



Ministry of Housing,
Communities &
Local Government

Our ref: APP/W1850/W/20/3244410

Guy Wakefield
Ridge and Partners LLP

15 March 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY BLOOR HOMES WESTERN
LAND NORTH OF VIADUCT, ADJACENT TO ORCHARD BUSINESS PARK, LEDBURY
APPLICATION REF: 171532**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Lesley Coffey BA Hons BTP MRTPI, who held a public local inquiry starting on 13 July 2020 into your client's appeal against the decision of Herefordshire Council to refuse your client's application for outline planning permission for a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works, in accordance with LPA reference 171532, dated 22 June 2018. The proposal is for outline planning permission with all matters reserved for future consideration with the exception of access. Only the means of access into the site is sought as part of this outline application, not the internal site access arrangements (i.e. they do not formally form part of the application). Vehicular access is proposed off the Bromyard Road.
2. On 26 March 2020, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted before the inquiry. Having taken account of the Inspector's comments at IR2.6-2.8, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The Secretary of State notes that the Council wrote to the Planning Inspectorate on 18 February 2020 advising that following a review of its case it had decided to withdraw the three reasons for refusal. Following the withdrawal of the reasons for refusal by the Council, Ledbury Town Council (LTC) applied for and was granted Rule 6 (6) status by letter dated 10 March 2020.
7. An application for a full award of costs was made by Bloor Homes Western against Herefordshire Council and Ledbury Town Council (IR2.10). This application is the subject of a separate decision letter.

Matters arising since the close of the inquiry

8. Following the closure of the Inquiry the Secretary of State received representations about the proposal. The Secretary of State is satisfied that the issues raised in the representations do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
9. On 19 January 2021 the Housing Delivery Test: 2020 measurement was published. The measurement for Herefordshire Council changed from 80% (buffer) to 106% (no action). The Secretary of State subsequently received correspondence from Herefordshire County Council on 5 February 2021 with an Addendum to the 2020 5 Year Housing Land Supply attached. The Council explained that they can now use the 5% buffer which has raised the supply from 3.69 years to 4.22 years and that 4.22 years should be used when quoting the latest supply figure for Herefordshire. The Secretary of State is satisfied that this does not affect his decision and no other new issues have been raised which warrant further investigation or necessitate additional referrals back to parties.

Policy and statutory considerations

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Herefordshire Local Plan Core Strategy (adopted 2015) and the Ledbury Neighbourhood Development Plan (made January 2019). The Secretary of State considers that relevant development plan policies include those set out at IR4.2-4.15.

12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Malvern Hills AONB Management Plan 2019-2024.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Main issues

14. The Secretary of State agrees with the Inspector on the main considerations in this case (IR16.1). The Secretary of State also notes that the LTC and a considerable number of interested parties maintain that the proposed development should be served by a second access under the Viaduct (IR16.2). For the reasons given in IR16.3 the Secretary of State agrees with the Inspector that it is necessary to assess whether the proposed vehicular access is satisfactory, and not whether there may be a preference for an alternative access under the Viaduct. Like the Inspector, the Secretary of State has considered the appeal accordingly.

Whether the proposed vehicular access arrangements are satisfactory

15. For the reasons in IR16.4-16.11 the Secretary of State agrees with the Inspector that an assessment as to whether the proposed vehicular access from Bromyard Road is satisfactory would depend on whether the capacity issues at the junction could be adequately mitigated and whether there would be any highway safety concerns arising from the proposed development, including the mitigation at the Station Junction (IR16.11).
16. For the reasons given in IR16.12–16.60 the Secretary of State finds the model inputs and design parameters used by the appellant to be acceptable. He also agrees with the Inspector that it is apparent from the appellant's evidence and from local residents that there are existing delays at the junction (IR16.57). The Secretary of State also agrees with the Inspector that, overall, in terms of safety, the signalisation of the junction and provision of facilities for pedestrians would be a clear benefit of the proposal (IR16.59). Furthermore he agrees with the Inspector that it would be a significant benefit (IR16.125) and affords it significant weight in the planning balance.
17. For the reasons given the Secretary of State agrees with the Inspector's conclusion that the proposed mitigation measures at the Station Junction would adequately mitigate the effect of the proposal on the local highway network and the impact of the proposal on the capacity of the junction would not be severe. He further agrees that the proposal would comply with Core Strategy Policies LB2, MT1 and SS4 (IR16.60).
18. The Secretary of State notes the Inspector's comments in IR16.61 should he disagree with the Inspector on her conclusion in IR16.60. As the Secretary of State has explained in paragraph 17 of this letter he agrees with the Inspector's conclusion.

Provision for Pedestrian and Cyclists

19. For the reasons given in IR16.62-16.67, the Secretary of State agrees with the Inspector at IR16.68 that the proposal would provide safe and suitable access for pedestrians and cyclists and would comply with Core Strategy policies LB2, and MT1 as well as paragraph 108 of the Framework. The Secretary of State also agrees with the Inspector at IR16.126 that improved footpath and cycle links, along with the provision of other green infrastructure, would be benefits of the proposal. The Secretary of State affords this moderate weight in favour.

The Effect of the Proposal on the AONB

20. The Secretary of State notes that the appeal site is outside of the boundary of the AONB but within its setting (IR16.70). For the reasons given in IR16.69-16.77 the Secretary of State agrees with the Inspector that whilst tranquillity is an important quality of the AONB a two-way traffic increase of about 19 vehicles during the AM peak would not have an adverse impact on the tranquillity of the AONB (IR16.75). Like the Inspector, the Secretary of State does not consider that the proposed development would give rise to any significant adverse effects on the quality of peoples' recreational experiences, or damage to/erosion and loss of characteristic and valuable landscape elements and features along narrow lanes (IR16.76). For the reasons given the Secretary of State agrees with the Inspector that that the proposal would not be contrary to Core Strategy policies SS6 and LD1, as well as the AONB Management Plan policy TRP6 (IR16.78) and paragraph 172 of the Framework.

The Effect of the Proposal on Ledbury Town Conservation Area and other Heritage Assets

Conservation area

21. For the reasons given in IR16.79-16.89 the Secretary of State, like the Inspector, acknowledges that the additional traffic may at times make it more difficult to appreciate the quality of some of the buildings than at present, but this would have little impact for pedestrians or drivers, and there would be no direct harm to the buildings or their significance (IR16.88). The Secretary of State is also not persuaded that the proposal would increase traffic levels to the extent that there would be an adverse impact on the viability of businesses (IR16.89). The Secretary of State further agrees with the Inspector's conclusions that, overall, the proposal would preserve the character and appearance of the Conservation Area and would comply with Policies LD4 and SS6 and paragraph 193 of the Framework (IR16.90 and 16.136).

Viaduct

22. For the reasons given in IR16.91-16.93 the Secretary of State agrees with the Inspector that the proposed development would not harm the significance of the Viaduct either physically or as a result of an alteration to its setting. Moreover, the proposed development would provide increased access to the Viaduct and this, together with the

view corridors, could be considered to be a heritage benefit (16.93 and IR16.126). The Secretary of State affords this moderate weight in favour.

Other heritage assets

23. For the reasons given in IR16.94 the Secretary of State agrees with the Inspector that There would be no direct harm to these assets or harm to their significance as a result of changes to the setting of any of these assets.

Second Access under the Viaduct

24. The Secretary of State has noted the Inspector's comments at IR16.96 that should he reach a different conclusion to that of the Inspector that the proposed development would not have a severe effect on the local highway network and would also make satisfactory provision for pedestrians and cyclists, he may wish to give consideration to the implications of a second access under the Viaduct. However, the Secretary of State has concluded in paragraphs 17 and 18 of this letter he does not disagree with the Inspector on these matters. Nevertheless, the Secretary of State has gone on to consider the Inspector's analysis at IR16.95-16.115. For the reasons given the Secretary of State agrees with the Inspector and is not persuaded that it would be beneficial by comparison with the proposed development (IR16.115)

Housing Land Supply Position

25. The Secretary of State has noted the Inspector's consideration at IR16.116-16.118. The Secretary of State has explained in paragraph 9 of this letter that, following the publication of the Housing Delivery Test: 2020 results, the Council now considers it can demonstrate 4.22 year of housing land supply. The Secretary of State also notes that, following the results, the requirement for the Council to apply a 20% buffer, which was the position at the time of the Inquiry, has changed. Nevertheless, even taking the new housing figures into account, he agrees with the Inspector that there is still a substantial shortfall in the 5 year housing land supply (IR16.118).

Planning benefits

26. The Secretary of State notes that the proposal would be likely to deliver 625 dwellings, and that evidence from both the Council's Position Statement and the appellant suggest that it would contribute 136 dwellings to the 5 year housing land supply. For the reasons given in IR16.119-16.121 the Secretary of State does not consider that the delivery of housing on other sites within Ledbury should reduce the weight afforded to the delivery of housing on the appeal site (IR16.121). The Secretary of State affords this substantial weight in the planning balance (IR16.118).

27. For the reasons given in IR16.122-16.123, the Secretary of State also gives substantial weight to the delivery of affordable housing.

28. For the reasons given in IR16.124 the Secretary of State also considers the delivery of employment land to be a substantial benefit of the proposal and affords it substantial weight. The Secretary of State affords economic benefits through construction related employment, and additional household income moderate weight in favour.

29. Regarding the signalised junction at Bromyard Road, for the reasons given in IR16.125, the Secretary of State agrees with the Inspector that, together with the provision of

pedestrian crossing facilities it would be a significant benefit of the proposal to which the Secretary of State affords significant weight.

30. For the reasons given in IR16.126 the Secretary of State agrees with the Inspector that the provision of green infrastructure would be a further benefit to which the Secretary of State affords moderate weight. The Secretary of State affords moderate weight to the safeguarding of land and the financial contribution to facilitate a restored canal as he agrees with the Inspector that the canal would be likely to provide an attractive amenity for the residents of Ledbury.

Other matters

31. The Secretary of State notes that a number of parties raised concerns regarding the potential of Bromyard Road to flood (IR16.128). He has considered the Inspector's analysis at IR16.128-16.129 and notes that the Flood Risk Assessment, supporting Technical Note and key Environment Agency correspondence confirm that the site is not at risk of flooding and would not increase the risk of flooding elsewhere.
32. The Secretary of State notes that it is suggested that there is no need for additional housing in Ledbury. Like the Inspector, the Secretary of State has addressed this above (IR16.130 and paragraphs 25 and 26 of this decision letter). For the reasons given in IR16.131 the Secretary of State agrees with the Inspector that the proposed Toucan crossing may cause some minor delay for motorists, but the evidence demonstrates that this would not be severe. The Secretary of State also agrees with the Inspector regarding the reinstatement of the canal (IR16.132); the proposed housing and employment uses (IR16.133) and notes that the parties agree that it is not necessary for the scheme to safeguard the route of the Ledbury bypass to the north and east (IR16.134). The Secretary of State also agrees with the Inspector's reasoning and conclusions regarding local support or opposition to a scheme (IR16.135) and notes that the appeal proposal relates to a site allocated within the Core Strategy for development of the nature proposed.

Planning conditions

33. The Secretary of State has given consideration to the Inspector's analysis at IR14.1-14.17, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

34. Having had regard to the Inspector's analysis at IR15.1-15.25, the planning obligation dated 2 October 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR15.26-15.27 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. He agrees with the Inspector for the reasons given at IR15.19-15.25 that the reduced Canal Contribution would not facilitate the delivery of the canal as required by Policy LB2, and therefore concludes that the contribution of £1,000,000 is appropriate in this case. He further agrees that it is not necessary for the Agreement to make provision for the residential development, including the affordable

housing units, to contribute to the future maintenance of the canal (IR15.25), finding that requirement would be incompatible with the tests for planning obligations set out in the CIL regulations, and would accordingly carry no weight.

Planning balance and overall conclusion

35. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with Policies LB2, SS4, MT1, SS6, LD1 and LD4 of the development plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
36. As the Secretary of State has concluded that the Council is unable to demonstrate a five year housing land supply, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
37. Any impacts on the Conservation Area, other heritage assets (excluding the listed Viaduct), the AONB and flooding are neutral in the planning balance.
38. The delivery of housing is afforded substantial weight as is the delivery of affordable housing. The delivery of employment land is afforded substantial weight, and the wider economic benefits are afforded moderate weight. The signalised junction at Bromyard Road together with the provision of pedestrian crossing facilities are afforded significant weight. The provision of green infrastructure is afforded moderate weight. The safeguarding of land and the financial contribution to facilitate a restored canal are afforded moderate weight as are the heritage benefits of improved accessibility and appreciation of the listed Viaduct.
39. The Secretary of State considers that there are no protective policies which provide a clear reason for refusing the development proposed and there are no adverse impacts which would significantly and demonstrably outweigh the benefits.
40. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a grant of permission.
41. The Secretary of State therefore concludes that the appeal should be allowed and planning permission should be granted.

Formal decision

42. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission subject to the conditions set out in Annex B of this decision letter for a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works, in accordance with LPA reference 171532, dated 22 June 2018. The proposal is for outline planning permission with all matters reserved for future consideration with the exception of access. Only the means of access into the site is sought as part of this outline application, not the internal site access arrangements (i.e.

they do not formally form part of the application). Vehicular access is proposed off the Bromyard Road.

43. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

45. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

46. A copy of this letter has been sent to Herefordshire Council and Ledbury Town Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

This decision was made by the Secretary of State and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Nina Shields	21/10/2020
Bill Wiggin MP on behalf of P and J Moorhouse	6/11/2020
Bill Wiggin MP on behalf of Mayor of Ledbury	16/11/2020
Ridge and Partners LLP	26/11/2020
Bill Wiggin MP on behalf of J Bannister	4/2/2021
Herefordshire Council	5/2/2021
Ridge and Partners LLP	9/2/2021

Annex B List of conditions

General Conditions applying to all parts of the development

1. Application for approval of the first reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission or within three years of final completion of any legal challenge under S288 of the Town & Country Planning Act 1990. The last of the reserved matters shall be submitted before the expiration of eight years from the date of this permission.
2. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of the approval of the last reserved matters to be approved, whichever is the later.
3. Approval of the details of the layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced. The development shall be implemented in accordance with the approved details
4. The development shall be carried out strictly in accordance with the approved plans and supporting details:
 - Site Location Plan 9000 Rev J
 - Site Access Roundabout - 3468-A-016-P4except where otherwise stipulated by conditions attached to this permission.

Site wide Conditions

Pre-Commencement Conditions

5. No development shall commence until a plan has been submitted to and approved in writing by the local planning authority identifying the phasing for the development and shall identify the following:
 - Residential phase(s)
 - Employment phase(s)
 - Canal phase(s)
 - Timing of delivery of on-site highway works (including but not limited to on site roads, footways, cycleway, emergency access opening)
 - Timing of delivery of off-site highways improvements (Section 278 works)
 - Timing of delivery of public open space (site wide strategy)

The development, including the completion and delivery of infrastructure shall be constructed in accordance with the agreed phasing plan.

6. Proposals for the number, size and type of open market housing on any individual phase of the development shall be submitted to the Local planning authority for approval

either prior to or as part of any reserved matter application(s) relating to Layout. The size and type of the open market housing for each phase shall comply with the following Table, unless otherwise agreed by the local planning authority:

Dwelling type	Quantity (%)
2 bed	25 - 35
3 bed	30 - 45
4 bed 'Small'	20 - 37.5***
4 bed 'large'*** & 5 bed	0 - 7.5***

*4 bed small = 150sqm GIA or less (1,615sqft or less GIA)

** 4 bed large = more than 150sqm GIA (more than 1,615sqft GIA)

*** The combination of 4-bed 'small' and 4 bed 'large'/ 5 bed dwellings shall be no more than 37.5% of the total Open Market Mix.

The development shall thereafter be implemented in accordance with the approved scheme.

7. Development shall not begin, including works of site clearance, until a Noise Masterplan and Acoustic Design Statement for the development of the site as a whole has been submitted to the local planning authority for written approval. The Statement and Plan shall also identify how the matter of noise will be considered and addressed in the Reserved Matters submissions for each phase of the development. Reserved Matters submissions and works shall be carried out in accordance with the approved Masterplan and Acoustic Design Statement.

8. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for additional measures for the remediation of this source of contamination. The remediation of the site shall incorporate the approved additional measures.

On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which shall be submitted before any development within that phase is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the local planning authority in advance of works being undertaken.

9. Prior to commencement of development a site wide Biodiversity Enhancement Plan / Strategy shall be submitted to and approved in writing by the local planning authority.

The plan shall contain a full working method statement for ecological works including the species mitigations with the full habitat protection and enhancements proposed. The plan shall accord with the principles within Ecology Solutions Ltd Ecological Assessment dated February 2017. An appropriately qualified and experienced clerk of works should be appointed (or consultant engaged in that capacity) to oversee the mitigation work thereafter.

The approved site wide strategy and individual phase details shall be implemented in full and thereafter maintained.

10. No development shall take place until the developer has secured the implementation of a programme of archaeological survey and recording to include recording of the standing historic fabric and any below ground deposits affected by the works. This programme shall be in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority and shall be in accordance with a brief prepared by the County Archaeology Service.

11. The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority and shall allow him/her to observe the excavations and record items of interest and finds. A minimum of 5 days' written notice of the commencement date of any works shall be given in writing to the County Archaeology Service.

12. No development shall commence, including any works of site clearance or ground preparation, until a site wide Arboricultural Method Statement specifying the measures to be put in place during the construction period, for the protection of those trees and hedgerows to be retained, has been submitted to and approved in writing by the local planning authority.

The Method Statement shall be prepared in accordance with the principles set out in BS 5837:2012 – Trees in relation to design, demolition and construction: Recommendations. Development shall be carried out in accordance with approved Method Statement.

13. The reserved matters submission relating to layout, scale, appearance and landscaping for each phase of residential development submitted pursuant to Condition 1 shall be accompanied by details of a scheme of noise attenuating measures for the proposed dwellings based upon the Noise Masterplan required under Condition 7 of this Decision. The scheme shall have regard to the most recent and relevant ProPG: Planning & Noise *Professional Practice Guidance on Planning & Noise – New Residential Development*, advice, the advice provided by BS 8233:2014, Guidance on sound insulation and noise reduction in buildings and the World Health Organisation Guidelines for Community Noise.

The approved scheme shall be implemented before the first occupation or use of the dwellings.

Pre Occupation

14. The development shall not be occupied until the details, including the proposed control method relating to the use of the Emergency Access to be located on Bromyard Road (B4214), has been submitted to and approved in writing by the local planning authority. The Emergency Access shall be implemented in accordance with the approved details within the timescale identified in the Phasing Plan to be submitted in accordance with Condition 5.

15. Before any phase of the development is first occupied or brought into use, a schedule of landscape implementation and maintenance for that phase, excluding private garden areas, shall be submitted to and approved in writing by the local planning authority. Delivery of the approved landscape matters and maintenance shall be carried out in accordance with this approved schedule.

Compliance Conditions

16. Finished floor levels of all dwellings and employment buildings shall be set no lower than 600mm above the adjacent 1 in 100 year plus 35% modelled River Leadon node level shown in Table 2.4 and Figure 2.2 of BWB Consulting's FRA dated 24 January 2017 (Revision P2).

17. There shall be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the bank of the River Leadon.

18. No development in any phase, including any works of site clearance, shall commence during the bird nesting season (1 March – 31 August inclusive) unless it has been demonstrated through the submission of a method statement (that shall previously have been submitted to and approved in writing by the local planning authority), that nesting birds can be adequately protected. Development shall be carried out only in accordance with the approved details which may include, but are not confined to, the timing of work, pre-work checks, avoidance of nesting areas, and protection zones around nesting areas.

19. No more than 625 dwellings shall be constructed on the site.

Housing Development Related Conditions

Prior to Commencement Conditions

20. No phase of residential development shall commence until a Construction Materials and Site Waste Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The Management Plan is to ensure waste management provisions compliment the construction activities on site and that all waste emanating from the development are dealt with in an appropriate manner and follows the waste hierarchy.

The Management Plan shall include, but not be limited to:

- i. a description of the likely quantity and nature of waste streams that will be generated during construction of the development;
- ii. measures to monitor and manage waste generated during construction including general procedures for waste classification, handling, reuse, and disposal, use of secondary waste material in construction wherever feasible and reasonable, procedures for dealing with green waste including timber water resources;
- iii. measures to monitor and manage spoil, fill and materials stockpiles, including details of how spoil, fill or material will be handled, stockpiled, reused, disposed of, and locational criteria to guide the placement of stockpiles;
- iv. details of the methods and procedures to manage construction related environmental risks and minimise amenity impacts associated with waste handling;
- v. a description as to how soils and their function will be protected during and after construction. Works shall be carried out in accordance with the approved plan.

Construction works shall thereafter be carried out in full accordance with the details of the Management Plan.

21. No phase of residential development shall commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction Management Plan shall include, but is not limited to, the following matters:

- i. site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles (including cycle parking for staff and visitors); and provision for the loading/unloading of plant and materials within the site;
- ii. wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- iii. measures for managing access and routing for construction and delivery traffic;
- iv. hours during which construction work, including works of site clearance, and deliveries can take place;
- v. Tree / hedge protection plan for the phase of development;
- vi. Construction Traffic Management Plan;
- vii. Address construction phase related matters listed by Network Rail in letter dated 23 July 2017.

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

22. No phase of residential development shall commence until a Drainage (foul and surface water) and Flood Risk Strategy for that phase has been submitted to and approved in writing by the local planning authority:

The Strategy shall address, but is not limited to the following:

- i. Demonstration that there is no increase in flood risk to the site associated with the proposed canal;
- ii. Demonstration that floor levels of all residential properties are above the 1 in 1000 annual probability flood depths in areas of the site shown to be at risk of flooding;
- iii. Demonstration that land has been profiled and property levels and thresholds have been designed to prevent the entrance of surface water into properties in areas show to be at risk by the EA's surface water flood map;
- iii. Demonstration that opportunities for the use of SuDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features, supported by results of infiltration testing and groundwater monitoring;
- iv. A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;

- v. Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;
- vi. Details of the proposed crossings of the ordinary watercourses and assessment of flood risk, demonstrating no increased flood risk up to the 1 in 100 annual probability event and allowing for climate change;
- vii. A detailed foul water drainage strategy showing how foul water from the development will be disposed of;
- viii. Demonstration of the management of surface water during events that overwhelm the surface water drainage system and/or occur as a result of blockage;
- ix. Details of any proposed outfall structures;
- x. SuDs management and maintenance details.

The development shall be carried out in accordance with the approved details, before the dwelling within that phase are first occupied and thereafter maintained as such.

23. Prior to the commencement of above ground works associated with the first phase of residential development, a Travel Plan which contains measures to promote alternative sustainable means of transport for residents and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the local planning authority.

The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the first phase of housing development.

A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.

Prior to Occupation Conditions

24. No dwelling within any phase of residential development hereby approved shall be occupied until the Remediation Scheme, if required, is approved pursuant to condition 8 above, has been fully implemented.

25. Prior to the first occupation of each dwelling hereby permitted full details of a scheme for the provision of covered and secure cycle parking facilities within the curtilage of each dwelling (or scheme for shared provision if apartments) within that phase shall be submitted to and approved in writing by the local planning authority. The covered and secure cycle parking facilities shall be carried out in strict accordance with the approved details and available for use prior to the first occupation of each dwelling hereby permitted. Thereafter these facilities shall be retained.

26. Prior to the first occupation of each dwelling the access, turning area and parking facilities serving that dwelling approved as part of the reserved matters or subsequent conditions shall have been laid out, consolidated, surfaced and drained in accordance with the approved details. Such areas shall thereafter be retained and kept available for those uses at all times.

27. No dwelling within any phase of residential development hereby approved shall be occupied until details including illumination areas, luminance levels and control systems of any floodlighting or external lighting proposed to illuminate that phase of the housing development, as relates to non-domestic fixings, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development (apart from domestic fixings).

28. Prior to the first occupation of any dwelling within any phase of residential development hereby permitted, a scheme for that phase of the development demonstrating measures for the efficient use of water as per the optional technical standards contained within Policy SD3 of the Herefordshire Local Plan Core Strategy shall be submitted to and approved in writing by the local planning authority and implemented as approved.

29. Prior to the first occupation of any dwelling within any phase of residential development hereby permitted, a scheme for that phase to enable the charging of plug in and other ultra-low emission vehicles (e.g. provision of outside electric sockets) to serve the occupants of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwellings within that phase.

Employment Related Conditions

Prior to Commencement Conditions

30. No phase of the employment development hereby approved shall commence until a Construction Materials and Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The Management Plan is to ensure waste management provisions compliment the construction activities on site and that all waste emanating from the development are dealt with in an appropriate manner and follows the waste hierarchy.

The Management Plan shall include, but not be limited to:

(i) a description of the likely quantity and nature of waste streams that will be generated during construction of the development;

(ii) measures to monitor and manage waste generated during construction including general procedures for waste classification, handling, reuse, and disposal, use of secondary waste material in construction wherever feasible and reasonable, procedures or dealing with green waste including timber and mulch from clearing activities and measures for reducing demand on water resources;

(iii) measures to monitor and manage spoil, fill and materials stockpiles, including details of how spoil, fill or material will be handled, stockpiled, reused and disposed of, and locational criteria to guide the placement of stockpiles;

(iv) details of the methods and procedures to manage construction related environmental risks and minimise amenity impacts associated with waste handling;

(v) a description as to how soils and their function will be protected during and after construction. Works shall be carried out in accordance with the approved plan.

Construction works shall thereafter be carried out in full accordance with the details of the Management Plan.

31. No phase of employment development shall commence until a Construction Management Plan that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction Management Plan shall include, but is not limited to, the following matters:

- i. site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
- ii. wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- iii. measures for managing access and routing for construction and delivery traffic;
- iv. hours during which construction work, including works of site clearance, and deliveries can take place;
- v. Construction Traffic Management Plan;
- vi. Tree / hedge protection plan;
- vii. Address construction phase related matters listed by Network Rail in letter dated 23 July 2017.

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

32. No phase of employment development shall commence until a Drainage (surface and flood risk) Flood Risk Strategy for that phase has been submitted to and approved in writing by the local planning authority.

The Strategy shall address, but is not limited to, the following:

- i. Demonstration that floor levels of all buildings are above the 1 in 1000 annual probability flood depths in areas of the site shown to be at risk of flooding;
- ii. Demonstration that land has been profiled and property levels and thresholds have been designed to prevent the entrance of surface water into properties in areas show to be at risk by the EA's surface water flood map;
- iii. Demonstration that opportunities for the use of SuDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features, supported by results of infiltration testing and groundwater monitoring
- iv. A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;

- v. Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;
- vi. Details of the proposed crossings of the ordinary watercourses and assessment of flood risk, demonstrating no increased flood risk up to the 1 in 100 annual probability event and allowing for climate change.
- vii. A detailed foul water drainage strategy showing how foul water from the development will be disposed of.
- viii. Demonstration of the management of surface water during events that overwhelm the surface water drainage system and/or occur as a result of blockage;
- ix. Details of any proposed outfall structures;
- x. SuDS maintenance and management details.

The development shall be carried out in accordance with the approved details before the buildings are first occupied and thereafter maintained as such.

