



Appeal Decisions

Site visit made on 4 June 2019

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2019

Appeal Ref: APP/G2435/W/18/3214451 (Appeal A)

Land off Hepworth Road, Woodville DE11 7DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Lauren Land Developments Ltd against the decision of North West Leicestershire District Council.
- The application Ref 16/01191/OUTM, dated 11 October 2016, was refused by notice dated 16 May 2018.
- The development proposed is self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) at Land Off Hepworth Road, Woodville, Swadlincote.

Appeal Ref: APP/G2435/Q/18/3214498 (Appeal B)

Land off Hepworth Road, Woodville DE11 7DW

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
- The appeal is made by Lauren Land Developments Ltd against the decision of North West Leicestershire District Council.
- The development to which the planning obligation relates is Part Three of the Schedule to the 2004 Section 106 Agreement (dated 3 June 2004) relating to application 02/01416/OUT.
- The planning obligation, dated 3 June 2004, was made between South Derbyshire District Council, North West Leicestershire District Council, Derbyshire County Council, Leicestershire County Council, Tapton Properties Limited, the Governor and Company of the Bank of Scotland and George Wimpey North Midlands Limited.
- The application Ref 16/01191/106A, dated 11 October 2016, was refused by notice dated 7 August 2018.
- The application sought to have the planning obligation discharged.

Decisions

1. **Appeal A** is allowed and planning permission is granted for self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) at Land Off Hepworth Road, Woodville, Swadlincote in accordance with the terms of the application, Ref 16/01191/OUTM, dated 11 October 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

2. **Appeal B** is allowed. The planning obligation, dated 3 June 2004, relating to Part Three of the Schedule to the 2004 Section 106 Agreement, no longer serves a useful purpose and is discharged.

Background and Planning History

3. Appeal A and Appeal B both relate to the same site. There is a close relationship between the two proposals. For the purposes of clarity I shall refer to the S78 appeal against the refusal of outline planning permission for a self and custom-build residential development consisting of 30 plots with a new access and supporting infrastructure (outline -access and layout included) on land off Hepworth Road, Woodville as Appeal A and the Section 106B appeal against the refusal of the Section 106A application to discharge the application site from the obligations in Part Three of the Schedule to the 2004 Section 106 Agreement as Appeal B.
4. A Planning Obligation in the form of a S.106 Agreement dated 24 April 2019 was submitted in support of the appeal proposals. A Deed of Variation dated 7 June 2019 was also submitted in response to Leicestershire County Council's (LCC) revised request for education contributions, in accordance with its Statement of Case dated 23 April 2019 and its subsequent e-mail dated 13 May 2019 to the Planning Inspectorate. These documents address all of the matters sought by the North West Leicestershire District Council (NWLDC) and LCC in connection with the provision of community and other services arising from the development. The Planning Obligation, including the Deed of Variation, is a material consideration in these cases. I return to the Planning Obligation later in these decisions.
5. The appeal site measures about 1.9 hectares in extent, is broadly triangular in shape and is situated to the south east of Woodville. It is bounded to the north and west by the recently constructed Taylor Wimpey residential development. The eastern boundary comprises a mature hedgerow and public footpath. Beyond this to the east of the site lies open grassland. The site is bounded to the south by Hepworth Road. The appeal site is currently undeveloped and is predominantly occupied with areas of scrubland and grassland along with several patches of marsh and some small ephemeral ponds. The appeal site is located outside the Limits to Development as defined in the adopted Local Plan.
6. Although there is no relevant planning history on the appeal site it is noteworthy that the appeal site forms part of the 48.77 hectares Woodville Woodlands development which encompasses land within the administrative areas of both South Derbyshire District Council (SDDC) and NWLDC. Following the grant of outline planning permission for the various aspects of the Woodville Woodlands development on 3 June 2004¹ and 11 June 2004², the residential development of the scheme has come forward in several distinct phases.
7. The appeal site was not included in any phase of the residential development because the plan annexed at Appendix 1 of the 2004 S.106 Agreement for the Woodville Woodlands scheme identifies several areas of the site for 'Forest Planting'. As a result, some of the appeal site is included within the 9.85

¹ SDDC planning application 9/2001/0050

² NWLDC planning application 02/01416/OUT

hectares of 'Dedicated Forestry Land' associated with the Woodville Woodlands development.

