



## Appeal Decisions

Hearing Held on 16-17 May 2023

Site visit made on 18 May 2023

**by P W Clark MA(Oxon) MA(TRP) MRTPI MCMi**

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

**Decision date: 11<sup>th</sup> August 2023**

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### **Appeal A Ref: APP/F3545/Y/22/3303353**

#### **Queensbury Lodge, Cottage and Stables, 196-198 High Street, Newmarket CB8 9AP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
  - The appeal is made by Unex (Nº3) Limited and TAP Investments, and Oftenfact Limited against West Suffolk Council.
  - The application Ref DC/21/1238/LB is dated 3 June 2021.
  - The works proposed are demolition of two end stables and the erection of gates at the Queensbury Lodge, Cottage and Stables, 196-198 High Street, Newmarket, Suffolk, CB8 9AP
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### **Appeals B and C Ref: APP/F3545/W/22/3303347**

#### **Appeal B: 196-198 and 216-218 High Street including Queensbury Lodge together with land to the rear off Rowley Drive/Black Bear Lane, Newmarket, Suffolk CB8 9AP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Unex (Nº3) Limited and TAP Investments and Oftenfact Limited against West Suffolk Council.
- The application Ref DC/21/1242/OUT, is dated 9 July 2021
- The development proposed is up to 123 residential dwellings together with the part demolition, extension and conversion of the former White Lion public house to provide up to 562 sqm of commercial space (Use Classes E(c)(i), E(c)(ii), E(c)(iii)), a new convenience store providing up to 371 sqm of floor space (Use Class E(a)), public open space, landscaping and land reserved for a dedicated horse walk.

#### **Appeal C: Queensbury Lodge, Cottage and Stables, 196-198 High Street, Newmarket CB8 9AP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Unex (Nº3) Limited and TAP Investments and Oftenfact Limited against West Suffolk Council.
  - The application Ref DC/21/1237/FUL, is dated 3 June 2021
  - The development proposed is demolition of two end stables and the erection of gates at the Queensbury Lodge, Cottage and Stables, 196-198 High Street, Newmarket, Suffolk, CB8 9AP.
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## Decisions

**Appeal A** is dismissed, and listed building consent is refused for the demolition of two end stables and the erection of gates at the Queensbury Lodge, Cottage and Stables, 196-198 High Street, Newmarket, Suffolk, CB8 9AP.

**Appeal B** is allowed, and planning permission is granted for up to 123 residential dwellings together with the part demolition, extension and conversion of the former White Lion public house to provide up to 562 sqm of commercial space (Use Classes E(c)(i), E(c)(ii), E(c)(iii)), a new convenience store providing up to 371 sqm of floor space (Use Class E(a)), public open space, landscaping and land reserved for a dedicated horse walk. subject to the 21 conditions appended to this decision.

**Appeal C** is dismissed and planning permission is refused for the demolition of two end stables and the erection of gates at the Queensbury Lodge, Cottage and Stables, 196-198 High Street, Newmarket, Suffolk, CB8 9AP.

## Procedural matters

1. The planning application for Appeal B was made in outline with all matters other than access (appearance, landscaping layout and scale) reserved for later consideration. As originally submitted, access was not to be a reserved matter. A submitted land use and access parameter plan showed the main vehicular access onto the High Street (accompanied with a detailed drawing), indicative pedestrian and cycle accesses onto Falmouth Avenue and Black Bear Lane, pedestrian, cycle and emergency vehicle access onto The Rows, using an existing access (accompanied with a detailed drawing) and an approximate location for a new horse walk within the site to connect to The Rows horse walk.
2. The County Council, as highway authority, had issues with all of these features. Shortly before the Hearing a revised parameters plan was submitted omitting the indicative pedestrian and cycle accesses onto Falmouth Avenue and Black Bear Lane and showing in greater detail a proposed pedestrian access at the junction of Black Bear Lane and The Rows. This had not been the subject of public consultation and I considered that members of the public might be prejudiced were I to base my decision on that revised plan.
3. At the Hearing, it was made clear that the only access feature to be considered in detail now is the main vehicular access onto the High Street. All other access matters are to be reserved for consideration later. Since further public consultation would be carried out on reserved matters applications, nobody would be prejudiced by my proceeding on that basis, which is what I have done.
4. Appeals C and A are for detailed planning and listed building consent approval of one element of the overall scheme encompassed within Appeal B but are discrete applications which stand alone in their own right.
5. The original applications for Appeals A and C were made on a single combined application form. When Appeal A was made, no separate appeal form was submitted for Appeal C. That is why there is no separate appeal reference for Appeal C. Nevertheless, the Council has issued the appropriate notices informing interested parties of all three appeals. As both the appellant and the

Council agree that to be the appellant's intention, I have proceeded on the basis that there are three appeals before me.

6. The planning application relating to Appeal B was the subject of a screening request by the applicant dated 10 September 2021, made under regulation 6(10) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. On 15 November 2021 the Secretary of State directed that the proposed development described in the request and the documents submitted with it, is not 'EIA development' within the meaning of the 2017 Regulations. Accordingly, there is no need for an Environmental Statement to accompany the application nor do any Parameters Plans automatically need to be applied by condition. Although some are notated as "information" and some are annotated as "planning", all the Parameters Plans are illustrative only.
7. The Secretary of State (the SoS) took note of representations from Natural England (NE) to the Council dated 20 August 2021 confirming that NE considers that the proposed development will not have significant adverse impacts on Devil's Dyke Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) either alone or in-combination with other plans or projects. The SoS also took note of representations from NE dated 19 October 2021 that there are potential likely significant effects on statutorily designated nature conservation sites as well as the mitigation measures suggested by NE in their letter of 12 July 2019 to Cambridgeshire Councils advising them of updated Impact Risk Zones to sensitive SSSIs.
8. The SoS concluded that the potential recreational impacts, cumulative impacts and suitable mitigation measures require further assessment but that that could be considered as part of normal planning practice. Accordingly, a Habitats Regulations Assessment forms part of this decision. In the event, NE has subsequently made further representations shifting its position on the effects of the proposal but those revised comments do not invalidate or render unnecessary the process which is followed in this decision.
9. During the course of the appeals two planning obligations were submitted; an agreement between the appellant, West Suffolk Council and Suffolk County Council signed and dated 12 May 2023 relating to the development described in appeal B, and a Unilateral Undertaking relating to any development or works authorised by any of the three appeals but triggered by the completion of a specified number of dwellings. Regulation 122(2) of the Community Infrastructure Regulations (CIL) sets out three tests with which planning obligations must comply. I report upon compliance with the CIL regulations as I consider each issue in turn.
10. The agreed obligation would provide the Councils with index-linked financial contributions of:
  - a. A highways contribution of £15,000 index-linked
  - b. A library contribution of £26,568 index-linked (reduced pro-rata in the event that detailed consent is for less than 123 units)
  - c. An NHS contribution of £73,800 index-linked (reduced pro-rata in the event that detailed consent is for less than 123 units)
  - d. A pre-school contribution of £200,057 index-linked (reduced pro-rata in the event that detailed consent is for less than 123 units)

- e. A public open space contribution of an amount to be specified in accordance with the Council's Supplementary Planning Document for Open Space, Sport and Recreation Facilities October 2011 to the extent that detailed consent falls short of the Council's required provision.
- f. A secondary school contribution of £353,542, index-linked (reduced pro-rata in the event that detailed consent is for less than 123 units)
- g. A sixth form contribution of £75,759 index-linked (reduced pro-rata in the event that detailed consent is for less than 123 units)
- h. A Travel Plan contribution of £1,000, index-linked
- i. Monitoring costs of £1,000 to West Suffolk Council and £3,808 to the County Council

and 30% of the number of dwellings as affordable housing (with a financial contribution covering fractions of a dwelling), split 2:1 between affordable renting and shared ownership.

11. The Unilateral Undertaking is summarised and considered below in the section of this decision dealing with the effects of the proposals on listed buildings.

## **12. Main Issues**

13. The main issues in these appeals are;

- a. The nature of the proposals and the drawings which are to be regarded as substantive (Appeal B only). This issue has been dealt with under procedural matters above.
- b. The effect of the proposals on the significance and special interest of the three Grade II listed buildings on site (Queensbury Lodge, Queensbury Cottage and Queensbury Stables). (Appeals A, B and C) (Putative reason for refusal (4) of Appeal B).
- c. Whether the proposals would secure the restoration and long-term future use of Queensbury Lodge, Cottage and Stables. ((Appeals A, B and C)) (Putative reason (1) for refusal of Appeal A).
- d. The effect of the proposals on the character, appearance and significance of the Newmarket Conservation Area. ((Appeals A, B and C)) (Putative reasons (4) and (8) for refusal of Appeal B).
- e. The effect of the proposals on the Devil's Dyke SAC/SSSI; (Appeal B) (Putative reason (2) for refusal of Appeal B).
- f. The effect of the proposals on the Horse Racing Industry in Newmarket. (Appeal B) (Putative reasons (1) and (6) for refusal of Appeal B).
- g. The effects of the proposals on highway safety and on users of the horse walk known as The Rows. (Appeal B) (Putative reason (5) for refusal of Appeal B).
- h. The effects of the proposals on the demand for and supply of highway and parking capacity. (Appeal B) (Putative reason (8) for refusal of Appeal B).

- i. The effects of the proposal on local air quality. (Appeal B)
- j. The effects on the proposal of noise from the adjacent petrol filling station and car wash. (Appeal B) (Putative reason (8) for refusal of Appeal B).
- k. Whether the site is contaminated to a degree which requires remediation. (Appeal B) (Putative reason (7) for refusal of Appeal B).
- l. The effects of the proposal on biodiversity (hedges, trees, fauna and flora). (Appeal B) (Putative reasons (3) and (8) for refusal of Appeal B)
- m. The effects of the proposal on flood risk (Appeal B) (Council statement paras 6.29-6.32).
- n. The effects of the proposal on local social infrastructure (schools, libraries, open space, healthcare facilities etc) (Appeal B) (Putative reason (9) for refusal of Appeal B).
- o. The effects of the proposals on housing supply in general and on affordable housing in particular. (Appeal B) (Putative reason (9) for refusal of Appeal B)

## Reasons

### *Structure of reasoning*

14. The way this section of the decision letter is structured is to take each of the issues in turn. Issue (a) has already been dealt with under Procedural matters. Issues (b), (c) and (d) all concern heritage assets. I deal with issues (b) and (c) together in one section. Advice in paragraph 195 of the NPPF is that a decision maker should identify and assess the particular significance of any heritage asset that may be affected by a proposal. This I do at the beginning of my examination of each issue (b), (c) and (d). I then assess the impact of the proposed development on the special interest of each heritage asset, following the advice of NPPF paragraphs 196 to 200 amongst others and conclude on the degree of harm (if any) which the development would cause to each heritage asset.
15. There is no suggestion that the development proposed would lead to substantial harm to any heritage asset and so, NPPF paragraph 201 does not apply. NPPF paragraph 202 advises that where a development proposal would lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. This I do, not within the sections dealing with each heritage issue in turn but instead, at the end of my decision, in the section headed "Planning balance and overall conclusion", giving great weight to the conservation of heritage assets, in accordance with the advice of NPPF paragraph 199.

