

Fernbank Lancaster New Road Cabus Garstang PR3 1NL

Stage 1 Permission in Principle Application for the erection of a self-build single storey dwelling following the demolition of a store room

PLANNING STATEMENT
February 2024



REPORT CONTROL

Document type	Planning Statement
Project	Fernbank
Client	Robert Woodhouse
Job Number	24-1698

Document Checking

Primary Author	Robert Palmer
Contributor	
Reviewer	Matthew Wyatt

Revision Status

Issue	Date
Client Issue	31/01/2024



CONTENTS

1 INTRODUCTION

2 SITE DESCRIPTION

3 PLANNING HISTORY

4 PERMISSION IN PRINCIPLE

5 PROPOSED DEVELOPMENT

6 PLANNING POLICY CONTEXT

7 PLANNING POLICY ASSESSMENT

8 CONCLUSIONS

Appendices

Appendix A: Self Build Counsel Advice

Appendix B: Appeal Decision APP/H1840/W/19/3241879 Corner Mead, Newland Lane, Droitwich Spa (2020)

Appendix C: Appeal Decision APP/G2435/W/18/3214451 Land off Hepworth Road, Woodville, DE11 7DW (2019)



/1 INTRODUCTION

- 1.1. PWA Planning is retained by Mr. Robert Woodhouse ('the Applicant') to progress a Stage 1 Permission in Principle (PIP) application for the erection of a self-build single storey dwelling ('the proposed development') at Fernbank, Lancaster New Road, Cabus, Garstang, PR3 1NL ('the application site'). The PIP application is made to Wyre Borough Council ('the Local Planning Authority') (LPA) and relates to the red edge application site boundary defined by the submitted Location Plan (Drawing No. E00 Rev A).
- 1.2. The Applicant aspires to deliver a dwelling that satisfies their accommodation requirements and is highly energy efficient. The Architect has worked closely with the Applicant to design their 'forever home', whilst minimising any impact on the openness of the countryside. Additionally, the Applicant is present on the Wyre Borough Council Self-Build Register, which will bring added social benefits to the development.
- 1.3. Whilst the illustrative plans are not necessary for a PIP, these are provided on the basis that they will help the decision-taker envisage how a future scheme can be developed, without harm to the open and rural character of the countryside and existing development. The document produced by BCAE Architects also aids the decision-taker in envisaging a future scheme for a highly energy efficient dwelling, which can be positively at Stage 2.
- 1.4. This Planning Statement will justify the proposal considering the Development Plan and other important material considerations. The Statement should be read in conjunction with the submitted application package, which includes the following documents:
 - Application form
 - BCAE Architects Supporting Information Document
 - Location Plan (Drawing No. E00 Rev A)
 - Existing Site Plan (Drawing No. E02)
 - Proposed Site Plan (Drawing No. P02)
- 1.5. Should the LPA require anything further to ensure the positive determination of the application, then please do not hesitate to contact the agent at the earliest opportunity.



/2 SITE DESCRIPTION

- 2.1. The application site is located on land west of Lancaster New Road (A6), Cabus, Garstang, PR3 1NL. The site is a part of ribbon development along Lancaster New Road, which are mainly residential properties.
- 2.2. The property Fernbank, which is immediately adjacent to the application site, is currently being used as a dwelling and will continue to do so after the erection of the proposed development. The residents of Fernbank are the Applicant's parents.
- 2.3. The application site comprises a garage store and store. The existing built form on the site totals a volume of 814.5m³.
- 2.4. The remaining areas of the site contain hardstanding and grassland. Along the eastern and southern boundaries are trees and hedgerow, which provide a visual block into the site from the A6.
- 2.5. Images of the site from the A6 are shown in Figure 1 and 2 below. The images show the dense hedgerow and trees on the eastern boundary of the site that provide a visual block into the site.



Figure 1: Image from the A6 looking westerly towards the site



Figure 2: Image from the A6 looking north westerly towards the site

- 2.6. Images from within the site at present are shown in Figures 3 – 7 below. The images help illustrate how the proposed dwelling will be well screened by the dense hedgerow and trees and the existing built form on the site.



Figure 3: Looking southerly towards the location of the proposed dwelling



Figure 4: An image of the store room that is to be demolished



Figure 5: An image of the eastern boundary from the location of the proposed dwelling



Figure 6: An image of the existing built form on the site



Figure 7: Looking southerly towards the location of the proposed dwelling with built form in the distance



- 2.7. To the immediate west of the site is grassland that is owned by the Applicant and is used as a Dog Training Agility Field. To the north of the site is a dwelling and to the east is the A6. To the immediate south is agricultural grazing land and further to the south is Taylors Attraction & Caravan Park.
- 2.8. The site extends to approximately 0.195 Ha and a Location Plan (Drawing No. E00 Rev A) is provided in the supporting documents.
- 2.9. Access to the site is currently taken via Lancaster New Road, which is an adopted road. Lancaster New Road connects the application site to existing amenities and services within Cabus and Garstang. These include:
- Cabus Village Hall (0.32km north of the site)
 - Redline Garage (Texaco and Londis) (0.34km south of the site)
 - Acresfield Health Club & Spa (0.63km south of the site)
 - Booths, Garstang (2km south of the site)
 - Aldi, Garstang (2.25km south of the site)
 - Garstang Community Primary School (1.5km south of the site)
 - Cabus Post Office (0.56km south of the site)
 - Cartmel Barbers (0.56km south of the site)
- 2.10. Footpaths are provided along Lancaster New Road towards Cabus and Garstang, with street lighting, making the amenities and services within Cabus and Garstang easily accessible by foot.
- 2.11. In terms of wider transport infrastructure, the M6 is 1.4km to the east of the site. The M6 can be accessed via the A6 at Junction 33 (Galgate) which is approximately 7.35km from the site. The A6 connects the site to neighbouring settlements such as Galgate, Catterall, Brock, Bilsborrow and Broughton and the larger settlements of Preston and Lancaster.



- 2.12. Bus stops servicing routes in each direction on the A6 are located 50m (for buses northbound) and 135m (for buses southbound) to the north east of the site. Both bus stops provide a flag post displaying service information. The bus stops are served by routes operating between Morecambe and Preston and Lancaster and Blackpool. The bus stops also serve a number of local colleges and secondary schools.
- 2.13. In terms of constraints, the site is located outside of the settlement boundary as per the Wyre Local Plan Policies Map and lies within the Countryside Area and a Strategic Area of Separation. The site has no ecological or biological designations and lies within Flood Zone 1, which means the site is at the lowest probability of flooding. Additionally, there are no Tree Preservation Orders on the application site and there are no heritage assets in proximity.



/3 PLANNING HISTORY

3.1. A planning search has been undertaken of Wyre Borough Council's online planning register to understand the planning history of the application site.

- 23/00815/LAWP | Lawful Development Certificate for the proposed erection of a single storey outbuilding within the garden of the existing dwelling for use as domestic garage, workshop and store | Fernbank Lancaster New Road Cabus Preston Lancashire PR3 1NL | Approved 16th November 2023.
- 92/00047 | Single storey side extension. | Fernbank, Preston Lancaster Road (A6), Cabus, Lancs, PR3 1NL | Approved 19th February 1992.
- 91/00559 | Single storey side and rear extension to provide granny flat and detached garage. | Fernbank, Preston Lancaster Road (A6), Cabus, Lancs, PR3 1NL | Withdrawn 2nd October 1991.

3.2. The applications below relate to the properties near the application site. The approved applications demonstrate the Council is supportive of residential development in this area.

- 18/00301/REM | Reserved matters (appearance, landscaping, layout and scale) application for the erection of 3 dwellings (following outline application 16/00442/OUT) | Nicky Nook View Lancaster New Road Cabus Preston Lancashire PR3 1NL | Approved 23rd July 2018.
- 18/00173/FUL | Erection of a detached dwelling with access and associated landscaping | Whitemont Lancaster New Road Cabus Preston Lancashire PR3 1NL | Approved 1st June 2018.
- 17/01176/FULMAJ | Change of use of land to travelling showpeople accommodation site and erection of storage and amenity building | Conway Lancaster Road Cabus Preston Lancashire PR3 1NL | Approved 3rd May 2018.



/4 PERMISSION IN PRINCIPLE

- 4.1. The PIP consent route is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development.
- 4.2. The relevant legislation and guidance for this route is taken from the following:
 - Town and Country Planning (Permission in Principle) (Amendment) Order 2017; and
 - National Planning Policy Guidance (PPG) – Permission in Principle
- 4.3. The former came into force on the 1st June 2018, whilst the latter was most recently updated in the same month. As such, it is considered, whilst at relatively recent application route, up to date guidance is readily available regarding such proposals. This section of the statement seeks to summarise the relevant provisions of the above to enable the authority to better understand the proposals.

Process

- 4.4. The permission in principle consent route has 2 stages:
 - Stage 1: establishes whether a site is suitable in-principle; and
 - Stage 2: ('technical details consent') is when the detailed development proposals are assessed. This is much like a reserved matters application.
- 4.5. The process for Stage 1 varies depending on the scale of the proposed development and whether it relates to Greenfield land or land classed as previously developed. For minor forms of development i.e. less than ten units, an application must be submitted to the local planning authority; this applies whether the site is greenfield or previously developed.
- 4.6. For major development on previously developed land, the site must be entered to the local planning authority's brownfield land register; which in turn grants a PIP. It is not possible to gain a PIP consent for major development on a Greenfield site.



