



# Appeal Decisions

Inquiry held on 5, 6 & 7 March 2008

Site visit made on 12 March 2008

by **Terry G Phillimore** MA MCD MRTPI

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

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Decision date:  
10 April 2008

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## Appeal Ref: APP/H3510/A/07/2057565 (Appeal A)

### Land adjacent to Balaton Place, Snailwell Road, Newmarket CB8 7YP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by English Courtyard Developments against the decision of Forest Heath District Council.
- The application Ref F/2007/0533/FUL, dated 15 June 2007, was refused by notice dated 30 August 2007.
- The development proposed is construction of 36 dwellings for the elderly plus warden's accommodation, garaging and ancillary facilities.

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## Appeal Ref: APP/H3510/E/07/2057567 (Appeal B)

### Land adjacent to Balaton Place, Snailwell Road, Newmarket CB8 7YP

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by English Courtyard Developments against the decision of Forest Heath District Council.
- The application Ref F/2007/0534/CAC, dated 15 June 2007, was refused by notice dated 30 August 2007.
- The demolition proposed is of four single storey buildings.

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## Decisions

### *Appeal A*

1. I dismiss the appeal.

### *Appeal B*

2. I dismiss the appeal.

## Procedural matters

3. At the inquiry the appellant submitted two unilateral undertakings dated 3 March 2008 containing planning obligations pursuant to section 106 of the Act.
  4. On 30 January 2008 the Council refused planning permission and conservation area consent for applications identical to those the subject of these appeals and for the same reasons. Submissions were made by a Rule 6 party (Balaton Place Management Company and Mill Reef Management Company) that the decision taken on the appeal planning application improperly made use of the
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Council's scheme of delegated authority, and that the reason given for the refusal of the subsequent application did not reflect the concerns expressed by members of the Planning Committee when it considered this. Having regard to the provisions of section 79 of the Act, I determine the planning appeal in relation to the full range of considerations put forward in evidence to the inquiry, and the validity or otherwise of these submissions is of no practical consequence to my decisions.

### **Main issues**

5. The main issues are the effect the proposals would have on:
  - the local horseracing industry
  - the character and appearance of the Newmarket Conservation Area.

### **Reasons**

#### ***Horseracing industry***

6. There is no dispute regarding the significance of horseracing to the character and economy of the town of Newmarket. This is signalled by a whole chapter of the Forest Heath Local Plan 1995 being devoted to the topic. This carries forward the thrust of earlier development plan policies, and the uniqueness of Newmarket in this respect continues to be a theme in the emerging Local Development Framework. It is agreed that the latter currently carries little weight in view of the early stage of preparation, but with the exception of policy 12.9 relating to the designation of conservation areas all of the policies in Chapter 12 of the Local Plan have been saved by Direction of the Secretary of State.
7. Paragraph 12.4 refers to a special presumption in favour of safeguarding land used for the horseracing industry as being a feature of past policy. Paragraph 12.6 states that established policies and attitudes to the horseracing industry and the character of the town will be continued, but the Plan will be used to review the scope of the policy and specific areas will be excluded to provide for essential land requirements. Within this context policies deal in sequence with racehorse and training grounds, the studs, training establishments, and other facilities. The focus with Appeal A is on policy 12.4, which is that: *'The change of use of racehorse training establishments will not be permitted. Similarly, any development which would adversely affect their operation will not be allowed'*.
8. The appeal site comprises a paddock of 1.4ha containing a small group of stable buildings and a small field shelter. It was formerly part of Balaton Lodge, which until 1999 was operated by the Animal Health Trust as the Equine Research Station. The Animal Health Trust use commenced around 1947, prior to which the whole site comprised a racehorse training establishment known originally as Zetland Lodge. The eastern part of the AHT site containing the main buildings has recently been developed for residential purposes following the granting of permissions in 1998 and 2000. The implemented development involved the demolition of post-War buildings, residential conversion of the courtyard buildings and restoration of residential use of Balaton Lodge, together with the erection of new detached houses, and is now known as

