



Forest Heath  
District Council

# DEV/FH/19/006

## Development Control Committee 27 March 2019

### Planning Application DC/18/0492/FUL - Brickfields Cottages, Cemetery Hill, Newmarket

<b>Date Registered:</b>	27.03.2018	<b>Expiry Date:</b>	01.04.2019
<b>Case Officer:</b>	Adam Ford	<b>Recommendation:</b>	Approve Application
<b>Parish:</b>	Exning	<b>Ward:</b>	Severals
<b>Proposal:</b>	Planning Application - (i) Change of use from Stud to Thoroughbred Race Horse Services and Stud (ii) Pony show jumping & training (iii) extension to existing menage, (iv) 6no lighting columns and (v) new access and track (Part Retrospective)		
<b>Site:</b>	Brickfields Cottages, Cemetery Hill, Newmarket		
<b>Applicant:</b>	Ms Vicky De Sousa		

#### **Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

#### **Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

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## **Background:**

**This application is referred to the Development Control Committee as the Officer recommendation of APPROVAL conflicts with Exning Parish Council's objection to the proposal.**

**The application is defined as being major development owing to its site area of 4.4 hectares.**

## **Proposal:**

1. This partially retrospective application seeks planning permission for the following development:
  - Change of the use of the land to thoroughbred race horse services and stud;
  - Pony show jumping & training;
  - Extension to existing ménage & 6no lighting columns;
  - New vehicular access onto Exning Road.
  
2. The submitted design and access statement provides additional clarification with respect to how the site is used and the overall scale of the operation taking place from the land:
  - There are currently 16 stables on the site whilst two horses remain outside within the paddocks at all times; the maximum number of horses that could be on site at any one time is 18.
  - Within the 16 stables, there are 5 occupied by show jumping ponies owned by the applicant. This number varies but represents a reasonable average. Typically, therefore there would be space for 11 further horses either in the livery housed on a temporary basis or mares with foals.
  - The normal working hours of the stud are 7am-7pm. There are two part time and one full time employee.
  - During the Newmarket horse sales, the intention is to provide overnight accommodation for horses coming to Newmarket to be sold.
  - The horses tend to be collected at the sales and delivered together to reduce the number of movements, typically this would result in two per day.
  - Between January and May mares will occupy the stables for boarding, foaling and covering.
  - The teaching usually takes place within the summer months and typically involves 6 visits per week for clients with their own trailers and ponies.
  - Where capacity allows, race horses are pre-trained on site and then sent to training yards. This training involves the use of a grass gallop and a spa housed within the stable block.

## **Application Supporting Material:**

3. This application was initially submitted to the LPA in March 2018. Since then, a number of amended plans have been submitted for further consideration. As such this report relates to the following documentation only:

- Completed application form
- Design and Access statement (Revision C)
- Business Financial Information (private and confidential)
- Proposed block plan (1907.10 Revision E)
- Proposed visibility splays (1907.11 Revision F)
- Average vehicle movements (1907, revision C)
- Flood Risk assessment (P3055.1.0)
- Ecological phase 1 assessment (P3055.5.0)
- Arboricultural Impact Assessment (P3055.4.0)

#### **Site Details:**

4. The 4.4 hectare application site lies between the A14 (north) and Exning Cemetery (South). Exning Road bounds the site to the west whilst residential development lies beyond the eastern boundary of the site.
5. From a land use perspective, the site is deemed to be in the open countryside as it falls outside of the defined settlements of Newmarket and Exning.
6. The site is presently open paddock land with a selection of equine related structures (stables, ménage, and horse walk) in situ and benefitting from previous approvals. Currently, it is understood that the site is used predominantly for private livery and activities relating to the applicant's own equestrian eventing. Recently submitted applications would also indicate that commercial equine activities also take place from the land.

#### **Relevant Planning History:**

<b>Reference</b>	<b>Proposal</b>	<b>Status</b>	<b>Decision Date</b>
DC/13/0121/FUL	Erection of stable block consisting of 8 boxes, 2 storage units, feed room & tack room and a ménage.	Granted	20.12.2013
DC/14/1287/FUL	Planning Application - Change of use from paddock to leisure use including the erection of 2 log cabins for holiday let use	Application Refused	27.10.2014
DC/14/1661/FUL	Planning Application - Relocation of stables from garden to adjoining paddock.	Application Withdrawn	30.10.2014
DC/14/2065/FUL	Planning Application - resubmission of DC/14/1661/FUL - relocation of stables	Application Granted	07.01.2015

	from garden to adjoining paddock for horse breeding and stud purposes (part retention of)		
DC/14/2209/FUL	Planning Application - Construction of horse walker and re-location of previously approved menage	Granted	12.03.2015
DC/16/2181/FUL	Planning Application - Re-location of horse walker	Application Granted	11.01.2017
DC/17/0781/FUL	Planning Application - 1no. dwelling	Application Withdrawn	22.05.2017
DC/17/1352/FUL	Planning Application - 1 no. dwelling	Application Refused	01.11.2017
DC/17/1970/FUL	Planning Application - Change of use from Stud to Thoroughbred Race Horse Services and Stud	Application Withdrawn	29.11.2017

### **Consultations:**

#### **SCC Highways Authority**

7. Following the submission of amended plans which demonstrate the provision of a new access point onto Exning Road, the Highways Authority have, in their formal response dated 14 February 2019, raised no objection to the proposal currently under determination. This is subject to nine conditions which seek to control the access, surfacing, visibility, parking, gate provision, signage, deliveries management and lighting.

#### **Environment Agency**

8. No objection to the proposal with respect to flood risk.

#### **Public Health and Housing**

9. No objection to the proposal with particular reference made to the proposed column lighting being acceptable. A condition which limits the hours within which the lights can be used (7am – 11pm) has been recommended.

#### **Jockey Club Estates**

- 10.No bespoke comments or objections provided to the LPA.