Requirements for a Valid Permission

- 4.7. The requirements for a valid PIP are laid out in Article 5D of the Town and Country Planning (Permission in Principle) (Amendment) Order 2017.
- 4.8. To meet the requirements of a valid PIP application the following information must be provided:
- Completed application form;
 - A plan which identifies the land the application relates to; and
 - The correct application fee (discussed below).
- 4.9. The scope of Stage 1 PIP is limited to location, land use and amount of development. Other matters should be dealt with at the Stage 2 technical details consent stage of the application. Local authorities cannot list the information they require for applications for PIP in the same way they can for applications for planning permission.
- 4.10. Once a valid application for PIP has been received, the local planning authority should decide on the proposal as quickly as possible, and in any event within the statutory time limit of 5 weeks unless a longer period has been agreed in writing with the Applicant.

Planning Considerations

- 4.11. Proposals are determined in accordance with the Development Plan and the National Planning Policy Framework (NPPF). Although the scope of the local planning authority assessment of the first stage is limited to location, land use and amount of development.
- 4.12. The PPG details statutory requirements, like those related to both listed buildings or protected species are only applicable to Stage 2 Technical Consent applications (Paragraph: 003 Reference ID: 58-003-20190615). As stated above, local authorities cannot list the information they require for applications for PIP in the same way they can for applications for planning permission. Equally it is not necessary to provide a suite of technical reports at Stage 1, like you would for a full or outline application.



Types of Development

- 4.13. The PPG states that non-residential development may also be given permission in principle providing housing occupies the majority of the floorspace of the overall scheme. Non-housing development should be compatible with the proposed residential development, and may include, for example, a small proportion of retail, office space or community uses (Paragraph: 049 Reference ID: 58-049-20180615). The proposals in question here are deemed to accord with these requirements, with housing occupying most of the site.

Implementation Period

- 4.14. Where Stage 1 permission is granted via an application, an applicant would have a further 3 years to apply for the Stage 2 Technical Details. The default duration of the permission is 3 years. The local authority cannot add further conditions to the grant of permission under Stage 1.



/5 PROPOSED DEVELOPMENT

- 5.1. The Applicant seeks to erect a self-build single storey dwelling following the demolition of a storeroom at Fernbank, Lancaster New Road, Cabus, Garstang, PR3 1NL.
- 5.2. As this is a PIP application, it is not required to be supported by a proposed site plan or an associated elevation/floorplan drawing. However, in this instance, the Applicant has commissioned Plans and a supporting information document by BCAE Architects to demonstrate to the LPA how they hope the site will look once developed.
- 5.3. The Existing Site Plan (Drawing No. E02) and the Approved LDC Site Plan on page 32 of the document produced by BCAE show the built form on the site. The plans include the outbuilding that was approved under LPA ref: 23/00815/LAWP.
- 5.4. The Existing Site Plan (Drawing No. E02) and the Proposed Site Plan (Drawing No. P02) have been submitted to illustrate how the development approved under LPA ref: 23/00815/LAWP differs from this proposal.
- 5.5. The existing store building, which is to be removed, and the lawful development outbuilding have a combined volume of 814.5³. The proposed dwelling's volume, as stated on page 45 of the drawings document, totals 615m³. Therefore, the proposed dwelling will have a lesser volume than the existing store and the outbuilding, which is the alternative to this proposal.
- 5.6. Any future Stage 2 application will seek to ensure the design of the proposed dwelling will fit well in the rural setting and nearby properties, as will the choice materials. However, as shown by the detailed drawing document, it is anticipated that the dwelling can be constructed in the southern segment of the application site, in a similar position to the recently approved outbuilding.



/6 PLANNING POLICY CONTEXT

6.1. Section 38 (6) of the Planning and Compulsory Act 2004 requires that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

6.2. The statutory Development Plan for the site comprises the 'Wyre Local Plan (2011-2031) (incorporating partial update of 2022)' which was adopted in January 2023. Key policy documents that comprise 'material considerations' include the National Planning Policy Framework (NPPF) (December 2023), National Planning Policy Guidance (PPG), and any local supplementary planning guidance documents considered relevant to the proposal.

6.3. Figure 7 is an extract from the Local Plan Polices Map showing the site's location indicated by an arrow. The map illustrates the site is within a Strategic Area of Separation and the Countryside Area.

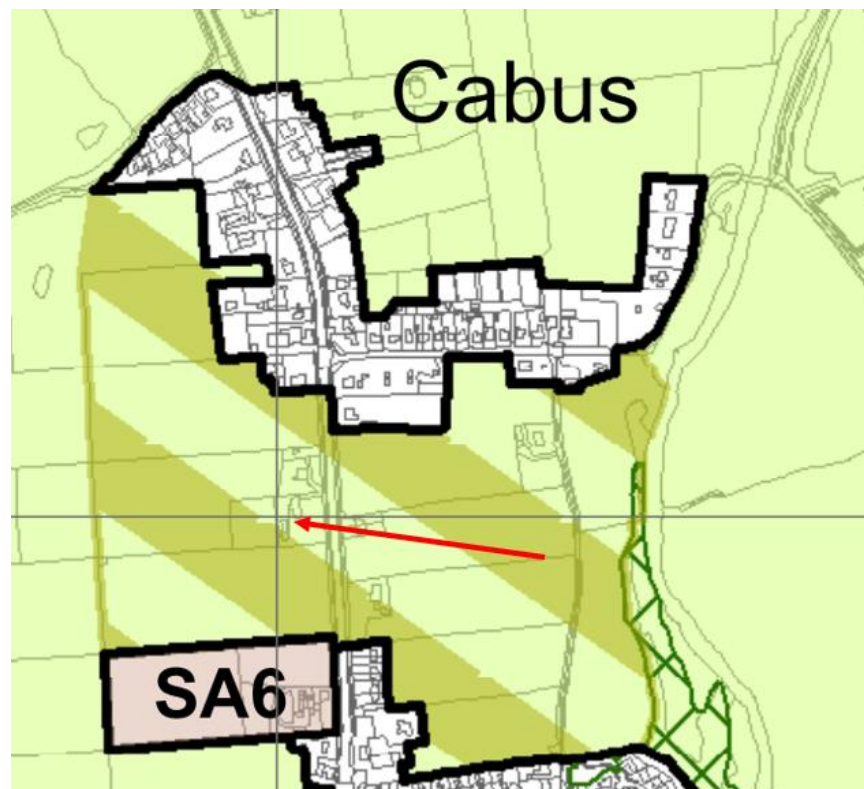


Figure 8: An extract from the Wyre Local Plan maps



Wyre Local Plan (2011-2031) (incorporating partial update of 2022) (2023)

- 6.4. The following Local Plan policies are relevant to the proposal at hand:
- SP1 Development Strategy
 - SP2 Sustainable Development
 - SP4 Countryside Areas
 - HP1 Housing Land Supply
 - HP2 Housing Mix
- 6.5. **SP1 Development Strategy** outlines the overall planning strategy for the Borough is one of growth within environmental limits. The Policy states at paragraph 5 that if developed sites within the open countryside become available for redevelopment, the priority will be to minimise the amount of new development that takes place and the level of activity that a new use generates, while securing a satisfactory outcome. Paragraph 7 of the Policy states development that would erode the openness of designated 'strategic areas of separation' and the effectiveness of the gap in protecting the identity and distinctiveness of the two settlements will not be permitted.
- 6.6. **SP2 Sustainable Development** states that all development should contribute positively to the overall physical, social environmental and economic character of the area.
- 6.7. **SP4 Countryside Areas** highlights development which adversely impacts on the open and rural character of the countryside will not be permitted unless it is demonstrated that the harm to the open and rural character is necessary to achieve the substantial public benefits that outweigh the harm.
- 6.8. **HP1 Housing Requirement and Supply** outlines that the minimum housing requirement for Wyre Borough is 296 net additional dwellings per annum between 2019 and 2031.
- 6.9. **HP2 Housing Mix** states it is required there is a wider choice of housing types available in Wyre. The Policy does not refer to specific house types but open wording implies that this should include specialist forms of accommodation, such as those listed at Paragraph 63 of the NPPF, which includes those wishing to commission and build their own homes (discussed further below).



Material Considerations

National Planning Policy Framework (NPPF) (December 2023)

- 6.10. The NPPF is a material consideration in planning decisions as per Paragraph 2 of the Framework and Section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 6.11. The NPPF sets out Government planning policies for England and how these are expected to be applied. The golden thread running throughout the NPPF is the Government's presumption in favour of sustainable development (**Paragraph 11**) whereby developments which correctly balance the requirements of economic, social and environmental issues should be granted planning permission unless there are strong reasons that permission should not be granted. The NPPF also strongly supports economic and housing development.
- 6.12. Sustainable development is broadly defined in **Paragraph 8** of the Framework as having three overarching objectives:
- a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
 - b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
 - c) an environmental objective - to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.



- 6.13. **Paragraph 63** states within the context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing; families within children; older people (including those who require retirement housing, housing-with-care and care homes; students; people with disabilities; service families; travellers; people who rent their homes and people wishing to commission or build their own homes.
- 6.14. **Paragraph 70** highlights small sized sites can make an important contribution to meeting the housing requirement of an area. The paragraph states that to promote the development of a good mix of sites local planning authorities should seek opportunities through policies and decisions to support small sites to come forward for self-build and custom-build housing.