33. Prior to the first occupation or use of the buildings hereby approved details including illumination areas, luminance levels and control systems of any floodlighting or external lighting proposed to illuminate any phase of the employment development, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development.

34. Prior to the commencement of above ground works associated with the employment development, a Travel Plan which contains measures to promote alternative sustainable means of transport for employees and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the local planning authority.

The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the employment development.

A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.

Pre Occupation or First Use Conditions

35. Prior to the first occupation of each unit or building sited within the employment phase of the development hereby permitted full details of a scheme for the provision of covered and secure cycle parking facilities for staff and visitors shall be submitted to the local planning authority for their written approval.

The covered and secure cycle parking facilities shall be carried out in strict accordance with the approved details and be made available for use prior to the first occupation of each unit / building within the employment phase. Thereafter these facilities shall be maintained as such.

36. Prior to the first occupation of each unit or building sited within the employment phase of the development hereby permitted a scheme to enable the charging of plug-in and other ultra-low emission vehicles (e.g. provision of outside electric sockets) to serve the staff and visitors of that unit or building shall be submitted to and approved in writing by the local planning authority. The scheme shall be completed in accordance with the approved details prior to the first use of the unit or building and the provision retained and kept available for use thereafter.

37. Prior to the first occupation of each unit or building sited within the employment phase of the development hereby permitted, the access, turning area and parking facilities (including areas for the manoeuvring, parking, loading and unloading of vehicles) as detailed within the reserved matters submissions relating to layout and landscaping (or subsequent conditions) have been laid out, consolidated, surfaced and drained. Such areas shall thereafter be retained and kept available for those uses at all times.

Compliance Conditions

38. The land allocated for the employment phase of the development hereby permitted shall be used for Class B1 use only of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Canal Related Conditions

39. No phase of the canal development hereby approved shall commence until a Construction Materials and Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The plan is to ensure waste management provisions compliment the construction activities on site and that all waste emanating from the development are dealt with in an appropriate manner and follows the waste hierarchy.

The Management Plan shall include, but not be limited to:

- i. a description of the likely quantity and nature of waste streams that will be generated during construction of the development;
- ii. measures to monitor and manage waste generated during construction including general procedures for waste classification, handling, reuse, and disposal, use of secondary waste material in construction wherever feasible and reasonable, procedures or dealing with green waste including timber and mulch from clearing activities and measures for reducing demand on water resources;
- iii. measures to monitor and manage spoil, fill and materials stockpiles, including details of how spoil, fill or material will be handled, stockpiled, reused and disposed of, and locational criteria to guide the placement of stockpiles;
- iv. details of the methods and procedures to manage construction related environmental risks and minimise amenity impacts associated with waste handling;
- v. a description as to how soils and their function will be protected during and after construction. Works shall be carried out in accordance with the approved plan.

Construction works shall thereafter be carried out in full accordance with the details of the Management Plan.

40. No phase of canal development shall commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction Management Plan shall include, but is not limited to, the following matters:

- i. site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
- ii. wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- iv. measures for managing access and routing for construction and delivery traffic;
- v. hours during which construction work, including works of site clearance, and deliveries can take place;
- vi. Tree / hedge protection plan;
- vii. Construction Traffic Management Plan;
- viii. Consultation with and written approval of the construction methods and mitigation from Network Rail.

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

41. Prior to the commencement of the canal development hereby permitted a detailed surface water and flood risk strategy shall be submitted to and approved in writing by the local planning authority.

The Drainage Strategy shall include, but is not limited to the following:

- i. Demonstration that there is no increase in flood risk to the site associated with the proposed canal;
- ii. Details of any proposed outfall structures;
- iii. Disposal of any foul flows (if any).

The development shall be carried out in accordance with the approved details and thereafter maintained as such.

42. Details of any proposed illumination areas, luminance levels and control systems of any floodlighting or external lighting proposed to illuminate any phase of the canal development shall be submitted to and approved in writing by the local planning authority before the installation of any method of illumination.

Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development.



Report to the Secretary of State

by **Lesley Coffey BA Hons BTP MRTPI**

an Inspector appointed by the Secretary of State

Date **14 December 2020**

TOWN & COUNTRY PLANNING ACT 1990

HEREFORDSHIRE COUNCIL

APPEAL BY BLOOR HOMES WESTERN

**PROPOSED DEVELOPMENT AT
LAND NORTH OF VIADUCT,
ADJACENT TO ORCHARD BUSINESS PARK, LEDBURY**

Inquiry Held on 13-17 July and 22-25 September 2020

Land North of Viaduct, Adjacent to Orchard Business Park, Ledbury

File Ref: APP/W1850/W/20/3244410

Abbreviation Used in this Report

AONB	Area of Outstanding Natural Beauty
CIL	Community Infrastructure Levy
DPD	Development Plan Documents
ES	Environmental Statement
MfS	Manual for Streets
MOVA	Microprocessor Optimised Vehicle Actuation
NDP	Neighbourhood Development Plan
PCU	Passenger Car Unit
POE	Proof of Evidence
PRC	Practical Reserve Capacity
RRS	Road Restraint System
SoCG	Statement of Common Ground
TA	Transport Assessment
TPA	Town Planning Associates
5YHLS	5 year housing land supply

CONTENTS	PAGE
1. Procedural Matters	3
2. Planning History and Background	3
3. The Site and its Surroundings	5
4. The Proposal	5
5. Planning Policy and Guidance	8
6. Agreed Matters with Herefordshire Council	8
7. Agreed Matters with Ledbury Town Council	9
8. The Case for Bloor Homes Western - the appellant	12
9. The Case for Hereford Council	14
10. The Case for Ledbury Town Council (Rule 6(6) party)	32
11. The case for other persons appearing at the inquiry	33
12. Written Representations	43
13. Conditions	49
14. Planning Obligations	53
15. Conclusions	57
16. Recommendation	78

APPENDICES	PAGE
Appendix A Appearances	79
Appendix B Documents submitted during the Inquiry	81
Appendix C Core documents	83
Appendix D Recommended conditions should permission be granted	103

File Ref: APP/W1850/W/20/3244410

Land North of Viaduct, Adjacent to Orchard Business Park, Ledbury

- 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 Bloor Homes Western against the decision of Herefordshire Council.
- The application Ref 171532, dated 22 June 2018, was refused by notice dated 12 December 2019.
- The development proposed is a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works.
- The proposal is for outline planning permission with all matters reserved for future consideration with the exception of access. Only the means of access into the site is sought as part of this outline application, not the internal site access arrangements (i.e. they are not formally form part of the application). Vehicular access is proposed off the Bromyard Road.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

1. Procedural Matters

- 1.1 The inquiry opened on 13 July 2020 and sat from 9 days from the 13 to 17 July and from 22 to 25 September. I carried out unaccompanied site visits on 29 and 30 September.
- 1.2 The appeal was recovered by the Secretary of State in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990. The reason for this direction is that the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

2. Planning History and Background

- 2.1 The appeal relates to an outline planning application with all matters except access reserved for future determination. The details of the access into the site (including its location and junction arrangements) were submitted for approval.
- 2.2 The application was refused by the Council on 12 December 2019, against the recommendation of Officers. The Council wrote to the Planning Inspectorate on 18 February 2020 advising that following a review of its case it had decided to withdraw the three reasons for refusal but would continue to liaise with the appellant on the Statement of Common Ground (SoCG) and CIL (Community Infrastructure Levy) compliance statements.
- 2.3 Following the withdrawal of the reasons for refusal by the Council, Ledbury Town Council (LTC) applied for and was granted Rule 6 (6) status by letter dated 10 March 2020.

- 2.4 In the light of its decision to withdraw its reasons for refusal the Council did not put forward any witnesses to the inquiry. Its participation was limited to the discussions in relation to the s106 Agreement, the suggested conditions, and the submission of the Housing Land Supply (2020-2025) Annual Position Statement (the 2020 Position Statement).¹
- 2.5 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987. However, since the planning application was submitted prior to that date, the transitional provisions (Regulation 4) mean that no alteration is required to the description of development in this case, nor any of the suggested conditions.
- 2.6 An Environmental Statement (ES)² has been undertaken and reported in accordance with the EIA (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 and pertaining to the amended provisions under the Highways Act 1980. These Regulations apply the amended EU directive 2014/52/EU2 "on the assessment of the effects of certain public and private projects on the environment" (usually referred to as the 'Environmental Impact Assessment Directive') to the planning system in England.
- 2.7 A Regulation 25 request dated 31 January 2020 sought further information in relation to:
- An updated project description that explains the difference between the Red Line Boundary on the Site Location Plan and the Illustrative Masterplan. A description of the likely significant effects resulting from the impact of the project on climate, in particular the nature and magnitude of Greenhouse Gas (GHG) emissions.
 - A cumulative impact assessment relevant to the following environmental aspects: Landscape and Visual; and Cultural Heritage.
 - A revised non-technical summary (NTS) incorporating all of the elements referred to above.
- 2.8 An amended Transport Chapter to the ES³ was submitted in January 2020 and the Regulation 25 information was submitted in March 2020. The ES includes comments from statutory consultees, comments made by any other person, and any other substantive information relating to the ES provided by the appellant. I have taken the ES and the submitted environmental information into account in reaching my recommendation.
- 2.9 The appellant submitted an updated Housing Land Supply Proof of Evidence to address the information in the 2020 Position Statement. I have taken all of this information into account in reaching my recommendation.

¹ ID 28

² CD 18

³ CD 18.21

- 2.10 At the Inquiry an application for costs was made by Bloor Homes Western against Herefordshire Council and Ledbury Town Council. This application is the subject of a separate Report.

3. The Site and Surroundings

- 3.1 The appeal site comprises two parcels of land currently in agricultural use and served by separate accesses. Topographically, the site slopes gently to the west and therefore towards the River Leadon. Access to the smaller parcel of land to the north is from Bromyard Road and access to the larger land parcel to the south is from Hereford Road, under the Viaduct. The latter is also used by Network Rail on occasion for Viaduct maintenance purposes
- 3.2 The site is situated on the edge of the existing built-up area of Ledbury. It is located to the north of the Viaduct. It lies to the west and north of the employment uses fronting Bromyard Road. To the west of the site is the River Leadon and agricultural land. In addition, there is a segment of land that extends to the south of the Viaduct terminating close to the roundabout with Hereford Road and Leadon Way.
- 3.3 The Ledbury Viaduct is a Grade II Listed operational railway viaduct and extends up to Bromyard Road/Hereford Road/The Homend junction, in close proximity to the Station. Ledbury Town Centre is located to the south of the Viaduct. Shops, schools, medical facilities and places of work, recreation and worship are all within walking distance of the site in a south westerly direction towards the Town Centre. Almost all of these facilities are located close to The Homend.
- 3.4 Bromyard Road forms the western boundary of the Malvern Hills AONB. Much of the appeal site is separated from the Area of Outstanding Natural Beauty (AONB) by the employment uses fronting Bromyard Road. To the south west of the site lies Walls Hill Camp Scheduled Ancient Monument. A Site of Special Scientific Interest (The Ledbury Cutting) designated for its geological interest lies on the south-western boundary of the area which also has Local Wildlife Site status.
- 3.5 The red line boundary also includes the Bromyard Road/Hereford Road/The Homend Junction (The Station Junction) where it is intended to deliver highway mitigation works.

4. Planning Policy and Guidance

- 4.1 In addition to the National Planning Policy Framework (the Framework) and the Government's Planning Practice Guidance, reference was made to policies in the development plan, which includes the Herefordshire Local Plan Core Strategy (adopted 2015)⁴ and the Ledbury Neighbourhood Development Plan (made January 2019).⁵ The parties also referred to the Malvern Hills AONB Management Plan 2019-2024.⁶

⁴ CD1.2

⁵ CD1.11

⁶ CD 1.17

Herefordshire Local Plan Core Strategy (adopted 2015)

- 4.2 The Core Strategy seeks to shape future development and set the overall strategic planning framework for the county. Although it does not allocate land directly, it proposes broad strategic directions for growth in sustainable locations. It anticipates that other Development Plan Documents (DPDs) and Neighbourhood Development Plans (NDP) will allocate sites to meet the identified development requirements for the county.
- 4.3 Policy SS1 sets out a presumption in favour of sustainable development. It states that the Council will work proactively to find solutions which mean that proposals can be approved wherever possible.
- 4.4 Policy SS2 – Delivering New Homes seeks to secure the delivery of a minimum of 16,500 new homes between 2011 and 2031 to meet market and affordable housing needs. The main focus of development is Hereford, Other urban areas, including Ledbury, are expected to deliver a minimum of 4,700 new homes.
- 4.5 Policy SS4 – Movement and Transportation requires new development to be designed and located to minimise the impacts on the transport network. Development proposals that will generate high journey numbers should be in sustainable locations and accessible by means other than private car. It states that proposals to provide new and improved public transport, walking and cycling infrastructure will be supported.
- 4.6 Policy SS6 Environmental Quality and Distinctiveness expects development proposals to conserve and enhance those environmental assets that contribute towards the county’s distinctiveness, in particular its settlement pattern, landscape, biodiversity and heritage assets and especially those with specific environmental designations.
- 4.7 Policy LB1 – Development in Ledbury requires Ledbury to accommodate a minimum of 800 new homes and a minimum of 15 hectares of new employment land over the plan period. It expects the majority of the development to be focused to the north of the town as set out in policy LB2.
- 4.8 Policy LB2 – Land North of the Viaduct. This policy includes the appeal site. Proposals are expected to bring forward a sustainable mixed-use urban extension to Ledbury. The policy sets out a number of elements that the scheme is expected to deliver. In summary these include:
- A mixed-use development of around 625 new homes comprising market and affordable house sizes and types;
 - Around 3 hectares of employment land restricted to use class B1;
 - 40% of the total number of dwellings to be affordable housing;
 - Land and contributions to facilitate a restored canal to be delivered in partnership with Herefordshire and Gloucestershire Canal Trust;
 - A new linear informal park to link to the existing Town Trail, Riverside Walk recreational open space and existing allotments;

- Developer contributions towards new or improved community facilities and infrastructure improvements. These include a 210-place primary school within the development (or the expansion of the existing primary school) and new recreational open space, play, indoor and outdoor sports facilities;
- The provision of satisfactory vehicular access arrangements, the details of which will be determined at the planning application stage;
- Appropriate mitigation to safeguard the amenities of future occupants and safeguard the continued operation of existing businesses adjoining the area;
- Development of bespoke, high quality and inclusive design, including accommodation that will meet the needs of older persons and contributes to the distinctiveness of this part of Ledbury and respects the setting and significance of the listed Viaduct and the Malvern Hills Area of Outstanding Natural Beauty;
- Safeguards to ensure there is no adverse impact on water quality and quantity in the River Leadon;
- New walking, cycling and bus links from the urban extension directly to the Town Trail and Riverside Walk under the Viaduct, the railway station and Town Centre to create linkages to nearby development and existing community facilities;
- Sustainable standards of design and construction; and
- A comprehensive sustainable urban drainage system.