## **LPA's Arboricultural Officer**

11. The submitted comments from the LPA's Tree Officer which can be seen on the website indicate an objection to the proposal on three grounds:

- A. The removal of group G1*
- B. Construction within the RPA of G7*
- C. The removal of tree T3*

12. However, since these comments have been made, a revised plan has been submitted which, from a purely arboricultural perspective, satisfactorily addresses points B and C above. This is achieved by removing development from within the RPA of G7 and the retention of T3.

13. The proposal still seeks to remove group G1 however.

## **Public Rights of Way (SCC)**

14. No objections to the proposal. Informative provided.

## **Ramblers Association**

15. No objection to the proposal subject to a condition which prohibits the use of the restricted byway to the south of the application site.

## **Natural England**

16. Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected sites or landscapes. A Habitats Regulation Assessment is not therefore needed and no additional ecological surveys are required.

## **Suffolk Fire and Rescue Service**

17. No objection to proposal and no requirement for additional hydrants.

## **Representations:**

18. Throughout the course of this application, comments from both Newmarket Town Council and Exning Parish Council have been submitted. This section of the report therefore seeks to clarify, for the purposes of the Development Control Committee, within which jurisdiction for determination of the application lies.

19. As part of the Community Governance Review in 2017, the boundary of Exning Parish Council was altered to include the Cemetery and, crucially, the entirety of the application site to which this proposal relates. For clarity, confirmation of this boundary change can be seen following this link:

<https://www.westsuffolk.gov.uk/community/upload/CGRDecisionNoticeIssue1.pdf>

20. Accordingly, for the purposes of this application, the relevant Parish Council is Exning Parish Council and their comments are therefore

reproduced below. Comments from Newmarket Town Council are also shown below although they are not strictly relevant to the determination of this application.

### **Exning Parish Council**

21. Exning Parish Council continues to object to this application. The applicant, in the amended plan, alludes to 'an existing entrance that is to be retained for horses, staff and car access with a suitable restriction arrangement. As far as Exning Parish Council is aware, this proposed entrance between Woodlands, Rose Cottage and Orchard Lodge was access to the three dwellings and a field entrance to the paddock. At no time in the past year has this entrance to Brickfields received the necessary planning permission. It is also felt that the earlier objections by Suffolk County Highways to this entrance have yet to be overcome.

22. If, however, the new entrance alongside to the electrical sub-station should be considered the main and only entrance to Brickfield Cottage, and the entrance between the three cottages should be abandoned, Exning Parish Council would withdraw its objection to this application.

### **Newmarket Town Council**

23. Newmarket Town Council have no objection to this proposal.

### **Public Representations:**

24. Throughout the course of this application, comments from three residential properties on Exning Road have been submitted.

25. Naturally, with the submission of each revised plan, comments from these properties have been updated and altered in response. As such, the comments produced below represent a summary of relevant points made with full, unabridged comments, available on the LPA's website.

### **Rose Cottage – objects**

26. The objection from this property cites the application should be refused for the following reasons:

- a. Adverse impact on landscape and character due to visual impact of roads & loss of trees.
- b. Lack of compliance with policy DM47.
- c. Adverse impact on highway safety with respect to use of current access.
- d. Intentional unauthorised development has been carried out.
- e. Imposed conditions will not be complied with.

### **Orchard Lodge – objects**

27. The objection from this property cites the application should be refused for the following reasons:

- a. Adverse impact on highway safety due to width of existing access.

- b. Adverse impact on amenity due to cumulative impact of large vehicles using the access adjacent to Orchard Lodge
- c. Site does not benefit from an extant commercial planning permission and no functional need demonstrated.
- d. Proposal results in irreversible loss of paddock land.

### **Woodlands – objects**

28. The objection from this property cites the application should be refused for the following reasons:

- a. Site is not currently used as a stud.
- b. Adverse impact on highway safety.
- c. Proposal represents over development of the site.
- d. Negative impact on local wildlife and ecology.
- e. No permission has been granted for any business use to take place.
- f. Proposal erodes character of locality.

### **Relevant Planning Policy:**

29. The following policies of the Joint Development Management Policies Document and the Forest Heath Core Strategy 2010 have been taken into account in the consideration of this application:

#### **FHDC Core Strategy (2010)**

- Core Strategy Policy CS1 - Spatial Strategy
- Core Strategy Policy CS2 - Natural Environment
- Core Strategy Policy CS3 - Landscape character and the historic environment
- Core Strategy Policy CS5 - Design quality and local distinctiveness
- Core Strategy Policy CS6 - Sustainable economic and tourism development

#### **Joint Development Management Policies Document (2015)**

- Policy DM1 Presumption in Favour of Sustainable Development
- Policy DM2 Creating Places Development Principles and Local Distinctiveness
- Policy DM5 Development in the Countryside
- Policy DM11 Protected Species
- Policy DM12 Mitigation, Enhancement, Management and Monitoring of Biodiversity
- Policy DM13 Landscape Features

- Policy DM32 Business and Domestic Equine Related Activities in the Countryside
- Policy DM44 Rights of Way
- Policy DM46 Parking Standards
- Policy DM47 Development Relating to the Horse Racing Industry
- Policy DM48 Development Affecting the Horse Racing Industry

**Other Planning Policy:**

30. The NPPF was revised in February 2019 and is a material consideration in decision making from the day of its publication. Paragraph 213 is clear however that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework, the greater weight that may be given. The Policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provisions of the 2019 NPPF that full weight can be attached to them in the decision-making process.

**Officer Comment:**

31. The issues to be considered in the determination of the application are:

- Clarification: Alleged intentional unauthorised development
- The principle of development
- Design, form and layout
- Compliance with equine based planning policies DM32 / DM47
- Impact on residential amenity
- Highways implications
- Ecological and arboricultural implications

**Clarification: Alleged intentional unauthorised development**

32. Before the planning merits of this application are considered, clarification with respect to alleged intentional unauthorised development, as referenced by Rose Cottage, is offered to Members.