### *The site and surroundings*

16. The site has three components, juxtaposed, not connected; Fitzroy Park (the paddock and fields formerly associated with Fitzroy House and stables; the White Lion Public House (and adjoining land); and Queensbury Yard (comprising a group of three Grade II listed buildings; Queensbury Lodge (the Lodge), Queensbury Cottage (the Cottage) and Queensbury Stables (the

Stables)). Two of these components (Fitzroy Park and Queensbury Yard) lie within the Newmarket Conservation Area; the third (the White Lion Public House) does not.

17. There are further heritage assets in the vicinity of the site (such as Queensbury House on the south side of the High Street and numbers 182 to 194 to the east of the site) but there is no suggestion that the development proposed would have any effect on these, or their setting, so they are not considered further in this decision. (Queensbury House was built in 1898 on the site of the stables of the former Queensbury House, demolished in around 1870, which was the residence of the 4<sup>th</sup> Duke of Queensbury who formed the Queensbury Yard with which this appeal is concerned but there is no other connection).

*Issues (b) and (c); (Appeals A, B and C); the effect on the significance and special interest of the listed buildings*

*Their significance*

18. Queensbury Lodge and Queensbury Cottage both front onto the High Street, rising from the back edge of the pavement. The ground falls to their rear where the Stables are located along the rear boundary, parallel to the High Street. Access to the yard is obtained by driveways to the side of the Lodge and the Cottage respectively, at each end of the site. I first consider the buildings' shared significance, then go on to consider the particular significance which each heritage asset displays. Any significance which they derive from their setting is a matter of controversy which I consider separately in a later section of this decision.
19. The three listed buildings on site are individually listed in their own right but share a common element of significance which is that they are a rare survival of one of the earliest racing stable groups in Newmarket; they document the development of the Horse Racing Industry with which Newmarket is synonymous internationally and from which the town has evolved; the group is associated with leading historic figures in the Horse Racing Industry.
20. Queensbury Stables was built in stages so has several components. The three remaining components of the Stables (a fourth element was destroyed by fire) are significant for their layout in relation to the frontage buildings on the High Street, their built form and vernacular design. As almost vernacular buildings, they contrast with later, more architecturally ambitious and formally grouped stable complexes elsewhere in Newmarket. Interior fittings which remain are typical of the early twentieth century when the Stables were refurbished and the former Mess or tack room at the west end (proposed to be demolished in the current appeal) was converted to loose boxes. The entry to the yard slopes down from the High Street and so the tiled roof of the Stables, emphasising its vernacular, rural appearance, is visually dominant on entry.
21. Queensbury Lodge is significant for its construction and planning, representing a transitional period in both. Its timber frame was apparently adapted during its construction to provide brick gable end walls. Its front façade was refronted in brick at a relatively early stage. Likewise, its plan form represents a transition from vernacular tradition to the more "polite" form of a gentry house, so its built fabric contributes to its significance. Later rear extensions are judged to be of little significance because of their perfunctory construction but it has a side extension which contributes to its significance because it was



originally a stables facing into the yard at the rear thus typifying a Newmarket racing establishment rather than a domestic or agricultural stable. The conversion of the side stable into residential use signifies the expectations for a trainer's house at the beginning of the twentieth century.

22. Queensbury Cottage is a typical small early- to mid- eighteenth-century house, plain and unexceptional for its period but significant as a survival of its period, which gains significance as a part of the Queensbury Yard complex for which it served as housing for stable lads. The listing description makes it clear that there are no visible features of interest in its interior.

*Setting of listed buildings*

23. The three Grade II listed buildings included within the red line boundary of Appeal B are located towards the western end of the High Street where it begins to change from an urban to a suburban form of development. They are experienced from the High Street either when entering Newmarket from the west, at the summit of the hill leading down to the town, or, from the east, from within the town centre looking up to the top of the hill leading out of the town. Because of the configuration of the red line boundary of the site, there would be no impact from the development proposed on the way these three Grade II listed buildings would be experienced from the High Street.
24. There is concern that Appeal B would involve the loss of the paddock (Fitzroy Park) in the northern part of the overall site to built development and that that would harm the setting of the three listed buildings in the Queensbury Yard. Setting is about how the heritage asset is experienced. Contrary to the assertion in the representation from the Suffolk Preservation Society that "The Fitzroy Paddocks are historically and culturally significant as they form part of the Queensbury Lodge Stables complex", all parties are agreed and the historical documentary evidence confirms that there has never been any physical or functional connection between the Queensbury Yard listed buildings and the open paddock which was last used by the adjacent Fitzroy stables. Although from within the southern part of the paddock the part of the stables which is proposed to be demolished can be seen, that is not the way the stables are normally experienced.
25. I therefore disagree with the opinions expressed in paragraphs 2.10.2 and 3.7.2 of the Drury McPherson report that "it provides a traditional setting to the nearby stables, including the listed buildings" and that "The relationship between the Queensbury Yard buildings – houses, stables, yard – and the presence of the open paddock which until recently served Fitzroy Stables – is central to their importance as a whole."<sup>1</sup> The way in which relatively informal stable groups lie behind or just beyond the street frontage with access at the rear to a paddock, horse walk and thus the Heath and gallops may be one of the most distinctive features of the Newmarket townscape and the conservation area scene but it is a description that does not apply to the Queensbury Yard, which has never had access at the rear to a paddock, horse walk and thus the Heath and gallops.

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<sup>1</sup> Comments reflected in Historic England's advice in their letter of 24 August 2021 that "Although the Fitzroy Paddock is not immediately visible from the listed buildings at Queensbury Stables, it provides an important context to the buildings and are therefore of importance to their significance."

26. The Council argues that the open skyline behind the Queensbury Stables would be prejudiced by development on the paddock land. But the paddock does not lie behind most of the length of the Stables. The open skyline behind the Queensbury Stables results from the single storey Fitzroy stables which abuts that boundary of the Queensbury Stables and sits at a lower level. Only at the western corner of the Queensbury Stables yard, behind the two loose boxes which are proposed to be demolished, is there any visual connection with the paddock land. There, a substantial tree, which is on the paddock land, appears over the roof of the Stables. Provided that tree is retained (which can be required by condition (6)), no development of the paddock land is likely to affect the setting of the listed buildings. Inspector Gray reached a similar conclusion in paragraph 49 of his 2014 appeal decisions (APP/H3510/A/13/2201646 and APP/H3510/E/13/2201648) relating to an earlier proposal for development of the site.
27. The effect of demolishing the two westernmost loose boxes of the Grade II listed Queensbury Stables on the setting of the Stables themselves and the Lodge and Cottage would depend on the use to which the opening is put. As discussed below, there is nothing inherent in the current appeal proposals which precludes the reuse of the Queensbury Yard for a different purpose which, as in the 2014 appeals would tend to change the character of the Queensbury Yard, and hence the setting of the three Grade II listed buildings, into a public thoroughfare. It is understood that the intention is to facilitate the reuse of the Queensbury Yard as a racehorse training establishment (RTE). That would retain the immediate setting of the three Grade II listed buildings as an enclosed yard. As that appears to be the current intention, I have proceeded on the basis that the proposed demolition of the two westernmost loose boxes on the Queensbury Stables would not harm the setting of the three Grade II listed buildings in the Queensbury Yard.
28. There are other listed buildings nearby, as noted earlier (Queensbury House and numbers 182-194 High Street) but, given their physical separation from the Fitzroy paddock and the intervening presence of the Queensbury Yard, no harm to the setting of other listed buildings nearby would result from the development proposed in this appeal.

*The proposed use*

29. Although paragraph 6.56 of the appellant's planning appeal statement for Appeal B asserts that one of the identified benefits of the overall scheme would be the refurbishment and reinstatement of the three Grade II listed buildings within the Queensbury Yard, there is no detail of what would be involved in this, or how it would be brought about. Since the description of development in Appeal B does not indicate any change of use of the three Grade II listed buildings in the Queensbury Yard and the accompanying drawing of the Block Plan As Proposed simply shows Building Elements to be Demolished and Areas of Infill Structure without indicating uses, it must be presumed that refurbishment and reinstatement would be for a RTE which paragraph 24 of Inspector Gray's appeal decisions (APP/H3510/A/13/2201646 and APP/H3510/E/13/2201648) confirms had not been abandoned in 2014.
30. I was told that this end of Newmarket is not favoured by horse trainers and is seen as "poor", in contrast to the opposite end of town which is seen as more "posh". The experience of the Holland House stables site on The Rows



adjoining the appeal site demonstrates that constructing a new RTE is not viable in the face of land values for alternative uses and so would need to be cross-subsidised by other development.

31. If the Council is to achieve its development plan proposal<sup>2</sup> to include a horse-related industry use somewhere within the overall Appeal B site, the most likely solution would be to bring about the refurbishment and re-use of the three Grade II listed buildings in Queensbury Yard for their original purpose. That appears to be what is envisaged in Appeal B. Nevertheless, other than the simple assertion of the appellant's planning appeal statement, there is no more information before me than there was before Inspector Gray in 2014 who concluded (in paragraph 25 of his decisions APP/H3510/A/13/2201646 and APP/H3510/E/13/2201648) that the apparent failure to re-establish a business in the late 1980s and the seeming lack of interest in establishing one subsequently might suggest that such a use is no longer viable.

*The need for an enabling development*

32. In the Site Allocations Local Plan for the Forest Heath area of West Suffolk Council (the SALP), adopted in September 2019, policy SA6(b) allocates Land at Black Bear Lane and Rowley Drive junction for residential or mixed use development and notes the indicative capacity of the site as a mixed use to include some 50 dwellings, a racehorse training yard and a paddock. This site allocation approximates to the red line boundary of the proposal before me in Appeal B.
33. The policy also includes specific requirements for individual sites. Those for site SA6(b) include a requirement that any scheme for the site must be comprehensive and facilitate the restoration and appropriate re-use of the listed buildings. The policy requirements also include incorporating the attributes of Fitzroy Paddocks (its openness, historic character and contribution to the Horse Racing Industry) into any proposed scheme and securing the horse racing use and restoration of the Grade II listed buildings on the appeal site through a legal agreement.
34. In 2014, Inspector Gray was provided with estimated costs for repair and restoration which even then were ten years' out of date but which established that repair and restoration of the listed buildings would need to be cross-subsidised by development of the appeal site as a whole. As then, so now, the appellant does not present the development of the larger site as an enabling development but, like Inspector Gray, I conclude that that is, in effect, what it would be, because any scheme for the restoration and re-use of the listed buildings is unlikely to be viable on its own; as the appellant's Heritage Significance Assessment of June 2021 makes clear, "since the 1980s various attempts at finding a new use for the Lodge and Cottage were made, but to no avail. The buildings have sat unused, derelict and deteriorating since at least the 1990s." If reinstatement, repair and reuse were viable without an enabling development, it would surely have happened by now. This matter is

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<sup>2</sup> The Forest Heath area of West Suffolk Council Site Allocations Local Plan (SALP) September 2019 includes Site SA6(b) which corresponds to the appeal site. Paragraph 5.6.18 of this document requires that "Any development on this site must facilitate the sympathetic restoration and viable reuse of the listed buildings, retain a horse racing industry related use on the site, and preserve or enhance the character and appearance of the conservation area." Policy SA6 requires in respect of site SA6(b) that "A horse racing related use should be retained on the site."

considered further in the penultimate section of this decision, headed Planning balance and overall conclusion.