Self-Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016)

- 6.15. This application is for 1 no. self-build dwelling. In this respect, there is a duty for Local Planning Authorities to plan for self-build developments as a recognised local housing need which in turn should feed into the Council's Strategic Housing Market Assessment.
- 6.16. Local planning authorities should use this demand data from the registers in their area, supported as necessary by additional data from secondary sources when preparing their Strategic Housing Market Assessment to understand and consider future need for this type of housing in their area (Planning Practice Guidance, Paragraph: 011 Reference ID: 57-011-20210208).
- 6.17. Relevant authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a base period. (Planning Practice Guidance, Paragraph: 023 Reference ID 57-023-201760728).
- 6.18. Relevant authorities should consider how local planning policies may address identified requirements for self and custom housebuilding to ensure enough serviced plots with suitable permission come forward (for example, as a number of units required as part of certain allocated sites, or on certain types of site).



More widely, relevant authorities can play a key role in brokering and facilitating relationships to help bring suitable land forward. This can include:

- supporting Neighbourhood Planning groups where they choose to include self-build and custom build housing policies in their plans;
- effective joint working across service delivery areas and with local delivery partners including Housing Associations, Arms Length Management Organisations and housing developers;
- using their own land (if available and suitable) for self-build and custom housebuilding and marketing it to those on the register;
- working with Homes England to unlock land and sites in wider public ownership to deliver self-build and custom build housing;
- when engaging with developers and landowners who own sites that are suitable for housing, and encouraging them to consider self-build and custom housebuilding, and facilitating access to those on the register where the landowner is interested; and
- working with local partners, such as Housing Associations and third sector groups, to custom build affordable housing for veterans and other groups in acute housing need. (Paragraph: 025 Reference ID: 57-025-20210508)

6.19. Further to guidance within the Planning Practice Guidance, the NPPF provides further clear guidance that LPA's should provide for self-build demand, as set out within Paragraphs 63 and 70 of the NPPF.

6.20. Also, Section 2 of the 2015 Act states at (5) that "development permission" means planning permission or permission in principle. Clear, this confirms that PIP applications are critical to help ensuring the effective delivery of self-build homes.



/7 PLANNING POLICY ASSESSMENT

Contributions to Housing Land Supply and Mix

- 7.1. Policy HP1 outlines that the minimum housing requirement for Wyre Borough is 296 net additional dwellings per annum between 2019 and 2031. This clarifies that there is no limit to the amount of housing that can be granted planning permission, regardless of the authority's housing land supply position. Indeed, Paragraph 60 of the NPPF is clear regarding the Government's objective to significantly boost the supply of homes across the country. The contribution of this dwelling, in a sustainable rural location should consequently be attributed positive material weight.

Self-build and Contributions to the Mix of Homes

- 7.2. The proposed development is put forward as self-build housing for the Applicant who is registered on the Council's self-build register. The Applicant lives locally, and their parents live at the site, in the dwelling named Fernbank.
- 7.3. Self-build is a type of housing for which the local planning authority is statutorily obliged to make provision for, as required by the Self-Build and Custom Housebuilding Act (2015) (as amended by the Housing and Planning Act 2016). The two duties in the 2015 Act which are concerned with increasing the availability of land to meet the demand for self-build/custom-build housing are the 'duty to grant planning permission etc.' and the 'duty as regards registers'. The 2015 Act is clear that permissions can include Permission in Principle and therefore the current application is an appropriate mechanism for securing delivery. In this instance, specific reference to the self-build nature of the dwelling is made within the description of development.
- 7.4. The 2015 Act details how the local planning authority must give suitable development permission for enough suitable serviced plots to meet the demand for self-build/custom-build in the area. The level of demand is established by reference to the number of entries added to the authority's register during the base period¹. At the time of writing there is understood to currently be 16 individuals on Wyre Borough Council's self-build register. The

¹ The first base period begins on the day on which the register (which meets the requirement of the 2015 Act) is established and ends on 30 October 2016. Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period. Subsequent base periods will therefore run from 31 October to 30 October each year.



current base period began on 31st October 2023 and runs until 30th October 2024. This therefore illustrates need for self-build plots which are not currently being met.

- 7.5. It is also important to note in a poll by Ipsos Mori² undertaken by NaCSBA in 2016 found only one in eight people interested in self-build were aware of the introduction of Right to Build Registers in England. The number of expressions of interest on a local authority's self-build register therefore may be significantly underestimated. The National Custom Build Association have also undertaken primary research at a national level which indicates that 1 in 50 of the adult population across the country want to purchase a custom or self-build home over the next 12 months. These findings therefore point to a significantly higher demand for self and custom build plots than identified on Wyre's self-build register, with there being a significant need for self-build plots which is not currently being met.
- 7.6. At the end of each base period, relevant authorities have 3 years in which to grant permission for an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period. The proposed development would make a valuable contribution to the target, in which the Council have a duty to meet.

Weight to be Afforded to Delivery

- 7.7. In terms of the weight to be afforded to the need for local planning authorities to grant permission for self-build and custom build housing, PWA Planning has taken counsel advice. The view of Anthony Gill (Kings Chambers) in this respect is that the weight to be afforded is significant, verging on overwhelming. The counsel advice issued in full is provided at Appendix A.
- 7.8. In reaching this view, Mr. Gill explains that a local planning authority has a statutory duty which the 2015 Act imposes into planning functions. In his opinion, this is a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. Regarding self-build, he finds that the duty requires no such articulation – it is clear upon the face of the 2015 Act that there is a freestanding duty beyond the duty under s.38(6) to follow the development plan. S.38(6) requires the development plan be followed unless material considerations indicate otherwise. One such material consideration would be an Act of Parliament imposing a

² Survey of Self Build Intentions 2016' – this survey questioned nearly 2,000 people about their self-build ambition and activity.



specific planning duty to provide planning permission for this specialist form of housing. The weight for a material consideration is a matter for the decision maker, however Mr Gill's view is that these factors indicate that the weight of a duty imposed by a primary piece of legislation from Parliament must be significant, verging on overwhelming.

- 7.9. Furthermore, there are clear social benefits to delivering self-build dwellings which should be given weight in the determination process. These social benefits are discussed within appeal reference APP/H1840/W/19/3241879 at Corner Mead, Newland Lane, Droitwich Spa (2020), which is included in full at Appendix B. Within this decision, whilst the Council had a 5-year supply of deliverable housing, the Inspector noted significant social benefit self-build dwellings would provide in terms of the diversity of housing type which would contribute to meeting the Council's duty under the 2015 Act. This should be established significant weight here, with the provision of 1no. self-build dwelling providing valuable housing for local people and meeting a currently unmet need for self-build housing.

Need to Grant Specific Self-Build Permissions

- 7.10. The LPA is also referred to appeal ref: APP/G2435/W/18/3214451, Land off Hepworth Road, Woodville, DE11 7DW (2019) (copy at Appendix C). In this appeal, which related to an outline application for 30 no. self and custom build plots, Inspector Stephens, who is an experienced and senior inspector, recognised a clear distinction between single dwelling plots with self-build restrictions and the council's reliance upon general single dwelling consents.
- 7.11. They state at Paragraph 23:

To my mind this [the reliance on 133 single plot dwellings without self-build restrictions] 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.

- 7.12. The conclusions reached by Inspector Stephens confirm that it is unreasonable practice for local authorities to count all plots intended for building on as being potentially suitable for self-building.
- 7.13. In this instance, PWA has only found a small number of consents that specifically refer to 'self-build' within the description of development. The authority does not maintain a Community Infrastructure Levy, so there is no other way for the Council to demonstrate that the needs of those on the self-build register (including the Applicant) is being met. The LPA should consider this aspect of the proposals positively.
- 7.14. Local Plan Policy HP2 promotes the delivery of a wider choice of housing types in Wyre. NPPF Paragraph 63 states that within the context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include people wishing to build their own homes. Similarly, Paragraph 70 of the NPPF highlights local planning authorities should seek opportunities through policies and decisions to support small sites to come forward for self-build and custom-build housing.
- 7.15. The proposed development is for a self-build single storey dwelling of high quality and design, sympathetic to the local character and setting. The proposal is therefore in accordance with all the above and the benefits of delivery are recognised within the Development Plan.

Development Strategy and Location

- 7.16. Policy SP1 of the Development Strategy outlines the overall planning strategy for the Borough is one of growth within environmental limits. The Policy states at paragraph 5 that if developed sites within the open countryside become available for redevelopment, the priority will be to minimise the amount of new development that takes place and the level of activity that a new use generates, while securing a satisfactory outcome.
- 7.17. In this instance, the site is sustainably located. It nevertheless forms part of the open countryside that is already developed, so paragraph 5 of SP1 is of relevance. The amount of new development in this proposal is minimal as it is a single storey dwelling that will be in a similar position to an outbuilding that has been given permission to be built under LPA



ref: 23/00815/LAWP. The proposal in affect will replace the outbuilding. Nevertheless, it is considered the amount of new development will be kept to a minimum whilst securing a satisfactory outcome, and therefore the proposed development is in accordance with Policy SP1.