8. Clauses 2-7 of Part Three of the Schedule to the 2004 S.106 Agreement provide further details about the covenants the owner of the land entered into with NWLDC in respect of the 'Dedicated Forestry Land'. Clause 5 requires that upon the completion of the Approved Forestry Scheme, the 'Dedicated Forestry Land' *must be maintained in perpetuity as a forestry area for use by the general public* to the reasonable satisfaction of NWLDC. Clause 7 goes on to establish that the 'Dedicated Forestry Land' must not be used *for any purpose other than woodland/shrubland*.
9. The Woodville Woodlands Phase 4 Strategic Composite Planting Plan,³ which formed part of the reserved matters application for the outline planning consent 02/01416/OUT is understood to be the Approved Forestry Scheme referred to in the 2004 S.106 Agreement. This plan indicates that 4,275 sq. m of mixed woodland planting was originally planned for the appeal site. From the evidence that is before me the appeal site is believed to incorporate 4,275 sq. m of the 9.85 hectares of 'Dedicated Forestry Land' that is identified in the 2004 S.106 Agreement.
10. With this background information in mind I now turn to deal with Appeal A.

Appeal A

Appeal proposal

11. The appeal proposal seeks outline planning permission for a self and custom-build residential development consisting of 30 plots with a new access and supporting infrastructure. All matters except access and layout were reserved for subsequent approval. It is proposed that the serviced plots would range in size from 290 sq. m to 597sq. m. The position and size of each plot would be fixed. However, the siting of the dwellings on each plot would be subject to separate reserved matters applications.
12. A new vehicular and pedestrian access would be provided to the site from Hepworth Road. In addition, several new pedestrian and cycle links would be created between the appeal site and the adjoining housing developments. One of these would connect the site to South Street to the north and the other would link to Dovedale Park residential development to the north west. There would be sufficient space on every plot to provide a minimum of two off-street parking spaces per dwelling. The Design Code, submitted with the application, also sets out that every dwelling must provide at least two secure and covered cycle parking spaces. Informal open space, a landscape buffer, boulevard planting strips together with hedge and tree planting would also be provided.
13. The subsequent reserved matters applications would be required to adhere to the Design Code for the scheme. The Design Code sets out the broad parameters and design principles that would guide the development in relation to layout; scale; design and appearance; landscaping; sustainability and drainage; parking; external storage; amenity space and ecology. A number of plans, drawings and documents were submitted in support of the proposal. These are listed at paragraph 4.11 of the Appellant's proof and

³ Drawing No: Plan/624/Strat/Ph4/PP(C)1c

where these were revised and superseded during the planning process they have been clearly marked as superseded.

Planning Policy

14. The statutory development plan for the area includes the North West Leicestershire Local Plan (LP) (2017). Both parties refer to a number of policies in the LP as being relevant to the determination of the appeal. These include: S1 - Future Housing and Economic Development Needs; S2 - Settlement Hierarchy; S3 - Countryside; D1 - Design of New Development; D2 - Amenity; H4 - Affordable Housing; If1- Development and Infrastructure; IF4 - Transport Infrastructure and New Development; IF7 - Parking Provision and New Development; En1 - Nature Conservation; En3 - The National Forest; Cc2 - Water - Flood Risk; Cc3 - Water - Sustainable Drainage Systems.
15. Other relevant policies and guidance which are material in this case include: the National Planning Policy Framework (NPPF); the National Planning Practice Guidance (NPPG); the Written Ministerial Statement (WMS), 28 November 2014; the Housing White Paper, February 2017; the North West Leicestershire District Council - Good Design Guide SPD; and the Leicestershire Highway Design Guidance.
16. I am also aware of the Self-build and Custom Housebuilding Act 2015 (as amended) and the associated Self-build and Custom Housebuilding Regulations 2016. Amongst other matters the purpose of the Act is to allow individuals wishing to build their own home to register their interest in acquiring a suitable plot of land with the relevant authority. Specifically, the Act makes provision for Local Authorities to maintain a register of people who are seeking to acquire a serviced plot in their area in order that they may build houses for them to occupy as homes; and for Local Authorities to have regard to the demand for custom build housing as evidenced by the registers when exercising certain functions including those relating to planning and housing.