33. Following the Ministerial Statement dated 31 August 2015, it has been government planning policy that intentional unauthorised development *is* a material consideration that should be weighed in the determination of planning applications and appeals. The written ministerial statement announcing this policy stated that it applied to all new planning applications and appeals received post 31 August 2015. However, it should be noted that this statement provides no further guidance which clarifies how much weight should be attached to this principle where development is found to be intentionally unauthorised.

34. It is therefore for the Local Planning Authority to decipher how much weight to ascribe to the embedded principle within this statement, whilst,



crucially, still having regard to the provisions of previous planning permissions and any up to date local plans and policies which are relevant to the planning application under determination.

35.Regard must therefore be had to the site's planning history which is set out in the preceding section of this report.

36.Importantly, application DC/13/0121/FUL which granted planning permission for stables and a manège was subject to a planning condition which restricted the development to a personal use only. This is not disputed. However, a number of subsequent planning permissions have been approved, and are not subject to the same prohibitive condition. DC/14/2065/FUL which granted planning permission for a further stable block is subject to a condition which states that the stables "*shall be used only for the breeding and pre-training of racehorses*". A similar position arises with respect to DC/14/2209/FUL which granted planning permission for the relocation of the previously approved manege on the basis this application was not subject to a private usage condition.

37.Therefore, whilst the LPA are content that planning permission has not been granted for the site to operate as it currently does so, it is not felt that the use of the site since 2013 represents an intentional or disingenuous attempt to deceitfully or otherwise circumnavigate the planning system and its associated controls.

38.As such, the aforementioned ministerial statement concerning intentional unauthorised development is not judged to be relevant in the determination of this planning application. No weight is to therefore be weighed against this proposal in this regard.

### **The principle of development**

39.The application site, known generally as 'Brickfield Cottages' and / or 'Brickfield Stud' is located outside any of the LPA's defined settlements and as such, the proposal comprises development in the countryside from a land use perspective.

40.Proposals for development outside of the LPA's defined settlements must be considered carefully as it is incumbent upon the LPA to ensure areas which are designated as countryside are protected from unsustainable and inappropriate development. Accordingly, where material planning considerations indicate that proposals in the countryside are unacceptable, they should be resisted.

41.National and local policies therefore broadly aim to direct development to locations which are both sustainable and will not result in the loss of unspoiled rural landscapes.

42.In his instance however, whilst the countryside location of the application site is duly noted, policy CS6 (Economic and tourism development) of the FHDC Core Strategy provides that support will be given to developing and sustaining Forest Heath's existing economy with particular priority given to key sectors including the equine industry around Newmarket.

43. In addition to policy CS6, policy DM5 of the JDMP (Joint Development Management Plan Document 2015) further provides that development proposals relating to equine related activities and the horse racing industry will be supported in the countryside. This policy specifically refers to buildings but the principle applies to the use associated land also. Policy DM5 also provides support for economic growth and expansion of businesses provided they do not give rise to a significant adverse impact on existing character and / or visual amenity whilst also maintaining the safety of the existing highway network.
44. In conjunction with DM5, policy DM32 of the JDMP (Joint Development Management Plan Document 2015) also provides a presumption in favour of equine related activities, whether domestic or commercial, in the countryside. Given the mixed nature of the proposal, this presumption applies directly to the pony training / jumping element of the application.
45. Further support for the principle of this development is established through policy DM47 which articulates that proposals which relate to the Horse Racing Industry (HRI) will generally be supported, subject to 4 criteria as discussed later on at the relevant juncture in this report.
46. Accordingly, in light of the above, and having considered the relevant material planning considerations with respect to local and national provisions, the principle of equine related development is something that the LPA can support in this location. Further relevant and material planning considerations are discussed in detail below.

### **Design, form and layout**

47. As noted above, the application site is not located within any of the LPA's defined settlements. However, given the site's peripheral location with respect to the settlement boundaries, the proximity to the A14 and existing equine development which is already in situ, the change in the use of the land does not unjustifiably erode existing rural landscape features that the LPA would otherwise seek to retain or protect. However, the visual impact of the proposal must be considered within the context of DM2, DM5, DM32 and DM47.
48. The application site currently benefits from an existing vehicular access which passes between Rose Cottage and Orchard Lodge. The initial submission sought to use this access for all vehicles from cars to large horseboxes. However, following advice from Officers, this element of the proposal has been amended so that a new access is now proposed adjacent to the electricity substation.
49. In addition, the application seeks to change the use of the land and for the most part, this does not involve an excessive amount of operational development as the site will remain as grassland / paddocks for use in connection with the equine nature of the site. Visual impact is therefore limited to a modest number of component parts of this application.
50. Although the access onto the highway between Rose Cottage and Orchard Lodge is not new, the road which then travels northwards into the site does represent a new addition and forms part of this application. The road itself is modest and is laid to gravel as opposed to black tarmac. This

prevents the track from appearing out of character with the general undeveloped nature of the site and serves to ensure the 'openness' of the site is not unjustifiably eroded. The track is functional but does not consume the site with an overtly urban appearance.