4.9 Policy MT1 – Traffic management, highway safety and promoting active travel sets out a number of principles for movement and transportation. Those most relevant to the proposed development are:

- Ensuring that the strategic and local highway network can absorb the traffic impacts of the development or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development;
- Where possible include integrated transport connections and supporting infrastructure including access to services by means other than private motorised transport;
- Encourage active travel behaviour to reduce the number of short distance car journeys through the use of travel plans and other promotional awareness raising activities;
- Ensure that developments are designed and laid out to achieve safe entrance and exit.

4.10 Policy LD4 – Historic environment and heritage assets Amongst other matters Development proposals affecting heritage assets and the wider historic environment should protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance.

- 4.11 Policy H1 Affordable Housing - thresholds and targets All new open market housing proposals on sites of more than 10 dwellings are expected to contribute towards meeting affordable housing needs. Within Ledbury there is an indicative target of 40% affordable housing provision.

Ledbury Neighbourhood Development Plan

- 4.12 Policy EE1.1 - New Employment Sites is supportive of new employment sites.
- 4.13 Policy BE2.1 - Edge of Town Transition The density of housing in the vicinity of the perimeter of the town should be appropriate to its location, the type of housing required and its environment. Development should respect the setting of the Malvern Hills AONB.
- 4.14 Policy TR1.1 – Footpaths and Cycleways supports improvements and/or extensions to the network of footpaths and cycling routes in the Neighbourhood Area especially where they:
- Create appropriate crossing facilities from the proposed strategic housing location north of the Viaduct to give safe access to the Station, schools, out of town shops and the Town Centre;
 - Improve cycling pedestrian and disabled access to and from the Station and the town especially where junctions create a hazard; and
 - Improve the Ledbury Town Trail to provide better cycling and disabled access along its whole length including the provision of street lighting and footbridges.
- 4.15 Policy TR2.1 - Supports improvements to the accessibility and facilities at the railway station and connectivity between the station and other sustainable transport modes.

Malvern Hills AONB Management Plan 2019-2024

- 4.16 The purpose of the Management Plan is to help those involved in managing the AONB to conserve its special qualities, the pressures on these qualities, and where possible improve the AONB for current and future generations.
- 4.17 Objective TR01 aims to reduce the impact of the motor vehicle whilst promoting a more sustainable approach to accessibility management. Policy TRP6 seeks to ensure that new developments on the periphery of the AONB do not give rise to significant traffic increases and associated effects on tranquilly and enjoyment. It seeks compensation for such effects where relevant.

5. Planning History

- 5.1 Apart from the appeal, there are no relevant planning applications on the appeal site.

6. The Proposal

- 6.1 The appeal proposal seeks outline planning permission with all matters reserved except access.
- 6.2 The appellant submitted a Design and Access Statement and an illustrative masterplan. Although the application has been made in outline and all matters

other than access are reserved, these documents nevertheless provide a useful indication as to how the site could be developed.

- 6.3 The layout of the site proposes that the employment uses will be located adjacent to existing employment uses on Bromyard Road. The housing areas will extend to the north and west of these areas. The layout provides for the reinstatement of the canal, a linear park, public open space with childrens' play areas and a pedestrian and cycle link under the Viaduct retaining the existing woodland.
- 6.4 Vehicular access to the site will be via a new roundabout with Bromyard Road. A separate access for emergency vehicles will be provided via Bromyard Road to the south of the roundabout. Pedestrian and cycle access to the site will be provided beneath the Viaduct in two locations; to the north of the Hereford Road / Leadon Way roundabout and also via Ballard Close.
- 6.5 The proposal includes the following walking and cycling infrastructure:
- Two new toucan crossings on Hereford Road;
 - A further crossing at the Hereford Road/Bromyard Road junction to provide access to the Station;
 - A 3m shared footway/cycleway on Hereford Road to replace the existing footway;
 - Improvements to Ledbury Footpath ZB18 to provide a shared footway/cycleway and connect to the Town Trail; and
 - Connections from within the site to the northern part of the Bromyard Road Trading Estate.⁷
- 6.6 The proposals provide for the signalisation of the Station Junction, and a right-turn lane from Bromyard Road to increase junction capacity.

7. Agreed Facts Between the Council and the Appellant⁸

- 7.1 The site is a strategic site within the Herefordshire Core Strategy and is a Strategic Urban Extension to deliver a significant amount of housing and employment land to serve Ledbury's needs during the Plan period. The proposal is consistent with Core Strategy Policy LB2, which sets out development parameters for the site.
- 7.2 The proposal complies with the Development Plan, which comprises the Herefordshire Local Plan Core Strategy 2011-2031 and Ledbury Neighbourhood Development Plan.
- 7.3 The principle of development is supported, subject to the proposal being acceptable in terms of technical matters.
- 7.4 In respect of the withdrawn reasons for refusal, which related principally to highways matters, it is agreed that:

⁷ Mr Millington POE 3.2.2

⁸ CD 4.1 & 4.2

- The vehicular access arrangements are satisfactory;
- The increase in vehicular traffic and associated disturbance will not result in an unacceptable impact on the AONB;
- Any increases to traffic flows through the Conservation Area would have no effect on its character and appearance;
- There is less than substantial harm to the Grade II Listed Viaduct. The harm is considered to be at the lower end of that scale, with significant landscape mitigation further minimising the harm. The public benefits of the proposal outweigh this minimal level of harm;
- The landscape character and visual amenity of the site has the ability to absorb change that would arise from the form of development proposed. The site is allocated for a residential led mixed use development, and the proposed development would be appropriate within this landscape context on the edge of the existing settlement. It is agreed that the proposal will not lead to unacceptable long-term landscape and visual harm. Any more detailed issues can be address at the Reserved Matters stage;
- Viewed in the context of the market and affordable housing shortfall, the housing delivery benefits of the appeal scheme are substantial;
- The appeal scheme would deliver other benefits in addition to the social and economic benefits of housing, including employment and training/apprenticeship opportunities, recreational benefits associated with the provision of public open space on land which is currently privately owned, and environmental benefits associated with the provision of housing in a sustainable location, as well as biodiversity enhancements; and
- In terms of other technical issues, no objections have been raised by the statutory consultees in respect of arboriculture, biodiversity, flood risk and drainage, noise, air quality, minerals & waste or contaminated land.

7.5 The Highway Authority originally recommended refusal on highway grounds. On the basis of a new Transport Assessment, Travel Plan and ES Chapter prepared by PJA⁹, and following a period of negotiations and the submission of additional evidence, the Highway Authority offered no objection to the planning application.¹⁰

7.6 The following highway matters are agreed:

- Trips rates and trip distribution used in the Transport Assessment;
- Assessment years and traffic growth factors used in the Transport Assessment;
- The junction analysis presented in the Transport Assessment concluded that, with the exception of the Station Junction, the impact on the junctions assessed would be acceptable;

⁹ The appellant's Transport Consultants

¹⁰ CD 4.2 Appendix SOCG1

- The Station Junction would require mitigation;
- A signal-controlled mitigation scheme is proposed at the Station Junction:
 - a) The scheme provides capacity improvements over what would happen in the future without the development at the site.
 - b) The design of scheme has been subject to a Stage 1 Road Safety Audit. Whilst the audit raised minor issues, these can be addressed at the detailed design stage;
- The proposed site access arrangements are considered to be satisfactory and it has successfully been demonstrated that:
 - a) A single point of access would not result in any wider capacity issues on the highway network, with the agreed mitigation strategy in place.
 - b) In highway capacity terms the proposed access arrangements can accommodate the anticipated level of traffic associated with the proposed development;
- It has been demonstrated that the walking and cycling routes proposed are appropriate for the development proposals and support the overall access strategy for the site; and
- Travel Plans have been prepared and are acceptable and can be secured by an appropriate planning condition.

Ledbury Town Council Objection

- 7.7 Shortly before the original planning committee meeting on 13th November 2019, LTC submitted an objection to the proposal and a technical review of the PJA submissions prepared by Transport Planning Associates (TPA)¹¹. The TPA review concluded that *"the proposals are likely to be acceptable in highways terms, subject to confirmation of a number of matters."*
- 7.8 The agreed position between the Highway Authority and the appellants, in relation to LTC's objection is set out at Table 3-1 of the Highways and Transportation SoCG¹²:
- The proposed pedestrian and cycle access and infrastructure improvements are deliverable;
 - A drawing has been provided which demonstrates that minor alterations to the access design could be made at the detailed design stage through the formal S278 approval process without requiring additional land or changes to the redline boundary, as noted by TPA;
 - The s106 heads of terms allow for contributions to be made towards sustainable transport infrastructure if deemed necessary by Herefordshire Council;

¹¹ Ledbury Town Council's original Transport Consultants

¹² CD4.2

- Suggestions to improve the Travel Plan have been reviewed and can be incorporated subject to the approval of the Highway Authority through the discharge of conditions;
- Comments relating to layout, including the emergency access and access to public transport services have been addressed; and
- The junction models have been revised to incorporate the TPA comments and confirm the previous findings of the Transport Assessment.

8. Agreed Facts Between Ledbury Town Council and the appellant¹³

8.1 SoCG were submitted in relation to Planning, Heritage, Highways and landscape matters prior to the inquiry. A supplemental SoCG in relation to highway matters was submitted during the course of the inquiry.

Planning

8.2 In terms of planning the following matters were agreed:

- The site is a strategic site within the Herefordshire Core Strategy as a planned Strategic Urban Extension to deliver a significant amount of housing and employment land to serve Ledbury's needs during the Plan period;
- The principle of development is supported, subject to the provision of satisfactory access arrangements;
- Herefordshire Council does not have a 5 year housing land supply;
- The housing delivery benefits of the appeal scheme should be afforded positive weight;
- There are no objections in relation to the following technical matters: arboriculture, biodiversity, flood risk and drainage, noise, air quality, minerals and waste or contaminated land;
- The appeal scheme could deliver other benefits in addition to the social and economic benefits of housing, including employment and training/apprenticeship opportunities, recreational benefits associated with the provision of public open space on land which is currently privately owned, and environmental benefits associated with the provision of housing in a sustainable location, as well as biodiversity enhancements.

Heritage

8.3 In terms of Heritage it is agreed that the proposed development will have no material impact on the significance of any designated heritage assets apart from the Conservation Area.

8.4 It remains in dispute whether an increase in traffic flow along 'The Homend' (A438), High Street and 'The Southend' (A449) through Ledbury Town Centre Conservation Area would harm the appearance and/or character of the Conservation Area.

¹³ CD 4.3, 4.4, 4.5, 4.5a, 4.6 & ID11

Highways

8.5 In terms of Highways the following matters are agreed:

- The development would not have a 'severe' impact on the capacity of the following junctions: the proposed site access/Bromyard Road roundabout; A438 Hereford Road/A417 Leadon Way/New Mills Way roundabout; and Bromyard Road/Beggar's Ash priority junction;
- Traffic generated by the development at the Bromyard Road/Hereford Road/The Homend priority junction would require mitigation;
- The proposed mitigation scheme to signalise the junction is shown on PJA Drawing No 3468-A-010 Rev P5;
- Minor alterations to the design of the proposed site access roundabout could be made at the detailed design stage through the formal S278 approval process without requiring additional land or changes to the redline boundary;
- A s106 agreement could secure contributions to be made towards sustainable transport infrastructure if deemed necessary;
- Suggestions to improve the Travel Plans can be incorporated subject to the approval of the Highway Authority through the discharge of conditions;
- The emergency access, serving the site from the Bromyard Road roundabout, as proposed, is acceptable;
- There is no requirement to safeguard the alignment of the northern section of the Ledbury bypass;
- It is agreed that it is not necessary to accommodate any traffic growth beyond the core strategy period (up to 2031);
- It is agreed that the traffic distribution (percentages using each route) in the PJA transport assessment are acceptable for the consideration of this proposed development unless the distribution of trips is affected by traffic congestion;

8.6 The supplemental SoCG¹⁴ agreed the following additional points:

- The more recent national guidance contained within Manual for Streets (March 2007), and Manual for Streets 2 (September 2010) takes precedence over the guidance set out in Herefordshire Council's 'Highway Design Guide for New Developments' (July 2006);
- The development would not have a 'severe' impact on the capacity of the A438 The Homend/A449 The Southend/A449 Worcester Road/B4216 New Road signal-controlled junction;
- Vehicles using various minor roads, including Beggars Ash Lane, Rhea Lane and Burtons Lane as a 'rat run' would not have an unacceptable effect on highway safety; and

¹⁴ CD4.5a

- There is no policy requirement or committed scheme for a new car park to the north of the station.