Main Issue

17. The main issue in this case is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

18. There is no dispute that the appeal site is located outside the defined Limits to Development as outlined on the Policies Map in the adopted LP. Land outside the Limits to Development is identified as countryside where development will be considered in the context of Policy S3. Only certain specified uses, listed (a) to (s) in the policy, will be supported. New residential development is not identified as a form of development permitted in the countryside under Policy S3 of the LP and therefore the appeal proposal is plainly in conflict with the development plan.
19. For the Council it is argued that the appeal proposal would introduce residential development and extend the existing edge of the settlement of Woodville. It is stated that the proposal would result in unnecessary development of greenfield land and encroach into an area of countryside which would be in conflict with Policy S3 in the LP. It is further contended that such proposed development would be harmful in terms of protection of the

countryside and would result in the development of open undeveloped land that forms an important separation between Woodville and Blackfordby. It is claimed that the proposal would be contrary to paragraph 170 of the NPPF 2019 as well as Policy S3 of the LP.

20. At my visit I saw that the proposed development would involve development of greenfield land on the fringe of the settlement of Woodville. However, the appeal site lies adjacent to the existing built form of Woodville and is bounded by Hepworth Road to the south and east and is well contained within its setting. In my view, it does not form an important area of separation between Woodville and Blackfordby. Development of the appeal site would not extend beyond the southern confines of the existing built form of Woodville and would be considerably set in from the eastern boundary of Woodville's developed footprint along Hepworth Road.
21. I also saw several existing clusters of development situated in the area of countryside between the south east boundary of Woodville and the north western boundary of Blackfordby. I note that these clusters are situated in a considerably more isolated location in relation to these settlements compared to the appeal site. Consequently, they have a greater impact on the perceived and physical separation between Woodville and Blackfordby than the appeal site. These clusters include development at Thorn Street, Butt Lane and the well-established manufacturing facility, Wavin UK (Forest Works), at Butt Lane. The siting of these clusters of development highlights that the countryside in between Woodville and Blackfordby is not undeveloped. In my view, development of the appeal site would not undermine the physical and perceived separation between Woodville and Blackfordby.
22. The Council confirms that as at April 2019, there are 54 individuals on the Council's Self-Build and Custom Housebuilding Register and that as of April 2019, it has permitted 4 plots in the period since 31 October 2016. Since 31 October 2016 the Council has permitted an additional 133 single plot dwellings which have been distributed across the District.⁴ However, the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).
23. To my mind this raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the District. Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding. There is no evidence before me of a similar mechanism which would secure the delivery of self-build and custom housebuilding on the plots referred to in Appendix 3 of the Council's Statement. I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the District.

⁴ See details in Appendix 3 to the Council's Statement

24. Moreover, the Council refers to the Buildstore.co.uk website which was, at March 2019, advertising 9 self-build plots sites as being available within the District and that all of these have been granted planning permission since 31 October 2016.⁵ However, one of these (17/01860/FUL) is also listed in Figure 4 of the Council's Statement of Case as an approved self-build site. From the evidence that is before me none of the 8 remaining sites is subject to a planning condition or a planning obligation requiring a self-build or custom-build house to be built on the site that accords with the statutory definition.
25. In summary, it is only the 4 plots listed in Figure 4 of the Council's Statement of Case that appear to comply with the definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended). It follows that the Council has not yet granted planning permission for enough serviced plots to meet the demand arising for base period 1 let alone any of the subsequent base periods (2, 3 and 4).⁶ Although the Council maintains it is already making progress towards granting planning permission for enough serviced plots to meet the demand arising in base period 1, the Council has provided no information to suggest that there are any applications pending determination for serviced plots in the District at present.
26. The deadline for granting planning permission for enough serviced plots to meet the demand arising for base period 1 is 30 October 2019. As such there remains a residual requirement to grant consent for at least 5 serviced plots by 30 October 2019. Consequently, the ability of the appeal proposal to address the unmet demand for serviced plots that arose in base period 1, base period 2 and part of base period 3⁷, in a comprehensively planned manner, is a material consideration that weighs strongly in favour of the appeal proposal. The appeal proposal would meet the majority of the current demand by delivering 30 serviced self-build or custom-build plots and this would accord with advice in paragraphs 59 and 61 of the NPPF and other Government guidance.
27. I accept that the NPPG on Self-Build and Custom Housebuilding states that relevant authorities *could* include policies in their local plans for self and custom housebuilding, but this is not a requirement.⁸ It also states that relevant authorities could seek to meet demand by engaging with landowners who own sites that are suitable for housing. The only requirement is that the Council has a duty to grant planning permission for enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area.⁹ The Council is considering how best to address the issue of self-build and custom housebuilding in the Local Plan Review.
28. Nevertheless, the Council is required by the provisions in Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) to grant planning permission for enough serviced plots of land to meet the demand for self-build and custom housebuilding in the District which arises in each base period. I consider the appeal proposal is necessary to enable the Council to meet its statutory obligations with respect to the duty under Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended), given that there