51. In addition to this track, the proposal also seeks to install a further gravel track (in connection with the new access adjacent to the A14 bridge) which will be 4.5m wide and take large vehicles such as HGVs and horseboxes from the South west corner of the site to the main complex in the North East corner of the application site. This track will run parallel to the electricity substation for approximately 70m and will then pass between tree T3 and Group G3 before tracking eastward for a further 120m. It is noted that public comments suggest this will have an urbanising effect and will destroy the rural character of the land. Whilst the track cannot be described as an informal track that would typically be found on large, rural sites, the use of a gravelled design as opposed to visually harmful black, urban tarmac prevents the track from appearing out of character. The context of the site must also be taken into account here; the A14 is a matter of metres away and it would therefore be inappropriate for the LPA to refuse this access road on the basis that it materially undermines the visual profile of the area to such an extent that the entire application should be refused.
52. The new access road will also be screened from public views by virtue of the road's trajectory and the site's existing boundary treatment adjacent to Exning Road as well as the tree belt which runs parallel to the highway. In this regard, it is further noted that a range of the public objections also refer to the loss of G1 from the TPO belt as highly unacceptable in terms of the adverse visual impact. However, as will be addressed later in this report, the proposed new HGV access has been designed to minimise arboricultural and highway matters, with something of a hybrid solution secured.
53. With respect to DM2 and DM13, the loss of group G1 which is a visually prominent section of the wider TPO belt is not strictly policy compliant. However, this only represents one element of the proposal that the LPA must factor into the overall planning balance.
54. In addition to the access roads, the proposal also seeks to extend the existing lawful manege with a new section measuring 31m by 15m. Given the ground level nature of such development and owing to the fact it extends an existing facility, this element of the proposal does not give rise to an adverse visual impact which would conflict with the provisions of DM2, DM5 or DM32. However, the proposal does seek to install eight new telescopic flood lights which extend to a maximum height of 8m and minimum height of 2.6m. Floodlights can have an urbanising effect on modestly developed sites but no such impact is judged to arise here as they are concentrated within the main nucleus of the site and are not proposed to be erected within the undeveloped Northern or Western segments of the site. Additionally, due to the lights being of a telescopic design, their physical and thus visual prominence will be limited to times of use; which will be during hours of darkness. This therefore further limits any potential adverse visual impact that eight flood lights may inflict upon the area.

## **Compliance with equine based policies DM32 and DM47**

55. As confirmed at the beginning of this report, there is a general presumption in favour of the proposed development arising from the support offered by policies DM5, DM32 and DM47. However, detailed objections have suggested that the proposal is incompatible with the provisions of these policies.
56. The proposal includes two core elements which require considering against these policies. The former, being the proposed pony and show jumping element.
57. This element of the proposal does not relate to the horse racing industry and is therefore subject to the test of DM32 which provides that proposals for equestrian development in the countryside, whether domestic or commercial, will be permitted providing they meet the following criteria:
- A. the size, scale, design and siting of new development (including lighting and means of enclosure) does not have a significant adverse effect on the character and appearance of the locality;
  - B. proposals do not result in the irreversible loss of best and most versatile agricultural land (grades 1, 2 and 3a) or it can be demonstrated to the satisfaction of the local planning authority that there are no suitable alternative sites on lower grade land;
  - C. proposals should re-use existing buildings where appropriate and any new buildings should be located in or adjacent to an existing group of buildings and have minimal visual impact within the landscape;
  - D. landscape mitigation measures are included appropriate to the scale and context of the proposal;
  - E. there is no significant detriment to residential amenity in terms of noise, odour, light pollution or other related forms of disturbance;
  - F. there is appropriate parking and access and the associated traffic movement should not compromise highway safety;
  - G. sufficient land is available for grazing and exercise where necessary.
58. With respect to the show jumping and training element, the proposal is able to demonstrate compliance with the above requirements. The scheme involves limited operational development and does not propose large, overbearing additions which would be incommensurate with the prevailing character of the locality. The proposal also does not result in the loss of valuable agricultural land and no new buildings are proposed; therefore meeting parts B and C of the above.
59. In terms of landscaping, it is noted that the proposed plans do not illustrate the provision of further planting or soft treatments. However, owing to the modest nature of the proposed development and the lack of widespread vegetation loss, this can be satisfactorily addressed through the imposition of a planning condition requiring the submission of a landscaping plan.
60. In addition and with respect to DM2(L) and DM46, adequate parking is available within the site and the proposal does not adversely impact highway safety; as confirmed by the dedicated section in this report entitled "Highways implications".

61. In conjunction with the pony element, the proposal also seeks permission to use the land for purposes in connection with the horse racing industry – as set out within the submitted design and access statement. A similar position arises therefore with respect to DM47 (development related to the horse racing industry).
62. DM47 confirms that development which relates to the horse racing industry will be supported, provide that:
- A. there is satisfactory evidence of the business viability, functional need for and scale of the proposal;
  - B. the development is designed to make a positive contribution to local character and distinctiveness;
  - C. the occupation of any residential accommodation is restricted by condition or legal agreement to those directly employed in the day-to-day operation and management at the horse racing establishment; and;
  - D. access proposals (including for the movement of horses for training) and the impact of all other movements on highway safety and the network capacity for all relevant modes of transport, are acceptable.
63. With respect to point A of the above policy, objection comments suggest the proposal does not include adequate information to enable compliance with this element of the policy. However, financial information has been provided to the LPA although owing to its sensitive nature, it remains confidential. That said, in considering this part of the policy, the LPA weight comments from Jockey Club Estates, given their professional and informed position, to assist reaching a judgement as to whether a proposal conflicts with DM47(a) in terms of its scale, need and overall impact on the horse racing industry. In this regard, written confirmation has been provided to the LPA that Jockey Club Estates wish to make no comment in response to the application. Whilst this does not indicate conspicuous support, the lack of an objection from Jockey Club Estates demonstrates that the proposal is not judged to be something which is detrimental to the longevity of the horse racing industry and cannot therefore be deemed as being inappropriately scaled or without a functional need. It is, given the nature of the site and the vehicles which use it, not unreasonable to have two access points – particularly given the lawful nature of the existing access which already exists.
64. With respect to point B of the policy, the proposal, if approved, will provide a further establishment which compliments and harmonises with Newmarket's identity within the Horse Racing Industry; which is explicitly supported within policy CS6 of the FHDC Core Strategy. Visually, the area benefits from a healthy TPO belt adjacent to Exning Road with the remainder of the application site sprawling northwards from Exning Road. It is noted both here, and later in this report, that the proposal will result in the loss of TPO group G1 whilst incorporating a new gravel road but neither of these elements give rise to such a large degree of harm that the proposal is judged to materially conflict with this element of the policy. It is also important to note that this component of DM47 is not restricted to the visual impact of the proposal and also includes the contribution to general, local distinctiveness.

65.As for the final point of the policy, which relates to vehicular movements, this element is addressed in detail later in this report with reference to comments from the Highway Authority.