Landscape

- 8.7 It is agreed that the direct /indirect landscape and visual effects on the Malvern Hills AONB that could arise from increased vehicular use resulting from the proposed development is a matter for consideration in this appeal.

9. The Case for the Appellant

- 9.1 This summary contains all material points in relation to the appellant's case and it is substantially based upon the closing submissions of the appellant.¹⁵ It is also taken from the evidence given on behalf of the appellant and from other documents submitted to the inquiry. The closing submissions are a blended document combining the closing submission made in relation to highway matters following the adjournment and the other matters considered at the resumed inquiry.
- 9.2 The reasons for refusal need to be put into the context of the development plan, national planning policy and guidance, other material considerations and the overall planning balance. The benefits of the proposal include the delivery of a very substantial amount of market housing and affordable housing, employment land, the extensive area of Green Infrastructure, the contribution and land for the canal restoration creation, the very significant employment arising from the construction of the development and the additional retail expenditure which would be brought into the town, highway improvements and the heritage benefit of opening up access and appreciation of the listed Viaduct.¹⁶
- 9.3 The LTC's case pivots on the absence of a road under the listed Viaduct. Core Strategy policy LB2 was expressly redrafted to exclude any such requirement because there was no evidence that it was necessary. Both the local planning authority and the Local Highway Authority accept that the Bromyard Road access is a satisfactory vehicular access.¹⁷
- 9.4 Network Rail, who own the Viaduct and the railway line which crosses along the top of it have made it very clear that they will not permit vehicular access under the Viaduct. Their reasons for doing so include the liability that such a road would pose to their operational function as the provider of our national railway network.¹⁸
- 9.5 Pedestrian and cycle access will be provided under the Viaduct and also under the embankment so that direct pedestrian access can be obtained to the Town Trail and the town centre.¹⁹

¹⁵ ID38

¹⁶ appellants closing submissions paragraph 10

¹⁷ appellants closing submissions paragraph 16 & 17

¹⁸ appellants closing submissions paragraph 18

¹⁹ appellants closing submissions paragraph 19

Development Plan

- 9.6 The Council has withdrawn its objection to this proposal. The Council Officers took the view that the proposal complied with the Development Plan. They considered the Development Plan as a whole and looked at all the relevant policies, including all those listed in the reason for refusal.
- 9.7 Neither the reasons for refusal, nor LTC allege any breach of the Ledbury NDP. The Ledbury NDP defers the responsibility for the allocation of housing sites to the Core Strategy. This allocates the appeal site for the development proposed.
- 9.8 The reasons for refusal do not allege a conflict with Policy LB2, which is the policy which allocated the appeal site as an allocation. The Core Strategy suggests that the appeal site and all other sites in the Core Strategy are not allocations. A site can still be an allocation as a broad location. The policy indicates that it is an allocation and is prescriptive about the numbers of houses and employment land proposed.²⁰
- 9.9 Policy LB2 sets out a number of matters 'expected' to be brought forward by development on the site. The proposal complies with all of these to the extent that it is necessary to do so. The requirement for a primary school and a bus link via the Viaduct are not required. This is because there is sufficient capacity in existing primary schools and the bus routes to be used are the existing bus routes along the Hereford Road and the Bromyard Road.²¹ The only alleged breach is the requirement for a satisfactory access. It is agreed that the proposal must provide satisfactory access arrangements, the threshold for deciding if such access is satisfactory is paragraph 109 of the Framework.²²
- 9.10 However, even a breach of a key policy does not necessarily make a proposal contrary to the Development Plan as a whole. This has been confirmed by *Corbett v Cornwall Council* [2020] EWCA Civil 508.²³ In this instance, even if there is a breach of the criteria of LB2 and the relevant parts of Policy MT1 in respect of satisfactory access, it would still be possible for the proposal to comply with the Development Plan as a whole. One needs to look at the extent to which the proposal is consistent with the other policies within the Core Strategy, including the need to deliver new homes and the spatial strategy for that delivery which focused 4,700 new homes on the main towns in the County including Ledbury, and the provision of employment land.²⁴ However, if the appellant's evidence in relation to the access is accepted, then there is no breach of LB2.

Highway and Accessibility

- 9.11 There are existing safety, capacity, and operational issues at the Station Junction adjacent to Ledbury Railway Station. These include long queues at the junction, particularly in the evening peak hour. In addition, HGVs cannot

²⁰ appellants closing submissions paragraph 29

²¹ appellants closing submissions paragraph 34

²² appellants closing submissions paragraph 39

²³ appellants closing submissions paragraph 40

²⁴ appellants closing submissions paragraph 41

safely negotiate the junction, with other vehicles having to wait back from the give-way line to allow larger vehicles through, and that there are no facilities for pedestrians to safely cross.²⁵

- 9.12 The proposed junction improvements include the provision of traffic signals at the junction and would offer substantial benefits in terms of highway safety and pedestrian accessibility. It is accepted that an improvement scheme at the Bromyard Road/Hereford Road junction is required in order to address existing capacity and safety concerns. The proposed development provides a suitable mitigation scheme which balances the temporary capacity constraints in the peak hours with the permanent beneficial effects to pedestrians and cyclists. This scheme has been subjected to a Stage 1 Road Safety Audit. The residual impacts at the junction are not severe and will not result in unacceptable highway safety impacts.²⁶
- 9.13 All of the experts who have assessed the proposed development for the Highway Authority, the Council, the appellant, and even the LTC's previous consultants TPA conclude that the proposed access arrangements (vehicular and non-motorised) and associated mitigation measures (on and off site) are technically robust, safe, policy compliant and will not give rise to any severe impact on the network.²⁷

Whether the proposal satisfy the requirements of Core Strategy Policy LB2 for the access arrangements to be 'satisfactory'

- 9.14 It is agreed that there are no issues as to the access roundabout in terms of capacity, geometry, safety and all related items. The issues are that the proposed development focuses all development traffic on the Station Junction. The LTC's case is that this has capacity issues, and also that the proposed pedestrian and cycle access would not benefit from natural surveillance.²⁸
- 9.15 LTC also referred to Policy MT1 and suggested that the development would not comply with points 1,2,and 4.

Whether the residential vehicle trip generation summarised in Table 5-2 of the PJA Transport Assessment Rev A is appropriate

- 9.16 The pedestrian trip rates are agreed, as are the trip rates for employment uses. The issue in relation to residential vehicle trip generation is focused on the AM peak, there being no significant difference between the parties in respect of the PM peak. It is the PM peak that is the more critical in terms of capacity and flows.²⁹
- 9.17 The Highway Authority accepted the appellant's trip rates. The rates were also reviewed and accepted by the Highway Authority's consultants WSP, as well as by PJA on behalf of the appellant, and TPA, LTC's original highway consultants.³⁰

²⁵ appellants closing submissions paragraph 48

²⁶ appellants closing submissions paragraph 53

²⁷ appellants closing submissions paragraph 54

²⁸ appellants closing submissions paragraph 66

²⁹ appellants closing submissions paragraph 72 & 73

³⁰ appellants closing submissions paragraph 74 & 75

- 9.18 The difference between the parties is a 0.508 (Two-way) trip rate advanced by the appellant as per the PJA Transport Assessment and a 0.642 (Two-way) trip rate advanced by the LTC. The trip rates do not take account of any possible internalisation of the trips, or the extent of affordable housing.³¹
- 9.19 Although the appellant's data is based on a single site, it was nonetheless taken from a sample of five sites. These were ranked, and the site used had the highest trip generation in one of the peak hours and the second highest in the other. The site is at Lower Wick in Worcester which is in the same area of the country with the same levels of affluence and morality. It is a lot further away from shops and facilities in the centre than the appeal site would be (approx. 1.4km) and is not as close as the appeal site is to the railway station.³²
- 9.20 Mr Millington's Rebuttal Proof of Evidence reviewed the TRICS rates and generated a further 12 TRICS assessments. The trip rates used by the appellant are slightly higher by comparison. LTC's rates are even higher still and are clearly out of kilter. The LTC rates identifies road network distances where it is the walking and cycling routes that are relevant and does not look at the quality of routes. Sites that benefit from multiple bus services have been ignored, as has the quality and level of rail services and the destinations they serve.³³
- 9.21 LTC's closing submissions incorrectly suggest that distance to a primary school and bus access are "*two of the factors most likely to affect trip generation in the AM peak*". No evidence is provided to support this suggestion. There was no debate of this issue during the inquiry. It is very common to see a range of trip rates within an assessment which is itself considered to be 'representative'.³⁴
- 9.22 LTC excluded sites in Wales and Scotland, any with less than 200 dwellings, and most importantly filtered by population size within 1 mile of the development. This was due to its view that there is a strong correlation between population size and trip rates. Such an approach fails to accord with the TRICS Good Practice Guide which states that "*a more "inclusive" than "exclusive" approach to site filtering is applied*". As demonstrated through Mr Millington's regression analyses³⁵ which look at populations within 5 miles compared with populations within 1 mile the correlation between population size and trip rate is virtually non-existent.³⁶ .

Whether the input parameters to the junction assessment methodology described in the PJA Transport Assessment Rev A, are appropriate

- 9.23 The Capacity Position Summary table produced by Mr Lee³⁷ summarises the capacity analysis undertaken by Mr Lee and Mr Millington with comments.

³¹ appellants closing submissions paragraph 78 & 80

³² appellants closing submissions paragraph 82

³³ appellants closing submissions paragraph 84

³⁴ appellants closing submissions paragraph 86

³⁵ ID3 and ID4

³⁶ appellants closing submissions paragraphs 87,88 &89

³⁷ CD21.3 then updated as CD21.4

Each of the outstanding issues in dispute set out in that summary are now dealt with in turn.

Drivers not travelling to the end of the Bromyard Road right turn taper requires a reduction in non-blocking storage

- 9.24 The appellant produced additional refined layout drawings to illustrate how a large vehicle could pass going southbound and still have two cars causing non-blocked passage for the bus. The layout has been discussed with the Highway Authority, and the drawing at Appendix C of the Transport Assessment was subjected to a stage 1 Road Safety Audit.
- 9.25 LTC suggest that for 2 Passenger Car Units (PCUs) to store in the right-turn lane, without blocking either northbound or southbound traffic through the junction, the front car must travel to the end of the right-turn lane. However, drawing 010 simply shows the length of the formally marked right turn lane, not the position a driver is assumed to take. Drawing A-030-P1 Viewpoint 3 is the same design as drawing 03468 A 010 P6 (Drawing 10),³⁸ but demonstrates that two PCU's can store and that drivers do not need to travel to the front of the right turn lane.³⁹
- 9.26 The appellant is aware that any large vehicles turning left to right would block the junction, however, that does not necessarily mean that the capacity would be reduced to the extent that it would cause an issue. As confirmed by JTC, the company who built LinSig, the appellant's modelling is correct. LinSig modelling is about the average situation over the hour, not the worst case.⁴⁰
- 9.27 Mr Lee also criticised the double kerb arrangement shown on the drawings, however, this is one solution and there are others. This is an existing junction which is being improved. There are existing safety issues and the current arrangements are leading to damage to the pavement. The extent of the highway is fairly extensive so the kerb line can easily be changed.⁴¹

90 second cycle times (or less) should be used where pedestrians are present

- 9.28 The Transport Assessment considered a 110 second cycle time. LTC could not point to any policy or guidance in support of its view that anything over a 90 second cycle time is inappropriate. The DfT Traffic Signs Manual⁴² advises that the cycle time will vary from site to site depending on circumstances and should be matched to actual demand. It also states that cycle times greater than 120 seconds are not recommended at junctions.⁴³
- 9.29 There are numerous examples of traffic signal-controlled junctions with pedestrians and have cycle times of 120 seconds or higher.⁴⁴ Moreover, the use of a Microprocessor Optimised Vehicle Actuation (MOVA) controller would

³⁸ Mr Millington's Rebuttal POE Appendix A

³⁹ appellants closing submissions paragraph 99

⁴⁰ appellants closing submissions paragraph 103 & 105

⁴¹ appellants closing submissions paragraph 106 & 108

⁴² CD 1.33 paragraph 6.2.1

⁴³ appellants closing submissions paragraph 110-112

⁴⁴ appellants closing submissions paragraph 116

manage the demand and change the cycle time accordingly. Therefore, outside of peak periods it would probably be closer to 90 second cycle time.⁴⁵ There is no evidence to support LTC's view that 90 seconds is the maximum generally considered to be acceptable.