⁵ See details in Appendix 4 to the Council's Statement

⁶ Base Period 4 runs from 31/10/2018-30/10/2019 and is therefore ongoing.

⁷ Based on the information provided by NWLDP in paragraph 6.5 of its Statement of Case

⁸ NPPG Paragraph: 025 Reference ID: 57-025-201760728

⁹ NPPG Paragraph: 023 Reference ID: 57-023-201760728

appears to be an inadequate supply of serviced plots coming forward for development in the District.

29. The Council refers to the need for the planning system to protect and enhance valued landscapes. However, the Council has provided no evidence to demonstrate there are physical attributes associated with the appeal site and its immediate setting that elevate it above ordinary countryside. From the evidence that is before me and from my site visit, the appeal site and its immediate setting do not represent a valued landscape in the context of paragraph 170 of the NPPF.
30. The Council and others have raised concerns that the appeal site forms part of National Forest planting and landscaping which was secured by the adjacent Woodville Woodlands development. From the evidence before me it appears that the appeal site is identified on the approved plans as a combination of forest planting and grassland. Aerial photography suggests that the appeal site was a greenfield element of the Woodville Woodlands scheme and consists of grassland and scrub. It appears as though these habitats have been left to develop and for woodland planting to naturally regenerate rather than being re-planted as plantation woodland which was the approach adopted on brownfield areas of the wider site. Overgrown brambles and hawthorns were cleared from the appeal site in 2015 but no protected trees have been removed.
31. The National Forest Company (NFC) has raised no objection to the proposal provided that an equal amount of landscaping is provided elsewhere. The NFC has requested a contribution of £38,000 which would be secured by the S.106 Agreement. The Council has agreed to and signed the S.106 Agreement which sets out details relating to the NFC contribution and has confirmed that it considers the £38,000 NFC contribution to adequately mitigate the impacts of the appeal proposal in respect of tree planting. I agree that the £38,000 NFC contribution would provide adequate mitigation for the proposed scheme.
32. On the main issue I conclude that the proposal would not adversely impact upon the character and appearance of the surrounding area.

Planning Obligation

33. The S.106 Agreement and Deed of Variation provide a legal mechanism to secure developer contributions towards local schools. LCC originally requested an education contribution of £195, 806.86 and this figure was referred to in the signed S.106 Agreement. However, in an email dated 13 May 2019, the LCC sought a revised education contribution which amounts to £184,956.51. The revised contribution is made up of a primary school contribution of £131,328.00 and a high school contribution of £53, 628.51. The primary school contribution is for the provision of pupil places at St Margaret's C of E Primary School or such other primary school as will provide additional facilities to accommodate pupil growth from the development. The high school contribution is for the provision of pupil places at Ivanhoe High School or such other high school as will provide additional facilities to accommodate pupil growth from the development.
34. Given that the S.106 Agreement had already been agreed and signed, the Appellant had to arrange for a Deed of Variation to be prepared and signed to ensure that the S.106 Agreement correlates with the amounts requested by

LCC in respect of the primary sector and high school sector contributions. The Deed of Variation has the effect of varying the submitted S.106 Agreement so the total value of the education contribution and its apportionment between primary and high school sectors accords with the LCC's revised request. Additionally, given that the education contribution would be paid in instalments, as per Schedule 3 of the S.106 Agreement, the Deed of Variation amends the value of each instalment to correctly reflect the revised value of the education contribution. I consider there are adequate provisions in place to mitigate the impact of the development on local schools.

