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**Forest Heath District Council**

**Single Issue Review Public Examination**

**Matter 1**  
**“Legal Requirements”**

**Submitted by Sellwood Planning**

**on behalf of**

**The Earl of Derby**

**September 2017**

Regulated by RICS

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## 1.0 **Introduction**

- 1.1 This response has been prepared on behalf of Lord Derby who is the freeholder of the Hatchfield Farm site which was previously proposed for 400 homes, a Primary School and a minimum of 5 hectares of employment land under Policy N1(c) of the Site Allocation Local Plan Preferred Options (April 2016). This proposal was assessed in the corresponding SA prepared by AECOM and found to be an appropriate site in the context of the spatial strategy in the adopted Core Strategy (May 2010).
- 1.2 The site was deleted from the pre-submission Single Issue Review (SIR) in January 2017 following the Secretary of State's refusal of an application for 400 homes in August 2016. Since then, High Court has quashed the Secretary of State's decision but not the Inspectors Report recommending approval. The Newmarket Horsemen's Group (NHG) sought leave to challenge this decision in the Court of Appeal, but leave was refused in August 2017. There is no further right of appeal.
- 1.3 The Inspectors have correctly identified the resulting low housing provision in Newmarket and the robustness of the SA as key issues to be examined.

## 2.0 **(Q 1.7) "Has the formulation of the Single Issue Review been based on a sound process of sustainability appraisal of reasonable alternatives, and is the sustainability appraisal adequate?"**

- 2.1 The issue of the adequacy of the SA is primarily dealt with in the response to the Matter 4 Questions. However, the soundness of the SA process must be called into question when the conclusions of the sequence of SAs is examined
- The 2015 Issues and Options SA acknowledged that  
**"Newmarket is comfortably the largest town in the district with a 2014 housing stock of 8,167. On this basis, given the established commitment to maintain the settlement hierarchy locally, Newmarket should be a focus of housing delivery"** (para 8.2.2)

- The 2016 Preferred Options SA discounted previous options with less than 900 homes in Newmarket as unreasonable. The Preferred Option arising from the SA was for 968 homes in the town. This was justified on the basis that **“it (ie. 968 homes) conforms with Policy CS1 of the Core Strategy in seeking to deliver the additional housing growth required in accordance with the settlement hierarchy”** (text in italic an addition) and **“the growth in Newmarket (ie. 968 homes) would balance the need to protect the Horse Racing industry while delivering additional growth meeting the needs of the town”**. (text in italic an addition).

Both quotes are in Box 6.1 (page 16) of the 2017 SA, but commenting on the 2016 SA

- The 2017 SA assesses two options, without Hatchfield Farm (Option 1) and with Hatchfield Farm (Option 2) which is the same as the Preferred Option in 2016. The SA concluded that Option 1 (612 homes in Newmarket) was the appropriate option in the context of the approved spatial strategy (Policy CS1). The crux of the difference between the 2016 and 2017 SA’s can be found at paragraph 11.1.4 of the 2017 SA where it states **“with regards to Newmarket, past SA work has highlighted the benefits of growth, whilst also recognising that the town is heavily constrained, most notably by the highly sensitive Horse Racing Industry. At the current time, given the Secretary of State’s recent decision in respect of a large planning application at the town, there is greater certainty regarding the merits of lower growth, however there remain some question marks....”**.

2.2 This timeline discloses that the various SA’s went from seeing Newmarket as a ‘housing focus’ in 2015, through stating that a provision of 968 homes ‘conforms with Policy CS1’ in 2016 to endorsing 612 homes in the town in 2017. The quote at para 11.1.4 of the 2017 SA makes it plain that the main reason why the Council chose Option 1 over Option 2 was the Secretary of State’s decision in 2016. The conclusion reached by the Secretary of State led directly to the conclusion in the 2017 SA that the delivery of Hatchfield Farm was not certain (8.2.1). It also affected the comparison between Options 1 and 2 (see Appendix IV of the 2017 SA) where the SA failed to consider

whether the concerns of the Secretary of State, particularly in terms of safety concerns at the Rayes Lane horse crossing, could be mitigated.