66.Collectively, when considered in conjunction with each other, the proposal is able to demonstrate that it complies with the central provisions of both policies DM32 and DM47 with no material conflicts identified.

### **Impact on residential amenity**

67.With the principle of equine development being established as something that the LPA can broadly support, consideration must still be given the potential amenity impacts arising from the proposal.

68.It is therefore relevant to raise at this juncture that amended plans have been submitted to address **previously** identified harm to residential amenity that was unacceptable. The initial plans as submitted to the LPA sought to use the existing site access for all traffic associated with the proposal. This included both domestic and non-domestic vehicles. In this regard, DM2 is a wide fetching policy but crucially, it aims to ensure proposals do not result in development which would have an adverse impact on existing residential amenity. Taking mitigation measures into account, point g of policy DM2 provides that residential amenity should not be adversely affected (by proposed development) and nor should there be unreasonable vibration, noise or vehicular disturbance created. From an amenity perspective, the use of the existing access by large horse boxes was deemed unacceptable due to the impact arising on residential amenity.

69.Accordingly, amended plans have been submitted which now illustrate a new access, for all vehicles in excess of 2.6m (or 3.5tonne), being installed adjacent to the A14 bridge and the substation. In conjunction with this, the applicant has indicated on the submitted plans and via formal communication that a height restrictor will also be installed to the existing access so as to ensure large vehicles of more than 2.6m simply cannot enter the site at this point in any event. For reference, a 'Transit' van is approximately 2.6m in height. This therefore gives rise to a position in which the only traffic using the access between the cottages on Exning Road will be cars or light vans, all other equine related traffic will use the newly proposed access. This represents a significant improvement in comparison to the initial plans and with all large vehicles no longer using the existing access.

70.The frequency of use must also be considered and information has been provided by the applicant so that this impact can be considered. As indicated within the document entitled "*Brickfield Cottages Typical Vehicle Movements*" (Rev C, dated 21.02.19), during normal working hours, there are approximately 6 car movements per day through the existing access point, with 2 movements outside of normal hours. Given the lawful nature of the existing access, this is not deemed to be excessive or to be such an intensification that the LPA are able to resist it on amenity grounds. Such numbers are of course only indicative but they are useful in illustrating the scale of the proposed use. During the Newmarket sales period, the values quite naturally increase albeit modestly but the existing access between the cottages still only experiences a mild degree of use in terms of vehicle

movements. This is because all horse boxes of 3.5tonne, 7.5tonne, 12tonne, 18tonne and 26tonne will utilise the newly proposed access point and this drastically reduces the adverse impact that is currently being experienced by occupiers of the existing cottage to such an extent that the proposal is no longer judged to conflict with DM2 or DM32. It should also be noted that the submitted documents indicate that horses will still be walked out of the site through the existing access although by virtue of the unobtrusive nature of such an activity, this is not judged to be something that would give rise to a materially adverse impact upon amenity.

71. The proposal also includes the provision of six flood lights towards the site's eastern boundary. Given the adverse impact that poorly placed lighting can have upon residential amenity, and noting the proximity of the lights to offsite dwellings (65m), formal comments from the LPA's Public Health and Housing team have been sought. These comments (dated June 2018) are reproduced below:

*"I confirm I have reviewed the lighting arrangements. I believe there is adequate separation and screening here to instil confidence that the Ménage lighting will not cause a problem. The lighting should be installed to ensure the lights are directed downwards and are not facing directly at nearby properties. It is assumed the lighting will not be left on throughout the night, however in order to safeguard this I would ask that whether the applicant would agree to a condition which restricts operations of the lights between 23:00 and 07:00.*

*The applicant should be aware that in the event of complaints being received, our department would have a legal duty to investigate. Lighting is a category of nuisance under section 80 of the Environmental Protection Act 1990 which our department can enforce against via a Nuisance Abatement Notice should the situation justify such action. Care should therefore be taken to ensure the lights do not unreasonably impact on nearby dwellings."*

72. The above comments illustrate the lack of an objection with respect to the proposed flood lights and given that they will of course need to be angled down or else they would be superfluous to requirements, the LPA are satisfied that this element of the proposal will not have a materially adverse impact on existing residential amenity. However, a condition which controls the hours within which the lights may operate is recommended nonetheless; the suggested hours from an amenity perspective are 7am – 9pm.
73. Finally, the impact upon amenity of the proposed equine use must also be considered as this too will generate additional activity on the land. The site is large in scale and benefits from healthy, well maintained boundary treatments which serve to prevent the use from having an adverse impact on general amenity. The eastern boundary of the site is the closest to large scale residential development but the proposed activities of pony show jumping and general equine related services are not inherently noisy to such an extent that they represent a material conflict with policies DM2, DM32 or DM47. There will, quite naturally, be times when there may be audible activity emanating from within the site but given the proximity of

the site to urban development and the busy A14, this is not a material constraint to this application.