35. The NFC has requested that a £38,000 contribution towards off-site National Forest tree planting and the S.106 Agreement sets out where the compensatory tree planting would take place. It is the current intention that such funds would be used for tree planting at Ashby Woulds which the NFC has recently acquired and which is around 1.39kms to the south of the appeal site. The S.106 Agreement includes some flexibility for the provision of tree planting and development works at an alternative site in the vicinity of the development to be agreed between the NWLDC and the owner. I consider that the proposal would comply with Policy En3 of the LP and the impact on trees and the National Forest would be acceptable.
36. The appeal proposal does not include provision for affordable housing. A viability report was submitted with the proposal and this indicates that the scheme would not be viable with the inclusion of affordable housing (either on-site or off-site). The District Valuer is satisfied that the scheme is not viable with the inclusion of affordable housing. There is no reason for me to disagree with that analysis.
37. From the evidence that is before me all of the obligations in the S106 Agreement, as varied by the Deed of Variation, are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They all meet the tests in CIL Regulations 122 and 123 and the guidance in paragraph 54 and 56 of the NPPF 2019. I have taken them into account in these decisions.

Other Matters

38. I have taken into account all other matters raised including the representations from interested persons and parties. Local residents have expressed concerns about the design of the new houses. The appeal proposal seeks approval of the layout of plots, the internal access roads and the point of access from Hepworth Road. The precise location of the dwelling within each plot, its appearance, scale and landscaping would be subject to separate reserved matters applications. A Design Code has been submitted as part of the proposal to guide future reserved matters applications and covers landscaping, sustainable technologies, drainage, scale, design and layout.
39. I note that the layout shows that a main route would run through the site that would be planted, that there would be significant planting to the boundaries of the site, public open space and spacious plots at a density of 15.7 dwellings per hectare. I consider that it has been demonstrated, in principle, that an appropriate scheme for 30 dwellings could be satisfactorily developed on the site and would comply with Policy D1 of the LP, the NWLDC Good Design Guide SPD and the advice in the NPPF.

40. With regard to traffic and highway safety the proposed development would provide a new vehicular access point from Hepworth Road. The access would be located about 170 m to the west of Hepworth Road/Forest Road roundabout and would take the form of a priority junction with a right turn ghost lane and appropriate visibility splays in each direction. The proposal is accompanied by a Transport Statement which concludes that the development would not materially increase traffic flows on the surrounding highway network. The County Highway Authority raises no highway safety objections to the proposed scheme. I consider the proposal would comply with Policy IF4 of the LP, the advice in the NPPF and the Leicestershire Highway Design Guidance.
41. With regard to ecological impacts I note that the proposal was supported by an initial ecological assessment. Following comments by the County Ecologist a Greater Crested Newt Mitigation Strategy and a further Botanical Survey were submitted to the Council. The County Ecologist has reviewed the updated information and was satisfied with the mitigation strategy put forward in respect of Greater Crested Newts and recommends that a planning condition be attached to any planning permission. The County ecologist considers that the loss of species rich grassland can be offset by the creation of a new wet grassland of around 0.25 ha. There is sufficient space along the site frontage and within the south eastern corner of the site for this to be created but it is recommended that the precise species and management be subject to planning conditions. There is no reason for me to disagree with that analysis.
42. A Flood Risk Assessment and Surface Water Drainage Strategy has been submitted in support of the proposal. This confirms that the site is located within Flood Zone 1 and thus has a low probability of fluvial or tidal flooding. However, it is noted that there is a small area located centrally within the site which has resulted in a high level of risk of surface water flooding. It is proposed to manage surface water run-off from the development through the implementation of a sustainable drainage system, limiting the proposed maximum discharge rate to the site specific greenfield rate, providing on-site attenuation in the form of ponds or open water features with controlled discharge rates. The precise location and design of the open water features would be subject to a planning condition. Foul drainage would be connected to the existing mains sewer.
43. Some local residents are concerned about the impact of the proposal on the living conditions of existing residential occupiers. I consider that the impacts on neighbouring occupiers arising from the proposed development would need to be assessed in more detail at the reserved matters stage(s) when more precise details as to the layout, scale and appearance of the dwellings are submitted for consideration. Notwithstanding the details shown on the submitted layout there would appear to be no reason in principle why 30 units could not be provided on the site in a manner which would not significantly adversely impact upon neighbours' amenities.
44. I have considered and taken into account the planning appeal decisions referred to by the Council. I consider that the circumstances of those appeals are materially different to the appeal proposal. The appeal proposal should be considered on its own merits in the context of the development plan and other material considerations.