- 2.3 It should also be recalled that what the Secretary of State was considering was a particular planning application with a specific mitigation package. In his decision, the Secretary of State did not conclude that residential development at Hatchfield Farm was, in principle, unsustainable or inappropriate. Indeed, the Inspector found it was a sustainable location (IR 491). In contrast to the application context, the SIR / SALP process provides the opportunity for the District Council to take a wider view of what constitutes the most sustainable pattern of development in Forest Heath into the 2030s. As such, the SIR / SALP should have assessed whether Hatchfield Farm should remain in the plan, but with a specific mitigation package.
- 2.4 In the light of this, the SA is inadequate and the SIR is unsound for the following reasons.
- 2.5 First, the Council has failed to assess whether the adverse effects it identified for Hatchfield Farm were capable of being mitigated. In particular, to assess whether the concerns raised by the Secretary of State in his decision could be mitigated through policies in the SIR and SALP. The PPG is clear (at para.11-018-20140306) that :
- “The sustainability appraisal should identify any likely adverse effects and measures envisaged to prevent, reduce and, as far as possible, offset them. The sustainability appraisal must consider all reasonable alternatives and assess them in the same level of detail as the option the plan-maker proposes to take forward in the Local Plan (the preferred approach)”.**
- 2.6 This failure to consider mitigation is a significant flaw because the NHG put forward a proposal for a signalised horse crossing at Rayes Lane with an associated widening of the Fordham Road horsewalk. This was reported at paragraph 387 of the Inspectors Report where she stated :

**“The NHG put forward its own proposal for improvement in the form of a signalised junction or underpass with associated improvements to the width of the Fordham Road horsewalk. It was pointed out that the incident savings would be significantly greater being in the region of 73% to 86% respectively”.**

- 2.7 It is clear from this that schemes have been prepared by the horse racing industry which would mitigate the concerns expressed by the Secretary of State relating to the safety of horses and riders which would allow Hatchfield Farm to be retained in the SIR / SALP. There is no evidence that the SA assessed whether such schemes were capable of mitigating the adverse effects of development at Hatchfield Farm that it identified, or could result in the scheme being deliverable notwithstanding the conclusions reached by the Secretary of State.
- 2.8 Second, a number of conclusions of the 2017 SA are unjustified and inconsistent with the findings of the 2016 SA. The Sellwood Planning response to Matter 4 sets out these concerns in more detail. However, significantly, the 2017 SA is also inconsistent with the Secretary of State’s rationale for refusing planning permission in 2016.
- 2.9 It is clear that in the Hatchfield Farm decision, the Secretary of State is making a general point (para 19 of the decision letter) that any increased traffic at the Rayes Lane crossing **“has the potential for danger”** and **“the additional risk arising from the increased traffic are a material consideration which carries moderate weight against the proposal”**. In this respect, there was nothing unique about the traffic generated by the Hatchfield Farm site that led the Secretary of State to conclude that there would be additional risk arising from increased traffic over the junction. He concluded that any additional traffic over the junction, whatever its nature or origin, had the **“potential for danger”**.
- 2.10 Therefore, this general conclusion applies to any development which increases either vehicular traffic or horse numbers over any of the horse crossings in Newmarket. This includes development outside of Newmarket. The Council and the various SAs have, therefore, unreasonably failed to

- examine the extent that the other Newmarket housing allocations, or allocations outside Newmarket, will increase traffic at horse crossings and whether this gives rise to the same safety concerns as were identified by the Secretary of State (see WSP / RPS Technical Note appended to the Matter 4 Statement)
- consider a new policy which would require any new horse training establishments (or extensions) which would increase horse numbers in the town to contribute to crossing improvements / horse walk widening before they can proceed.

2.11 So, to conclude on Q1.7, the SA process has not been satisfactory and the SA itself is flawed and inadequate. The Council has failed to consider measures to reduce the adverse effects it identified with Option 2, as it is required to do; and has unreasonably failed to apply the conclusions reached by the Secretary of State to its preferred option and therefore assessed the reasonable alternatives selected on an inconsistent basis.