## Highways implications

74. As indicated at numerous points in this report, the initial proposal as put forward to the LPA was for there to be one access into / out of the site; and this was between Rose Cottage and Orchard Lodge. This is how the site presently operates which, as will be explained below, is not acceptable from a highway safety perspective. The proposal to install a new access, which is supported by the Highway Authority, is therefore seen as a favourable solution.
75. The application has been under determination for approximately 12 months and the reason for this lengthy period has been down to the positive and proactive negotiations between the applicant, the LPA and the County Council with respect to the vehicular access arrangements for the site. Numerous locations for the proposed access have been considered with various amendments submitted to the LPA for consideration.
76. In September 2018, the Highway Authority formally objected to the then submitted plan which sought to install a new access onto Exning Road which was further eastward than the current proposal. The Highway Authority's comments, dated 25 September 2018 were as follows:
- "Notice is hereby given that the County Council as Highways Authority recommends that permission be refused as the proposal would lead to a severe cumulative highway safety risk because adequate visibility in the eastern direction has not been demonstrated. The proposal is not in accordance with NPPF P32 because it does not demonstrate that a "safe and suitable access to the site can be achieved for all people".*
- Visibility eastwards from the proposed access is insufficient for a safe access onto the highway. Drawing No. 1907/11 Rev A indicates a 120m visibility splay, to the nearside kerb edge in the easterly direction. The actual visibility distance, for a driver travelling in a north/north westerly direction around the left-hand bend towards the proposed access, is significantly less than that shown on the plan. I estimate that a driver travelling in this direction would have a clear view of the proposed access from a distance of approximately 80m. This is sub-standard for a 40mph categorised road because it would not present sufficient space for a driver to take safe avoiding action should a vehicle be leaving the site heading west. This highway safety concern is particularly acute because of the type of large vehicle (3.5tonnes upwards) that the applicant intends would use the access because such vehicles would take longer to complete an exit manoeuvre than smaller vehicles."*
77. Accordingly, the proposal was, at this point, unable to meet sufficient compliance with the standards required by the Highway Authority or policy DM2 of the Joint Development Management Policies Document.
78. However, to address these concerns (with arboricultural impacts discussed below), a further and final set of amended plans were submitted to the LPA; being revision E of the block plan and revision F of the visibility splay drawing.



79. In response to these drawings, the Highways Authority submitted further written comments on 30<sup>th</sup> January 2019 and 14<sup>th</sup> February confirming that the amendments satisfactorily address the concerns previously raised. The Highway Authority therefore have no objection to the use of either access as exhibited within the submitted plans. An unacceptable highway risk or a material conflict with DM2(I) has not therefore been identified.
80. Within their no objection comment, a number of conditions have been recommended and it is for the LPA to decipher those that should be imposed as it is incumbent upon the LPA to consider the 'condition test' as set out within section 55 of the National Planning Policy Framework. The conditions recommended by the Highway Authority are accepted in the interest of Highway safety but a number of them will need to be modified before they can be imposed upon this permission; in the event that planning permission is granted.
81. Condition P1, which states the use shall not commence until the areas for parking have been provided is not necessary on the basis that the development has commenced and the parking areas are already available within such a generous site.
82. Condition HGV 1 requires a deliveries management plan to be submitted so that HGV traffic is controlled. However, given that this application seeks to install a new access on the basis that the current arrangement is a poor solution and there is only one readily available access into the site, this condition is not judged to be necessary. There is no other available access into the site that delivery vehicles could utilise.
83. In addition, all 'pre-commencement' conditions will need to be suitably reworded to reflect the fact that the use to which this permission relates has, in some regard, already commenced. Pre-commencement conditions could not therefore be reasonably imposed.
84. Within the response from the Highway Authority, they have also recommended the following condition be imposed:
- "Before the development is commenced details shall be submitted to and approved in writing by the Local Planning Authority showing the location and wording of signs related to preventing the use of the existing access between Orchard Loge and Rose Cottage, by HGV and horse boxes over 2.6m in height and 2.2m in width".*
85. This is an important condition as it works in conjunction with the provision of the new access onto Exning Road and although it cannot be a pre-commencement condition (for the reasons already outlined), the LPA support the principle of such a condition. The collective impact being that inadvertent attempts to enter the site between the two cottages will, subject to correct signage, be successfully avoided. This measure is therefore an important one in serving to maintain highway safety and further represents an improvement over the plans that were initially submitted.
86. It is noted that there are public objections in relation to the continued use of the existing access for cars. However, as the Highway Authority have

clarified, this is an existing access (used by the objecting properties also) and the proposal under determination does not seek to install a new access in this location as has been suggested. As previously addressed, the existing access will be utilised by cars and small vehicles however, with the introduction of the 'new' HGV access, the use of this access is not judged to be of a sufficient scale, frequency or type that the Highways Authority wish to restrict its otherwise lawful use.

### **Arboricultural implications**

87. This aspect of the proposal is intrinsically linked with the location of the proposed new access as any new access onto Exning Road will require the removal of one or more TPO specimens.

88. In his formal comments, the LPA's Tree Officer has raised an objection to the proposal which cites the following concerns.

- A. The removal of group G1*
- B. Construction within the RPA of G7*
- C. The removal of tree T3*

89. However, since these comments have been made, a revised plan has been submitted which, from a purely arboricultural perspective, satisfactorily addresses points B and C above. This is achieved by removing development from within the RPA of group G7 and the retention of tree T3

90. Nonetheless, the proposal seeks to remove group G1 from the TPO belt so that the proposed access can be installed which, as confirmed by the submitted arboricultural impact assessment (AIA) and the LPA's Tree Officer, is a visually prominent specimen.

91. As noted by the LPA's Tree Officer, from a purely arboricultural perspective, it would be preferable to move the proposed new access eastward to preserve G1 and remove tree T2, which is a poorer specimen instead. This must, given the amenity value of the G1 group, and with respect to policies CS2, CS5 and DM13 be acknowledged as something which weighs against the proposal in the overall balance. The loss of otherwise healthy TPO specimens is seldom something the LPA advocate or tolerate.

92. However, if the access were to be moved further eastward, although it would enable the retention of group G1, it would give rise to an unacceptable highway safety risk as the objection from the Highway Authority referred to above, was in response to this precise scenario and access location. Whilst the loss of group G1 will be visually impactful, the LPA must ascribe significant weight to the concerns of the Highway Authority and, in doing so, afford lesser weight to concerns which deal with the limited matter of just visual amenity. Highway safety must therefore, in this instance, be prioritised and although the concerns raised with respect to the loss of G1 are of course duly noted, when considering the overall balance and owing to fact that the plans have been amended to remove the impact on G7 and retain T3, the removal of G1 should not be seen as a factor which weighs heavily against this proposal. A soft landscaping condition will however be recommended to ensure there is not a net loss in visual specimens or biodiversity credentials.