- 7.18. Furthermore, in regard to the level of activity caused by the proposed development, as the proposal is for a single storey dwelling, it is considered the level of activity will be unnoticeable and will have little impact on the local infrastructure. As such, the proposal is in accordance with Policy SP1.
- 7.19. As shown by the Local Plan Policies Map, the site is within the Garstang and Cabus 'strategic areas of separation'. Paragraph 7 of Policy SP1 states development that would erode the openness of designated 'strategic areas of separation' and the effectiveness of the gap in protecting the identity and distinctiveness of the two settlements will not be permitted.
- 7.20. In terms of location within the site, the proposed dwelling will be within the southern area of the site which means it will be very well screened by the dense hedgerow and multiple trees to the east and south. Figures 1 and 2 illustrate the dense hedgerow and trees on the eastern and southern boundary. Additionally, the proposed dwelling will be well screened by the existing buildings on site to the north and west. This is shown in Figure 6.
- 7.21. Furthermore, the proposed dwelling will be situated roughly 2m lower than the A6. The images on page 12 of the document produced by BCAE and Figure 2 of this statement show the view of the built form on the site from the A6 is very limited.
- 7.22. Taking the level of screening into account and the gradient of the site compared to the A6, the proposed development is not deemed to erode the openness between Cabus and Garstang. The 'strategic area of separation' will still therefore be able to protect the identity and distinctiveness of the two settlements and as such the proposal is considered to be in accordance with Policy SP1 of the Wyre Local Plan.
- 7.23. The proposal is for a dwelling on land immediately off the A6, between Cabus and Garstang, and such residential properties are extremely common off the A6 in this area and in the settlements of Cabus and Garstang. Therefore, the addition of this proposed dwelling that is heavily screened by hedgerow and trees and the existing built form that surrounds it, is not thought to impact upon the identity and distinctiveness of the two settlements. As such, the proposal is in accordance with Policy SP1 of the Wyre Local Plan.



- 7.24. As shown by the Local Plan Policies Map, the application site is within the Countryside Area where Policy SP4 is of relevance. Policy SP4 highlights development which adversely impacts on the open and rural character of the countryside will not be permitted unless it is demonstrated that the harm to the open and rural character is necessary to achieve the substantial public benefits that outweigh the harm.
- 7.25. Firstly, the proposed development will be a total volume of 615m³, which is considerably lower than the volume of the outbuilding and storeroom which is 814.5m³. The reduction in the volume is mainly as a result of the demolition of the store room. It is considered that the reduced volume, which is nearly 200m³, will have a much lesser impact on the openness of the Countryside than the alternative, which is to erect the outbuilding and keep the store room. The proposal is therefore considered to be in accordance with Policy SP4 as the potential harm to the openness is a reduction in volume to the alternative scheme and the public benefits, listed below, that come with the proposed development outweigh any perceived harm.
- 7.26. As aforementioned, the proposed dwelling will be heavily screened by dense hedgerow and trees and the existing built form that surrounds the site. There is also limited visibility of the site from the east because it is at a lower gradient than the A6. It is therefore considered the harm to the openness of the countryside area is minimal. Furthermore, existing views into the site are limited from the west due to existing screening, building mass and topography.

Planning Balance

- 7.27. Policy SP2 states that all development should contribute positively to the overall physical, social environmental and economic character of the area. This is reflected within the Paragraph 8 and 11 of the NPPF where it states development that correctly balances the requirements of economic, social and environmental issues should be granted planning permission.
- 7.28. Any potential limited harm to the countryside area is believed to be outweighed considerably by the public benefits and economic, social and environmental benefits that will be achieved as a result of the development. These include but are not limited to:
- A contribution to the Council's housing land supply set out in Policy HP1;



- A contribution to the Council's supply of self-build homes and mix of housing as set out in Policy HP2 (which should be given significant weight);
- Development that forms part of an existing cluster of buildings and is sustainably located, where contributions can be made to the local economy;
- Development that is of high architectural design and will offer a positive contribution to the local character;
- Development that is preferable to the outbuilding that has been granted approval under LPA ref: 23/00815/LAWP;
- Opportunities for additional soft landscaping that will promote the beauty of the open countryside; and
- Opportunities for the local construction industry.

Technical Considerations

- 7.29. Whilst final details of the proposed dwelling are reserved until Stage 2, it remains the intention of the Applicant to ensure that future submissions achieve the aspirations set out within the Development Plan in terms of design and amenity. It is not a matter for consideration at this stage but based upon the positive applications at sites in the locale, the LPA should be confident that the promotion of good design is achievable and that there will not be any technical matters to prevent delivery of the proposed development.
- 7.30. Indeed, the document produced by BCAE provides further detail regarding the Applicant's design aspirations for a Stage 2 application with their home comprising light timber cladding, stone, a green roof and 'up and over' glazing. It is considered that such materials will be sympathetic to the countryside area and reduce any impact the proposal could have on the openness.



/8 CONCLUSIONS

- 8.1. PWA Planning is retained by Robert Woodhouse to progress a Stage 1 Permission in Principle application for a self-build single storey dwelling at Fernbank, Lancaster New Road, Cabus, Garstang, PR3 1NL.
- 8.2. The Applicant, who is on the Council's Self-Build Register, aspires to deliver a dwelling that is highly efficient and has worked closely with the Architect to minimise the impact the scheme could have on the countryside, whilst being sympathetic to the character of the area.
- 8.3. The proposed dwelling's volume totals 615m³. The existing store building, which is to be demolished, and the lawful development outbuilding, which has not been built, have a combined volume of 814.5³. Therefore, the proposed dwelling will have a lesser volume than the existing store and the outbuilding, which is the alternative to this proposal. The proposal will therefore have a reduced impact on the openness of the countryside than the alternative scheme.
- 8.4. Additionally, the proposed dwelling will be heavily screened by the existing dense hedgerow and trees on the eastern and southern boundaries. Screening is also provided by the existing built form on the site which means the development will have little to no impact on the openness of the countryside and the role of the strategic gap between Cabus and Garstang.
- 8.5. The evidence presented in this Statement demonstrates how the proposed development is compliant with the Wyre Local Plan and the National Planning Policy Framework. Moreover, with reference to relevant planning appeals, significant material weight should be attributed to the delivery of a self-build home, which helps to meet an identified need for a person on the self-build register.
- 8.6. In this instance, the benefits of the scheme significantly outweigh any potential deemed harm to the openness of the countryside and green gap. Permission in principle should therefore be approved and the application is commended to the LPA.



2 Lockside Office Park
Lockside Road
Preston
PR2 2YS

01772 369 669

www.pwaplanning.co.uk





2 Lockside Office Park
Lockside Road
Preston
PR2 2YS

01772 369 669

www.pwaplanning.co.uk

Appendix A



Re: land adjacent to John Smith Playing Field, Chaigley Road, Longridge

ADVICE

1. I am asked to advise Mr Andrew Billington in respect of a planning application (ref:3/2017/1100) on land 'adjacent to John Smith Playing Field, Chaigley Road, Longridge, PR3 3TQ' ('the Site') for 'up to 15 self-build dwellings (30% affordable self build) including access'.

2. The application was submitted to Ribble Valley Borough Council ('the Council') on 20th November 2017 and is due to be determined by the Council's planning committee on Thursday 8th March 2018. I have been provided with the officer's report to committee ('the Report') which recommends refusal for three reasons. I am asked to advise on the first reason:
 - '1. The proposal is considered contrary to Key Statements DS1, DS2 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that the approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification which would cause harm to the development strategy for the borough leading to the creation of an unsustainable pattern of development

contrary to the core aims and objectives of the adopted Core Strategy and the NPPF presumption in favour of sustainable development’.

3. Those instructing me disagree with this characterisation. They contend that the application provides for a local need for self-build housing opportunities. Further the provision of such allocations and opportunities is a duty upon the Council since the coming into force of the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016).

4. Section 1 of the 2015 Act requires:

s.1(1) Each relevant authority must keep a register of—

(a) individuals, and

(b) associations of individuals,

who are seeking to acquire serviced plots of land in the authority's area for their own self-build and custom housebuilding.

5. Further section 2 provides:

2 (1) Each of the authorities mentioned in subsection (2) must have regard to each register under section 1 that relates to its area when carrying out the functions mentioned in subsection (4).

...

(4) The functions referred to in subsection (1) are functions relating to—

(a) planning;

6. The 2015 Act continues:

2A Duty to grant planning permission etc

(1) This section applies to an authority that is both a relevant authority and a local planning authority within the meaning of the Town and Country Planning Act 1990 (“the 1990 Act”).

(2) An authority to which this section applies must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.

(3) Regulations must specify the time allowed for compliance with the duty under subsection (2) in relation to any base period.

(4) The first base period, in relation to an authority, is the period—

(a) beginning with the day on which the register under section 1 kept by the authority is established, and

(b) ending with 30 October 2016.

Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period.

(5) In this section “development permission” means planning permission or permission in principle (within the meaning of the 1990 Act).

(6) For the purposes of this section—

(a) the demand for self-build and custom housebuilding arising in an authority's area in a base period is the demand as evidenced by the number of entries added during that period to the register under section 1 kept by the authority;

(b) an authority gives development permission if such permission is granted—

(i) by the authority,

(ii) by the Secretary of State or the Mayor of London on an application made to the authority, or

(iii) (in the case of permission in principle) by a development order, under section 59A(1)(a) of the 1990 Act, in relation to land allocated for development in a document made, maintained or adopted by the authority;

(c) development permission is “suitable” if it is permission in respect of development that could include self-build and custom housebuilding.