- 9.30 It is necessary to balance the needs of motorists with those of pedestrians. At present there is no crossing outside the Station and the appellant's proposal would provide a safety benefit.⁴⁶

Bromyard Road Intergreens

- 9.31 JCT, who built the LinSig software calculated the intergreen periods used in the appellant's model.⁴⁷
- 9.32 Mr Lee's position is that the intergreen period from Bromyard Road should be increased by 3 seconds to allow queuing traffic to clear the right turn lane. JTC reviewed this change and concluded that it "*would not be an issue, as right-turning traffic should not be queuing as the signals turn to red. This is because the opposed stage (Stage 1) is followed by an Indicative Arrow (Stage 2), where the right-turn is free-flowing*". JTC also stated that adding an additional 3 seconds, which could be dealt with using more efficient means, "*could be seen as unsafe and cause unnecessary additional delay*".⁴⁸
- 9.33 Mr Lee said that he agreed with "*almost everything*" in JCT's email but suggested that it is based on a set of assumptions not true at this site. However, JCT had access to the model and the drawings in relation to the junction.
- 9.34 Although the amendments have not been assessed by the Highway Authority, the intergreen values used in the PJA model were calculated by JCT and are based upon the prescribed method within Traffic Signs Manual Vol 6, the relevant standard governing the design of traffic signal junctions.⁴⁹
- 9.35 As discussed during the roundtable session if, following installation, there was observed to be a conflict risk between vehicles, then the 'arrow period' could be extended to allow vehicles to clear the junction. This would be at the expense of the green time allocated to The Homend, however within the PJA junction modelling scenarios The Homend is well within capacity. This on-site adjustment would not have a detrimental effect on the overall capacity of the junction.⁵⁰

The Homend approach turning radius has not been entered into LinSig

- 9.36 This would have less than a 1% impact on the Practical Reserve Capacity (PRC). During the roundtable session both parties thought the failure to include it would make no significant difference.⁵¹

⁴⁵ appellants closing submissions paragraph 117

⁴⁶ appellants closing submissions paragraph 119

⁴⁷ appellants closing submissions paragraph 123

⁴⁸ Appellants closing submissions paragraph 123

⁴⁹ Appellants closing submissions paragraph 125

⁵⁰ Appellants closing submissions paragraph 126

⁵¹ appellants closing submissions paragraph 128

Pedestrian Crossing should be demanded every cycle

- 9.37 For the purposes of capacity modelling it is assumed that on average, the pedestrian stage is likely to be called one in every two cycles. However, it may be the case that on occasion the pedestrian stage will be called back to back at some points during the peak hours. The pedestrian survey found that the demand for the pedestrian crossing in the peak hour to be once in every three cycles on average. The proposed development would lead to an increase in the number of times the crossing is called, but that increase is not likely to be pro-rata with the number of pedestrians. The pedestrian surveys are at Tables 3 and 4 of the Transport Assessment.⁵²
- 9.38 Each crossing event can include more than one pedestrian. There are groupings of pedestrians linked to the arrival and departure of trains, but there are also gaps where even during the peak periods where there are no crossing events. The number of times the crossing is called may impact on queues but there will be gaps in the cycle time which would allow traffic to recover. There would not be a constant flow of pedestrians using the crossing during the peak period.⁵³

Revised Flows Scenarios

- 9.39 The 2018 survey was not carried out during half term. Gloucestershire was the only area adjoining Herefordshire where the schools were on half term the week of the survey. Although LTC suggested that some children may go to schools within Gloucestershire, no evidence was provided to support this. The 2018 traffic counts are preferred since the data is more recent. They were carried out because the 2017 surveys were incomplete and did not contain any pedestrian counts or look at queuing. It is therefore more complete and also comes within a reasonable range of the 2017 data.⁵⁴
- 9.40 The differences between the 2017 and 2018 data, are 1.6% in the AM peak and 8.4% in the PM peak. The difference in flows in the AM peak is clearly negligible and the difference in the PM peak is within the typical levels of daily variation, commonly accepted to be +/- 10%.⁵⁵

Effect of Second Access on Traffic Flows

- 9.41 It is evident that with a second access the development flows would be less through Station Junction. However, the LTC's alternative is entirely undeliverable and the highways impacts would not be severe at the junction in any event.⁵⁶

Industrial Unit Egress

- 9.42 It is possible that some vehicles leaving the industrial units and turning right may encounter a queue of traffic. This is not an unusual situation within an

⁵² appellants closing submissions paragraph 131,132 & 135

⁵³ appellants closing submissions paragraph 140

⁵⁴ appellants closing submissions paragraph 143 & 144

⁵⁵ appellants closing submissions paragraph 146

⁵⁶ appellants closing submissions paragraph 149

urban area and could, if necessary, be managed by keep clear markings or a yellow box.⁵⁷

Buses manoeuvring into Depot

- 9.43 Some coaches do reverse into the depot and this has implications for the existing junction operation. The appellant's additional drawings demonstrate the vehicles can enter and leave in forward gear. This is a small depot with five or six vehicles all of which are marked school buses. Therefore they may not be entering and leaving the depot during peak hours.⁵⁸

Ledbury Railway Station and Masefield Avenue

- 9.44 LTC considers that traffic turning right into and out of Masefield Avenue and the industrial area will experience delay and cause friction in The Homend traffic stream. Drawing 010⁵⁹ provides a right turning lane so there would be no delay to traffic turning right and it could pull out of the northbound stream thus not interrupting the traffic trying to get to the stop line. The modelling clearly demonstrates that The Homend will operate within capacity with minimal queuing.⁶⁰

Bus Stops on The Homend

- 9.45 LTC contends that the bus stops on The Homend will block traffic approaching the signals. However, the number of buses stopping at this location is just three in each direction in the AM peak, and just one northbound and two southbound in the PM peak.⁶¹

Bradford's Buildings Supplies Access

- 9.46 The number of movements into the site during the peak hours is likely to be low. The builders' yard is approx. 180m from the junction and the appellant's evidence is that queues will only extend 130m.⁶²

Whether the improvements proposed to walking and cycling infrastructure and the accessibility of the site by walking, cycling and public transport are acceptable

- 9.47 The Highways and Transport SoCG between the appellant and Council acknowledges that the proposed walking and cycling routes have been demonstrated to be appropriate. LTC's previous consultants, TPA, only identified matters of detailed design relating to the proposed pedestrian facilities and no general concerns. In their 2017 consultation response on the application the LTC explicitly asked for a combined cycle way/footway link, from the southeast corner of the site, through the old canal bridge, connecting to Ballard Close.⁶³

⁵⁷ appellants closing submissions paragraph 151

⁵⁸ appellants closing submissions paragraph 155 & 156

⁵⁹ Mr Millington Rebuttal POE Appendix A

⁶⁰ appellants closing submissions paragraph 158 & 159

⁶¹ appellants closing submissions paragraph 162

⁶² appellants closing submissions paragraph 165

⁶³ appellants closing submissions paragraph 169 & 170

- 9.48 The proposed development will provide both the requested cycleway/footpath link and the controlled crossing of Hereford Road.
- 9.49 LTC confirmed that it had concerns with safety, security and distance for some people, but the appellant's proposed links provide the shortest distance, and the issue in terms of distance was with the location of the site rather than the scheme.⁶⁴
- 9.50 LTC raised concerns that the pedestrian routes will be unlit and not overlooked and consider that a second vehicular access under the Viaduct could remedy this as pedestrians and cyclists would then be using the same route as vehicles. Ledbury has a very low crime rate. The Ballards Close route would be a traffic free, direct walk to the town centre with only one, controlled crossing, rather than a series of busy roads. The Town Trail is well used by local people, provides for pedestrians and cyclists, and is lit, and although it is not overlooked in various parts it is well used.⁶⁵ The Viaduct pedestrian route would also be traffic free.⁶⁶
- 9.51 LTC suggest that a second access would create a greater possibility of the bus to and from Hereford being able to dip into the site. However, such a bus route is not viable. It would be possible for there to be modifications to the Bromyard Road access arrangement such that bus services passing on that route could briefly call into the site; but such matters do not need to be decided at outline stage. Rail is likely to be a more attractive mode choice for longer distance journeys given the proximity of the station and high-quality pedestrian and cycle links provided from the site to the Town Centre.⁶⁷

Whether the operation of the Bromyard Road / Hereford Road / The Homend proposed signalised junction would result in greater levels of 'rat running' traffic than indicated in the PJA Transport Assessment;

- 9.52 LTC's approach to traffic re-routing assumes that all of its assumptions regarding base traffic, trip generation, traffic growth and pedestrian crossing demand are correct, as well as all of Mr Lee's assertions regarding the modelling of the junctions.
- 9.53 LTC suggest that between 20% and 40% of traffic bound for the A449 to the east (Malvern and Worcester) would reroute via the AONB (in particular Petty France/Beggars Ash). Mr Millington's analysis using Google Maps indicates that there would not be a time saving due to the standard of the routes. Therefore there is no significant benefit to rat running through the AONB.⁶⁸
- 9.54 There is already a level of delay experienced within Ledbury and the proposed development and new traffic signals will not substantially change that situation. Furthermore, any delays are likely to occur only over a short period within the peak hour, not for the vast majority of the day.⁶⁹

⁶⁴ appellants closing submissions paragraph 172 & 173

⁶⁵ appellants closing submissions paragraph 178

⁶⁶ appellants closing submissions paragraph 175

⁶⁷ appellants closing submissions paragraph 180

⁶⁸ appellants closing submissions paragraph 187

⁶⁹ appellants closing submissions paragraph 188

Whether the proposed mitigation scheme at The Homend / Hereford Road / Bromyard Road provides 'satisfactory' geometry in terms of traffic signal placement, reasonable vehicular movements and in all other respects

All-out Scenario

- 9.55 An 'all-out' scenario whereby the traffic signals fail is unlikely to occur. Should it do so, the junction would revert to priority control which is similar to the existing situation. The proposed scheme would still represent a marked improvement on the current situation.⁷⁰

Inter-visibility

- 9.56 LTC raised concerns as to the lack of inter-visibility between the stop lines of the proposed signalised arrangement at this junction. Full inter-visibility is not provided, however, this is only a recommendation for upgrades to existing junctions and not a requirement of the relevant guidance. Further, Mr Lee suggested that pedestrians waiting to cross the road need to be able to see oncoming vehicles and referred to the stopping distance calculation in Manual for Streets (MfS). The stopping sight distance calculation in MfS is about the distance ahead a driver needs to be able to see to come to a stop, and not whether or not a driver can see a pedestrian at a crossing at a signalised junction or vice versa. What is important is if the driver can see the signal heads, which they could in this scenario.⁷¹
- 9.57 The Road Safety Audit did not raise the lack of full inter-visibility as a concern. The Designer's Response, signed off with the Highway Authority, included that "*the bridge obscures pedestrian visibility partially to the north, but weighed against the existing situation and the introduction of a signalised facility this would demonstrate a betterment to the existing route to the station*".⁷²
- 9.58 LTC suggests that fencing or some other structure could be placed on the third-party land at the corner of Bromyard Road/Hereford Road thus limiting visibility. It is understood that the land concerned comprises unregistered land. There is no suggestion, that anyone would seek to procure it and erect structures of any kind. The proposal is to put in place a controlled crossing and any pedestrian should be able to rely upon the green man. Should the signals fail, one would simply revert to the current situation.⁷³

Whether the development would have a 'severe' impact on the capacity of: The Bromyard Road/Hereford Road/The Homend junction; and whether the proposed scheme at The Homend / Hereford Road / Bromyard Road junction would mitigate the impact of the development in terms of junction capacity

- 9.59 There are existing capacity issues, particularly in relation to queues and delays forming on the Bromyard Road arm of the junction. An improvement to the junction is required with or without the development. LTC assert that alleged

⁷⁰ Appellants closing submissions paragraph 195

⁷¹ appellants closing submissions paragraph 197

⁷² appellants closing submissions paragraph 198

⁷³ appellants closing submissions paragraph 200

flaws in the methodology and data used render the Transport Assessment conclusions invalid.

- 9.60 The appellant's junction capacity analysis of the proposed signalised scheme was thoroughly reviewed at the application stage. The Council's Committee Report records that it "*will provide capacity improvements over what would happen in the future without the development at the site*" and that "*the operation of the proposed traffic signal scheme is considered acceptable*".⁷⁴ LTC's previous highways consultants did not take issue with capacity.
- 9.61 The parties' combined model summaries are at ID24 which sets out all of the various options available. It is the appellant's position that the 2018 traffic counts are most appropriate with a 1 in 2 pedestrian call frequency and 110 seconds cycle time per the Transport Assessment.⁷⁵
- 9.62 There would still be increased traffic volumes if a second access were to be provided beneath the Viaduct, and the existing issues relating to capacity and pedestrian safety would still prevail.⁷⁶
- 9.63 LTC suggested that the Bath Press appeal decision⁷⁷ and the Lancaster decision referenced within it, can assist with the meaning of severe within paragraph 109 of the Framework given the similar modelling approach. However, this approach would ignore local context and apply as a benchmark the conclusions as to severe in Bath Press and/or Lancaster simply due to what is standard methodology.⁷⁸
- 9.64 The junction would be at capacity not above, and this is not necessarily an unacceptable impact. Before concluding that, one would need to look at the reasons for queues and delays and understand what the implications of the same were. One cannot say automatically that there is a severe impact.⁷⁹

Whether the proposed mitigation scheme at The Homend / Hereford Road / Bromyard Road junction is acceptable in terms of highway safety

- 9.65 There is an acknowledged need to improve the pedestrian environment at this junction. Large vehicles presently either overrun the footway close to where pedestrians wait to cross or come across the centre line when turning left into Bromyard Road from Hereford Road. As to the former, there are signs of damage to the pavement as a result.
- 9.66 These issues were all identified in the Transport Assessment.⁸⁰ There will be no unacceptable impact on highway safety and no severe residual cumulative impacts on the road network. The proposed mitigation will address localised junction capacity issues and improve safety for pedestrians and cyclists.⁸¹

⁷⁴ appellants closing submissions paragraph 205

⁷⁵ appellants closing submissions paragraph 207

⁷⁶ appellants closing submissions paragraph 208

⁷⁷ CD 11.33 at 12.52

⁷⁸ appellants closing submissions paragraph 211

⁷⁹ appellants closing submissions paragraph 214

⁸⁰ CD 8.26 in section 3.4

⁸¹ appellants closing submissions paragraph 216-218

Whether any of the conclusions reached on the above matters could be resolved by providing an additional point of access beneath the Viaduct to the north of the Hereford Road / Leadon Way roundabout

