dwellings hereby permitted has been submitted to and approved in writing by the local planning authority. The electrical supply to the charge point shall be capable of providing a 7kW charge. Development shall take place in accordance with the approved scheme, which shall be retained thereafter.

#### Alternative proposals for condition 20

- x) No development shall take place within each development phase until the implementation of a programme of archaeological work has been secured in accordance with a Written Scheme of Investigation (WSI), which has been first submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions and:

- The programme and methodology of site investigation and recording (a minimum of 3% trenching of the application site will need to be included in the scheme to complement the 2% site area trenching carried out and agreed previously);
- The programme for post investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;

- Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation; and

The site investigation shall be completed prior to development and/or in accordance with such phased arrangements set out in the approved WSI. No development shall take place other than in accordance with the WSI.

**AND**

Council preference:

- y) No building shall be occupied within each development phase until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under Condition X and the provision made for analysis, publication and dissemination of results and archive deposition

OR

Applicant preference:

- z) No development shall take place other than in accordance with the WSI approved under condition X.



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

by Richard Schofield BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

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**Town and Country Planning Act 1990**

**WEST SUFFOLK COUNCIL**

**Application made by**

**LORD DERBY**

Inquiry held on 8-10 May; 14-17 May; 21-22 May; and 5 June 2019  
Site visit undertaken 7 May 2019

Land at Hatchfield Farm, Fordham Road, Newmarket

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

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

**Land At Hatchfield Farm, Fordham Road, Newmarket, Suffolk**

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

- 1.1 As noted at several points in the main report to which this addendum relates, matters relating to ecology, both on and off the application site, were not disputed by the main parties. Ecological impact was not, therefore, a main consideration in the report.
- 1.2 The Statement of Common Ground<sup>1</sup> on ecological matters between the Council, the Applicant and Natural England confirms that there is no dispute between them in relation to the impacts (lack thereof) upon on-site ecology, non-statutory sites of importance for nature conservation and statutorily protected sites (subject to relevant safeguarding measures).
- 1.3 The sole matter of disagreement within this Statement of Common Ground relates to the Chippenham Fen Ramsar site/Fenland Special Area of Conservation. The Council's view is that, because of potential uncertainty about whether certain factors affecting Chippenham Fen could be regarded as mitigation, an Appropriate Assessment would be required if the grant of planning permission were to be considered. The Applicant disagrees but, nonetheless, considers that it would be prudent for the Secretary of State to carry out an Appropriate Assessment to avoid the risk of legal challenge on this matter, were he minded to grant planning permission.
- 1.4 There is no dispute between the signatories that such an assessment should conclude, based on the available evidence<sup>2</sup>, that there would be no adverse effects arising to the integrity of European sites.
- 1.5 Pursuant to this, the Secretary of State has requested an addendum report setting out the issues relating to the Likely Significant Effects to European sites arising from the development. It will be for the Secretary of State as the competent authority in this case to address the requirements of the Habitats Regulations and, if required, to produce an Appropriate Assessment to support a decision granting planning permission. This Addendum Report simply sets out matters he may wish to consider in carrying out that duty.

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<sup>1</sup> CD/SOCG/4

<sup>2</sup> Which the Newmarket Horsemen's Group agreed was sufficient to carry out an Appropriate Assessment.

## 2. CONTEXT

- 2.1 Article 6 of the Habitats Directive, which has been transposed into UK law through the Conservation of Habitats and Species Regulations 2017<sup>3</sup>, requires that where a plan or project is likely to result in a significant effect on a European site, and where that plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives. In particular, an assessment is required as to whether a development proposed is likely to have a significant effect upon a European site, either alone or in combination with other plans and projects.
- 2.2 The so-called *People over Wind* judgement<sup>4</sup> ruled that measures intended to avoid or reduce the harmful effects of a plan or project (i.e. mitigation) should not be taken into account when determining if significant effects are likely and that they could only be considered at the Appropriate Assessment stage.