- Balaton Place. There has been some horse grazing use of the appeal site since 1999.
9. Training establishments are not identified on the Local Plan Proposals Map, but paragraph 12.12 of the Plan refers to a detailed survey that enabled them to be classified in locational terms. At the inquiry it was confirmed that Balaton Lodge was not recorded in this survey, which appears to have been carried out in the early 1990s. Paragraph 12.9 states that the phrase '*racehorse training establishments*' is used to describe the enclosed yards containing stable boxes used to house racehorses undergoing training; it adds that frequently, but not necessarily, they are associated with a paddock and other buildings including residential and storage accommodation.
  10. Taking into account the date at which the AHT use commenced, the non-appearance of Balaton Lodge in the Council's survey, the subsequent residential development of part of it, the appeal site's physical features and details of its current and previous uses, I consider that the site does not come within the definition of a racehorse training establishment for the purposes of policy 12.4. The first part of policy 12.4 is therefore in my opinion not engaged by the proposal, on the basis that the change of use now sought cannot reasonably be said to be one from a racehorse training establishment, notwithstanding the historic use prior to 1947.
  11. In view of the use of the term '*their operation*' within a policy dealing with racehorse training establishments and its position immediately after a specific reference to these, I take this term in the second part of policy 12.4 to mean the operation of racehorse training establishments. Disagreement arises as to how widely such establishments should be examined and how an adverse effect should be assessed for the purposes of the policy test.
  12. Given my above findings, there is no racehorse training establishment comprising or including the site itself which could be affected by the proposal. Although otherwise bordered by residential development, adjoining it to the north is the paddock land of Pegasus Stables, which is agreed to be a racehorse training establishment. No party argues that the proposal would be a form of neighbouring development that would be of unacceptable detriment to the operation of Pegasus Stables by way of physical proximity, taking into account the scope to control various details of the development by condition.
  13. The matter in contention therefore relates to the wider effect of non-equine use of the site. The site has not been marketed for equine purposes, but the appellant recognises the potential demand and that there would be no difficulty in obtaining take up for such a use. The Council suggests that the site is large enough to form a racehorse training establishment in its own right and that permission could be expected to be granted for the development associated with this. The likely impact on residential amenity of the site's access through the Balaton Place development is a consideration in this respect. Nevertheless, I believe that the site has firm potential to make a significant contribution of some form to racehorse training establishment operations, with scope to overcome any deficiencies of size and condition relating to the existing stables.
  14. This is confirmed by evidence I heard from the operators of Pegasus Stables and Stockbridge Stables. The former is an established trainer, the latter has

recently returned to training after a break. Both currently make use of land other than their stables, and would be interested in an opportunity to use the appeal site for horses. However, the weight that can be accorded to these individual expressions of interest is limited in that in the event of permission being refused there is no certainty that either would obtain use of the site. In addition, no objection to the proposal has been raised by Jockey Club Estates and the Newmarket Trainers' Federation. They assess the land as not being essential for the operation of the Pegasus Stables business, and also refer to the history of the site and the matter of consistency with the decision previously taken on the remainder of Balaton Lodge. While the responses also express objectives that are not capable of being secured through the determination of the current proposals, in my opinion this does not detract from the significance of the views given on the relevant planning matters. Questions were raised at the inquiry regarding the extent to which the letters record the wider opinions of the particular bodies and the racehorse training industry in general. However, these do not lead me to seriously doubt that the letters should be given significant weight as reflections of the views of the industry on the proposal.

15. These findings support a conclusion that the proposal would not involve the loss of a facility that is essential for the operation of racehorse training establishments, which is the threshold of 'adverse effect' urged by the appellant in applying the second part of policy 12.4. However, this term in the policy is unqualified by reference to degree or whether or not the impact relates to an essential need; nor is the assessment required to be limited to identified establishments. Paragraph 12.11, part of the reasoned justification for policy 12.4, describes racehorse training as a cyclical activity and takes a long-term perspective in seeking to retain training premises for the industry by recognising the scope for suitable alternative uses that are ancillary to the industry when premises are not currently required for training. Chapter 12 overall makes clear that the amount and availability of land for racehorse training use in the town is important to the continued success of the industry. These factors support a broad interpretation of the second part of policy 12.4 that can have regard to the land needs of racehorse training beyond the sites in existing use for training.
16. Applying this approach to the appeal site, with its history of equine-related use and suitability for such use, I consider that the loss of potential equine use that would result from the proposal would be an identifiable unfavourable consequence in terms of the land use needs of the town's racehorse training establishments; it would therefore involve a material adverse effect on their operations. In my view the generalised nature of this effect, especially in the context of the position taken by the industry's bodies, limits the weight that it carries. Nevertheless, I am unable to conclude that no conflict with policy 12.4 arises from the proposal.
17. I have been referred to appeal decisions made in 2004 on Kremlin Stud (refs APP/H3510/A/03/1124400 & APP/H3510/E/03/1124399) and in 1989 on Fitzroy Stables (refs APP/H3510/A/88/99790 & APP/H3510/A/88/105541). In the former case the Inspector found that the site in question met the definition of a racehorse training establishment, and in the latter the horseracing issue related to the functioning of the particular stables. These other appeals are

therefore not directly comparable to the proposal before me, which I assess on its own merits having regard to the particular circumstances, as would any other case need to be.