- 9.67 There is no policy requirement for the provision of a second point of access beneath the Viaduct, or any evidence to suggest that the provision of a second access under the Viaduct is required or deliverable. The provision of a single site access complies with MfS and MfS2. Fundamentally, the Council as highway authority has accepted that a single point of access is an appropriate solution to access the site. The implications of providing a second access has been considered and it has been shown to have no significant beneficial effects.
- 9.68 The Transport chapter in the ES assessed four alternative access options. It concluded that none of the options considered would result in significant adverse environmental effects. It found that all of the options would result in significant beneficial effects to Hereford Road on severance, pedestrian delay, pedestrian amenity and fear and intimidation and *"none of the alternative options considered would offer a significant betterment in terms of traffic related environmental effects"*⁸².
- 9.69 If a second access were to be provided beneath the Viaduct, development traffic flows would reduce through the Station Junction and to a lesser degree through the Top Cross junction; but not to the extent suggested by LTC.⁸³
- 9.70 National Rail state that they will not allow a public highway for vehicles to be constructed beneath the C19 Grade II listed Viaduct piers that support an operational, single-track rail line some 20m above the highway in order to access the appeal site.⁸⁴

Effect on the AONB

- 9.71 The AONB lies approximately 230m to the east of the site and is physically and visually separated by existing intervening industrial and commercial development on Bromyard Road. The appeal site lies within the setting of the AONB. Based upon the Urban Fringe Sensitivity Analysis the site represents the most logical and appropriate location in landscape and visual terms for new development at Ledbury.⁸⁵
- 9.72 LTC argue that there would be significant direct and/or indirect adverse landscape and visual effects on the AONB as a result of increased vehicular use, as well as landscape/visual effects on the setting of the AONB because of the increased vehicular movements.
- 9.73 The Malvern Hills AONB is surrounded by various towns. It is not a remote and isolated area. The increase in traffic arising from the proposed development will be confined to a single minor road/route within the AONB – Beggars Ash. LTC's objection in relation to Burton Lane was withdrawn.⁸⁶

⁸² Paragraph 7.10.39 of the ES at CD18.9

⁸³ appellants closing submissions paragraph 225

⁸⁴ appellants closing submissions paragraph 228 & 229

⁸⁵ appellants closing submissions paragraph 234 & 235

⁸⁶ ID11

- 9.74 Beggars Ash is currently lightly trafficked with less than two vehicles per minute on average in each peak hour. The proposed development will give rise to a 20-23% increase in peak hour traffic resulting in less than one extra vehicle every three minutes on average. The predicted increase is 19 additional vehicles during each peak hour.⁸⁷
- 9.75 LTC suggest that should 20% of the development traffic predicted to travel to/from the east via the A449 (i.e. to and from Worcester and Malvern) divert there would be 29 additional trips in the AM peak hour, and 25 additional trips in the PM peak hour. In the case of 40%, there would be 57 additional trips in the AM peak hour, and 50 additional trips in the PM peak hour.⁸⁸
- 9.76 New development within or surrounding the AONB is likely to give rise to some modest increase in traffic. LTC suggested that if there are more cars, there will be more areas that cars and vehicles need to pass and over time hedge banks of verges will become more and more eroded, due to drivers having to reverse back because of more vehicles that use the lane.⁸⁹ The numbers of vehicles using this lane are very low and will remain so. Any increase in traffic would be very limited and very localised.⁹⁰
- 9.77 LTC allege the proposed development is considered to be contrary to paragraph 172 of the Framework, Policies SS6 and LD1 of the Core Strategy and objective TRO1 together with Policy TRP6 of the adopted Malvern Hills AONB Management Plan. There is no such breach of any these development plan policies nor the Management Plan.

Heritage

- 9.78 The only matter in dispute is whether an increase in traffic flow along The Homend, High Street and The Southend through Ledbury Town Centre Conservation Area would harm the appearance and/or character of the Conservation Area. This complaint relates only to the additional traffic using these roads which might otherwise not have used these roads if there was a second access under the Viaduct.⁹¹
- 9.79 The parties agree that the special architectural and historic interest of the Conservation Area is very much reflected in the quality of the buildings within the centre of Ledbury. The character of the street patterns, narrow lanes leading to the east to the Church, and the area around Market House are key to the special historic interest. The open, verdant areas around the Church and within the park contrast and provide relief to the urban form while maintaining a character relevant to their historic interest. The character and appearance of the Conservation Area is also clearly influenced by its vibrancy as an active, bustling market town.⁹²
- 9.80 The current two-way hourly flow of vehicles along The Homend through the Conservation Area of c.650 vehicles per hour during the peak hour in the

⁸⁷ appellants closing submissions paragraph 246 & 247

⁸⁸ appellants closing submissions paragraph 249

⁸⁹ appellants closing submissions paragraph 251 & 252

⁹⁰ appellants closing submissions paragraph 254

⁹¹ appellants closing submissions paragraph 262

⁹² appellants closing submissions paragraph 269

morning and the evening and to the forecast of an additional c.160 trips per hour post-development.⁹³

- 9.81 LTC's case is that whilst the vibrancy and hustle and bustle of the town centre contributes to character on the current levels of traffic, that evidence shows the town to be more at tipping point in terms of the balance between acceptable traffic levels and the levels that would damage the character and appearance of the Conservation Area. There is no real evidence to support such an assertion. Town centres risk becoming irrelevant because Covid-19 has accelerated the process of the High Street retail collapse.⁹⁴ The increased traffic flows as a result of the appeal proposals would in no way change the character and appearance and accordingly have no effect on the special architectural or historic interest of the Conservation Area.⁹⁵
- 9.82 LTC also questioned the methodology in the Amended ES Transport Chapter. The references within this chapter to sensitivity do not relate to heritage considerations.⁹⁶
- 9.83 LTC submit that even with two accesses the proposed development would give rise to less than substantial harm to the conservation area, but that the harm would be less. The second access would result in a c.3% difference compared to the existing traffic flow, and this would not be discernible or change the way in which the heritage significance is experienced.⁹⁷
- 9.84 The evidence of Mr Howell, on behalf of LTC suggests that he has an issue generally with traffic in the Conservation Area even as it presently is, despite claiming to accept that the hustle and bustle is part of the character of the Conservation Area. The appellant's position is that the restrictions on movement and presence of fewer people and vehicles due to Covid-19 have adversely affected the character and appearance of the Conservation Area.⁹⁸
- 9.85 The proposed development would affect the fabric of the Viaduct. None of the existing land-uses or landscape characteristics makes a meaningful contribution to the heritage significance of the Viaduct. Therefore the proposed development would not bring about an adverse effect to the heritage significance of the Viaduct. The Viaduct will retain its dominance within the landscape, it will still stand out in many views as the most imposing structure in its environs; its monumentality will not be challenged by the proposed development.
- 9.86 The slight impact, very much at lower end of 'less than substantial harm', that would come about from the change to views from the B4214 (looking south) would be outweighed by the public (heritage) benefits that would come from the improved access and views of the structure, that would ultimately better reveal its significance. In the context of the tests within the NPPF the public (specifically heritage) benefits would outweigh the harm; and in the context of

⁹³ appellants closing submissions paragraph 275

⁹⁴ appellants closing submissions paragraph 289

⁹⁵ appellants closing submissions paragraph 290

⁹⁶ appellants closing submissions paragraphs 280 -284

⁹⁷ appellants closing submissions paragraphs 291 & 293

⁹⁸ appellants closing submissions paragraphs 295 & 296

the legislative test within the Act, this equates to 'preserving its special architectural and historic interest'.

- 9.87 In views from the north, at a few locations, while travelling along the B4214, the proposed development will be visible. This change will, to a small degree, impinge on the aesthetic quality of the experience of the Viaduct at these locations. The improved accessibility and enhanced experience(s) of the Viaduct, that the Appeal Scheme would allow, outweighs the very small impact that would come from impinging the aesthetic quality within one transitory view (from the B4214).⁹⁹

Flooding¹⁰⁰

- 9.88 The appellant submitted a Statement to address the concerns of interested parties in relation to flooding. This relied upon the information within the Flood Risk Assessment, the Sustainable Drainage Statement and the Flood Risk & Drainage Technical Note.¹⁰¹
- 9.89 It is concluded that the site is at low risk of flooding and that, subject to the provision of appropriate mitigation measures, could be developed to be safe from flood risk and without causing any off-site flood risk detriment.¹⁰²
- 9.90 It also reviewed anecdotal reports of flooding. The photographic evidence submitted with these reports does not show the appeal site. The flooding on Bromyard Road is shallow and can be negotiated by traffic and therefore do not suggest that a development is inappropriate as a result of the presence of surface water.¹⁰³

Planning Balance

- 9.91 The appellant believes there are four routes to the grant of permission in this case¹⁰⁴:
- (i) The proposal complies with the Development Plan including all the relevant policies. Planning permission should be granted unless there are material considerations that indicate otherwise.
 - (ii) The proposal complies with the Development Plan taken as a whole, such that even if there is a breach of some policies: see *Corbett v Cornwall* (above). Again, planning permissions should be granted.
 - (iii) If the proposal breaches the Development Plan, then the tilted balance in 11(d)(ii) should be applied because:
 - (a) The Council does not have a 5 year housing land supply.

⁹⁹ CD Mr Suttons POE paragraphs 4.2-4.11

¹⁰⁰ CD20.1

¹⁰¹ CD8.52

¹⁰² CD20.1 Paragraph 2.11

¹⁰³ CD20.1 Section 3

¹⁰⁴ appellants closing submissions paragraph 303

- (b) It follows that the most important policies relating to this application are judged automatically out of date.
- (c) Cllr Harvey agreed that those are, at the very least, all the policies identified in the Council's reasons for refusal.
- (d) The appellant does not allege those policies are inconsistent with the Framework.
- (e) But the appellant does submit that reduced weight should be given to such policies, and this follows from paragraphs 79 and 83 of the Supreme Court's judgment (Lord Gill) in Suffolk Coastal v Hopkins Homes : Richborough Estates v Cheshire East [2017] UKSC 37 (CD11.15). It is accepted that the Supreme Court did not specifically address policies concerned with highway safety and highway capacity, which do not fall comfortably within those two categories. But it is submitted that if there is a shortfall in the 5year housing land supply then flexibility over the application of all policies which are restricting housing land supply should be given reduced weight. In this case that extends to the highway policies and LB2 criteria on access. It was suggested by Mr Parkinson that the Supreme Court could never suggest that weight could be reduced by a decision maker if there is no 5 year housing land supply. That is wrong. This has been confirmed by the Court of Appeal in Peel v SSCLG [2020] EWCA Civ 1175 and the Courts have endorsed that view.
- (f) The appellant's position is that 11(d)(i) does not apply here. There is no clear reason to refuse based on either heritage harm or harm to the AONB. There is no such material harm. LTC's case here is a contrivance.
- (g) On heritage, to make this argument stick they have to show the heritage harm to the Conservation Area would outweigh the full public benefits.
- (h) The same argument is said by LTC to apply to the harm to the AONB on the basis of the Monkhill case. This public benefits test is not contained in paragraph 172 of the Framework and is subject to an appeal to the Court of Appeal. The case is in fact authority for the approach to be taken when a site is in the AONB. That is clear from the facts of the case. It is not authority for the proposition that the public benefits test, implied by the Court, applied for development outside the AONB. The only thing to which paragraph 172 refers to is sites in the AONB. That is not to say that a decision maker cannot identify harm to the setting of an AONB from development outwith the designated area. But the need to apply "great weight" only applies to conserving and enhancing landscape and scenic beauty in the AONB. And that test was the trigger for the public benefit test suggested by the Court in the Monkhill case.

- (i) The benefits of the proposal need to be weighed against the harm.
- (iv) If the proposal breaches the Development Plan, then there are other material considerations (which are the same as the benefits of the proposal) which outweigh any such conflict.

Benefits

Housing Supply

- 9.92 The appellant's position in relation to housing land supply is set out in detail in Mr Pyecroft's updated Proof of Evidence and summarised in the appellant's closing submissions.
- 9.93 As at 1 April 2020 the Council claim to have a housing land supply of 3.69 years, compared to 4.05 years in April 2019 and 4.55 years in April 2018. In addition, the Council has failed to pass the Housing Delivery Test and must produce an action plan and apply a 20% buffer to the five-year housing land supply calculation.¹⁰⁵
- 9.94 The appellant's position is that there is a 2.8 year housing land supply if one includes the appeal site or 2.71 years without it. The extent of the shortfall at the base date is 1,675 dwellings and this should be addressed in full in the five-year period. The five-year requirement plus a 20% buffer is 7,350 dwellings. The appeal site is "deliverable" such that 136 dwellings on the site are included within both the Council's and the appellant's housing land supply figures.¹⁰⁶
- 9.95 The appellant concludes that 1,312 dwellings should be removed from the 5 year housing land supply. These include 1,112 dwellings on sites with outline planning permission for major development and sites allocated in the Core Strategy and Neighbourhood Plans and 200 dwellings removed from the windfall allowance.¹⁰⁷
- 9.96 There are three key areas leading to that discrepancy: a) lack of clear evidence¹⁰⁸; b) issues concerning the River Lugg¹⁰⁹; and c) a lack of compelling evidence with regard to windfall allowance.¹¹⁰ The deductions are set out at paragraph 322 of the appellant's closing submissions.

Affordable Housing

- 9.97 The ability to deliver Affordable Housing on this site is an important part of the appeal proposal and benefits of the scheme. There is a well-established national housing crisis in this country which is causing misery to millions of people. It is a manifestation of an underlying persistent and pervasive trend

¹⁰⁵ appellants closing submissions paragraphs 309 & 310

¹⁰⁶ appellants closing submissions paragraph 312

¹⁰⁷ appellants closing submissions paragraph 314

¹⁰⁸ appellants closing submissions paragraphs 320-323

¹⁰⁹ appellants closing submissions paragraphs 324 -327

¹¹⁰ appellants closing submissions paragraph 328

over many decades. We build too few homes and far too few affordable homes.¹¹¹

9.98 The Herefordshire Local Housing Market Assessment (LHMA) 2012 (November 2013) identifies an annual requirement of 691 dwellings between 2012/13 and 2016/17. Between 2011/12 and 2018/19 there has been an accumulated shortfall of 4,604 affordable dwellings. This is an affordable housing shortfall of 81% since 2011/12 against a target of 5,667. There was only one affordable home built in Ledbury in the last 9 years, and that was in 2011.¹¹² The appeal scheme will deliver up to 250 affordable dwellings in accordance with Policy H1 of the Core Strategy.