## 3. PROJECT DESCRIPTION AND LOCATION

- 3.1 Details of the proposed development, its location and where further information about it may be found, are described in the main report.
- 3.2 In summary, the site is on the north eastern edge of Newmarket, to the east of the A142 and to the south of the A14. The A142/A14 junction is around 350 metres to the north west of the site boundary. The site lies adjacent to agricultural land to the north and east, which is also part of Hatchfield Farm. To the south is Stanley House Stud.
- 3.3 The appeal proposal is for residential development of up to 400 units (of a mix of tenures and types) and open space. There would be landscaping in and around the site, with limited removal of vegetation to provide access onto the A142.
- 3.4 There would be a new junction on the A142, along with some off-site works to the highway and to the network of pedestrian and cycle paths around the site. There would be provision of foul and surface water drainage infrastructure.
- 3.5 The application site lies within 10 kilometres of five internationally designated wildlife sites: Breckland Special Protection Area (SPA); Devil's Dyke Special Area of Conservation (SAC); Fenland SAC; Wicken Fen Ramsar site and Chippenham Fen Ramsar site. The boundaries of the Fenland SAC are coincident with the boundaries of the two Ramsar sites.
- 3.6 A 10 kilometre study area is identified in the Applicant's *Technical Report to Inform Habitats Regulation Assessment*<sup>5</sup> (HRA) (the Technical Report) as being suitably precautionary on the basis that it encapsulates all European sites likely to be affected by abstractions for public water supply (Atkins, 2010) and comfortably exceeds the 7.5km zone within which new development is

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<sup>3</sup> CD/L/2

<sup>4</sup> CJEU Case C-323/17, *People over Wind and Sweetman v Coillte Teoranta*

<sup>5</sup> CD/EC/1

considered by Natural England (as set out in the HRA of the Council's Single Issue Review) to have potential to significantly contribute to recreational impacts upon relevant European sites.

- 3.7 No arguments were advanced at the Inquiry that additional European sites should have been considered.

#### **4. HRA IMPLICATIONS OF THE PROJECT**

##### *Breckland SPA*

- 4.1 The Breckland SPA is an extensive area straddling the Norfolk and Suffolk border. It comprises remnants of heathland and grassland habitats over mainly sandy soils, with large areas of conifer plantation that were planted during the twentieth century. Otherwise, arable farming is the predominant land use.
- 4.2 These habitats support internationally important populations of woodlark and nightjar, which breed on grazed heathland and grassland and in open, clear-felled areas in the plantation woodland. They also support internationally important numbers of stone curlew, which breed on open, arable land and on areas of open heathland and grassland.
- 4.3 There are a total of twenty eight component Sites of Special Scientific Interest (SSSI) within the SPA. The most pertinent to this assessment by virtue of proximity (located within 10km) to the proposed development is Breckland Farmland SSSI.
- 4.4 This is a large site (c. 13,335 hectares) of predominantly arable land used for vegetable and root crops in rotation with cereals and outdoor pig rearing. Management for game birds is also characteristic. The designated feature is stone curlew, which benefit from a lack of recreational disturbance on the arable land.

##### *Devil's Dyke SPA*

- 4.5 Devil's Dyke is a linear earthwork, thought to be of Anglo-Saxon origin, running over 11km from Woodditton, south of Newmarket, to Reach, to the northeast of Newmarket. The site is crossed by a number of roads and a railway line. The designated area is just under 40ha. It supports chalk grassland flora including a number of rarities.
- 4.6 Devil's Dyke SAC contains one "Annex I" habitat, which is the primary reason for the selection of the site. This is semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*).
- 4.7 Devil's Dyke SSSI is a component of the SAC. It contains one of the best expanses of species rich chalk grassland in West Suffolk. Characteristic chalkland species are present in addition to some uncommon species such as purple milk-vetch (*Astragalus danicus*), bastard toadflax (*Thesium humifusum*) and the pasque flower (*Pulsatilla vulgaris*).

##### *Fenland SAC*

- 4.8 Fenland SAC contains two "Annex I" habitats, which are the primary reason for the selection of the site. These are Molinia meadows on calcareous, peaty or clayey-silt laden soils (*Molinion caeruleae*) and calcareous fens with great fen-

sedge (*Cladium mariscus*) and species of the *Caricion davalliance*. The calcareous fens are a priority habitat feature.

- 4.9 There are also two "Annex II" species present at the site, spined loach (*Cobitis taenia*) and great crested newt (*Triturus cristatus*). While these are not the primary features for which the site was designated they are still qualifying features which need to be considered in any appropriate assessment.

#### *Chippenham Fen Ramsar*

- 4.10 Chippenham Fen is a c. 156 hectare site, which is designated as a Ramsar site for the spring-fed calcareous mire, its rich invertebrate fauna, diverse vegetation types and scarce plants. The latter includes the rare Cambridge milk-parsley (*Selinum carvifolia*), found at only three other sites in the United Kingdom. The site is a National Nature Reserve, but access is by permit only. There is, however, a public footpath running through the reserve, which provides visitors with views of the fen habitats.
- 4.11 Chippenham Fen and Snailwell Poor's Fen SSSI is a component SSSI. The Applicant's Technical Report locates it approximately 3.2 km from the site. It is of national importance for its wetland habitat and associated birds, insects and other invertebrates. This site comprises tall fen, fen grassland, woodland, mixed scrub and open water. It supports a range of breeding birds, including hobby, short-eared owl, nightingale and several species of warbler, along with a number of invertebrates.