(7) A grant of development permission in relation to a particular plot of land may not be taken into account in relation to more than one base period in determining whether the duty in this section is discharged.

(8) No account is to be taken for the purposes of this section of development permission granted before the start of the first base period.

(9) Regulations under subsection (3)—

(a) may make different provision for different authorities or descriptions of authority;

(b) may make different provision for different proportions of the demand for self-build and custom housebuilding arising in a particular base period.

7. Section 2B provides that a council can apply for an exemption from its s.2A duty subject to conditions prescribed in Regulations. I do not understand the Council to have applied for such an exemption and in light of Regulation 11 of the Self-build and Custom Housebuilding Regulations 2016/950 I do not see that the Council could apply for such an exemption

8. The Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016/1027 provide at Regulation 2. Time for compliance with duty to grant planning permission:

The time allowed for an authority to which section 2A of the Act (duty to grant planning permission etc) applies to comply with the duty under subsection (2) of that section in relation to any base period is the period of 3 years beginning immediately after the end of that base period.

9. Therefore, the Council has a duty to grant sufficient planning permissions to account for the demand arising in each base period for self-build plots as recorded in its self-build register. The base periods are twelve months running from the 31st October each year. There have been two base period end dates since the 2015 Act came into force: 30th October 2016 the most recent base period ended on 30th October 2017. The Council has a duty to grant sufficient permissions within three years of those base period end dates for demand arising within those periods.

10. The duty exists under the Act and the metric of how the demand is measured is prescribed by the Act. No alternative measure of demand is provided.

11. The Council should maintain a self-build register and it is the measure of demand. It would seem to me that it is also the obvious, and statutorily prescribed, measure of the need for a specialised form of housing. Just as councils are required to understand their market and affordable housing need they are also required to understand the need for

other specialist housing such as that for the elderly or in this case those wishing to self-build.

12. The 2015 Act is unusual in clearly specifying how such demand is to be understood. Section 2(4) of the 2015 Act is important in confirming that the duty towards self-builders and the requirements of the Act relate to planning functions. Therefore, it seems clear to me that whilst the 2015 Act addresses the issue as ‘demand’ the Act also prescribes how ‘need’ for such specialist housing is to be understood for planning purposes.
13. The primacy of the ‘demand’ metric under the 2015 Act is confirmed in the NPPG:

What is the relationship between the register and the Strategic Housing Market Assessment?

Local planning authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance), when preparing their Strategic Housing Market Assessment to understand and consider future need for this type of housing in their area. Plan-makers will need to make reasonable assumptions using the data on their register to avoid double-counting households.

Paragraph: 011 Reference ID: 57-011-20160401

Revision date: 01 04 2016

14. From the foregoing it is apparent that the Council must rely upon the register as its measure of need. It is allowed, under the guidance, to carry out secondary research ‘as necessary’ but such licence as granted by the guidance is not sufficient to trump the requirement to rely upon the register and does not excuse the Council from failing to fulfil its duties under the 2015 Act whilst such research, if any is proposed, is pending.

15. Those instructing have proceeded on the basis that the proposal complies with the local plan under DMH3 as, in spite of seeking development in an area the Council contends to be open countryside, it is within the exception for the meeting of identified local need. The Council has not accepted that submission, in the officer report, as it is contended that self-build is not a local need for the purposes of the local plan.
16. In this, I think the Council has a serious risk of falling into error for the following reasons:
17. The Council has a statutory duty to provide development plots of those who wish to self build. It is a statutory duty which the 2015 Act imposes **into** planning functions.
18. I would note that this is in fact, arguably, a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. That is, the duty to provide for housing need in general is the result of a duty articulated through guidance and then by the operation of s.38(6).
19. Here, the duty needs no such articulation, it is clear upon the face of the 2015 Act. From that it is a freestanding duty beyond the duty under s.38(6) to follow the local plan. Section 38(6) requires the local plan be followed unless material considerations indicate otherwise. One such material consideration would be an Act of Parliament imposing a specific planning duty to provide planning permission for this specialist form of housing. The weight for a material consideration is a matter for the decision maker but the weight of a duty imposed by a **primary piece of legislation from Parliament** must be significant verging, I would hazard, on overwhelming.
20. From the officer's report and telling comments that 'concerns have been conveyed verbally in respect of potential implications for the Local Authority resultant from the Self-Build Act' and that 'further work may need to be commissioned in respect of the

obligations the act places on the authority’ and ‘works have not commenced on such matters’ (para.5.1.10) it would appear the Council has not considered the significant implication of this Act or if it has it is only just beginning but one senior officer (Head of Housing and Regeneration) has begun to recognise the impact of this duty.

21. I note that para.5.1.10 raise concerns over ‘future implications given the timescales and obligation for granting a suitable number of self-build consent to match the level of demand which is reflected within the self-build register’. I would only observe that these are not future implications: it is a live statutory duty and there is a self-build application before the Council now. The duty is material under the planning acts and the 2015 Act reiterates that it must have regard to that demand in exercising its planning functions.

22. Further, even ignoring that the Council is now under a legal duty to provide plots for self-builders, I consider that the officer’s local plan analysis is short sighted. There is a specialist form of housing need (self-build) which those instructing me submit falls within the terms of DMH3. If, as the report states, that analysis is not accepted what then does the current local plan have to say about self-build and addressing that need: where is the relevant policy?

23. The officer report relies upon no other provisions of the extant plan. Such a policy would be, if it existed, central to the consideration of this application. Rather, there is no specific policy. If this need has no policy provision and it does not fall within the terms of DMH3 then the local plan is ‘silent’ as per the second bullet point of the decision making provisions of para.14 of the NPPF and the tilted balance is the relevant decision making test:

where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

—any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

—specific policies in this Framework indicate development should be restricted.

24. The Report does not analyse the decision on the basis that it is either plan compliant with DMH3 (the submissions of those instructing me) or that the plan is silent on self-build and as such permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of doing so.
25. The adverse impacts are particularised in the reasons as development beyond a disputed development boundary and an alleged visually and morphologically anomalous development affecting the appearance and character of the area and landscape. Those adverse effects would have to outweigh significantly and demonstrably the Council comply with its legal duty under the 2015 Act to meet a specialised housing need along with the numerous benefits particularised in the planning statement that accompanied the application¹ and the context of a local planning authority with a marginal housing land supply.
26. Under either analysis the Report is legally wrong. I advise accordingly, if I can be of any further assistance please do not hesitate to contact me.

ANTHONY GILL

6th March 2018

KINGS CHAMBERS

MANCHESTER, LEEDS, AND BIRMINGHAM

¹ Para.7.4



2 Lockside Office Park
Lockside Road
Preston
PR2 2YS

01772 369 669

www.pwaplanning.co.uk

Appendix B





Appeal Decision

Hearing Held on 29 June 2020

Site visit made on 1 July 2020

by David Richards BSocSci DipTP MRTPI

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

Decision date: 23 July 2020

Appeal Ref: APP/H1840/W/19/3241879

Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH

- 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 Build 1 against the decision of Wychavon District Council.
 - The application Ref 19/01679/OUT, dated 22 July 2019, was refused by notice dated 25 September 2019.
 - The development proposed is up to 9 self-build dwellings including new means of access off Newland Lane.
-

Decision

1. The appeal is allowed and planning permission is granted for up to 9 self-build dwellings at Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH in accordance with the terms of the application, Ref 19/01679/OUT, dated 22 July 2019, subject to the conditions set out in the attached Schedule.

Application for costs

2. At the Hearing an application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect on the character and appearance of the surrounding area, and whether the Council has made adequate provision for the delivery of self-build dwellings in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015 (The Act).

Reasons

4. The application was made in outline and included provision of a new access, with matters relating to appearance, landscaping, layout and scale reserved.
5. The development plan includes the South Worcestershire Development Plan (SWDP) which was adopted in February 2016. Policy SWDP2 is concerned with the Development Strategy and Settlement Hierarchy. The development strategy and site allocations are based on a number of principles, including provision for and facilitation of the delivery of objectively assessed needs to 2030, safeguarding of the open countryside, the effective use and reuse of brownfield land. Most development is focussed on urban areas, which include Droitwich Spa. Under criterion C, the open countryside is defined as land

beyond any development boundary, where development will be strictly controlled and limited to a number of defined categories, none of which include the construction of self-build housing. It is common ground that the appeal proposal conflicts with Policy SWDP2 C as it is located outside of the defined development boundary.

6. The SWDP is under review (SWDPR). However, as it is at an early stage of preparation, it carries very little weight.
7. Section 5 of the NPPF sets out the Government's objective of significantly boosting the supply of homes and states that it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The size, type and tenure of housing for different groups in the community should be assessed and reflected in planning policies, including people who wish to commission or build their own homes. Footnote 26 sets out the requirements of the Self Build and Custom Housebuilding Act 2015 which are also explained in Planning Practice Guidance (PPG).
8. Paragraph 023 of the PPG provides that relevant authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a base period. The first base period begins on the day on which the register is established and ends on 30 October 2016. Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period. At the end of each base period, relevant local authorities have 3 years in which to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period.