### ***Conservation Area***

18. Newmarket Conservation Area covers the historic part of the town centre including the High Street but also an extensive section of the town's later suburban development to the north, where the appeal site is located. The Council has not produced a Conservation Area appraisal, but I have had regard to the synopsis of a draft appraisal that has been prepared and the appellant's conservation impact assessment report, together with the Council's designation reports, statements in the Local Plan and my own observations.
19. Horseracing is a dominant influence on the town and this is strongly reflected in the character and appearance of the Conservation Area. There are many stables and training yards both within the centre and further out, the latter described as 'established peripheral yards' in the Local Plan. Around Snailwell Road there are a number of racing establishments with late nineteenth and early twentieth century buildings. The yards here are generally of medium to very large size, most have paddocks and exercise areas together with large houses built for the original owners and stable complexes, often on a grand scale and within an enclosed courtyard form. Between Snailwell Road and Bury Road is a significant wedge of stud farm land, paddocks and a gallop. It is a common feature of training establishments to be set behind high walls, hiding the house, stable yards and paddocks, but racehorses are much in evidence around the town. The Inspector on the Kremlin Stud appeal observed that the special character of the Conservation Area embraces all of the signs of the presence of racehorses, including sights, sounds and smells, and I readily adopt this description.
20. The appeal site forms a projection from a section of the Conservation Area that also encompasses new residential development on the west side of Snailwell Road, including Balaton Place, and the buildings and paddock land of Pegasus Stables. As paddock land it formed part of a larger site with historic use as a training establishment and which was in use for equine purposes as the Equine Research Station at the time of designation of this part of the Conservation Area in 1988. The new houses and residential conversions within the east part of the former Balaton Lodge site now give this a residential character, and the functional link between these two areas no longer exists. However, with the retained elements of the former courtyard buildings and the presence of the Lodge itself, and by virtue of the access to the site through Balaton Place, I consider that there continues to be a visual association with the site's history of use as the paddock land for an equestrian establishment. In my view this has been diminished but not lost.
21. In addition, the open grassed nature of the site and the form of the existing buildings, although these are not of significant interest as structures in themselves, together give it a distinctly equine quality. Although there are further modern residential developments to the south and north, these are outside the Conservation Area and in my view do not determine the character of the site, which has more in common with the adjoining open land of Pegasus Stables. The site is not prominent from public viewpoints, but glimpses are

possible through the vegetated boundary on Fordham Road and it is seen from neighbouring properties. Moreover, I have already noted that concealment of spaces is one of the attributes of the Conservation Area. While paragraph 4.27 of PPG15 refers specifically to buildings in terms of making a positive contribution to the character or appearance of a conservation area, paragraph 4.4 explains that the definition of an area's special interest should derive from an assessment of the elements that contribute (and detract from) it, with the character and hierarchy of spaces being one aspect identified as the basis for a coherent assessment. In my judgement this site makes a positive contribution to the character and appearance of this part of the Conservation Area, and with the attribute throughout the Area of equine features including open land juxtaposed with urban uses, to its special interest as a whole.

22. The proposed development would comprise two parallel ranges of two-storey buildings with details reflective of aspects of stable design features within the town. The layout would also retain relatively large areas of open space, including adjacent to Balaton Place and the boundary with Pegasus Stables. However, in my assessment these factors would not compensate for the substantial loss of the existing equine characteristics of the site that I have described through its development for residential use. I therefore consider that the proposals would detract from rather than preserve or enhance the character and appearance of the Conservation Area.
23. I recognise the common ground position between the main parties that the design and layout of the proposed development would preserve the character of the Conservation Area and that the existing buildings do not make a positive contribution to it. However, a case against the proposals on Conservation Area grounds was made by the Rule 6 party, and I am required to make my own assessment having regard to the Conservation Area status of the site and the statutory duty set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **Other matters**