#### *Wicken Fen Ramsar*

- 4.12 Wicken Fen is a 254 hectare site, which is designated as a Ramsar site as it is one of the most outstanding remnants of the East Anglian peat fens, and one of the few which have not been drained. Traditional management has created a mosaic of habitats, from open water to sedge and litter fields. It is also designated for the population of fen violet (*Viola persicifolia*), which survives at only two other sites in Great Britain. It also contains eight nationally scarce plants and 121 British Red Data Book invertebrates.
- 4.13 The site is largely owned and managed by the National Trust. It is one of Britain's oldest nature reserves, supporting a range of wetland habitats. The site offers a range of facilities for visitors, including parking, visitor centre, café and a walking routes on boardwalks or paths.

## **5. CONSERVATION OBJECTIVES**

#### *Breckland SPA*

- 5.1 The published conservation objectives for Breckland SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:
- the extent and distribution of the habitats of the qualifying features;
  - the structure and function of the habitats of the qualifying features;

- the supporting processes on which the habitats of the qualifying features rely;
- the population of each of the qualifying features; and
- the distribution of the qualifying features within the site.

*Devil's Dyke SAC*

5.2 The general conservation objectives for Devil's Dyke SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:

- The extent and distribution of qualifying natural habitats;
- The structure and function (including typical species) of qualifying natural habitats; and
- The supporting processes on which qualifying natural habitats rely.

*Fenland SAC/Chippenham Fen Ramsar/Wicken Fen Ramsar*

5.3 The Fenland SAC boundaries overlap with the boundaries of the Chippenham Fen Ramsar and the Wicken Fen Ramsar. The Applicant's assessment has, therefore, used the conservation objectives for the Fenland SAC as a proxy for the two Ramsar sites. Natural England does not appear to have raised any concerns about this approach, which accords with usual practice. The conservation objectives for Fenland SAC are to ensure that the integrity of the SAC is maintained or restored as appropriate, and to ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying features, by maintaining or restoring:

- the extent and distribution of the qualifying natural habitats and habitats of qualifying species;
- the structure and function (including typical species) of qualifying natural habitats;
- the structure and function of the habitats of the qualifying species;
- the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
- the populations of qualifying species; and
- the distribution of qualifying species within the site.

## **6. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS**

6.1 The Applicant's Technical Report identifies potential Likely Significant Effects resulting from the following impacts:

- Changes in water quantity / hydrology, resulting from increased demand for water supply;
- Reduced water quality (from construction or operational effects of the development); and

- Increased visitor pressure from residents of the 400 new residential units.

6.2 The following impacts were scoped out by the Applicant's Technical Report:

- Direct loss or damage from construction;
- Disturbance and urban edge effects (construction or occupation of buildings);
- Disturbance from construction or operation of roads; and
- Air quality.

6.3 The reasons given for scoping these impacts from the assessment are the distance of the application site from the European sites. Reliance is also placed upon an AECOM report<sup>6</sup> for the Council (addressing those European sites where Likely Significant Effects could not be screened out in the HRA of the SIR), which concludes that no significant effects are expected "*from growth in Forest Heath District Council alone, or in combination with other projects or plans*". There was no dispute about the Applicants conclusions in relation to Likely Significant Effects (lack thereof) from additional car journeys arising from the proposed development.

6.4 Of the European sites identified as being within 10 kilometres of the application site, only Chippenham Fen Ramsar/Fenland SAC has any hydrological dependency on the hydrological systems that extend beneath the site and surrounding area. Likely significant hydrological effects for the Wicken Fen Ramsar site, the part of the Fenland SAC which overlaps with Wicken Fen and the Breckland SPA can therefore be excluded as there is no pathway for an effect to occur.

6.5 No criticisms of this approach were raised at the Inquiry, in response to the updated ecological reports prepared by the Applicant.