35. In 2014, even though there were no up to date costings, there were specific proposals for the listed buildings. For these appeals there are still no up to date costings. Additionally, neither are there any specific proposals other than that contained within Appeals A and C. That is the demolition of the westernmost portion of the Stables to form a gateway into the larger part of the overall site. For all these reasons, I form the view that condition (5) or a planning obligation to secure the repair, restoration, refurbishment and reinstatement of the Listed Buildings is a necessary prerequisite for Appeal B to succeed.

#### *The Unilateral Undertaking*

36. A Unilateral Undertaking is submitted which would require the owners to obtain planning permission and listed building consent for restoration works to the Queensbury Lodge, Cottage and Stables group and to complete the restoration works before a "trigger point" is reached. The "trigger point" is defined as the occupation of the 50<sup>th</sup> dwellings on site or such other trigger point as may be defined in this decision letter. The restoration works are defined as including the restoration of Queensbury Lodge, Cottage and Stables to a condition suitable for immediate and enduring use.
37. No information of the kind which I would normally expect in order to judge the appropriateness of the "trigger point" proposed or any alternative "trigger point" is submitted. I therefore follow the precautionary principle of setting the "trigger point" low, on the basis that, if it were demonstrated by the appellant that it has been set too low and is preventing the viable implementation of the development as a whole, it can be raised through the mechanism of an application under s106A of the Act or by an application to vary condition (5). However, if the reverse were true and it was found that the "trigger point" had been set too high to incentivise the restoration of the listed building group, there would be no mechanism then available to review it and to make it effective. I therefore take the view that the "trigger point" should be the first occupation of the first dwelling to be occupied in Appeal B.
38. For the reasons already set out, I consider that such an obligation or alternatively, a condition, is necessary to make Appeal B acceptable in planning terms. It would be directly related to the development (in terms of the trigger point) and would be fairly and reasonably related in scale and kind to the development. Consequently, it complies with the CIL tests.
39. However, the Unilateral Undertaking is conditional upon the grant of the planning permissions (defined as Appeals A, B and C, including that for listed building consent). For the reasons set out below, I am dismissing Appeals A and C (the two appeals related respectively to the listed building consent and to the detailed planning permission) (although with an expectation that revised proposals will be submitted and approved). Thus, the condition of the Unilateral Undertaking is not met. I fall back on the imposition of a Grampian-style condition (5).

*The proposed demolition works*

40. The only specific proposal for the listed buildings contained in the current appeals is to demolish the two end boxes of the Stables building and erect gates leading to Fitzroy Paddock in their place. They are the works proposed in Appeal A; are shown as one of the "Building elements to be demolished" on the "Block Plan - As Proposed" accompanying Appeal B and form the description of development in Appeal C.
41. Although the authoritative Drury McPherson report of 2016<sup>3</sup> advised that the removal of the western pair of boxes from the stable range, dating largely from 1906, could be justified to facilitate reinstating use of the Yard for its historic purpose by providing a connection to the horse walk proposed, Inspector Gray in 2014 found that there is no logical purpose in it if one considers only the proposals for the restoration and re-use of the listed buildings. The only logical purpose is to give access to the land at the rear which, in the case of his appeals, was not a use directly connected to the restoration of the listed buildings. He concluded that the loss of the two boxes at the south-western end of the stables range may be seen, purely in terms of the listed buildings and their setting, as a somewhat unnecessary and questionable proposal.
42. In the case of the current appeals, there is a proposal to reserve land for a horse walk as part of the overall scheme. Indicative drawings suggest that it would connect an RTE using the listed buildings with the existing horse walk (The Rows) to the north of the site, allowing racehorses to avoid using the High Street and thus encouraging the reuse of the listed buildings as an RTE. The Council has also suggested that a part of the site should be retained as a paddock, both as part of the setting of the listed buildings and also to facilitate an RTE use.
43. The evidence which I heard was to the effect that although stables elsewhere in Newmarket do operate by relying on the High Street without access to The Rows (whether through the Fitzroy Paddock or by other means), it was inherently less safe to do so and so, an access to The Rows would be beneficial in bringing about a re-use of the listed buildings as an RTE. Likewise, although access to a paddock would not be necessary<sup>4</sup> other than for a breeding establishment, it was desirable for a training establishment. Both points are arguments which I accept in favour of allowing an opening of some kind, suitable for horses to use.
44. However, I am not convinced that the particular proposal put forward in these Appeals, to demolish two stables, should be allowed. As noted earlier, the tiled roof of the two loose boxes concerned is a prominent feature in the view of the listed Stable building when entering the site, contributing to its vernacular, almost rural, appearance which forms part of the significance of these Stables. The demolition proposed would cause harm to the significance of the Grade II listed Stables, not only by the loss of historic fabric of evidential value but also by the loss of the tiled roof which has aesthetic value.

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<sup>3</sup> Subsequent to Inspector John Gray's decisions (APP/H3510/A/13/2201646 and APP/H3510/E/13/2201648) on a previous proposal for the development of a site akin to the appeal site, a multidisciplinary team lead by Colliers International with Thomas Ford and Partners, D R Nolans and Co and Keylocks Ltd, was commissioned by Forest Heath District Council to undertake an options appraisal to inform decisions about the future of the site comprising Queensbury Lodge, Queensbury Cottage, the adjacent former stables (hereafter referred to as Queensbury Yard), and Fitzroy Paddock to their north. The Drury McPherson report "QUEENSBURY YARD AND FITZROY PADDOCK HIGH STREET, NEWMARKET UNDERSTANDING AND ASSESSMENT OF SIGNIFICANCE" forms part of that appraisal.

<sup>4</sup> Paragraph 12.9 of the 1995 Local Plan concurs.

45. It was put to me by one of the appellant's witnesses during the Hearing that an alternative, retaining the roof of the Stables whilst forming an arched opening in the front and rear walls suitable for a horse to pass, was feasible. Since that would cause less harm to the significance of the Stables by allowing the retention not only of the aesthetically significant tiled roof but also of some internal fittings of evidential value, I am reluctant to grant consent for the particular demolition proposal which is included in all three appeals (A, B and C) before me until alternative, less damaging possibilities have first been explored and demonstrated to be unfeasible.
46. I note that the Unilateral Undertaking includes a provision that, if Appeals A and C were allowed, they would not be implemented unless the works and development to which they relate were included in the specification of restoration works which the appellant agrees to undertake as part of the Unilateral Undertaking. However, that still leaves open the possibility that the specification of restoration works does not include a re-use which requires and justifies the opening to be made. In that event, consent would lead to potentially unjustified harm to the Grade II listed Stables building. That would be clean contrary to government policy set out in NPPF paragraphs 200 and 202 and so I do not do so. I accept that the Unilateral Undertaking then falls for the reasons explained earlier but I fall back on the device of a Grampian-style condition (5) (which was canvassed at the Hearing) to produce the same effect.

*Conclusion in respect of issues (b) and (c) (Appeals A, B and C)*

47. I therefore conclude that although the proposed development of Fitzroy Park (the paddock in the northern part of the site) would not cause harm to the setting of the three Grade II listed buildings forming the Queensbury Yard, the works of demolition to the listed Stables proposed in all three appeals would cause harm (albeit less than substantial harm because it would not lead to the total loss of the asset and its significance) to a designated heritage asset. The works would be contrary to Core Strategy Development Plan Document 2001-2026 (the Core Strategy) policy CS3 which requires the historic environment to be protected and Joint Development Management Policies Document (the DMPD, adopted in 2015) policy DM15, which provides that proposals to demolish part of a listed building will only be permitted in very exceptional circumstances.
48. It would be possible to sever by condition (4) the demolition of the stables from the remainder of the proposal in appeal B if it were felt to be in the interests of progressing a development otherwise found to be acceptable. There is a statutory test (s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990) to be applied in considering whether to grant planning permission for development which affects a listed building and there is government advice in NPPF paragraph 199 that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of the degree of harm and in paragraph 202 that less than substantial harm must be weighed against the public benefits of the proposal. I consider this balance in the section of my report below, headed Planning balance and overall conclusion.

*Issue (d); (Appeals A, B and C); The effect on the Newmarket Conservation Area*

49. The draft appraisal of the Newmarket Conservation Area, of June 2009 analyses the character of the Conservation Area street by street, rather than as a whole but it does have a small section which comments on the town's general character and plan form. This suggests that the special character of Newmarket derives from the overlay of the horse breeding, training and racing activities and the associated Royal patronage, upon a traditional market town and its medieval layout.
50. The importance of the wide, long High Street in its layout is noted, from which radial roads spread out to north and south. The appraisal notes a fine collection of Regency, Victorian and Edwardian buildings, rarely exceeding three storeys, on narrow frontages, their facades displaying a tight rhythm resulting from the classical proportions of their fenestration. This mix is overlaid by the racehorse training establishments, some small and tightly packed, others occupying spacious settings with the trainer's house, stables, stable yards and paddocks hidden behind high brick walls. The appraisal concludes by noting that the sight and smell of racehorses is an ever-present phenomenon in Newmarket and makes a significant contribution to its character. From my visits to the town, I concur with this analysis of its character.
51. The authoritative Drury McPherson report asserts that both the Queensbury Yard and the open paddock make an exceptional contribution to the character of the Newmarket Conservation Area. Inspector Gray's decision letter confirms that the Lodge and the Cottage make a valuable contribution to the character and appearance of the Conservation Area by their location on High Street on the approach to the town centre from the south-west. My visits to the town lead me to concur with both these observations. The White Lion public house stands at the point where suburban development recessed behind gardens gives way to urban development fronting directly onto the pavement. Whatever is built on the vacant part of the site fronting on to the High Street next to the White Lion will cast an indelible imprint onto the mind of any visitor to the town.
52. Historic England advises<sup>5</sup> that although it is not a public area, the open character of the paddock land is readily appreciated from Rowley Drive and Falmouth Avenue and makes an important contribution to the distinctive urban grain of the town formed by a long-standing association with the Horse Racing Industry. Inspector Gray's 2014 decisions letter also confirms that the paddock land makes a highly significant contribution to the Newmarket Conservation Area, notwithstanding both the subsequent enlargement of the Conservation Area and the disuse of the land. He particularly remarks on the points where its openness can be discerned through the gates onto Rowley Drive and other points where there are breaks in the boundary hedges, a point also made in paragraph 2.10.2 of the Drury McPherson report. My visits to the site lead me to concur with paragraph 3.7.3 of the Drury McPherson report which remarks that the walk (The Rows) and the adjoining paddock may be regarded as making a positive contribution to the Conservation Area and as undesignated heritage assets in their own right.

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<sup>5</sup> In their letter of 24 August 2021



53. There are therefore several aspects to a consideration of the effect of the proposals on the Conservation Area. One is its effect on the townscape of the High Street. Another is its effect on the pattern of land uses and the representation of the Horse Racing Industry within the fabric of the town (the urban grain). I deal with each in turn.

