

22 March 2012

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

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

Your Ref: F/2009/0713/ESO

Dear Mr Blaney,

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

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

Inspector's recommendation and summary of the decision

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

Procedural matters

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

Matters arising after the close of the inquiry

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

Policy considerations

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises the 2008 East of England Plan (EEP), the 2010 Forest Heath Core Strategy (CS) and those saved policies of the Forest Heath Local Plan that have not been superseded. The Secretary of State notes that a successful High Court challenge to the CS, referred to at IR3.1.2, resulted in the quashing of policies relating to the spatial distribution of housing. He further notes that the Council intends to undertake a Single Issue Review of the housing growth targets and strategic land allocations in the Core strategy (IR3.1.3). He considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR3.1.5 – 3.1.7.
9. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; PPS3: *Housing*; PPS4: *Planning for Sustainable Economic*

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

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

Main issues

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

Adequacy of the Environmental Information

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

Highways

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

Impact on the Horseracing Industry in Newmarket

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

Ecology

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

Housing Need and Distribution

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

Employment Provision

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

Countryside

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

Design Assurance

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

Air Quality

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

Compliance with the Development Plan

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

Other Material Considerations

Housing Distribution

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

Justification in the Countryside

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

National Planning Policy – Housing Land Supply

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

Prematurity

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

Ministerial Statement – Planning for Growth

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

Planning Obligations and Conditions

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

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

Overall Conclusions

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

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

Formal Decision

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

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

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

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

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

Yours sincerely,

Pamela Roberts

Authorised by Secretary of State to sign in that behalf

ANNEX A – LIST OF REPRESENTATIONS

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