Effect on character and appearance of the area

9. The appeal site lies in the countryside on the outskirts of Droitwich Spa, beyond the development boundary defined in the SWDP and detached from it by a gap of some 110 metres. It is located in the Parish of Salwarpe but is more closely related to the town of Droitwich Spa. The SWDP made provision for a large urban extension (site allocation SWDP49/2) which is currently well under construction and lies 110m from the appeal site
10. The site extends to about 0.68 hectares. It is bounded to the south by Newland Lane and to the west by Newland Road. It is currently occupied by a dwelling and part of the site is garden land, the remainder having last been in agricultural or grazing use. Development in the immediate vicinity is sporadic in nature and the area retains a rural character, albeit one that is now very close to, and influenced by, the urban edge created by the new development. Neither the Council's refusal reason nor statement of case address the impact on the character of the countryside in any detail.
11. The Council refers to the suburban appearance of the indicative layout but notes that layout, scale and appearance are reserved matters, and suggests means by which greater variety might be achieved to reflect the more organic pattern of the area. With regard to effects on the landscape, the committee report recorded no objection on landscape or visual impact grounds, subject to

the attachment of conditions addressing tree and hedgerow retention, new planting and protection during construction. There are established trees and planting which could provide effective screening, particularly on the Newland Road frontage.

12. I accept that the development would lead to an intensification of built development in an urban fringe location. I also agree that the site cannot properly be described as adjacent to the settlement, (given the normal meaning of 'adjacent' as adjoining or next to) as there are other low-density properties and small fields intervening. However, while the area currently has a pleasant semi-rural character, the countryside is very close to the urban edge, and is not covered by any relevant landscape policy designation, nor does it lie within the Green Belt, which lies to the south of Newland Lane. I conclude the actual harm to the countryside setting of the current urban area of Droitwich Spa would be very limited, and could be mitigated by careful design and landscaping.

Whether the council has made adequate provision for self-build dwellings in accordance with the provisions of the Self Build and Custom Housebuilding Act 2015.

13. The Council's position is that the development is in conflict with an up-to date development plan (the SWDP). It considers that the SWDP policies are not 'absent' or 'silent' on the appeal proposal, which in the Council's view entails open market residential development in the open countryside, beyond the development boundary.
14. The Appellant does not dispute that the Council can demonstrate a 5 year Housing Land Supply (5YHLS). Footnote 7 to Paragraph 11 of the NPPF states that policies for the provision of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5YHLS. On this basis, the Council considers that all SWDP policies concerning the provision of housing are to be afforded full weight, and the appeal should be determined in accordance with the Development Plan.
15. The Appellant accepts that the proposal conflicts with Policy SWDP2 C, but considers this is no more than a technical breach of one criterion of one policy. In the Appellant's submission the proposal accords with the strategic objectives and spirit of Policy SWDP2 and the development plan as a whole, and there are significant material planning considerations which indicate that permission should be granted. The Appellant believes that the provision of self-build and custom housebuilding in what is a location with good accessibility to shops and facilities is a fundamental material planning consideration which is clearly capable of outweighing the technical conflict with the development plan.
16. This is so because the Appellant believes that the Council have not complied with their duty under the 2015 Act to permit sufficient self-build and custom housebuilding plots to meet the need as stipulated on the register.
17. The Council publishes an annual progress report for self-build and custom housebuilding. The first base period for the local planning authority is 1 April 2016 – 31 Oct 2016. Data from the council's Annual Progress Reports¹ gives the number of entries for each base period as follows:

¹ Wychavon District Council Self Build and Custom Housebuilding Progress Reports December 2017, December 2018 and December 2019

Base Period	Part 1 Entries	Part 2 Entries	Total Entries
1 April 2016 – 31 Oct 2016			51
31 Oct 2016 – 31 Oct 2017	35	13	48
31 Oct 2017 – 31 Oct 2018	41	26	67
31 Oct 2018 – 31 Oct 2019	50	37	87

18. The Council’s position is that they have granted sufficient permissions to meet the demand on the self-build register and that there are no exceptional circumstances to justify determining the appeal other than in accordance with the development plan.
19. In support of its position the Council referred to the SWDP Examination, where the Inspector took the view that self-build and custom build should not be specifically identified in housing allocations as they were considered to represent another form of market housing which could come forward on the numerous small sites allocated in villages for under 10 dwellings, or smaller policy compliant sites that were ruled out as too small to meet the allocation threshold of +5 dwellings. The Council cited a number of appeal decisions which supported this approach².
20. In the committee report and at the hearing, the Council referred to an alternative requirement for the first base period of 11 dwellings. This is not taken from the progress reports, which appear to be the only relevant publicly available documents. It was explained at the hearing that the Council had applied eligibility criteria to the gross figure. People who were on the register were contacted and asked to provide details of local eligibility, to avoid a situation where people interested in self-build could put themselves on a number of different registers, thus potentially inflating overall demand for self-build sites. Those who didn’t respond were not taken off the register but retained in Part 2.
21. The Self-build and Custom Housebuilding Act 2015 was amended by the Housing and Planning Act 2016 to enable local authorities to include up to two optional local eligibility tests, only to be applied by local authorities where there is strong justification for doing so. A local connection test should only be applied in response to a recognised local issue. If a local authority chooses to set a local eligibility test it is required to have two parts to the Register. Individuals or Associations of individuals who apply for eligibility criteria must be entered on Part 1. Those who meet all eligibility criteria except for a local connection test must be entered on Part 2 of the Register. Only Part 1 entries count towards the number of suitable serviced plots that they must grant development permission for.
22. The Council’s states that the Register was established on 1 April 2016, but went through an update period during May and June 2017 when the local connection test was introduced. During this period, individuals already on the Register were asked to provide an update to remain on the Register, and were

² APP/H1840/W/17/3185471; APP/H1840/W/16/3151822;

automatically placed on Part 1 if such an update was provided irrespective of whether or not they could meet the local connection test. During the update period, a number of entries were removed from the Register if an update was not provided. There were originally 51 entries on the Register during the first base period, however, this figure dropped to 11 as only 11 of these provided an update.

23. The Appellant says there is no justification for applying the local eligibility criteria retrospectively to the first base period. Authority to split the register into two parts was only introduced in 2016 through the Housing and Planning Act and brought into force through the Self-build and Custom Housebuilding Regulations 2016. The commencement date for these provisions was 31 October 2016 and the relevant Planning Practice Guidance was not updated in 2017 in this respect.
24. In view of the need for transparency in such matters I share the Appellant's concern that the reduction of the numbers on the register from 51 to 11 is lacking in clear justification. There has been no opportunity to scrutinise the further consultation undertaken by the Council, or whether people on the register were aware of the implications of not establishing local eligibility in relation to the Council's duties in respect of granting planning permissions relating to the first base period. No explanation of the need for eligibility criteria to be applied in Wychavon was given or any indication of a recognised local issue to justify it. A further 23 entrants were included in Part 1 of the register in the second base period (01/11/16 – 31/10/17) according to the table in the Council's statement. It seems at least possible that some of these were people included in the first base period who failed initially to respond to the Council's call for further information and so were excluded.
25. With regard to the supply of sites for self-build, the Council provides evidence of planning permissions granted for 11 serviced plots in the period 1 April 2016 to 31 October 2019. All refer to self-build dwellings as part of the description of development and supported by additional evidence in the form of references to self-build in Design and Access or Planning Statements or self-build exemption CIL claim forms. The Council considers that this provides clear evidence for enough serviced plots to meet the demand in the District for the first base period.
26. The Appellant disagrees and submits that a legal mechanism is required to ensure that the permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding, as set out in the 2015 Act. The Appellant refers to the 'I'm Your Man' case to support the proposition that the Council cannot rely on the description of development to secure self-build homes. On this basis, it would be necessary for an express condition or a s106 legal obligation to ensure that a permission is restricted to self-build. I agree with the Council that this would be too restrictive and would include situations such as infill plots where there would be no reason to insist on an s106 obligation, for example policy compliant infill plots or developments on small housing allocations which could be considered to satisfy a demand for self-build if developed accordingly. The duties do not require a level of completions to be achieved in a particular time frame.
27. In response to the Appellant's claim that the Councils approach is 'overly optimistic' the Council refers to an additional 27 planning permission which

have been granted in the period between 1 April 2016 to 31 October 2019 for a total of 35 new dwellings where the planning application has been submitted with a signed Community Infrastructure Levy Form Self Build Exemption Claim Form (CIL Exemption Form), as detailed in latest Progress Report (December 2019). The Council contend that each of these can also be counted towards meeting the requirement as the CIL Exemption Form is a legally binding agreement whereby the applicant is required to declare that the project meets the definition of self-build and will occupy the dwelling for at least three years after its completion.

28. The Appellant cites a relevant recent Appeal Decision, dated 25 June 2019 concerning land off Hepworth Road, Woodville DE11 7DW³. The application was for self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure. The site was outside the defined limits to development as defined in the relevant Local Plan. As regards the Council's duties under the 2015 Act the Inspector had this to say:

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. 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.

29. The Inspector found in that case that only 4 plots identified by the Council appeared to comply with the definition of self-build and custom build housing in the 2015 Act. He discounted sites that were not 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. He concluded on the evidence available that there was a shortfall of permissions for at least 5 serviced plots to meet the demand identified from the first base period and found that 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 3 in a comprehensively planned manner is a material consideration that weighs strongly in favour of the appeal proposal, and that the appeal proposal

³ APP/G2435/W/18/3214451

was necessary to enable the Council to meet its statutory obligations with respect to the duty under Section 2A of the 2015 Act (as amended), given that there appeared to be an inadequate supply of serviced plots coming forward for development in the District.