*Townscape*

54. As I have already observed, the site is located at the edge of Newmarket, at the point where substantial town centre buildings rising from the back edge of pavement, give way to more suburban (though still substantial) buildings, set back from the High Street behind tree lined verges. It is, as several have remarked, a gateway to the town centre, sitting at the top of the hill leading down into the town.

55. Although Queensbury Lodge and Queensbury Cottage are relatively modest buildings, their context is more substantial. The two terraces which link the two parts of the High Street frontage include a terrace of two storeys with second floor engaged dormers. Abutting the site to its north-east is the very substantial four storey Clarendon House, in orange brick. Opposite, behind a brick boundary wall, is the equally impressive property at 141 High Street.

56. Because of the proximity of larger-scaled buildings in the conservation Area, I do not concur with the Council's suggestion that any development of the site should be limited to two storeys in height. Equally, the appellant's submitted parameter plans suggesting that a single storey convenience store be sited at the High Street entrance to the site (just outside the Conservation Area boundary) are disappointing in terms of the implied height of the building and its contribution to the townscape of the High Street.

*Urban grain and the pattern of land uses*

57. From the High Street, Black Bear Lane gradually transitions from town centre commercial buildings, past a substantial three storey double-fronted house, towards two storey houses (with a third storey in the roof) eventually giving way to modest, two-storey cottages. The site frontage also morphs from a substantial wall to an impenetrable hedgerow, reinforced by a fence. The frontage onto The Rows seems positively rural, as the single storey Houldsworth Valley Primary Academy hides behind hedgerows at a lower level on the opposite side of Rowley Drive. The site itself is hidden behind a substantial hedgerow with hedgerow trees.

58. There are views into the paddock part of the site, from gaps within the hedgerow along Black Bear Lane and, most notably, from the gates onto The Rows along Rowley Drive. This viewpoint, with its avenue of trees leading to Fitzroy Stables is where the paddock makes its greatest contribution to the character of the Newmarket Conservation Area. The view within the site to the left of the gates is into two fields well contained by trees and hedgerows. The view to the right leading up towards the rear of the White Lion building is somewhat less satisfying as the flanks of houses in Falmouth Avenue present a somewhat untidy appearance. Some of these, particularly a three-storey terrace prominent in the view, are quite substantial buildings and again, do not lend support to the Council's view that development on the paddock should be limited to two-storey buildings.



59. Taking all things in the round, I do not disagree with the suggestion made in paragraph 4.6.1 of the Drury McPherson report that the retention of the northern two-thirds of the Paddock as open space is desirable in order to preserve the character or appearance of the Conservation Area. The appellant's submitted parameters plans demonstrate that at least 38.9% of the site could be retained as open space. The more recent of the parameters plans indicated a layout which retained the two fields fronting Black Bear Lane and the avenue of trees leading to Fitzroy Stables. That would retain the most important open part of the site which contributes to the character of the Conservation Area. In my view, refinement of that concept could result in even greater openness being retained.
60. Given the reduction in the open space within the paddock to the extent that Appeal B would not achieve the two-thirds retention of open space recommended in the Drury McPherson report and given the paddock's contribution to the urban grain of the Conservation Area, I conclude that its partial development as proposed would result in some harm to the character and appearance of the Conservation Area.
61. Consequently, the proposal in Appeal B would be contrary to Core Strategy policy CS3 and to DMPD policy DM17 which requires, amongst other matters, that development within a Conservation Area should preserve or enhance its character or appearance. The evidence does not suggest that the harm would amount to substantial harm causing a loss of all significance relating to the Conservation Area; it would be less than substantial harm which will need to be weighed against any public benefits arising from the proposal. I make this balance in a later section of my decision, headed Planning balance and overall conclusion, taking into account the requirement of s72(1) The Planning (Listed Buildings and Conservation Areas) Act 1990 to play special attention to the desirability of preserving or enhancing the character or appearance of the Newmarket Conservation Area.
62. Although Appeals A, B and C would not preserve the entirety of the stables within the Queensbury Yard, the intent of all three appeals in making a connection between the yard and a horse walk to the rear would be to modify the Queensbury Yard so as to be more characteristic of a typical Newmarket stables having access at the rear to a paddock, horse walk and thus the Heath and gallops as noted earlier. Whilst causing harm to the listed building, as noted in an earlier section of this decision, it would nevertheless be an enhancement to the Conservation Area and so would comply in that respect with Core Strategy policy CS3, DMPD policy DM17 and Newmarket Neighbourhood Plan policy NKT1, which asks that proposals for new development within the designated conservation area should preserve or enhance its character or appearance. Again, this is a matter to be taken into account when I weigh up the harms and benefits resulting from the scheme in a later section of my decision, headed Planning balance and overall conclusion, taking into account the requirement of s72(1) The Planning (Listed Buildings and Conservation Areas) Act 1990 to play special attention to the desirability of preserving or enhancing the character or appearance of the Newmarket Conservation Area.

*Issue (e); (Appeal B only); The SSSI and SAC*

63. There are three parts to this issue. One is concerned with the possible adverse effects of the development proposed upon the integrity and conservation objectives of the Devil's Dyke Special Area of Conservation (the SAC) through recreational effects on its qualifying botanical interest as a result of wear and tear and as a result of nutrification from dog faeces. The second and third are concerned with possible adverse effects upon the Devil's Dyke SSSI (which is more extensive than the Devil's Dyke SAC; the SAC is Unit 3 of the SSSI) and on the Newmarket Heath SSSI. I deal with the SAC concern first.

*Natural England advice*

64. I have been provided with seven sets of comments made by NE on the current appeal proposals dated 6 July 2021, 15 July 2021, 20 August 2021, 6 December 2021, 7 February 2022, 6 July 2022 and 10 May 2023. The first was made in relation to Appeals A and C only. It offers no comment and explains that the lack of comment implies that the proposal is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes.
65. The other comments were made in relation to Appeal B only. That of 15 July 2021 gave general advice relating to SSSIs only (neither specifying Devil's Dyke SSSI nor Newmarket Heaths SSSI), making no mention of the SAC, and referred the reader to a letter of 12 July 2019 sent to Cambridgeshire districts advising them of a change to the Impact Risk Zones (IRZs) of the SSSIs.
66. In response to the appellant's Shadow Habitats Regulations Assessment, NE confirmed by email of 20 August 2021 its view "that the proposed development will not have significant adverse impacts on Devil's Dyke Special Area of Conservation / Site of Special Scientific Interest either alone or in-combination with other plans or projects, and has no objection. This is due to the distance of the proposed development from the designated site and its location within Newmarket which provides existing green space which is more accessible from the development than the Devil's Dyke."
67. The Council pointed out to NE that its conclusion was based on what the Council considered to be a false premise about the availability of green space within Newmarket. NE responded on 6 December 2021 confirming its earlier view that the proposed development is unlikely to have significant indirect impacts on the SAC or SSSI alone. But it felt that in-combination effects could not be ruled out and asked for an assessment, including an assessment of existing alternative natural greenspace, together with a strategy for mitigating any identified impacts.
68. NE's further response of 7 February 2022 reiterated its earlier advice, reviewed information received and concluded that "there does not currently appear to be sufficient publicly accessible green space on and close to the site for a development of the proposed size." It supported the principle of providing funding towards management and monitoring of the SAC if there was a mechanism for developments having an in-combination impact to contribute. There is currently no such mechanism in place.
69. NE's further comments of 6 July 2022 were made in response to material from the appellant on Devil's Dyke and Open Space. It repeated its request for an

assessment of existing alternative natural greenspace. It reiterated its support in principle for providing funding towards management and monitoring of the SAC if there was a mechanism for developments having an in-combination impact to contribute. It provided guidance on what is considered an appropriate amount and quality of on-site greenspace for minimising recreational pressure on designated sites.

70. NE's further comments of 10 May 2023 were made in response to a further illustrative masterplan submitted by the appellant. NE confirmed that the quantity of open space shown would satisfactorily address recreational disturbance impacts from this development alone but sought details (which would only be provided when reserved matters are submitted) to show that the quality would be sufficient to prevent significant impacts to Devil's Dyke SAC from increased recreational disturbance as a result of this development.
71. This last comment provided by NE, received during the Inquiry, contradicts its response of 6 December 2021 confirming its earlier view that the proposed development by itself is unlikely to have significant indirect impacts on the SAC and that it was "in-combination" effects which needed to be assessed and mitigated. The letter reiterated the guidance given in its 6 July 2022 letter on what is considered an appropriate amount and quality of on-site greenspace for minimising recreational pressure on designated sites. It also reiterated NE's support in principle for providing funding towards management and monitoring of the SAC if there was a mechanism for developments having an in-combination impact to contribute. (It remains the case that there is not such a mechanism.) Despite this inconsistency, I have taken account of NE's advice in making the following Habitats Regulation Assessment and consequent Appropriate Assessment.

*Habitats Regulation Assessment*

72. The Habitats Regulations 2017 (as revised) require that before any planning permission is given for a project which is likely to have a significant effect on what is known as a European site (in this case the Devil's Dyke Special Area of Conservation (SAC)), an appropriate assessment must be made of the implications of the project in view of the SAC's conservation objectives and that I must ascertain that the project would not adversely affect the integrity of the SAC. I can take account of conditions which may be imposed. This is a two-stage process; first of all establishing a likely significant effect and then secondly making an appropriate assessment of that likely significant effect.
73. The Habitats Regulations Assessment (HRA) dated September 2019 carried out for the Council's Site Allocations Plan (SALP) (which allocates the appeal site for development but for a lesser quantity than that now proposed) found that likely significant effects from the SALP alone or in combination with other plans could not be ruled out. An Appropriate Assessment was made. This concluded that "Appropriate Assessment was able to rule out an adverse effect on the integrity of any European site from the SALP, either alone or in combination with other plans and projects."
74. A few months before that Appropriate Assessment of the SALP was carried out, NE notified Cambridgeshire Councils (but not West Suffolk Council) that it had updated its Impact Risk Zones (IRZ) for a number of SSSIs across Cambridgeshire, including the Devil's Dyke SSSI, on the grounds of increasing evidence of greater visitor numbers for daily exercise, dog walking and

enjoyment of the countryside. The IRZ for the Devil's Dyke SSSI was extended to 5km. The notification advised that an ecological impact assessment be carried out on proposals for development falling within the IRZ. It also pointed out that some SSSIs are also internationally designated as European sites to which the HRA process should apply.

75. The Council has taken the view that, because its SALP HRA was carried out in ignorance of the extended IRZs and considered the potential for recreation pressure on Breckland SPA only, the conclusion reached in the HRA is now invalid and cannot be relied upon. Paragraph 5.62 of the Habitats Regulations Assessment of the Forest Heath Area Site Allocations Local Plan, where the decision to concentrate on Breckland SPA statement is stated, immediately follows paragraph 5.61 where all European sites potentially affected by increased recreational pressure were assessed. The threshold for assessment was 7.5km from new housing development (considerably in excess of the 5km increased IRZ notified for the SSSIs) and included the Devil's Dyke SAC. For Devil's Dyke SAC, the conclusion was reached in the SALP HRA that there would be "no significant vulnerability to recreation pressure, based on designated features plus pressures and threats described in the Site Improvement Plan".
76. I am therefore not necessarily convinced of the invalidation of the SALP HRA but, in the interests of pursuing the precautionary principle, make the following further HRA and Appropriate Assessment. The site lies within the 5km IRZ established by NE for the SSSI and so, for that reason, if for no other, likely significant effects on the SAC from the appeal site should not be ruled out.