Planning Balance

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise. The Reason for Refusal cites only Policy S3 which is said to be breached but it also indicates that the proposal would not constitute sustainable development. The site is outside the defined limits to development and is not a form of development permitted by Policy S3. I find that being outside the settlement boundary and within the countryside, the appeal proposal is not in accordance with the development plan taken as a whole.
46. However, balanced against the identified conflict with the development plan, I consider there are a number of factors that need to be considered. Paragraph 8 of the NPPF 2019 states "*Achieving sustainable development means that the planning system has three overarching objectives*", which are identified as economic, social and environmental. In my view the appeal proposal would make a positive contribution towards achieving all three of these.
47. I attach substantial weight in terms of the economic benefits that would arise from the provision of 30 dwellings in Woodville. The new residents that would live in these homes are likely to use and support local services, local facilities and local businesses. Therefore, the proposal is likely to make a positive contribution to the local economy. The development of each property should create opportunities for local builders, tradesmen and builder's merchants. This has the potential to create local employment and training opportunities.
48. In terms of the social benefits, the proposal would be able to meet most of the current demand for self and custom-build plots in the District. The appeal proposal does not represent unnecessary development because it would greatly assist NWLDC to meet its statutory obligations with respect to providing serviced plots for self-build and custom-build housing. This would ensure that the proposed development plays a major role in meeting an evidenced housing need in North West Leicestershire. Moreover, the mix of housing types that come forward on the site would respond to the needs of local residents in accordance with Policy H6 of the LP and paragraph 59 of the NPPF. The overall layout of the site has been designed to ensure that a high standard of amenity can be provided for existing and future residents in line with Policy D2 and paragraph 127f of the NPPF. This comprises a substantial social benefit.
49. The proposal would not impact upon any physical separation between Woodville and Blackfordby or the character and appearance of the surrounding area. The site is well located in relation to the local transport infrastructure and would have good pedestrian and cycle links to local services, facilities and open space. The Design Code establishes that each dwelling must incorporate ecological enhancements, which include a minimum of one bat or one bird box. Furthermore, landscaping on each plot would help to promote biodiversity enhancements across the site. With regard to the performance and energy efficiency of the homes, the Design Code establishes that each dwelling must exceed the energy and carbon requirements in Part L of the Building Regulations. All of these factors would provide environmental benefits. I apportion moderate weight in terms of the environment. Taking all of these matters into account, I consider that the proposal would represent sustainable development as defined by the NPPF 2019.

50. In summary, the appeal proposal provides an opportunity to comprehensively meet the majority of the current demand for self and custom-build plots in the District on a sustainably located site. On balance I consider that the economic, social and environmental benefits of the proposal significantly and demonstrably outweigh the conflict with the development plan. It is therefore concluded that there are material considerations in this case to justify a departure from the development plan in accordance with the statutory provisions outlined under Section 38(6) of the Planning and Compulsory Purchase Act 2004.
51. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. Appeal A is allowed subject to the conditions set out in the attached Schedule.

Appeal B

Background

52. I have already set out the background and planning history of the site at paragraphs 3-9 above and there is no need for me to repeat that here. The Section 106B Appeal seeks to discharge the appeal site from the obligations in Part Three of the Schedule to the 2004 S.106 Agreement. The proposed discharge would result in the 1.9 hectares appeal site being excluded from the definition of 'Dedicated Forestry Land' in the 2004 S.106 Agreement. As a result, it would allow the self or custom-build scheme (Appeal A) to come forward on the site. The S.106 Agreement and Deed of Variation submitted with the appeal proposals provide the legal mechanism to achieve this. Amongst other matters this S.106 Agreement includes a clause to secure the £38,000 financial contribution towards off-site National Forest planting in accordance with the request from the NFC.