30. Notwithstanding the conclusions of this Inspector, I do not consider that only those permissions subject to an express condition or s.106 obligation should be counted towards meeting the Section 2A requirement, for reasons set out above. To my mind this would be too onerous a requirement, and could lead to the exclusion of self-build sites within development boundaries ever being counted towards meeting Section 2A, which appears to me to conflict with the objective of promoting self-build as a means of meeting identified housing need, and in a wide range of circumstances. Both the Woodville site and the site under consideration in this appeal were promoted as exceptions sites, where such an arrangement would be necessary to justify making the exception to the policies in an otherwise up-to-date development plan.
31. Nevertheless I do not consider that the evidence provided by the Council is sufficiently reliable for me to conclude that the Council has met its duty under Section 2A. To my mind, some further analysis of the raw data is necessary, which as a minimum relates permissions granted to meeting the needs of named individuals or groups identified in part 1 of the Register. It is not sufficient to rely on CIL exemption forms without this type of further analysis, which is lacking in the Council's evidence. I conclude that the Council has not satisfactorily demonstrated that it has granted enough permissions for serviced plots to meet the demand for self-build and custom build plots in the first base period.

Other matters

32. The parties agree that the site has a reasonable degree of accessibility to the facilities and services available in the wider area of Droitwich Spa, and that the site is locationally sustainable in this respect.
33. Local residents raised a number of issues in their representations, and at the hearing. There was concern regarding the traffic impact of the proposal, and the effect of the new access arrangements on road safety. The Appellant argued that there would be a clear safety benefit, as the existing sub-standard access would be replaced by a designed access that met all the relevant visibility standards. A resident considered that this would be outweighed by the significant increase in vehicle movements arising from 9 dwellings as opposed to one. It was also stated that Newland Drive carried a lot of heavy traffic, though it was acknowledged that some of this was temporary, being attributable to the construction of the urban extension.
34. I note that the Highways consultee asked for a deferral of the application for further information. However, a previous application, to which the consultee had no objection, proposed a similar access arrangement⁴. The previous application was for 10 dwellings, while this is for up to 9, with the existing dwelling retained. However the difference is not material.
35. I acknowledge that extra traffic would be unwelcome to existing residents. However, I do not consider that the increased number of trips would be

⁴ 18/00906/OUT - Outline application for up to 10 self-build dwellings including a new means of access off Newland Lane - Refused 7 August 2018.

significant in the context of existing usage of the local road network, and I conclude that the proposed arrangement would be acceptable in terms of traffic safety and effect on the living conditions of neighbours.

36. Residents were also concerned about the effect of development on their living conditions, during the construction period and thereafter. Layout and appearance are reserved matters, so that the detailed design of the new development could ensure reasonable separation distances between the new dwellings and neighbouring properties to protect the living conditions of existing residents. With respect to the construction period, a site management plan is proposed to address such concerns and in my view would be effective in minimising potential noise and other disturbance to residents. In the event of the appeal being allowed, this could be secured by a condition. I accept that further disturbance would be unwelcome, particularly at a time when work on the urban extension may be drawing to a close. However, I do not consider these concerns would be sufficient to stand in the way of allowing the appeal in the absence of other convincing reasons.
37. Another resident raised concerns with local flood risk, particularly on Newland Road at its lowest point, which is reported to flood after heavy rain. The Council's drainage engineer commented at application stage that the site is in flood zone 1 and in an area at low risk of surface water flooding. Surface water drainage is proposed via soakaways and areas of hard standing will make use of permeable materials or, if grounds conditions are unsuitable, an alternative sustainable solution will be required. The principle of sustainable drainage is that surface water is intercepted so that flows are no greater from a site as a result of development than the current situation. Having regard to the drainage engineer's comments, there is no reason to suppose that an acceptable drainage system cannot be achieved.

Conditions

38. A schedule of agreed conditions was included in the Statement of Common Ground (SOCG). The Appellant expressly agreed to the inclusion of the suggested pre-commencement conditions at the hearing. The application was made in outline (except for the access arrangements) so reserved matters conditions are necessary to ensure the development achieves a satisfactory appearance, landscaping, layout and scale (Conditions 1, 2, 3, 5, 18, 20 and 23). Condition 4 is necessary to protect trees to be retained from damage during construction. Condition 6 is necessary to avoid any risk of surface water flooding. Conditions 7 and 11 are necessary to ensure satisfactory visibility in the interests of highway safety. Conditions 8 and 9 are necessary to ensure appropriate provision for cars and cycle parking. Conditions 10 and 12 are necessary to encourage the use of sustainable transport, including provision for the charging of electric vehicles. Condition 13 is necessary to protect the living conditions of neighbours during construction and in the interests of highway safety. Condition 14 is necessary to secure a programme of archaeological work to ensure that any archaeological interest is investigated and appropriately recorded.
39. Condition 15 sets out a requirement for a Construction Environment Management Plan for Biodiversity (CEMP: Biodiversity) and is necessary to ensure that areas of sensitive ecological importance are appropriately managed and protected from damage during construction. Condition 16 requires the

preparation and implementation of a Biodiversity Enhancement Strategy, and is necessary to ensure that biodiversity objectives for the development are met. Condition 17 requires preparation of a Landscape and Ecological Management Plan (LEMP) to identify responsibilities for on-going management of features of landscape and ecological importance. I have amended the parties' wording as it is not within the Appellants' control to secure the agreement of the local planning authority within one month of the commencement of the development. As this condition is concerned with ongoing management, I consider it acceptable that the LEMP should be approved prior to first occupation of the first dwelling. I have made other minor changes to the wording in the interests of clarity.

40. Condition 19 (slab levels) is necessary to ensure that the development sits well within the landscape and surroundings. Condition 21 is necessary to ensure appropriate provision for refuse storage. Condition 22 is necessary to secure a reduction in carbon emissions from the development.
41. Subject to the amendments I have made I consider these conditions to meet the tests set out in the NPPF and PPG.

S106 obligation

42. The Appellants submitted a final signed version of a unilateral undertaking (UU) dated 9 July 2020. The main provisions are: 1. The owners covenant that each residential unit shall be constructed as a self-build dwelling; 2. The first occupation of each unit shall be by a person or persons who had a primary input into design and layout and who intends to live in it for at least 3 years and who is included in Part 1 of the Register. 3. The Council shall be notified of the persons who intend to take up first occupation at least two months prior to first occupation.
43. Schedule 2 of the UU addresses an off-site affordable housing contribution of £143,966.25 to be paid prior to the first occupation of the first dwelling.
44. The Council does not dispute the contribution figure but expressed a preference for an on-site discount market self-build dwelling on site, in accordance with Policy SWDP15, which requires that on sites of 5 – 9 dwellings, 20% of units should be affordable and provided on site.
45. I note that in its appeal statement the Council did not take issue with the Appellant's approach of providing a commuted sum for off-site provision, but introduced the request for on-site provision at a later stage. The policy allows for the acceptance of off-site-contributions where a robust justification exists.
46. While I acknowledge the preference for on-site provision, I consider that the provision of an agreed sum as a contribution to off-site provision would satisfactorily address affordable housing provision in the circumstances of the case. I note the difficulties encountered in reaching an agreed form of wording in the context of a UU where it is not appropriate to place a requirement on the Council to exercise its powers in a particular way, for example in respect of nomination rights or marketing strategies. The site lies close to Droitwich Spa where there are opportunities to address affordable needs arising in the neighbouring parish of Salwarpe, in which the appeal site lies.
47. The 2015 Act and the NPPF/PPG guidance support provision for self-build as a means of diversifying access to the housing market and allowing for self-

builders to contribute their skills and labour to reduce the costs of entry into the market. In the circumstances, where the UU secures an appropriate off-site contribution for affordable housing, I do not consider that the failure to make on-site provision outweighs the benefits that would arise from the grant of permission.

48. With regard to the CIL regulations, I conclude that the final UU is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to the development in scale and kind.

Planning balance and conclusion

49. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. It is not disputed that the proposed development would conflict with Policy SWDP2 C as it lies outside the defined development boundary and within an area identified as open countryside.
50. I have found that the harm to the character and appearance of the area would be very limited, and capable of mitigation by careful design and landscaping. Although other matters of concern were raised by residents, these would not be of sufficient weight to stand in the way of granting permission. I consider the effects on highway safety would be broadly neutral when balancing the increase in trip generation against the improvement in visibility and geometry. The parties agreed that, but for the conflict with the development plan, the location is sustainable for the type of development proposed, having good accessibility to a range of facilities.
51. While there is no dispute that the Council can demonstrate a 5-year supply of housing land, I consider that the Development Plan is out-of-date in respect of self-build housing. There is no reference to self-build housing within Policy SWDP2. Policy SWDP14 addresses the mix and type of market housing to ensure that a range of household demand and needs continue to be accommodated, but does not say anything substantive about self-build housing. In view of the importance attached to provision for self-build housing in the NPPF and PPG, I do not accept the Council's view that it should be treated simply as a component of general market housing. The tilted balance is therefore engaged in this case. The forthcoming review of the plan does address self-build housing but is at an early stage and carries very little weight at this time.
52. With regard to meeting the Council's duty under the 2015 Act I have found that the Council has not satisfactorily demonstrated that it has granted enough permissions to meet the need identified in the first base period, for the reasons set out above. The proposed development would make a significant contribution to the supply of sites for self-build housing in Wychavon in accordance with Section 5 of the NPPF and the associated PPG. There would be an economic benefit during construction and from on-going support for local facilities, and significant social benefit in terms of the diversity of housing type which would contribute to meeting the Council's duty under the 2015 Act. I attach substantial weight to this benefit and conclude that the adverse impacts of granting planning permission in this case would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. This is a material consideration of sufficient weight to

indicate that the appeal should be determined otherwise than in accordance with the development plan.