*Appropriate Assessment*

77. The Conservation Objectives of the Devil's Dyke SAC<sup>6</sup> 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

The Qualifying Features are; H6210. Semi-natural dry grasslands and scrubland facies: on calcareous substrates (*Festuco-Brometalia*) (important orchid sites); Dry grasslands and scrublands on chalk or limestone (important orchid sites).

78. NE's Supplementary advice on conserving and restoring site features for the Devil's Dyke SAC, published on 21 January 2019 provides information about its qualifying features, summarising studies including a botanical survey of 1997, monitoring of herbaceous species carried out in 2008 and 2012, plant records from 1983, a check list of flora from 2011 and of butterflies from the same date. It records a definition of Favourable condition in 2011. East Cambridgeshire District Council's Natural Environment SPD adopted in September 2020 records a condition summary of the whole SSSI (not just the

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<sup>6</sup> Natural England 27 November 2018 (version 3)

SAC which is only 20% of the whole) from 2017 as 49.57% Favourable and 50.43% Unfavourable-recovering.

79. Because of the physical separation of the appeal site from the SAC, there is no question of the integrity of the SAC being put directly at risk by the development proposed. It is indirect effects which are examined. There is no information to show the number of visits made by members of the public to the SAC but preliminary results of the West Suffolk 2023 visitor survey suggest that the mean distance which visitors travel to the SAC is 4.6km, within a range from 0.8km to 15.6km. 75% of surveyed visitors came from within 5.5km. A mapping of visitor postcodes shows that about half of all interviewees came from within Newmarket. The remainder came from further afield in both Suffolk and Cambridgeshire.
80. The population of Newmarket in 2011 was 16,615 people. As Newmarket provides about half the interviewees in the visitor survey, that suggests that a surrogate total market catchment for the SAC has a population of about 33,000. Planned allocations within West Suffolk within 5km of the SAC are estimated to be likely to house a population of about 2,382 people. That would represent an increase in the surrogate market catchment population of about 7.2%. (There would also possibly be allocated development in East Cambridgeshire within 5km of the SAC but no information is provided to quantify that so it has been ignored for the purposes of this exercise, which therefore slightly exaggerates the proportionate impact which the appeal site development would have).
81. The above analysis is based upon early data from a visitor survey being carried out in 2023. Yet, as the appellant's Shadow Habitats Regulations Assessment and its Further Information – Devils Dyke & Open Space reports point out, it is likely that the greatest damage to the SAC is caused by its use as a free grandstand for the Newmarket Nights concerts and for racing events themselves rather than by casual recreational visits. Damage caused on those occasions cannot be attributed to development proposals, either alone or in combination. It must therefore be borne in mind that the remainder of this analysis, which is based on an examination of development proposals alone, will unfairly exaggerate their proportionate effect on the SAC.
82. The appeal site would be expected to house between 307 people (Council's estimate) and 473 people (appellant's estimate), representing approximately 13-20% of the estimated population increase of Newmarket resulting from allocations and thus would add about 1.8%-2.8% to the population of Newmarket or 0.9%-1.4% to the estimated surrogate market catchment of the SAC. Even if the propensity to visit the SAC on a casual recreational basis from the future residents of the appeal site were to be the same as that of Newmarket as a whole, it is clear that on its own the appeal site development would cause no significant adverse effect on the conservation objectives of the SAC. In consequence, there is no necessity for appeal B to provide mitigation of the effects of the development proposed on its own.
83. Even in combination with other development allocations in West Suffolk the effect on the surrogate market catchment of the SAC would be about 7.2%. As that is less than ten percent it could be argued that it would not be a significant impact and that the verdict of the SALP HRA was correct all along. However, there is no quantitative threshold for judging significance; the relevant legal



cases quoted in the SALP HRA point to an effect which undermines the conservation objectives of a designated site as being significant. Taking a precautionary approach, it is desirable that even a 7.2% increase in the surrogate market catchment of the SAC which would increase the wear and tear on the SAC, would be best mitigated in any event, even though the contribution to in-combination effects which the appeal site would make is small and recreational effects from casual visiting are likely to be causing much less damage than the use of the SAC as a grandstand for events at the racecourse.

84. NE has asked for an assessment of existing natural greenspace which could provide mitigation of the effects of the proposal. But the assessment I have carried out is based on the observed activities of the existing population. If existing natural greenspace were to have any mitigating effects, that would have had its effects on existing behaviour. By projecting into the future the effects of the proposed development, based on the propensities of the existing population, already influenced by the provision of such natural greenspace as there is, I have already taken into account the effects of such existing natural greenspace on the population likely to reside in the development proposed. There is therefore no need to carry out any further assessment of existing natural greenspace except in terms of potentially increasing mitigation effects by improvements to the quantity or quality of existing public open space.
85. In all its comments, NE has consistently supported the concept of a financial contribution towards funding the management and monitoring of the SAC as a way of mitigating in-combination effects, if there is a mechanism for pooling and expending such contributions. But there isn't, and so, I turn to the advice set out in NE's original letter to Cambridgeshire authorities, dated 12 July 2019, in which it first alerted those authorities to its concerns about the effects of increased wear and tear from visitors on a number of SSSIs within Cambridgeshire.
86. That letter set out NE's suggested strategic solution of a package of mitigation measures and its intention to progress such an approach through the next phase of local plans review. But it also provided what it called Natural England's proposed interim approach to alleviating the recreational pressure impacts of residential development on SSSIs within Cambridgeshire. This suggested the provision of natural green space to provide an alternative attraction to any SSSI (in this case, the SAC).
87. The letter of 12 July 2019 suggested suitable alternative natural green space (SANGS) at the rate of 8ha per 1,000 population (the rate used in guidance specific to the creation of SANGS for the Thames Basin Heaths Special Protection Area). For the appeal site, this would translate into a requirement of between 2.456 and 3.784 ha, larger than the 3.61ha appeal site itself.
88. In comments on the Appeal B proposal itself, NE's letter of 6 December 2021, which raised objections for the first time, specified no particular quantitative mitigation, but gave general advice on environmental enhancement including new footpaths, restoring hedgerows, creating a new pond, planting trees, using native plants in landscaping, providing bird or bat boxes, designing lighting to encourage wildlife and giving consideration to the implementation of any landscape, green infrastructure or biodiversity strategy already in place, such as linking to existing greenspace, identifying new greenspace, improving



existing, planting street trees, improving the existing right of way network or restoring neglected environmental features. NE's letter of February 2022 repeated that advice.

89. In its letter of 6 July 2022, NE gave further guidance on what is considered an appropriate amount and quality of on-site greenspace for minimising recreational pressure on designated sites, referencing the TCPA's published Guides and Principles for Garden Communities. The letter stated that Natural England recommends that typically, around 40% of a site should be used to provide on-site greenspace and that this should include, where possible:

- High quality, informal, semi-natural areas.
- Circular dog walking routes of 2.7km within the site and/or with links to surrounding public rights of way.
- Dedicated "dogs off lead" areas.
- Signage/information leaflets to householders to promote these areas for recreation.
- Dog waste bins.
- A commitment to the long term maintenance and management of these provisions.

NE's letter of 10 May 2023 repeats the above advice but adds a new recommendation by going on to say that consideration of off-site measures is also required.

90. Because this is an outline application, no precise details of the degree to which on-site provision of open space would increase the quantity or quality of natural greenspace in the area are available at this stage. All that can be expected at outline stage is to be satisfied, by an assessment of illustrative material, that the necessary quantity and quality could be provided and then to require, when considering reserved matters applications, that it be provided.

91. As pointed out in the appellant's Further information – Devil's Dyke & Open Space report, the originally submitted land use and access parameter plan showed 1.3ha of open space, representing 36% of the site. The appellant's revised masterplan submitted on 25 April 2023 states that public open space would be 1.12ha (31% of the site). There is also incidental amenity space shown. At the hearing, the appellant's representative stated, and was not contradicted, that, in total, open space could be provided representing a total of 38.9% of the site, complying with Natural England's suggestion of "around 40%".

92. The Council's representatives pointed out that a dog walk of only 400m was indicated on land use and access parameter plan version E and that even using the whole site a route of only 700m could be provided but I share the observation made on page 11 of the appellant's Shadow Habitats Regulations Assessment version dated 18 January 2022 that additional opportunities for informal recreation are frequent in Newmarket along the bridle (though perhaps not when used for walking horses) and footpath networks and along some of the wide boulevard style roads with ample grass verges. I saw a good example of the latter to the immediate west of the site in the triangle of land

between the High Street, Barbara Stradbroke Avenue and Hamilton Road. Hamilton Road itself and Rowley Drive both have ample grass verges (without implying the use of the Rows) so a potential circular dog walk of about 1.09 miles (3km) centred on the site presents itself for consideration without much research.

93. All parties agreed that the other attributes of a high-quality open space suitable to mitigate the appeal proposal's minor contribution to the arguably insignificant in-combination effects of casual recreational visits to the Devil's Dyke SAC could be secured when reserved matters are submitted for consideration. Condition (17) secures other attributes of necessary mitigation.

*The SSSIs*

94. The Devil's Dyke SAC is the closest part of the Devil's Dyke SSSI to the appeal site. Consequently, the above analysis of the effects of the appeal proposals on the Devil's Dyke SAC applies to a lesser extent to the rest of the Devil's Dyke SSSI, except that the latter is less likely to be used as a grandstand for events at the Newbury racecourse. As a result, the quantification of effects in the analysis is more reflective of the total impacts on the SSSI than in the case of the SAC. It still remains of little significance.
95. The Newmarket Heath SSSI is closer to the appeal site than is the Devil's Dyke SAC but it is both more extensive (279.3 ha) and less openly accessible. It does not figure in the list of SSSIs of concern to Natural England as a result of increased visitor pressures set out in their letter of 12 July 2019 because that letter only refers to Cambridgeshire sites whereas the Newmarket Heath SSSI is in West Suffolk. Nevertheless, no concern has been expressed by any party that the development of the appeal site would cause any harm to the Newmarket Heath SSSI.

*Conclusion in relation to issue (e)*

96. I therefore conclude that an adequate quantity and quality of public open space could be secured at reserved matters stage to comply with the specific requirement of SALP policy SA6(b) for strategic landscaping and open space and to provide sufficient mitigation for any individual or in-combination adverse effects on the Devil's Dyke SAC and SSSI. At this outline stage there is no reason to withhold planning permission because of concerns about the effects of the proposal on the Devil's Dyke SAC and SSSI. The proposal would therefore comply with Core Strategy Policy CS2 which seeks to protect areas of biodiversity interest from harm and DMPD policies DM2, DM10, DM11 and DM12 which seek recognition of the key characteristics and special qualities of an area, have regard to Natural England advice, the objectives of site designation, the integrity of designated sites and the cumulative impacts of development and seek mitigation of any adverse impacts.