93. Following on from this, it is noted that the public objections suggest the loss of G1 is unacceptable and should result in the application being refused. Whilst the voiced public concern is understood, with respect to the overall planning balance and the degree of policy compliance that the wider proposal is able to show, the loss of G1 is not, in itself, a sufficient reason to recommend that the entire application be refused. To do so would be to unjustifiably sterilise the application site, which, given the degree of policy support for equine uses, the lack of tangible irrevocable harm and given the site's location in Newmarket, is not something that the LPA would be able to robustly defend at appeal in the event of the application being refused.

94. With respect to the trees which are to remain, the submitted AIA incorporates, at appendix 5, a tree protection plan. The detail of this plan is judged to be sufficient to prevent the remaining specimens from being unjustifiably damaged throughout the construction phase. Compliance with this tree protection plan shall therefore be controlled by way of condition, as is normal protocol in such circumstances.

### **Ecological implications**

95. As required by the National Planning Policy Framework (2019) at paragraphs 170 and 175 the LPA have a duty to consider the conservation of biodiversity when determining planning applications. At a local level, this is exhibited through policies CS2, CS4, DM11 and DM12.

96. Although the proposal does not include wide spread vegetation loss or activities that would otherwise be incompatible with wider biodiversity objectives, due to the relatively undeveloped nature of the site and the prevalence of trees in the vicinity, a phase 1 ecology report has been submitted in support of the application.

97. With respect to the potential ecological implications of this proposal, the submitted ecological survey confirms that although some boundary features were suitable for a small number of foraging bats, generally, the site was considered to be of negligible ecological importance due to the management of its habitats, high levels of disturbance, urban location and poor plant diversity. The report further comments that the scope of the proposed works is limited to a new access and additional lighting with both involving negligible habitat loss. No additional surveys were found to be required.

98. With respect to the impact of the proposed removal of group G1, the report confirms at section 4.3.3.3 that none of the specimens within this grouping have a high suitability for roosting bats. The report further clarifies that although the site has a high potential for nesting garden birds, it carries a low potential for protected farmland birds. Notwithstanding this, the report recommends a number of mitigation and enhancement measures from section 5 onwards.

99. The proposed mitigation measures are as follows:

## **Nesting birds**

Vegetation / trees only to be felled from September to February (inclusive). Or, if done outside of this period, an ecologist must be present to check the site immediately before any such clearance / felling.

## **Potential roosting bats**

- The use of soft felling techniques;
- All cuts should be made at 0.5m or greater from any visible cavities, splits. Hazard beams or small cracks are to be wedged open to prevent them from springing closed once cutting removes the tension from the limb;
- Timber with potential roost features must be lowered gently to the ground and left at the base of the tree for 48 hours with openings pointing upwards. This will give time to allow any bats present to disperse before the wood is processed or removed. If it is impractical to lower parts of the tree, then a mat of brash can be placed under the tree to minimise the effects of impact as branches are removed;
- If any bats are discovered at any point, then all work must immediately cease until a suitably experienced ecologist has been brought in for consultation. If a bat is discovered within any section of the tree that is still standing, then a Mitigation Licence from Natural England may be required.

## **Commuting and foraging bats**

- Install light columns that are the minimum height necessary to illuminate the arena;
  - Use hoods, cowls or directional fittings to avoid light being directed at the sky or backwards towards the boundary vegetation;
  - Maintain periods of darkness by limiting lighting times to 8:00pm.
100. Given that the proposal is seeking permission for 6 flood lights, it would be contradictory to prohibit their use after 8pm as from October to February, the approved manage would need to be lit. As such, to compensate for this, the proposed enhancement measures as included within the ecological survey will be conditioned to be provided as this represents a suitable trade off between provisions.

## **General mitigation measures**

- Protection of retained trees close to the proposed works, including the installation of root protection areas where required during construction with Heras fencing in line with Trees in Relation to Design, Demolition and Construction –Recommendations BS5837:2012 (BSI, 2012);
- Cover any trenches, holes or deep pits overnight, or use secured planks to allow any animals that fall in to escape during construction. A member of staff should check the site at the end of each working day to ensure that

these provisions to protect nocturnal species (such as hedgehog or badger) have been made.

101. In addition to the above mitigation, which, with the exception of the flood light timings, is deemed appropriate given the proposed development, the submitted ecological survey also recommends a number of ecological enhancements – as encourage and supported by the National Planning Policy Framework. These enhancements are as follows:

- Installation of three general bird boxes
- Installation of two sparrow terraces
- Installation of one bat box
- Use of native species in any proposed soft landscaping

102. The above measures have been reviewed by Natural England who have confirmed that they have no objections with respect to the proposed development or concerns regarding a potentially adverse ecological impact.

103. Therefore, given the aims of both national and local policy, these proposed enhancement measures shall be conditioned so that the proposal does not just mitigate against harm but also delivers additional biodiversity benefits.

### **Flood Risk**

104. A small western parcel of the application site lies within flood zone 2, as confirmed by the Environment Agency's flood maps. However, no development is proposed within this section of the site and as such, an adverse flood risk has not been identified.

105. The remainder of the site lies within flood zone 1 whilst the proposed development would also be considered as 'less vulnerable' to flooding and as such, with no objection raised from the Environment Agency, the proposal is not considered to be at an unacceptable risk from flooding.

### **Conclusion:**

106. Having considered the above matters, the principle of a commercial equine use, in this location is deemed to be acceptable and is supported by the provisions of CS6 of the FHDC Core Strategy and policies DM5, DM32 and DM47 of the Joint Development Management Policies Document (2015). Residential amenity is not judged to be unduly or adversely impacted by the proposal and following extensive positive and proactive negotiations with the applicant, issues of highway safety have been satisfactorily addressed through the provision of new purpose built HGV access onto Exning Road. The loss of the G1 tree group to the front of the site may result in a minor loss to biodiversity but ecological mitigation and enhancements measures are recommended to be secured by planning conditions.

107. Additionally, although the loss of group G1 will be visually impactful, the LPA must ascribe significant weight to the concerns of the Highway Authority and, subsequently, afford lesser weight to concerns which deal

with the limited matter of visual amenity. Highway safety must, therefore, in this instance, be prioritised and although the concerns raised with respect to the loss of G1 are noted, when considering the overall planning balance and owing to fact that the plans have been amended to remove the impact on G7 and retain T3, the loss of G1 should not be seen as a factor which weighs heavily against this proposal.