#### *Breckland SPA*

6.6 The qualifying features for Breckland SPA are susceptible to effects caused by increased recreational access. However, the only component area within the established 7.5 kilometre "zone of influence" (and also within 10km) is the Breckland Farmland SSSI. As noted by the Inspector in her 2015 report:

*It is predominantly privately owned arable farmland and is bordered and crossed by the Icknield Way Trail. However this is not particularly accessible from the application site and there is little convenient car parking. It is not readily distinguishable from the wider farmland landscape and so in my judgement is unlikely to be particularly attractive to visitors, especially dog walkers. Those people that do use it for recreation are unlikely to stray from the footpaths because the farmland is not publicly accessible.*

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<sup>6</sup> AECOM Infrastructure & Environment UK Ltd (2018) Forest Heath District Council, Single Issue Review of CS7 and Site Allocations Local Plan – Air Quality Assessment Regarding Breckland SAC and Breckland SPA.

- 6.7 I see no reason to depart from this assessment and do not consider this area to be inherently a visitor attraction likely to generate significant volumes of visitors, with their associated impacts. There does not appear to be scope for Likely Significant Effects arising from recreation as a result of the proposal. Nor was any evidence presented that would lead me to the conclusion that there is scope for Likely Significant Effects in combination with other plans and projects.
- 6.8 No mitigation would be required and, as such, I consider that Breckland SPA can be screened out from further assessment.

*Devil's Dyke SAC*

- 6.9 I note the correspondence from Natural England (28 November 2018)<sup>7</sup>, which states that:

*"The current opinion of Natural England is that some erosion to the top of the Dyke is occurring, however there is currently insufficient evidence available (to our knowledge) that indicates that current or anticipated levels of growth are expected to result in a significant decline in the quality of the site. It is further noted that the site is a linear route in character, lacking the strategic open space qualities that might attract large volumes of people. Furthermore its steep slope largely safeguards much of it from impacts associated with recreation which are problematic at other sites".*

- 6.10 There is no substantive evidence before the Inquiry to indicate that this opinion is misguided. As such, I consider that there is no scope for Likely Significant Effects on Devil's Dyke SAC, alone or in-combination with other plans or projects; that no mitigation is required; and that the designation can be screened out from further assessment.

*Chippenham Fen Ramsar/Fenland SAC*

- 6.11 There is no dispute that Chippenham Fen/Fenland SAC is considered to be intrinsically less susceptible to recreational pressures and threats, due to its wetland habitat types and lack of visitor facilities. In addition, other than a single footpath through the site, access is restricted to permit holders only, who are kept to well-marked routes. I note that the reports of the Inspectors at the 2011 and 2015 Inquiries both ruled out Likely Significant Effects from recreational pressure (alone or in combination), and that the Secretary of State agreed with this in his decision derived from the latter. Natural England raises no concern in this regard.
- 6.12 Turning to water abstraction, the following qualifying features could be affected by a lowering in water levels:
- Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae*;
  - *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*);

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<sup>7</sup> Appendix 13 to CD/EC/1

- Great crested newt; and
  - Spined loach.
- 6.13 The hydrological and hydrogeological characteristics of Chippenham Fen have been subject to extensive modelling and analysis, as set out in Chapter B.4 of the applicant's 2018 Environmental Report<sup>8</sup>. Further information may be found in the Applicant's Technical Report and in the Forest Heath Water Cycle Study<sup>9</sup> (upon which Natural England confirm that they and the Environment Agency (the EA) were consulted). In addition, the Inspector at the 2015 Inquiry dealt with this matter in some detail<sup>10</sup> (and there was no suggestion at the most recent Inquiry that her conclusions and considerations were flawed).
- 6.14 The evidence before the Inquiry, derived from these documents, is that current abstraction levels from the Water Resource Zone in which both Chippenham Fen and the application site lie are well below existing licence allocations<sup>11</sup>. Anglian Water has confirmed that it is able to supply the proposed development from within existing licence limits<sup>12</sup>.
- 6.15 The EA has statutory responsibility for licensing water abstraction and for reviewing consents to ensure that they do not adversely affect the integrity of relevant European Sites. Evidence from the EA<sup>13</sup> confirms that it is content that there would be no impact upon Chippenham Fen from abstraction for the application scheme within existing licences. Anglian Water has also confirmed that it is able to supply the proposed development on this basis<sup>14</sup>. Natural England does not depart from this position and is "*satisfied that no additional assessment work on water quantity is required*"<sup>15</sup>. In my judgement, considerable weight can be placed on the satisfaction of the two relevant statutory bodies.
- 6.16 The Forest Heath Water Cycle Study also concluded that the Council's proposed development trajectory, including the Hatchfield Farm proposals, can be supplied within existing licence capacity without adverse impact on Chippenham Fen<sup>16</sup>. This conclusion is supported by the EA's Restoring Sustainable Abstraction programme.
- 6.17 I also note that these conclusions are consistent with those of the Inspector at the 2015 Inquiry and with the Secretary of State in his decision.
- 6.18 The Lodes Granta Groundwater Scheme (the Lodes Granta Scheme) was established in 1991 by the EA. It provides a means of managing water levels at Chippenham Fen, by supplementing surface water flows into the Fen if