*Issues (f) and (g); (Appeal B only) The effects on the safe operation of the Horse Racing Industry and on highway safety*

97. There is concern regarding the adequacy of serving the development by a single access onto the High Street, which led to the original proposal for an emergency vehicular access onto The Rows, with consequent concerns of enforceability and safety at the interface with horses and their riders. For that reason the bilaterally agreed planning obligation includes a financial

contribution of £15,000 towards the cost of a Traffic Regulation Order to prohibit the entry of motor vehicles onto the site at that point.

98. I am not convinced that an emergency access is necessary, or that it necessarily be onto The Rows. The government publication Manual for Streets notes that the length of cul-de-sacs or the number of dwellings have been used by local authorities as criteria for limiting the size of a development served by a single access route. Authorities have often argued that the larger the site, the more likely it is that a single access could be blocked for whatever reason. The fire services adopt a less numbers-driven approach and consider each application based on a risk assessment for the site, and response time requirements.
99. In the case of this appeal, there is no evidence submitted to show that a single vehicular access would be inadequate or unsafe. The outline proposals no longer include a proposal for an emergency access onto Rowley Drive crossing The Rows. For that reason, I find that the provision in the bilaterally agreed planning obligation of a financial provision of £15,000 towards the highways authority's costs of a Traffic Management Order to prohibit motor vehicles from using such an access to be unnecessary. It therefore fails the CIL Regulations test of necessity and so, I take no account of it in this decision. In the event that an emergency access is subsequently found to be necessary and is revived during the submission and consideration of reserved matters, then it can be accompanied with its own planning obligation at that stage.
100. The County Council is concerned that stationary buses using the bus stop adjacent to the proposed access would obstruct visibility and that the position of the access, debouching into the layby where the bus stop is situated might lead to vehicles emerging from the site obstructing the path of buses pulling out of the layby. Drawings included in a rebuttal statement produced by Mr Doyle on behalf of the appellant allay these concerns.
101. A feature of transport planning and highway management unique to Newmarket is the movement of horses between their stables and the racecourse and training grounds to the east and west of the town using reserved horsewalks. Suffolk County Council (SCC) and West Suffolk Council have worked with the Horse Racing Industry over a number of years to identify and secure improvements to the equestrian highways infrastructure in the town, reflecting its importance as the national centre of horse racing in the UK.
102. In support of the emerging West Suffolk Local Plan, Cottee, consultants to the Horse Racing Industry have produced proposals for 17 horse crossings (seven in Cambridgeshire, 10 in West Suffolk) together with other measures to protect the Horse Racing Industry from negative impacts arising from traffic. One of these proposals is at the junction with Hamilton Road and Rowley Drive. It is suggested that it be implemented "When funds available." However, the appellant's transport assessment shows that the limited traffic generated by the site is unlikely to have any impact on the junction of Hamilton Road and Rowley Drive sufficient to justify any contribution from the development of the site towards the funding of this undoubtedly desirable measure.
103. I conclude that Appeal B would have no unacceptable adverse effects on the safe operation of the Horse Racing Industry or on highway safety in general. It would comply with Core Strategy policy CS1 (which provides that the importance of the Horse Racing Industry will be protected), with DMPD policies

DM48 and DM50 (which would not permit development likely to have a materially adverse effect on the operational use of an existing site within the Horse Racing Industry and which support the retention and improvement of existing horse walks), with the specific requirement of SALP policy SA6(b) (for the avoidance of material impacts on the operations of the Horse Racing Industry) and with Newmarket Neighbourhood Plan policies NK22 and NK24 (which require traffic resulting from development to be within the capacity and safety of the local highway network and to safeguard horsewalks in general and The Rows in particular).

*Issue (h); (Appeal B only); Car parking*

104. At this outline stage, there is no evidence to suggest that the details to be submitted for approval as a reserved matter would be inadequate to provide the development with an appropriate level of car parking. It would be for the Council, when considering reserved matters to determine whether the details comply with DMPD policy DM2(l) which requires development to accord with standards that maintain or enhance the safety of the highway network and DM22(f) and (g) which require residential development to apply innovative parking measures to avoid its visual dominance and to support the street scene.
105. In common with several other issues, the Council's putative reason for refusal relating to this matter refers to non-compliance with DMPD policy DM4. This policy requires the production and approval of a development brief before a planning application is considered, as does a specific requirement of SALP policy SA6(b). Although the appellant produced a draft development brief, it was not approved by the Council and so the proposal is now incapable of compliance with these policies. These policies are however a procedural requirement for a planning application; they place no substantive requirements on a proposed development itself. In the nature of an appeal which considers the substantive merits and demerits of a development proposal, the time for such procedural requirements is past and I give no further consideration to these policy requirements.

*Issue (i); (Appeal B only); Local air quality*

106. This issue was not pursued at the Hearing. There is no evidence to suggest that the development proposed would give rise to an unacceptable effect on air quality.

*Issue (j); (Appeal B only); Noise from the adjacent petrol filling station*

107. This issue was not pursued at the Hearing. There is no evidence to suggest that the development proposed would experience an unacceptable noise environment as a result of the adjoining petrol filling station on the High Street frontage. It would therefore comply with DMPD policy DM2(h) which requires that sensitive development should not be sited where its users would be significantly and adversely affected by noise from existing sources.

*Issue (k); (Appeal B only); Potential land contamination*

108. A revised Phase I Desk Study and Preliminary Risk Assessment was submitted with the appellant's rebuttal of the Council's Statement of Case. The Council confirmed that it met its criticisms of the appellant's originally submitted material.

109. The revised study recommends that further intrusive investigation be carried out by excavating five trial pits to a maximum depth of 1.2m and sinking thirteen window sampler boreholes across the site and suitable samples be taken for chemical analysis. This further work can be required by condition (8). I conclude that with such a condition in place the proposal would comply with DMPD policy DM14 which would not permit development to occur where there is an unacceptable risk of contamination and requires remediation of identified contamination.

*Issue (l); (Appeal B only); Biodiversity*

110. The Council's concern represented by its putative reasons for refusal is that the illustrative plans and drainage strategy would imply both the removal of trees and also construction activity within the root protection areas of those that would remain. But the illustrative plans and strategy are just that; illustrative and strategic.

111. Revised illustrative plans were submitted with Appeal itself and shortly before the Hearing, which are less open to the Council's criticisms. There is no evidence that it would be impossible for detailed plans to be submitted which would comply with policy NKT14 of the Newmarket Neighbourhood Plan which, amongst other matters, requires protection for trees and hedges that have amenity value as perceived from the public realm.

112. The policies referred to in the Council's putative reasons for refusal also deal more widely with biodiversity and ecology. There were criticisms of the age of the appellant's originally submitted ecology report but there is no suggestion that the recommendations of the updated report dated 2 May 2023 would not lead to an acceptable outcome. With condition (7) in place applying those recommendations, I conclude that the proposal would comply with Core Strategy policy CS2 requiring mitigation measures to result in a net biodiversity gain, DMPD policies DM2(g(iv)) requiring the avoidance of harm to sites, habitats and features of ecological interest, DM12 requiring the protection of biodiversity and the mitigation of adverse impacts and DM13 requiring no unacceptably adverse impact on the character of the landscape, landscape features, wildlife or amenity value.

*Issue (m); (Appeal B only); Flood risk*

113. Third parties report that the site is subject to surface water flooding in parts, which does not appear to have been taken on board by the appellant's Strategic Flood Risk Assessment. At the hearing, the Council confirmed that the Environment Agency's flood risk maps have been recently updated to confirm the point made by third parties.

114. The appellant originally submitted a Strategic Flood Risk Assessment including a drainage strategy which the Lead Local Flood Authority (LLFA) confirmed to be acceptable. In a desire to demonstrate a greater usable area of open space, the appellant submitted a revised Strategic Flood Risk Assessment including a drainage strategy which involved the use of a crated system to store flood water. The LLFA advises that a crated system may sometimes be acceptable on constrained sites but they point to disadvantages; that they have no confidence that the revised system would provide sufficient treatment of pollutants and prevent an increase in flood risk to neighbouring properties and so are no longer able to recommend approval.



115. Neither Strategic Flood Risk Assessment forms part of the detail which I am being asked to approve as part of this outline application. What the LLFA's comments do demonstrate is that it is possible to devise a drainage strategy for the site which would be acceptable. That may, or may not, include the use of a crated system in order to achieve a greater quantity of usable open space but, if it does, the appellant's detailed proposals will need to address the difficulties which the LLFA raises, perhaps by including a maintenance scheme within any detailed proposal.
116. Neither a surface water drainage scheme, nor a foul water drainage scheme would be required to be submitted as a reserved matter. Nor is it a matter included within the outline proposal which I am asked to determine. Yet, it would be clearly necessary for a drainage scheme to be submitted and approved before the scheme goes ahead. Accordingly, condition (10) is imposed to require the submission of drainage details for approval. With such a condition in place, I conclude that the development would comply with Core Strategy policy CS4 which supports development proposals that avoid areas of current and future flood risk and which seeks the implementation of Sustainable Urban Drainage Systems (SUDS) into all new developments where technically feasible, DMPD policy DM6 which requires all new development to include schemes of surface water drainage and Newmarket Neighbourhood Plan policy NKT18 which requires the incorporation of SUDS features.

*Issue (n); (Appeal B only); Social infrastructure*

117. As noted previously, a bilaterally agreed planning obligation provides for financial contributions to a number of items of social infrastructure and for affordable housing. The Council has provided a CIL compliance statement which seeks to justify each contribution. Except as noted above, in respect of the financial contribution to the making of a Traffic Regulation Order prohibiting the use of an emergency access onto Rowley Drive across The Rows which no longer forms part of the present proposals, which I find unnecessary, the CIL compliance statement is not challenged by the appellant and I find it convincing.
118. It does not, however, comment on the NHS contribution of £75,000. The justification for this is contained within a letter from the West Suffolk Clinical Commissioning Group dated 27 July 2021. This explains the demand likely to arise from the development, the lack of capacity at the three GP surgeries closest to the development, costs the expansion of two of them at a little under £75,000 each and makes a claim for a payment of £149,000. I therefore consider that the payment of £75,000 included in the planning obligation to be a proportionate contribution which meets the CIL tests.
119. With the bilaterally agreed planning obligation in place, I conclude that the proposal makes adequate provision for social infrastructure. The proposals therefore comply with Core Strategy policies CS9 which seeks the provision of 30% of dwellings as affordable housing, and CS13 which seeks the provision of social infrastructure where necessary to mitigate the effects of development.

*Issue (o); (Appeal B only); Housing provision*

120. The Council claims that it has an identifiable five-year housing land supply sufficient for 5.4 years demand, not including the appeal site, notwithstanding that the appeal site is an allocation for 50 dwellings in its Site Allocations Local



Plan 2019. The appellant contests this claim on two grounds; firstly, the way that its housing supply is pooled from the formerly separate supplies of the two former component authorities comprising West Suffolk; and secondly in terms of the deliverability of a number of sites. I deal with each point in turn.