53. I therefore conclude that planning permission should be granted subject to the conditions set out in the attached schedule.

David Richards

INSPECTOR

APPEARANCES

For the Appellant

Neal Pearce	Director, Avon Planning Services
Mark Donald	Director, H2 Land
Chris Hughes	Commercial Director, H2 Land
Jack Smyth	of Counsel

For Wychavon District Council

Emma Worley	Development Manager (North)
Denise Duggan	Senior Planning Officer (Policy)

Interested Person

Mr Chris Everton	Local resident
------------------	----------------

Appeal Ref: APP/H1840/W/19/3241879

Schedule of conditions:

- 1) Application for the approval of reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun 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, layout and scale (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced. The development shall be carried out in accordance with approved reserved matter details.
- 3) The following details shall be submitted for approval as part of the landscaping reserved matters:-
 1. Survey information of all existing trees and hedges on the application site, and branches from trees on adjacent land that overhang the site. The survey shall include for each tree/hedge:
 - a) the accurate position, canopy spread and species plotted on a plan;
 - b) an assessment of its general health and stability;
 - c) an indication of any proposals for felling or pruning;
 - d) details of any proposed changes in ground level, or other works to be carried out, within the canopy spread.
 2. A landscape scheme which shall include:
 - a) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
 - b) a schedule of proposed planting – indicating species, size at time of planting and numbers/densities of plants;
 - c) a written specification outlining cultivation and others operations associated with plant and grass establishment;
 - d) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

The landscaping shall be provided and maintained in accordance with the approved details within the first planting season following completion of the development hereby permitted.
- 4) Temporary fencing for the protection of all retained trees/hedges on site and trees outside the site whose Root Protection Areas fall within the site shall be erected in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction) before development of any type commences, including site clearance, demolition, materials delivery, vehicular movement and erection of site huts. Any alternative fencing type or position not strictly in accordance with BS 5837 (2012) must be agreed in writing by the local planning authority prior to the commencement of development.

Protective fencing shall remain in place until the completion of development unless otherwise agreed in writing with the local planning authority. Nothing should be stored or placed (including soil), nor shall any ground levels be altered, within the fenced area without the previous written consent of the local planning authority. There shall be no burning of any material within 10 metres of the extent of the canopy of any retained tree/hedge.

- 5) Details of any walls, fences, surface treatments to drives, cycle and footways and an implementation timetable shall be submitted for approval as part of the landscaping reserved matters.
- 6) Prior to the first use/occupation of each plot hereby permitted, the details set out in the submitted Water Management Statement shall be fully implemented and retained thereafter.
- 7) Notwithstanding the approved plans no part of the development shall be occupied until visibility splays have been provided from a point 0.6m above carriageway level at the centre of the footway / cycleway access to the application site and 2.0 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 25 metres in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 8) No dwelling shall be occupied until an area has been laid out within the curtilage of that dwelling for the parking of cars in accordance with County standards. The parking area shall thereafter be retained for the purpose of vehicle parking only.
- 9) No dwelling shall be occupied until sheltered and secure cycle parking to comply with the Council's standards has been provided for that dwelling in accordance with details which shall be submitted to and approved in writing by the local planning authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
- 10) Appropriate cabling and an outside electrical socket must be supplied for each property to enable ease of installation of an electric vehicle charging point (houses with dedicated parking). The charging point must comply with BS7671. The socket should comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building. As a minimum, charge points should comply with Worcestershire County Council Design Guide which requires 7kw charging points for residential developments.
- 11) The development hereby approved shall not commence until drawings of the site access works comprising:
 - The vehicular site access to Newland Lane, and
 - The footway / cycleway access to Newland Road

generally in accordance with, but not limited in detail to, the application drawings have been submitted to and approved in writing by the local planning authority and no part of the development shall be occupied until those works have been constructed in accordance with the approved details.

- 12) Each dwelling hereby approved shall not be occupied until the applicant has submitted in writing to and had approval in writing from the local planning authority a residential welcome pack promoting sustainable forms of access to the development. The approved pack shall be delivered to each dwelling upon its first occupation.
- 13) The development hereby approved shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in by the Local Planning Authority. This shall include but not be limited to the following:
- Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - Details of site operative parking areas, material storage areas and the location of site operatives facilities (offices, toilets etc);
 - The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;
 - Details of any temporary construction accesses and their reinstatement; and
 - Details of any site boundary hoarding / fencing set back clear of visibility splays.

The measures set out in the approved CEMP shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved by in writing by the local planning authority.

- 14) A) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:
- 1) The programme and methodology of site investigation and recording.
 - 2) The programme for post investigation assessment.
 - 3) Provision to be made for analysis of the site investigation and recording.
 - 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - 5) Provision to be made for archive deposition of the analysis and records of the site investigation.
 - 6) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(B) 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 clause (A) of this condition and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 15) No development shall take place (including any site clearance, ground works or demolition) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall be based on

the findings of the Tree Survey, Preliminary Ecological Appraisal and Reptile Survey submitted with the outline application as well as the findings of an updated Preliminary Ecological Appraisal include the following:

- a. Risk assessment of potentially damaging construction activities;
- b. Identification of "biodiversity protection zones";
- c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements and should include details of appropriate protective fencing of retained trees' root protection zone);
- d. The location and timing of sensitive works to avoid harm to biodiversity features;
- e. The times during construction when specialist ecologists need to be present;
- f. Responsible persons and lines of communication;
- g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h. Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 16) No development shall take place until a Biodiversity Enhancement Strategy (BES) has been submitted to and approved in writing by the local planning authority. The strategy shall include the following:
- a. Purpose and conservation objectives for the proposed works;
 - b. Review of site potential and constraints;
 - c. Detailed designs and working methods to achieve stated objectives (including, where relevant, type and source of materials to be used);
 - d. Extent and location of proposed works shown on appropriate scale maps and plans;
 - e. Timetable for implementation, demonstrating that works are aligned with the proposed phasing of development;
 - f. Persons responsible for implementing the works;
 - g. Initial aftercare;
 - h. Details for disposal of any wastes arising from works.

The BES shall be implemented in accordance with the approved details and all features be retained in that manner thereafter. On completion of the ecological mitigation and enhancement works, a statement of compliance shall be submitted to the local planning authority by the Ecological Clerk of Works (or similarly competent person) confirming that specified and consented measures have been implemented.

- 17) A Landscape and Ecological Management Plan (LEMP) shall be submitted to and be approved in writing by the local planning authority before the first occupation of the first dwelling. The content of the LEMP shall include the following:
- a. Description and evaluation of the features to be managed;
 - b. Ecological trends and constraints on site that might influence management.
 - c. Aims and objectives of management;

- d. Appropriate management options for achieving aims and objectives;
- e. Prescriptions for management actions;
- f. Preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and longer term thereafter;
- g. Details of the body or organisation responsible for implementation of the plan;
- h. Ongoing monitoring and remedial measures.

The plan shall also set out how contingencies and/or remedial action shall be identified, agreed and implemented where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall be implemented as approved.

- 18) Details of any external lighting to be provided in association with the development shall be submitted with each reserved matters application. Only external lighting in accordance with approved details shall be provided on the application site. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) there shall be no other external lighting provided on the application site.
- 19) The construction work on the buildings hereby approved shall not be commenced until the precise floor slab levels of each new building, relative to the existing development on the boundary of the application site have been submitted to and approved in writing by the local planning authority. Thereafter the new buildings shall be constructed at the approved floor slab levels.
- 20) Each reserved matters application relating to appearance shall include details of the materials to be used in the construction of the external surfaces of any building. Development shall be carried out in accordance with the approved details.
- 21) Each reserved matters application relating to the appearance and layout of the development shall include details of the facilities for the storage of refuse for all proposed dwellings. No individual dwelling shall be occupied until refuse storage facilities to serve that dwelling have been constructed in accordance with approved details. The facilities shall thereafter be retained.
- 22) Prior to the first occupation of any dwelling hereby approved, the renewable energy generating facilities set out in the Energy Assessment by Reports4Planning dated July 2019 to be incorporated as part of the development shall be fully implemented. The renewable energy generating facilities shall provide at least 10% of the predicted energy requirements of the development and shall remain operational for the lifetime of the development.
- 23) Each reserved matters application relating to the appearance, scale and layout shall be broadly in accordance with the principles of the Design & Access Statement (dated 11 July 2019) submitted as part of the

application. All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.



2 Lockside Office Park
Lockside Road
Preston
PR2 2YS

01772 369 669

www.pwaplanning.co.uk

Appendix C





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, Tpton 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.