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<sup>8</sup> CD/UP/8

<sup>9</sup> Although not a Core Document, it is cited within the Applicant's Technical Report and the Statement of Common Ground CD/SOCG/4

<sup>10</sup> IR2015 409-428

<sup>11</sup> CD/EC/1 5.2.1-5.2.20

<sup>12</sup> *Ibid*

<sup>13</sup> CD/EC/1 Appendix 14

<sup>14</sup> CD/EC/1 Appendices 6 and 12

<sup>15</sup> CD/EC/1 Appendix 13

<sup>16</sup> CD/EC/1 5.2.14; 5.2.16.

requested by Natural England. It has been used very occasionally, in 1991, 1992, 2006 and 2014<sup>17</sup>.

- 6.19 The Lodes Granta Scheme is a longstanding initiative that was established as a generally applicable safeguard, as opposed to something that was developed in response to the application scheme. It bears no direct relationship to the application proposal. As such, it could reasonably be argued that it is not a form of mitigation, as defined by recent European case law. Nonetheless, it could be so viewed and I address the matter further in Section 7 below.
- 6.20 In terms of water quality, there is no surface water link between Chippenham Fen and the application site. Thus, the risk of Likely Significant Effects arising from surface water run-off are almost none.
- 6.21 Given the depth at which groundwater is found at the application site, contamination during either the construction or operational phases of the development would seem theoretical at best. Even if this were to occur, given the distance of the application site from the Fen it is reasonable to consider that any contaminants would be filtered, diluted and dispersed before they reached the Fen.
- 6.22 Standard construction and drainage methods, as secured by condition, would also serve to overcome any potential risks. Such methods, which are integral parts of any construction project, could, arguably, be disregarded as specifically targeted "*mitigation measures*" in the terms understood in relation to European case law. Again, however, they could be so viewed and I consider this in Section 7 below.
- 6.23 I am also mindful that the current use of the application site is agricultural. I have no reasons to doubt the Applicant's Technical Report's statement that the site receives regular inputs of inorganic fertiliser and pesticides, which have the potential to leach into groundwater. As such, it is not unreasonable to consider that the application proposal would be an improvement over current circumstances in this specific regard.

## **7. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY**

- 7.1 There is nothing in the evidence before the Inquiry to demonstrate that, either during construction or once operational, even when considered in combination with other plans and projects, the proposed development would impact adversely on the relevant conservation objectives for the above European sites. Nor was any argument advanced to gainsay such a finding, which is consistent with that of the Inspector and the Secretary of State in relation to the 2015 Inquiry.
- 7.2 Even so, in relation to the Chippenham Fen Ramsar/Fenland SAC, I consider that both the Lodes Granta Scheme and standard construction and drainage methods, as secured by condition *could* be regarded as mitigation. Being prudent, one should disregard them for the purposes of an initial assessment of Likely Significant Effects. If so, one might consider that there is a possibility that water levels and water quality in the Fen could be impacted adversely by

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<sup>17</sup> Ibid 6.4.8 and IR2015 para. 411

the application proposal, with the concomitant adverse effects upon its water dependent species and habitats. Likely Significant Effects could not be excluded. In these circumstances, an Appropriate Assessment would be required.

- 7.3 To inform that Appropriate Assessment, and having regard to the conservation objectives of the Fen (as set out above), I consider that the Lodes Granta Scheme, which would serve to top up water levels in the Fen, and standard construction and drainage methods, as secured by condition, would be sufficient to avoid or, at worse, to reduce materially the identified effects. On that basis, it is my view that there would be no adverse effect on the integrity of these designated sites.

## **8. HRA CONCLUSIONS**

- 8.1 I have taken into account all of the available evidence and have adopted the precautionary principle in carrying out my consideration of the matters raised.
- 8.2 Overall, I am content that the development proposed would not affect the delivery of the conservation objectives for any of the European sites discussed above.
- 8.3 For the purposes of clarity, since I am not the competent authority in this case, the conclusion set out above represents my findings but does not constitute an Appropriate Assessment for the purposes of the Habitats Regulations.

  
INSPECTOR



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

### Challenges under Section 288 of the TCP Act

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

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

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

## SECTION 3: AWARDS OF COSTS

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

## SECTION 4: INSPECTION OF DOCUMENTS

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