Main Issue

53. The main issue in this appeal is whether the planning obligation continues to serve a useful planning purpose.

Reasons

54. Section 106A (6) of the Town and Country Planning Act 1990 (as amended) provides that on an application for modification, the determination may be that the obligation shall continue to have effect without modification; if the obligation no longer serves a useful purpose, that it should be discharged; or if the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications requested.
55. The judgment in *Batchelor Enterprises Limited v North Dorset District Council* [2003] EWHC 3006 (Admin)¹⁰ provides clarity on how to assess whether a planning obligation still serves a useful purpose, in paragraph 26 of the judgment, Mr Justice Sullivan established that

"paragraph (b) in sub-section 106A (6) should be read as providing that a local planning authority may determine "if the obligation no longer serves a useful (planning) purpose that it shall be discharged.""

¹⁰ Appendix 12 of the Appellant's Statement of Case

56. The Council's reason for refusal is premised on the fact that the application 16/01191/OUTM was refused partly due to its perceived impact upon the separation and undeveloped character between Woodville and Blackfordby. I have already comprehensively addressed this matter under Appeal A and concluded that the appeal site is well contained within its setting and does not form part of an important area of separation between Woodville and Blackfordby. It follows therefore that the 4,275 sq. m of Dedicated Forestry Land on the site does not serve a useful planning purpose by protecting an important separation between the two settlements.
57. Furthermore, as noted in paragraph 31 above, the NFC has confirmed that it does not object to the proposal, subject to the self or custom-build scheme (Appeal A) making a £38,000 contribution towards compensatory off-site tree planting. This financial contribution would be secured by the S.106 Agreement submitted alongside both appeals.
58. I note that the primary reason for designating 4,275 sq. m of the appeal site as Dedicated Forestry Land in 2004 was to enable a National Forest tree planting scheme to take place on the site. However, the NFC has confirmed that the appeal site was not re-planted as plantation woodland as part of the National Forest Planting that took place for the Woodville Woodlands development.¹¹
59. In addition, clause 5 of Part Three of the Schedule to the 2004 S.106 Agreement stipulated that upon completion of the Approved Forestry Scheme the Dedicated Forestry Land should be maintained ... *"in perpetuity as a forestry area for use by the general public."* In 2010 the NWLDC stated that the Approved Forestry Scheme was complete.¹² Therefore, had the appeal site formed part of the Approved Forestry Scheme, the appeal site should now be accessible to the public. However, the appeal site has not been made publicly accessible. This provides further evidence to suggest that no forestry planting took place on the site and therefore designating part of it as Dedicated Forestry Land does not serve a useful planning purpose.
60. Moreover, from the evidence that is before me, it appears that neither NWLDC nor SDDC has adopted the appeal site as a forestry area. Had the appeal site formed part of the Approved Forestry Scheme, one of these Councils would have been obliged to adopt it under clause 3.2 of Part Two of the Schedule to the 2004 S.106 Agreement. Therefore, the fact that the appeal site has not been adopted by one of the District Councils provides further confirmation that the National Forest tree planting scheme did not take place on the site and was not implemented in the manner originally intended. This signals that there has been a material change in circumstances for the obligations in Part Three of the Schedule to the 2004 S.106 Agreement since it was originally signed. Ultimately, this means that designating part of the appeal site for Dedicated Forestry Land no longer serves a useful planning purpose because it protects the site for a tree planting scheme that did not materialise.
61. I consider that designating part of the site as Dedicated Forestry Land does not make a positive contribution towards the three overarching objectives of the planning system set out in paragraph 8 of the NPPF 2019. If the appeal site was not discharged from the obligations in Part Three of the Schedule to the 2004

¹¹ Appendix 7 of the Appellant's Statement of Case

¹² Appendices 13 and 14 of the Appellant's Statement of Case

S.106 Agreement this would prevent it from being used for any purpose other than as woodland/scrubland and the proposed self or custom-build plots would not come forward. There is clear evidence from the Council's self-build and custom housebuilding register which confirms that there is a need for the type of residential development that is being proposed for the appeal site. The Dedicated Forestry Land on the appeal site would be contrary to the economic, social and environmental objectives of the planning system. Accordingly, it does not fulfil a useful planning purpose.