121. The appellant accepts (and I agree) that it is appropriate that the Council has amalgamated the housing requirement of its Single Issue Review of Core Strategy Policy CS7 Overall Housing Provision and Distribution adopted September 2019 for Forest Heath with the local housing need defined by the government's standard method for St Edmundsbury to define a single housing requirement for West Suffolk. That accords with the advice contained in paragraph 66 of the NPPF that strategic policy-making authorities should establish a housing requirement figure for their whole area. It is also legitimate to go on to set housing requirements for more localised areas within the overall local authority area (as the example, East Suffolk, given by the appellant has done) but it is equally legitimate not to do so, as West Suffolk has chosen to do.
122. The appellant quite rightly points out that NPPF paragraph 60 emphasises the importance of a sufficient amount and variety of land coming forward where it is needed. But, to say that having a strategic housing requirement for an area (eg Forest Heath) and then looking for sites beyond that area to meet the demand somewhat defeats these policy objectives is not correct; NPPF paragraphs 61 and 66 both specifically refer to the legitimacy of providing for needs that cannot be met within neighbouring areas. Thus, I find nothing wrong in West Suffolk's approach of considering its housing land supply position for the whole of its administrative area as a single entity.
123. Checking the appellant's site-by-site analysis of the Council's claimed five-year supply, against its publicly available applications search database I find;
- Skeltons Drove. Condition 9 is concerned with car parking. It is condition 8 which is concerned with the removal of the existing use on site. An application to discharge these two conditions, together with conditions 6, 7, 10,11,12 and 13 was approved on 25 May 2018. The Council understands that development has commenced on site. This does not suggest that the appellant's criticism is sound.
  - Land east of Beeches Road. The Council claims that development has started. Even if planning permission for this site has expired (as the appellant claims), so that it should not be included within category (a) of the Council's 5-year HLS, it remains an allocated site and so, capable of being included within category (b) of the supply and capable of being delivered within the five-year period.
  - Bird in Hand Hotel. Outline permission was granted on 21 July 2021. Reserved matters have to be applied for by 20 July 2024. None has yet been applied for but the Council's trajectory does not anticipate delivery of this modest (16 dwelling) site until year four of a five-year trajectory and so the site remains capable of being delivered.
  - Land at Gas House Drove. Outline permission was granted on 27 November 2019. Application for reserved matters had to be made within three years. A reserved matters application was validated on 26 September 2022 and is pending decision, so the outline consent remains

valid. Whilst it is correct that no application has been made to discharge condition 9 in respect of contamination, the delivery of this small (9 dwelling) site is not anticipated until year four of a five-year trajectory and so it is entirely plausible that it remains deliverable within that timescale.

- Land at Chedburgh. The identification of this site as an allocation is somewhat long in the tooth. However, a request for pre-application advice is evidence of progress and so it is entirely plausible that this small site (10 dwellings) is deliverable within five years.
- School Road, Great Barton. The identification of this site as an allocation is somewhat long in the tooth although recently reallocated for up to 150 dwellings in the made Great Barton Neighbourhood Plan. The Council states that a development brief has been consulted upon, which is evidence of progress and so it is entirely plausible that part of this site (80 dwellings) is deliverable within five years.
- Great Wilsey Park. Outline permission for this very large (2486 dwellings) development was granted on 15 August 2018 with 46 conditions. Approval of reserved matters for access, landscaping and scale for the spine road was given on 28 May 2020 with ten additional conditions and for 499 dwellings on parcels A1, A2 and A8 on 23 September 2020 with five additional conditions. The Council advises that road infrastructure commenced on site in November 2020 and that the first residential phase is being built out. An application for approval of reserved matters in relation to the HV cable and associated infrastructure for the first phase was submitted on 26 February 2020 and is pending a decision. Applications to discharge 20 out of 46 conditions have been approved for phases of the site and applications to discharge 9 conditions on parts of the site are pending. This is clear evidence of progress and so a trajectory averaging 80 dwellings per year is plausible.
- Land west of Eriswell Road. This is an allocated site with an outline permission and a reserved matters application submitted. Although there may remain outstanding issues in respect of identifying offsetting land to mitigate potential effects on the Breckland SPA, this ought not to be a showstopping issue. Although I accept the appellant's view that there can be no surety about these matters, it is a realistic prospect with clear evidence of delivery within five years which is sought, not surety. The Council commissioned Turleys, a consultancy with a considerable reputation of expertise in these matters, to report on delivery and provide the clear evidence of build-out rates, lead-in times and lapse rates which is required to underpin estimates of realistic prospects and so I accept the Council's assertion that commencement in 2024 provides a reasonable lead-in time.
- Land north of Station Road, Lakenheath. This is an allocated site with outline permission. Although I accept that a reserved matters application is limited in scope and has yet to be determined, the lead-in time for commencement in 2025/6 is plausible and so I take the view that the Council has established a realistic prospect of delivery with Turley's report providing the clear evidence to support its presumed lead-in times.

- District Council Offices, Mildenhall. This is an allocated site and is included on the Council's brownfield register. Although there have been no planning applications, Turley's report to the Council provides clear evidence on which to base a realistic prospect of delivery of this modest site (45 dwellings) within the five-year period.
- Land at Acorn Way, Red Lodge. This is an allocated site and a masterplan has been prepared and consulted upon. Although there have been no planning applications, Turley's report to the Council provides clear evidence on which to base a realistic prospect of commencement of delivery of this site within the five-year period.
- Land to the west of Kingshall Street, Rougham. Although the site allocation is somewhat long in the tooth, outline permission was granted on 20 November 2020. Although there has been no application for approval of reserved matters or discharge of conditions, Turley's report to the Council provides clear evidence on which to base a realistic prospect of delivery of this small (seven dwelling) site within the five-year period.
- Beeches Road, West Row. The site is allocated for development and outline permission was approved on 2 November 2022. Although there has been no application for approval of reserved matters or discharge of conditions, Turley's report to the Council provides clear evidence on which to base a realistic prospect of commencement of delivery of this site within the five-year period.
- Little Court, Little Wratting. There is a resolution to grant planning permission. Although there may be many issues outstanding and there can be no surety of delivery, it is a realistic prospect with clear evidence of delivery within five years which is sought, not surety. Turley's report to the Council provides the clear evidence on which a realistic prospect of commencement of delivery of this site within the five-year period can be based.

124. With a few exceptions, a common thread running through these examples is an expectation from the appellant of a surety of delivery from sites which are anticipated to commence delivery in the later stages of the five-year period, some of which are relatively small sites in any event. At this distance in time it is unrealistic to expect surety that a site will commence within four years and three hundred and sixty four days rather than five years and one day. All that can be expected is that the Council bases its expectations on clear evidence of a realistic prospect of delivery. I am aware of a number of studies (eg those carried out by Lichfields) which can provide that clear evidence. This Council has not relied on Lichfields but has instead commissioned a report from Turley to provide that clear evidence and that report has not been questioned.

125. I therefore conclude that the Council has demonstrated that it can identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement. There is therefore no question of any development plan policy being deemed out of date by virtue of NPPF paragraph 11 and footnote 8. That conclusion does not imply that this proposal has no benefits in terms of housing provision. It is an objective of government to boost the supply of homes significantly. This proposal is for up to 123 dwellings and so is likely to be built out over a couple of years. As such,

it would represent about 7% of the Council's annual housing requirement for each of two years, or about 2.8% of its total five-year housing requirement. Moreover, it is in a part of the Council's administrative area where, historically, there has been a shortfall in delivery. That, together with its compliance with Core Strategy policy CS9 requiring the provision of 30% of the number of net new dwellings as affordable housing represents the benefits of this proposal in terms of housing provision.

*Planning balance and overall conclusion (Appeals A, B and C)*

126. In an earlier paragraph, I have noted that, the appellant does not present the development of appeal B as an enabling development but, like Inspector Gray deciding the appeals in 2014, I conclude that that is, in effect, what it would be.
127. Historic England guidance dated June 2020 defines enabling development as that which would not be in compliance with local or national planning policies and would not normally be given planning permission except for the fact that it would secure the future conservation of a heritage asset. NPPF paragraph 208 confirms that local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. Likewise, NPPF paragraph 202 advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The following paragraphs carry out those assessments, whilst also complying with the exhortation of NPPF paragraph 199 to give great weight to the conservation of a heritage asset, irrespective of the degree of harm to its significance.
128. I have concluded that the works of demolition to the listed Stables proposed in all three Appeals A, B and C would cause harm (albeit less than substantial harm) to their significance and so would be contrary to Core Strategy Development Plan Document 2001-2026 (the Core Strategy) policy CS3 and Joint Development Management Policies Document (the DMPD, adopted in 2015) policy DM15. This is a harm present in all three Appeals, A, B and C but could be divorced from Appeal B through condition (4).
129. There is a statutory test (s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990) to be applied in considering whether to grant planning permission for development which affects a listed building and there is government advice in NPPF paragraph 199 that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of the degree of harm and in paragraph 202 that less than substantial harm must be weighed against the public benefits of the proposal.
130. Whilst causing harm to the Grade II listed Stables, the opening formed by the works to the Stables would nevertheless be an enhancement to the Conservation Area and so would comply in that respect with Core Strategy policy CS3, DMPD policy DM17 and Newmarket Neighbourhood Plan policy NKT1. This would be a benefit of all three Appeals A, B and C. It would be divorced from Appeal B by condition (4) but an alternative causing less harm can be envisaged through the operation of condition (5).

131. To the extent that appeal B would not achieve the two-thirds retention of open space recommended in the Drury McPherson report, I have also concluded that there would be some harm to the character and appearance of the Conservation Area, contrary to Core Strategy policy CS3 and to DMPD policy DM17. This would be a harm exclusive to appeal B.
132. There is therefore both potential enhancement and harm to the Newmarket Conservation Area to be taken into account bearing in mind the requirement of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to play special attention to the desirability of preserving or enhancing its character or appearance.
133. Provided that an adequate quantity and quality of public open space is secured at reserved matters stage to provide sufficient mitigation, I have concluded that at this outline stage there is no reason to withhold planning permission in Appeal B because of concerns about any individual or in-combination adverse effects on the Devil's Dyke SAC and SSSI. The proposal would comply with Core Strategy Policy CS2 and DMPD policies DM2, DM10, DM11 and DM12. This is a neutral consideration in Appeal B.
134. I have concluded that Appeal B would have no unacceptable adverse effects on the safe operation of the Horse Racing Industry or on highway safety in general and would comply with Core Strategy policy CS1, with DMPD policies DM48 and DM50 and with Newmarket Neighbourhood Plan policies NK22 and NK24. This is a neutral consideration in Appeal B.
135. I have concluded that at this outline stage, there is no conflict with DMPD policies DM2(l) or DM22(f) and (g). It would be for the Council, when considering reserved matters to determine whether the details comply with those policies. The proposal would also comply with DMPD policy DM2(h). I have also concluded that with condition (8) in place to deal with potential contaminated land the proposal would comply with DMPD policy DM14. This is a neutral consideration for appeal B.
136. With condition (7) in place requiring mitigation measures to result in a net biodiversity gain I have concluded that the proposal would comply with Core Strategy policy CS2, DMPD policies DM2(g(iv)), DM12 and DM13. Although a net biodiversity gain would result, it would be intended as a mitigation of harm to the SAC and SSSI and so, would be a neutral consideration overall in Appeal B. Similarly, with condition (10) in place to require the submission of details of both surface and foul water drainage, I have concluded that the development would comply with Core Strategy policy CS4, DMPD policy DM6 and Newmarket Neighbourhood Plan policy NKT18. This would be a neutral consideration for Appeal B.
137. With the bilaterally agreed planning obligation in place, I have concluded that the proposal makes adequate provision for social infrastructure and so would comply with Core Strategy policies CS9 and CS13. This would be a neutral consideration for Appeal B.
138. I have concluded that the proposal would represent about 7% of the Council's annual housing requirement for each of two years, or about 2.8% of its total five-year housing requirement. Moreover, it is in a part of the Council's administrative area where, historically, there has been a shortfall in delivery. That, together with its compliance with Core Strategy policy CS9



requiring the provision of 30% of the number of net new dwellings as affordable housing represents the benefits of this proposal in terms of housing provision. There are also economic benefits arising from construction and from the spending power of future residents of the development to be taken into account. This would be a benefit arising from Appeal B.

