

# D15b

08<sup>th</sup> September 2017

## **Hatchfield Farm, Newmarket. Update**

On the 24th August 2017, Justice Hickinbottom refused permission to appeal the Order of Justice Gilbert 9th May 2017 (CD: D15a) allowing the Earl of Derby and Moulton Parish Councils' application to quash the decision of the Secretary of State dated 31st August 2016, contrary to the recommendation of his own Inspector, to refuse permission for 400 dwellings and associated development on land at Hatchfield Farm, Fordham Road, Newmarket.

This decision does not alter the Councils position. The SIR distribution is 'sound' without the inclusion of the Hatchfield Farm site.

The Hatchfield Farm application remains with the Secretary of State to re-issue a decision. It is not known when that decision will be issued, or what that decision will be.

The council has adopted a precautionary approach to the Hatchfield Farm site's deliverability/developability, given its long and complex planning history (see FHDC response to Inspectors questions 27<sup>th</sup> June 2017, Annex A: Hatchfield planning application history updated below).

The refusal of the order to appeal has therefore not had a bearing on the soundness of the SIR. In light of guidance in paragraph 47 (and its footnotes) of the NPPF (CD: A14), there is no 'reasonable prospect' at present that the site will be available for development and can be delivered/developed within the Plan period. There are sufficient alternative available, suitable and deliverable sites to meet the district's housing needs to 2031.

**Annex A: Hatchfield planning application history**

Core document library reference	Date	Decision making body	Recommendation	Key reasons for refusal/approval
D2	4 June 2010	FHDC	<b>Refusal</b> of planning application F/2009/0713/ESO for 1200 homes	<ol style="list-style-type: none"> <li>1. ...unable to conclude that the highway related implications of this proposal will be satisfactory.</li> <li>2. ...not satisfied how or if the impact of the development upon the horse racing industry within and around Newmarket can be appropriately mitigated.</li> <li>3. At present insufficient data has been supplied on how bat species use this site.</li> <li>4. The absence of a signed section 106 Agreement</li> <li>5. inappropriate to approve this large scale application at this stage.</li> </ol>

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D3	<p>22 December 2011</p> <p>(Inspector's report issued with Secretary of State's decision 22 March 2012)</p>	<p>Appeal recovered 8 December 2010 for the Secretary of State's determination.</p>	<p><b>Dismissed</b> appeal F/2009/0713/ESO for 1200 homes</p>	<p>12.15.5</p> <p>...it would be premature to permit this strategic scheme which represents such a large proportion of the District's residual housing requirement on a site which may or may not be chosen when properly evaluated through the democratic development plan process (12.14.21).</p>
D4	<p>22 March 2012</p>	<p>Secretary of State</p>	<p><b>Dismissed</b> recovered appeal F/2009/0713/ESO for 1200 homes</p>	<p>29.</p> <p>...the Secretary of State agrees that in the absence of a spatial distribution and no clear requirement for 1,200 dwellings in this location in the development plan, it would be premature to permit this strategic scheme on a site which may or may not be chosen when properly evaluated through the democratic development plan process (IR12.15.5).</p>

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D5	2 July 2014	FHDC	<p><b>Approval</b> of planning application DC/13/0408/OUT for 400 homes</p> <p>See Extract from the Minutes in Key reasons for refusal/approval</p>	<p>329. The local planning authority cannot currently demonstrate a five year supply of deliverable housing sites.</p> <p>330. ...In relation to the economic role of sustainable development, the proposal would generate direct and indirect economic benefits.</p> <p>331. ...there is no evidence to suggest that the development proposed by this planning application would cause significant and demonstrable harm to the equine industry.</p> <p>332. ...the development would provide a level of market and affordable housing to meet the needs of present and future generations.</p> <p>333. In relation to the environmental role...On balance, the dis-benefits of the development proposals are considered acceptable, and would not significantly or demonstrably outweigh the benefits.</p> <p><b>Extract from the Minutes of DC Committee 02.04.14</b></p> <p>046. LAWYER'S ANNOUNCEMENT Prior to the consideration of the Newmarket (DC/13/0408/OUT) and Red Lodge (F/2013/0257/HYB) applications on the agenda,</p>

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				<p>the Lawyer advised all present that the National Planning Casework Unit (NPCU) had served Article 25 notices on the Council preventing it from issuing permissions for either application until they had had time to consider whether they should be called-in for consideration by the Secretary of State.</p>
B19	<p>9 July 2015</p> <p>(Inspector's report issued 31 August 2016 with Secretary of State's decision)</p>	<p>Application called-in by the Secretary of state on 11 July 2014 for his own determination.</p>	<p><b>Approval</b> of planning application DC/13/0408/OUT for 400 homes</p>	<p>369. In the circumstances it is not considered that the application development would result in an unacceptable increase in congestion or harm to highway safety. The residual transport impact of the development would not be severe.</p> <p>400. The application proposal would not result in an adverse effect on or an undue risk to the existing economic importance, potential for future growth and continuing success of the horse racing industry. There would be associated improvements to the Rayes Lane horse crossing which would at the very least mitigate the impact of the additional traffic generated but also result in a material safety benefit.</p> <p>401. ...It would conform with Policy DM48 in the JDMPD as it would not threaten the long term viability of the horse racing industry as a whole. It would also meet the requirements of Policy DM50 through the improvement of the existing Rayes Lane road</p>

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				crossing, which is part of the system of horse walks through the town
B19	31 August 2016	Secretary of State	<u>Refusal</u> of planning DC/13/0408/OUT for 400 homes	<p>33. Not in accordance with the development plan Policies DM5, DM27, DM48, Vision 2 of the CS, Spatial Objective ECO5 or CS1 and is not in accordance with the development plan as a whole.</p> <p>36. Threat to the HRI carries substantial weight...risks arising from increased traffic at the Rayes Lane horse crossing carry moderate weight...loss of countryside and best and most versatile agricultural land also carries moderate weight.</p>
D1	9 May 2017	Mr Justice Gilbert	<p>Application to quash the 31 August 2016 Secretary of State decision letter</p> <p><b><u>Claim succeeds (decision letter quashed) on Grounds 1 and 2.</u></b></p> <p><b><u>The matter has therefore been returned to the Secretary of State to issue a new decision. This decision could be</u></b></p>	<p>1. SSCLG failed to consider or apply his own policy in the NPPF: Paragraph 14.</p> <p>2. That the SSCLG failed to give any reasons why he was reaching a conclusion about Rayes Lane crossing which was consistent with his first Decision Letter or take his previous decision into account;</p> <p>The Judge found that the claim was successful on grounds 1 and 2. In short the Secretary of State had failed to apply his own policies in the NPPF; and failed to have regard to his own previous decision "where he had reached conflicting conclusions to those he now holds on matters relating to highway safety, or has reached a conclusion on safety without evidence, or which is irrational". Meaning the Inspector and Secretary</p>

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			<b><u>to allow or refuse the application.</u></b>	of State had found in the case of the larger scheme that highway problems were not likely to arise. Latterly, there was no explanation as to the Secretary of States change in position.
D15a	24 August 2017	Newmarket Horsemen's Group sought permission to appeal the High Court decision of Mr Justice Gilbert to the Court of Appeal.	<b>Order Refused</b>  <b>The matter has therefore been returned to the Secretary of State to issue a new decision. This decision could be to allow or refuse the application.</b>	Justice Hickinbottom found that Justice Gilbert clearly understood the relevant principles on inconsistent decision-making, and applied them. In his view, he did not err in concluding that the Secretary of State had failed to explain the inconsistency here.