24. The Animal Health Trust is a charity undertaking clinical and research work for the benefit of animals, a large proportion of which is associated with horses and of value to the horseracing industry. Its work is now concentrated at Lanwades Park nearby. The proposal would realise a large capital receipt for the AHT, which it would utilise to increase its liquid reserves. Auditors have identified a need to add to these, and financial security is important in underpinning its future activities. Doubts have been raised as to whether this financial contribution is a material consideration, which is a question of law. I am not persuaded that the continuation of the AHT's activities is seriously in jeopardy having regard to information on its current and recent financial position, although I recognise constraints imposed by funding requirements. In my assessment there is no doubt regarding the value of the work carried out by the AHT, but the potential benefit is a financial consideration that carries little weight in considering the land use implications of the proposals.
25. The development would provide new housing intended for a specific population group, and it appears to me that it would be suited to meeting a particular housing requirement for the elderly despite criticisms made of aspects of the scheme in this respect. A unilateral undertaking contains a planning obligation

for the payment of £551,250 towards affordable housing elsewhere in the District. The Council is satisfied with this arrangement on the basis of a supporting statement of justification and advice from its housing officer that on-site provision would not financially be possible. The potential interest of a housing association identified by the Rule 6 party does not seem to negate the importance of financial considerations in the scope for on-site provision, which I regard as a valid factor in this case. The housing gains that would arise from the development weigh significantly in its favour.

26. A further unilateral undertaking contains a planning obligation for a financial contribution of £13,250 towards the provision of healthcare services, but would only take effect in the event of permission being granted with confirmation that the contribution ought to be made. In my opinion this contribution would be justified by the health needs likely to be generated by the development and the anticipated use of the payment towards helping to meet these.

### **Conclusion**

27. The benefits of a contribution towards meeting a particular housing requirement on this site and providing affordable housing elsewhere, and the financial advantage argued to the AHT, do not in my judgement outweigh my finding that the proposals would not preserve or enhance the character or appearance of the Newmarket Conservation Area. The conflict with this objective as set out in PPG15 is sufficient to warrant dismissal of the appeals. The detriment I have found to the local horseracing industry also weighs against the development.
28. Having regard to all other matters raised, I conclude that the appeals should fail.

*T G Phillimore*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Ground of Counsel                      Instructed by the Chief Executive, Forest Heath District Council

He called:

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### FOR THE APPELLANT:

John Pugh-Smith of Counsel                      Instructed by Tanner & Tilley Planning Limited

He called:

Keith Reid BA FCA                      Director of Finance and Trust Secretary, Animal Health Trust, Lanwades Park, Kentford, Newmarket CB8 7UU

Peter Chillingworth  
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John Grossart MA MRICS                      Partner, Jackson-Stops & Staff, 168 High Street, Newmarket CB8 9AJ

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### FOR BALATON PLACE MANAGEMENT COMPANY AND MILL REEF MANAGEMENT COMPANY:

Harriet Townsend of Counsel                      Instructed by Michael Haslam

She called:

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INTERESTED PERSONS:

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James Fanshawe	Pegasus Stables, Snailwell Road, Newmarket, Suffolk CB8 7DJ
Brian McMath	Stockbridge Stables, 192 High Street, Newmarket CB8 9AP

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Appellant's aerial photograph
- 2 Correspondence between Mr Fanshawe and Mr Grossart
- 3 Extract from Animal Health Trust accounts 2006
- 4 Comments from Primary Care Trust of 4 March 2008
- 5 Bundle of correspondence submitted by Balaton Place Management Company and Mill Reef Management Company
- 6 Submissions and attachment of Mrs Townsend on the determination of the applications
- 7 Various Forest Heath DC Planning Committee meeting papers and minutes
- 8 Synopsis of Draft Newmarket Conservation Area appraisal
- 9 Extract from English Heritage guidance on conservation area appraisals
- 10 Chapter 12 of Forest Heath Local Plan
- 11 Statement of common ground
- 12 Unilateral undertaking dated 3 March 2008 - affordable housing
- 13 Unilateral undertaking dated 3 March 2008 – health care
- 14 Mrs Townsend's opening submissions
- 15 Email from James Sinclair to Mr Tilley dated 12 December 2006 and earlier emails
- 16 History of the Jockey Club
- 17 History of the Animal Health Trust (extract)
- 18 Local Plan Proposals Map
- 19 Adams Integra statement on affordable housing
- 20 Suffolk local planning authorities supplementary planning guidance relating to section 106 planning obligations
- 21 Emails between Racing Welfare and Mr Haslam
- 22 Mrs Townsend's closing submissions
- 23 Mr Ground's closing submissions
- 24 Mr Pugh-Smith's closing submissions
- 25 Site visit map