139. Overall, there is little reason not to allow Appeal B. Its main substantial (as opposed to procedural) defect is its failure to comply with the specific requirement in policy SA6(b) to preserve or enhance the character and appearance of the Conservation Area by not preserving the openness of Fitzroy paddock in its entirety. But, that is a less than substantial harm to an extensive conservation area as a whole which would retain its special interest and significance even with the extent of loss of open paddock implied in this scheme. That harm would be clearly outweighed if the benefits of ensuring the restoration, repair, reinstatement, refurbishment and reuse of all three listed buildings in the Queensbury Yard on the appeal site were obtained. The benefits of housing development would also contribute positively to that balance. For those reasons, I allow appeal B, subject to conditions (5), (16) and (18) designed to secure its benefits.

140. The other problematic issue, common to all three Appeals A, B and C, is the proposition to demolish part of the Queensbury Stables in the absence of an approved scheme of restoration, repair, reinstatement, refurbishment and reuse of all three Grade II listed buildings on the appeal site in which the demolition is shown to be a necessary component. For that reason, I dismiss Appeals A and C but allow appeal B with condition (4) severing the partial demolition of the listed stables from the remainder of the permission and including condition (5) designed to bring about an approved scheme of restoration, repair, reinstatement, refurbishment and reuse of all three listed buildings. I do not preclude the possibility that the demolition of part of the listed stables may be shown to be a necessary component of such a scheme.

#### *Conditions*

141. The Council's Statement of Case included suggestions for sixty-four conditions in the event that I decided to allow Appeal B. The County Council's statement made recommendations for a further nineteen conditions. By the time that conditions came to be discussed during the Hearing, these had been consolidated into a list of 64 potential conditions.

142. Most of the suggested conditions are unnecessary since they either duplicate a requirement to provide details of reserved matters, or simply provide information about the kind of content which the Council would like to see submitted at reserved matters stage, or set requirements, the necessity for which could only be determined once reserved matters are submitted for consideration. I have therefore limited those conditions which require the submission of further applications to those matters which would not anyway be submitted as a reserved matters application (conditions (5), (6), (9), (10), (11), (12), (13), (14), (15), (16), (19) and (20)).

143. Other conditions reflect recommendations from the appellant's consultants included in the appellant's supporting material (conditions (7) and (8)), or are necessary to comply with a development plan policy (eg conditions (21) and (8) to comply with DMPD policy DM7 for restricting water consumption and DM14 regarding land contamination but not for the requirements of DM7



concerning energy and BREEAM standards as the thresholds for application are not met in this case and the policy does not require Building Regulations standards to be exceeded). In the light of information contained in the appellant's updated ecological walkover survey 2023, I have omitted the suggested condition requiring the submission of a Construction Environmental Management Plan in favour of condition (6) requiring the submission of a tree protection plan and arboricultural method statement.

*P. W. Clark*

Inspector

### **APP/F3545/W/22/3303347 APPEAL B SCHEDULE OF CONDITIONS**

- 1) Details of the access (other than as approved in condition 4), appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) 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.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan number 147/DS/2020/001; Block Plan – as proposed number 147/DS/2021/010 but excluding the parts of the Grade II listed Queensbury Stables indicated as a Building Element to be Demolished; Site Access Strategy number PPS21-15-0001 Rev B except in respect of the upper drawing relating to details showing accesses onto Rowley Drive and The Rows.
- 5) No development shall take place until details of a scheme of restoration, repair, reinstatement, refurbishment and reuse of the three listed buildings forming the Queensbury Yard has been submitted to and approved by the local planning authority. Development shall be carried out in accordance with the approved details. No dwelling shall be occupied until the scheme of restoration, repair, reinstatement and reuse of the listed buildings has been completed and the listed buildings made available for occupation in accordance with the approved scheme.
- 6) No site clearance, preparatory work or development shall take place until a scheme for the protection of trees and hedges to be retained (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved before other elements of the development commence and shall be retained in place until the trees protected are no longer at risk from construction activity.
- 7) No site clearance, preparatory work or development shall take place until the bat and reptile surveys recommended on pages 3 and 4 of the updated Ecological Walkover Survey report by James Blake Associates dated 2 May 2023, reference JBA 23/142 ECO01 SR have been carried out and the details of any consequently required mitigation measures together with the enhancements recommended on page 4 of the aforesaid Ecological Walkover Survey report have been submitted to and approved by the local planning authority. No dwelling shall be occupied until any approved mitigation or enhancement measures relating to that dwelling shall have been completed.

- 8) No development shall commence until a further assessment of the risks posed by any contamination, carried out in accordance with Appendix F of the Phase 1 Desk Study and Preliminary Risk Assessment by Stansted Environmental Services, dated 24 April 2023 reference CON233-NEWM-002 shall have been submitted to the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the relevant part of the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The relevant part of the site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority before any development on the remediated part of the site is occupied. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the additional discovered contamination shall incorporate the approved additional measures and a verification report for the additional remediation works shall be submitted to the local planning authority and approved in writing before any development on the additionally remediated part of the site is occupied.
- 9) No demolition or development shall take place until details of a Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and:
- i) the programme and methodology of site investigation and recording;
  - ii) the programme for post investigation assessment;
  - iii) the provision to be made for analysis of the site investigation and recording;
  - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
  - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- The development shall be carried out in accordance with the approved details.
- 10) No development shall commence until details of surface water and foul water drainage and their maintenance shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No part of the development shall be occupied until the drainage serving that part of the development has been completed and brought into use.
- 11) No development shall take place until details of the provision of fire hydrants within the application site shall have been submitted to and approved in writing by the local planning authority. No part of the development shall be occupied or brought into use until the fire hydrants

have been provided in accordance with the approved scheme. Thereafter the hydrants shall be retained in their approved form.

- 12) No development shall take place until details of the areas to be provided for the storage and presentation for collection and emptying of refuse and recycling bins shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. No part of the development shall be occupied until the areas to be provided for the storage and presentation for collection and emptying of refuse and recycling bins serving that part of the development has been completed and brought into use.
- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works, excluding burning on site;
  - viii) delivery, demolition and construction working hours.
  - ix) measures to protect nearby equine yards from activities generating loud noises
  - x) measures to manage surface water drainage during construction

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) No development above ground floor slab level of any part of the development hereby permitted shall take place until the travel arrangements to and from the site for residents of the dwellings, in the form of a Travel Plan written in accordance with the Suffolk Travel Plan Guidance has been submitted to and approved in writing by the Local Planning Authority. No dwelling within the site shall be occupied until the Travel Plan has been agreed. The approved Travel Plan measures shall be implemented in accordance with a timetable that shall be included in the Travel Plan and shall thereafter adhere with the approved Travel Plan.
- 15) Prior to the installation of any external plant or equipment on non-residential elements of the development, full details of the plant or equipment to be installed together with its maintenance plan, including any heating installations, air conditioning plant or extract ventilation systems, and any noise and odour control measures to be used, shall be submitted to and approved in writing by the Local Planning Authority.

The approved plant or equipment, shall be installed and made operational in accordance with the approved details prior to the premises being occupied and thereafter, shall be retained in the approved form.

- 16) Before any part of the development hereby permitted is occupied details of the arrangements by which the public open space proposed is to be laid out, made available and subsequently kept available for public use shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 17) Before any dwelling is first occupied it shall be provided with information leaflets indicating the location and promoting the use of;
  - circular dog walking routes of at least 2.7km originating from the site but avoiding any Special Area of Conservation or Site of Special Scientific Interest
  - dedicated "dogs off lead" areas.
  - dog waste bins.
- 18) Before any part of the development hereby permitted is occupied details of the arrangements by which the land proposed to be reserved for a dedicated horse walk is to be laid out, made available and subsequently kept available for public use shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 19) Before any part of the development hereby permitted is occupied any street lighting or public lighting serving that part of the development shall have been installed and made operational in accordance with details previously submitted to and approved in writing by the local planning authority.
- 20) Before any part of the development hereby permitted is occupied, electric vehicle charge points shall have been provided and made operational for the relevant part of the development in accordance with details previously submitted to and approved in writing by the local planning authority.
- 21) 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 fully incorporated into the dwelling.



## **APPEARANCES**

### FOR THE APPELLANT:

Charles Banner	King's Counsel
Jason Parker	MD and Head of Planning, Parker Planning
Stacey Weiser	Principal Heritage Specialist, Parker Planning
John Johnstone	Chartered Surveyor & Equestrian Property Consultant
Daniel White	Senior Planner, Parker Planning
Tony Doyle	Principal Highways & Transport Consultant, Parker Planning
Magnus Magnuson	Senior Planning Policy Specialist, Parker Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Ruchi Parekh	Counsel
Penny Mills	Principal Planning Officer, W Suffolk Council
Marie Smith	Strategic Planning Officer, W Suffolk Council
Chris Leveson	Conservation Officer, W Suffolk Council
Savannah Cobbold	Planning Officer, W Suffolk Council
Jackie Fisher	Ecology and Landscape Officer, W Suffolk Council
Luke Barber	Strategic Transport and Policy Manager, Suffolk County Council
Hannah Purkis	Flood & Water Engineer - Lead Local Flood Authority at Suffolk County Council
Samantha Robertson	Senior Planning Officer, W Suffolk Council

### INTERESTED PERSONS:

Sheila Kavanagh	Local resident
Cllr Andy Drummond	County Councillor, West Suffolk Councillor and Newmarket Town Councillor
Alison Hayes	Newmarket Journal
Councillor James Lay	East Cambridgeshire District Councillor
Richard Beavis	Local resident

## **DOCUMENTS submitted at the Hearing**

- 1 Comments from Historic England dated 11 May 2023
- 2 Habitats regulation Assessment for application DC/21/0152/FUL; Land south of Burwell Road, Exning, Suffolk
- 3 Unsigned draft Unilateral Undertaking
- 4 E-mail correspondence between Cllr Andy Drummond, Nick Patton, Managing director of Jockey Club Estates, Graeme Mateer, Head of Transport Strategy, Suffolk County Council and Cllr Andrew Reid, Suffolk County Council Cabinet Member for Highways, Transport and rural Affairs
- 5 E-mail from Amy Starkey on behalf of the Jockey Club to Cllr Andy Drummond.
- 6 Document headed "Off site mitigation for the SAC"