62. On the other hand, discharging the appeal site from the planning obligations in Part Three of the Schedule to the 2004 S.106 Agreement would enable the proposed self or custom-build development, subject to Appeal A, to come forward. This scheme would deliver a number of social, economic and environmental objectives and thus would make a positive contribution towards achieving all three of the planning system's overarching objectives. As a result, the proposed discharge would represent a significant improvement on the current circumstances.
63. In conclusion, for all of the above reasons, I consider that the 4,275 sq.m of Dedicated Forestry Land on the appeal site no longer serves a useful planning purpose. None of the other matters raised alter the balance of my conclusions. Therefore, the proposed discharge conforms with the test in Section 106A (6) of the Town and Country Planning Act 1990 (as amended). As such Appeal B is allowed and the appeal site is discharged from the obligations in Part Three of the Schedule to the 2004 S.106 Agreement.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-16) (APPEAL A)

- 1) Application for approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 2) Approval of the details of the appearance, landscaping and scale (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) The development shall be carried out in accordance with the following approved plans:
 - Drg No. P0877.20160420.SK001 Rev B - Site access arrangement;
 - Drg No 10 3008-10-Rev E - Site Block Plan; and
 - Drg No 11 Rev A - Site location plan.
- 4) No more than 30 dwellings shall be constructed on the site.
- 5) No development or submission of any reserved matters shall be undertaken until a Risk Based Land Contamination Assessment for the entire site has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
 - BS10175:2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
 - BS 8576:2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs); and
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, no development shall commence on site until a Remedial Scheme and a Verification Plan is prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; and
- BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by The Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity.

- 6) Prior to occupation of any part of the completed development, either
- (i) If no remediation was required by Condition 5 a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development is received and approved in writing by the Local Planning Authority, or
 - (ii) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:
 - Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
 - Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
 - Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
 - Contain Test Certificates of imported material to show that it is suitable for its proposed use;
 - Demonstrate the effectiveness of the approved Remedial Scheme; and
 - Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.
- 7) No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:
- a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction;
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works;

h) delivery, demolition and construction working hours.

The approved construction method statement shall be adhered to throughout the construction period for the development.

- 8) No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 x 65 metres have been provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
- 9) No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on Drg No. P0877.20160420.SK001 Rev B have been implemented in full.
- 10) Notwithstanding the submitted plans, no development shall commence until details of parking and turning have been submitted to and approved in writing by the Local Planning Authority. Thereafter the onsite parking provision shall be so maintained in perpetuity.
- 11) No development shall take place until a scheme for foul drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.
- 12) No development approved by this planning permission shall take place until such time as infiltration testing has been carried out to confirm or discount the suitability of the site for the use of infiltration as a drainage element, and the Flood Risk Assessment (FRA) has been updated accordingly to reflect this in the drainage strategy.

The results should conform to BRE Digest 365, details should also be submitted demonstrating that sufficient surface water storage can be provided on-site. Alternatively, the Lead Local Flood Authority would accept the proposal of an alternative drainage strategy that could be used should infiltration prove not to be feasible during the detailed design stage.

- 13) No development approved by this planning permission shall take place until such time as a surface water drainage scheme has been submitted to, and approved in writing by, the Local Planning Authority.

The scheme shall include the utilisation of holding sustainable drainage techniques with the incorporation of sufficient treatment trains to maintain or improve the existing water quality; the limitation of surface water run-off to equivalent greenfield rates; the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and the responsibility for the future maintenance of drainage features.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

Full details for the drainage proposal should be supplied, including but not limited to, headwall details, pipe protection details (e.g. trash screens), long sections and full model scenarios for the 1 in 1, 1 in 30 and 1 in 100 year + climate change. Where discharging to a sewer, this should be modelled as surcharged for all events above the 1 in 30 year, to account for the design standards of the public sewers.

- 14) No reserved matters applications shall be submitted until such time as a Design Code for the entirety of the site has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement (including addendum) and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council or any successor organisation). The development shall thereafter be carried out in accordance with the agreed details.
- 15) No demolition/development shall take place/commence until a programme of archaeological work, commencing with an initial phase of trial trenching, has been detailed within a Written Scheme of Investigation, submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:
- The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme)
 - The programme for post-investigation assessment
 - Provision to be made for analysis of the site investigation and recording
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - Provision to be made for archive deposition of the analysis and records of the site investigation
 - Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition/development shall take place other than in accordance with the approved Written Scheme of Investigation.

- 16) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (15) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.