108. In conclusion, the principle and detail of the development are considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework.

**Recommendation:**

109. It is **RECOMMENDED** that planning permission be **GRANTED** subject to the following conditions:

1 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:

<b><u>Reference No:</u></b>	<b><u>Plan Type</u></b>	<b><u>Date Received</u></b>
1907/10 REV E	Proposed Block Plan	07.02.2019
1907/11 REV F	Visibility splays	07.02.2019
TELESCOPIC FLOODLIGHTING MAST SYSTEM 6M	Lighting Details	27.03.2018
Revision C	Design and Access Statement	03.09.2018
P3055.5.0	Ecological Survey	23.11.2018
P3055.4.0	Arboricultural Details	30.11.2018

Reason: To define the scope and extent of this permission.

2 Within 3 months from the date of this permission, a scheme of soft landscaping for the site drawn to a scale of not less than 1:200, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include accurate indications of the proposed position, species, & canopy spread of all retained trees and all proposed planting, with a minimum of at least two new trees to be planted. Any retained trees removed, dying or becoming seriously damaged or diseased within five years of this permission shall be replaced within the first available planting season thereafter with planting of similar size and species unless the Local Planning Authority gives written consent for any variation. The works shall be completed in accordance with the approved plans and in accordance with a timetable to be agreed with the Local Planning Authority.

Reason: To enhance the appearance of the development and to ensure that the most vulnerable trees are adequately protected during the periods of construction, in accordance with policies DM2, DM12 and DM13 of the

West Suffolk Joint Development Management Policies Document 2015, Chapters 12 and 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 3 The development shall be carried out in complete accordance with the Tree Protection Plan as per appendix 5 and appendix 6 of the submitted Arboricultural Impact Assessment (Ref: P3055.4.0, dated 30 November 2018).

Reason: To ensure that the trees on site are adequately protected, to safeguard the character and appearance of the area, in accordance with policy DM12 and DM13 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 4 No other part of the development hereby approved shall be commenced until the new vehicular access has been laid out and completed in accordance with SCC Drawing No DM04 and has been made available for use. Thereafter the access shall be retained in the specified form.

Reason: To ensure that the access is designed and constructed to an appropriate specification and is brought into use before any other part of the development is commenced in the interests of highway safety.

- 5 Before the new access onto Exning Road (The B1103) is first used visibility splays shall be provided as shown on Drawing No. 1907/11 REV F with an X dimension of 4.5m and a Y dimension of 120m in both directions and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays. This would include the removal and/or pruning of trees in the visibility splay.

Reason: in the interest of highway safety and to ensure adequate visibility for all road users

- 6 Before the new access onto Exning Road (the B1103) is first used, the access shall be properly surfaced with a bound material for a minimum distance of 20 metres from the edge of the metalled carriageway, in accordance with details previously submitted to and approved in writing by the local planning authority.

Reason: To secure appropriate improvements to the vehicular access in the interests of highway safety.

- 7 Gates shall be set back a minimum distance of 20 metres from the edge of the carriageway.

Reason: In the interests of road safety.

- 8 Before the new access onto Exning Road (the B1103) is first used, details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be

carried out in its entirety before the access is first used and shall be retained thereafter in its approved form.

Reason: To prevent hazards caused by flowing water or ice on the highway.

- 9 Within 3 months from the date of this permission, details shall be submitted to and approved in writing by the Local Planning Authority showing the location and wording of signs related to preventing the use of the existing access between Orchard Lodge and Rose Cottage, by HGV and horse boxes over 2.6m in height and 2.2m in width.

Reason: To reduce and/or remove, as far as is reasonably possible, the frequency of HGV's and horse boxes attempting to use the existing access which is unsuitable for these vehicle movements.

- 10 The upper limit of the main beams of the proposed menage, taken as 1/10th of the peak intensity level of any floodlight, shall not be greater than 70 degrees from the downward vertical.

Reason: In the interests of road safety to prevent uneven light levels on the highway and to prevent light pollution.

- 11 The six telescopic flood lights as approved and shown on drawing 1907/10 REV E shall only be used between the hours of 7am - 9pm. At all other times the lights shall not be used or switched on.

Reason: To safeguard the character and appearance of the area, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 12 of the National Planning Policy Framework and all relevant Core Strategy Policies.

- 12 Upon completion of the new vehicular access onto Exning Road (the B1103) and the associated track, the vehicle height restrictor as depicted in drawing 1907/10 REV E shall be installed and thereafter the existing access between Rose Cottage Orchard Lodge shall not be used by vehicles exceeding 2.6m in height.

The height restrictor shall be retained as illustrated on 1907/10 REV E and shall only be removed with the prior written agreement of the Local Planning Authority.

Reason: To safeguard the amenity of adjacent residential properties and highway safety, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 12 of the National Planning Policy Framework and all relevant Core Strategy Policies

- 13 The development shall be carried out in full accordance with all mitigation measures, as contained within section 5 of the Ecological Impact Assessment (Ref: P3055.5.0 & dated 23 November 2018).

Reason: To ensure minimal impacts on ecology, in accordance with the provisions of Policy DM12 of the Joint Development Management Policies.

- 14 Within 6 months from the date of this permission, details of: Three Schwegler 1B General Purpose Bird Boxes, Two Schwegler 1SP Sparrow Terraces and one Schwegler IFF / 2F Bat Box, to be installed at the site,



including details of the timescale for installation, shall be submitted to and approved in writing by the Local Planning Authority.

Any such measures as may be agreed shall be installed in accordance with the agreed timescales and thereafter retained as so installed.

Reason: To secure biodiversity enhancements commensurate with the scale of the development, in accordance with policies DM11 and DM12 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies

**Documents:**

110. All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=P5LOWWPDMSB00>