9.99 Further detail in relation to the need for and benefits of affordable housing are provided within the appellant's closing submissions.¹¹³

Other Benefits

9.100 The appeal proposal will bring with them a number of other benefits including:

- The delivery of employment land;
- Construction, employment and additional disposable income in the area;
- Green infrastructure including the provision of Public Open Space, Improved Footpath and cycle links and improved biodiversity;
- Wider landscape impacts;
- Improved services and facilities;
- Sustainable construction and operation (limited); and drainage;
- The safeguarding of land and financial contribution to facilitate a restored canal;
- Highway safety benefits relating to the operation of the Hereford Road/Bromyard Road junction;
- Heritage benefits of improved accessibility and appreciation of the magnificent listed Viaduct. Heritage benefits should be taken into account as part of the public benefits of the scheme: see *Kay v SSCLG* [2020] EWHC 2292 (Admin).¹¹⁴

9.101 The appropriate weight to be applied to such benefits is summarised in at appellant's closing submissions.¹¹⁵ Whether these are material considerations or as benefits (under the titled balance) these are very considerable benefits which weigh in favour of allowing the appeal if there is any conflict found with the Development Plan.

¹¹¹ appellants closing submissions paragraph 331

¹¹² appellants closing submissions paragraphs 339 & 340

¹¹³ appellants closing submissions paragraphs 330-357

¹¹⁴ appellants closing submissions paragraph 358

¹¹⁵ appellants closing submissions paragraph 359

Planning Obligation

- 9.102 The appellant does not seek to suggest that the planning obligations are not reasonable or necessary. The Canal Contribution is sizeable, especially when coupled with the land to be provided. Nonetheless, it is part of the development plan policy which relates to this site/location. It also forms part of the application and the appellant has always made clear to the Herefordshire and Gloucestershire Canal Trust that it is perfectly willing to assist in helping to facilitate its restoration through the site.¹¹⁶
- 9.103 With the Wye Valley NHS Trust contribution, the appellant is aware of the fact the Secretary of State has disallowed this in respect of a recent proposal in Devon. However, Bloor Homes is not adopting a position of challenging this contribution and presents no evidence against it.¹¹⁷

10. The Case for the Council

- 10.1 This summary contains all material points in relation to the Council's case. It is taken substantially from the Council's closing submissions and the submitted 2020 Position Statement. The Council also participated in the discussion in relation to the suggested planning conditions and the planning agreement under s106 of the Act. The Secretary of State is also referred to the Council's opening and closing submissions.¹¹⁸
- 10.2 It is the Council's case that planning permission should be granted for the proposed development, subject to the appellant entering into a planning obligation as set out in the draft section 106 agreement and the imposition of suitable conditions as contained within the draft schedule.
- 10.3 The Council has agreed the terms of a s.106 agreement with the appellant, which will apply in the event that the Secretary of State grants planning permission. The Council is satisfied that the proposed obligations in this agreement comply with the tests set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The inquiry has been provided with a "CIL Compliance Statement" which provides full reasons for this position.
- 10.4 Part 6 of the planning SoCG records that the Council and the appellant disagree on the Council's five-year housing land supply position.¹¹⁹ Since agreeing the SoCG, the Council has published its 2020 Position Statement. This concludes that the Council's current supply is 3.69 years.
- 10.5 The appellant provided evidence to the inquiry which disputed this figure. For the avoidance of doubt, the Council confirms that it does not agree with the appellant's evidence and maintains that the correct supply is as set out in its 2020 Position Statement. As indicated during the inquiry, however, since the Council: (a) has withdrawn its reasons for refusal, (b) has agreed in the statement of common ground that the appeal should be allowed, and (c) did not itself provide witness evidence on housing land supply, it did not seek to

¹¹⁶ appellants closing submissions paragraph 362

¹¹⁷ appellants closing submissions paragraph 363

¹¹⁸ ID36

¹¹⁹ CD4.1

challenge the appellant's evidence. It would in these circumstances have been inappropriate to do so.

- 10.6 By the terms of the s.106 agreement, the amount of the Canal Contribution (which is provided in order to satisfy the fourth bullet point of Policy LB2 of the Council's Core Strategy) will be the sum of £1 million, save if the Decision Letter clearly states instead that the reduced Canal Contribution is payable. For the reasons set out in the CIL Compliance Statement, and during the inquiry, the Council submits that the sum of £1 million meets the tests in regulation 122(2).
- 10.7 The provision of a restored canal will be a significant exercise, and one that will benefit the amenity of the proposed development. The Herefordshire and Gloucestershire Canal Trust have estimated the total cost of facilitating the canal on the appeal site as being approximately £2.45 million.
- 10.8 For the reasons set out in the representations made by the Wye Valley NHS Trust on 21 September 2020, and during the inquiry session on the s.106 agreement, the Council considers that the Hospital Contribution meets the tests in regulation 122(2).

11. The Case for Ledbury Town Council

- 11.1 This summary contains all material points in relation to Ledbury Town Council's case. It is substantially taken from the closing submissions as well as the evidence given on behalf of LTC and from other documents submitted to the inquiry. The Secretary of State is also referred to the closing submissions of LTC at Inquiry which contain a full exposition of LTC's case.¹²⁰
- 11.2 The proposal fails to provide satisfactory access as required by Policy LB2 of the Core Strategy, due to the single point of access proposed from Bromyard Road. As a consequence of the unsatisfactory access there would be detrimental effects on the highway network in terms of congestion and safety, as well as harm to the character of the Ledbury Town Centre Conservation Area and the AONB due to the additional traffic passing through these areas.
- 11.3 It was previously intended that vehicular access would be provided under the Viaduct onto Leadon Way. This changed following the Core Strategy Examination in Public, and the adopted plan required the access to be satisfactory.

Highways Issues

- 11.4 As a consequence of the single access the Station Junction would operate above capacity, resulting in severe congestion and delays. In addition, the appeal site would not provide safe and suitable access for all users as the proposed pedestrian and cycle routes would be unsafe and unattractive to many.

¹²⁰ ID37

Whether the mitigation proposed at the Station Road Junction is adequate

- 11.5 Core Strategy Policies LB2,SS4, & MT1 are relevant, as is Framework paragraph 109.¹²¹
- 11.6 The Station Junction is an important junction in the context of Ledbury's highways network, given its proximity to the Station. In addition, Hereford Road is a Class A road and is one of the main junctions on the route to the centre of town when approaching Ledbury from the north. It is also a junction that will be frequently used by residents of the appeal site: 93% and 88% of residential and employment trips respectively are anticipated to travel through Station Junction.
- 11.7 There is simply insufficient evidence to reliably conclude that the existing junction is operating above capacity.¹²² The queue surveys show the junction to be operating within capacity, in that the brief 10-15 minute period in the hour where queues exceed 19 PCUs is the result of a sudden increase in demand at the junction¹²³ which the junction is quickly able to deal with.¹²⁴
- 11.8 The Ledbury Public Realm and Transportation Study¹²⁵ proposes the signalisation of the junction, but it is a very low priority (ranked 41 out of 53 suggested interventions).¹²⁶
- 11.9 Some local residents have referred to congestion at the Station Junction. However, these unevidenced opinions are not a sound basis on which to conclude that there is an existing problem.¹²⁷

The modelled LinSig outputs

- 11.10 Both parties have used the industry standard LinSig computer software to model the operation and capacity of the proposed junction in the design year of 2031. The parties have been able to agree a number of inputs, but the following remain in dispute:
- (1) The base traffic data;
 - (2) Residential trip rates;
 - (3) The model design parameters;
 - (4) Pedestrian crossing demand frequency; and
 - (5) Cycle time

Base Traffic Data

- 11.11 The Transport Assessment uses observed PM peak traffic data for the Station Junction from a survey carried out on 25 October 2018. However, a previous survey carried out on 15 September 2017 showed higher PM flows (a

¹²¹ LTC Closing submissions paragraphs 8 & 9.

¹²² LTC Closing submissions paragraphs 12 & 13

¹²³ Accepted by Mr Millington in XX. Almost certainly the result of workers leaving the Bromyard Road industrial estate at the end of the working day – again, accepted by Mr Millington in XX.

¹²⁴ LTC Closing submissions paragraph 14

¹²⁵ CD 1.19.

¹²⁶ LTC Closing submissions paragraph 15

¹²⁷ LTC Closing submissions paragraph 16

difference of 8.4%).¹²⁸ It is accepted that the 2017 survey was incomplete as it did not show queue lengths and did not include a pedestrian count. Nonetheless, we do not know which surveyed flow represents normal conditions.¹²⁹

11.12 In the light of the uncertainty, it is entirely permissible to take a precautionary approach and adopt the higher flow figures. This is justified on the basis that the flow rates would have a material effect on the capacity of the junction, and some schoolchildren from Ledbury go to a Primary School in Gloucestershire which was on half-term during the 2018 count.¹³⁰

Residential Trip Rates

11.13 The predicted residential traffic generation of the development is derived from a single site in the TRICS database, which (contrary to good practice) does not reflect the characteristics of the appeal site. The Worcester site used has better bus services and is closer to shops and the primary school. Connect Consultants, on behalf of LTC have undertaken their own analysis of the likely trip generation. This results in a more realistic trip generation of 401 movements in the AM peak, compared with 318 movements used in both the BWB¹³¹ and the PJA Transport Assessments.¹³²

11.14 The TRICS exercise in Mr Millington's rebuttal proof is based on a similarly unrepresentative sample of sites¹³³. The sample used by Connect Consultants is robust and representative. The resultant residential trip rates are significantly higher in the weekday AM peak, with 401 vehicle movements compared to the 318 vehicle movements used in the BWB and PJA Transport Assessment.¹³⁴

11.15 The criticisms in relation to the selection criteria used by Connect Consultants are without merit.¹³⁵

Model Design Parameters

11.16 Non-blocking storage refers to the number of PCUs that can wait to turn right from Bromyard Road into Hereford Road. LTC submits that only 1.21 can wait.¹³⁶

11.17 The junction design is shown on Drawing 010 is not realistic. It demonstrates that in order to accommodate 2 PCUs the only safe arrangement requires a right-turn manoeuvre that will not be taken by drivers in practice. Alternatively, if the front vehicle is positioned in a better position the

¹²⁸ The 2017 survey recorded a total of 1,180 PCUs through the junction in the weekday AM peak hour, and 1,241 PCUs in the weekday PM peak hour (shown in BWB Transport Assessment (CD 8.73) - Figures 22 and 23 respectively); the 2018 survey recorded 1,161 and 1,144 PCUs respectively (derived from the PJA Transport Assessment (CD 8.26) - Appendix K).

¹²⁹ LTC Closing Submissions paragraphs 22 & 23

¹³⁰ LTC Closing Submissions paragraph 24

¹³¹ The appellant's original Transport Consultants

¹³² LTC Closing Submissions paragraphs 25 & 27

¹³³ LTC Closing Submissions paragraph 29

¹³⁴ LTC Closing Submissions paragraph 31

¹³⁵ LTC Closing Submissions paragraph 32

¹³⁶ LTC Closing Submissions paragraph 35

arrangement is not safe in that buses or other large vehicles would not be able to safely pass a second queuing vehicle in the right lane.¹³⁷

11.18 In response to these concerns the appellant produced drawing 03468-A-035-P0 to show that 2 PCUs can store in the right turn lane.¹³⁸ There are concerns about the deliverability and safety of this arrangement.¹³⁹

11.19 The appellant relies on three points: (i) buses and HGVs travel southbound down Bromyard Road fairly infrequently, and therefore this conflict is unlikely to occur regularly in practice; (ii) HGV/bus drivers are professionals and will be able to avoid a conflict occurring; and (iii) all of this is a matter for the detailed design stage.¹⁴⁰ However, the appellant has yet to produce a safe design whereby 2 PCUs are accommodated in the right-turn lane. As such, Mr Lee's position that the non-blocking storage capacity should be 1.21 PCUs should be adopted.¹⁴¹

Intergreen times

11.20 The intergreen time is the time between the end of the green signal for one phase, and the start of the green signal for the next phase. The parties disagree whether it is necessary to add an additional 3 seconds of all-red intergreen time to allow right-turning traffic from Bromyard Road to Hereford Road to clear the junction before the next stage begins.¹⁴²

11.21 LTC consider that it is necessary to add an additional 3 seconds of all-red intergreen time to allow right-turning traffic from Bromyard Road to Hereford Road to clear the junction before the next stage begins.¹⁴³ The appellant disputes this and relies on the emailed comments from JCT the makers of LinSig. The inter-green period is primarily a safety feature and the intergreen period assessed by the Highway Authority is different from that now put forward by Mr Millington.¹⁴⁴ Mr Lee's approach is far more likely to reflect the reality on the ground post-development.¹⁴⁵

Pedestrian Crossing Demand

11.22 The pedestrian crossing would be called on-demand, which impacts on the capacity of the junction. As a result of the development the number of pedestrians using the crossing will increase from 23 to 71 in the AM peak; and from 28 to 65 in the PM peak. The key issue is how frequently these pedestrians will call the crossing.¹⁴⁶

11.23 There will be 48 additional pedestrians using the crossing in the AM peak post-development and 37 additional pedestrians in the PM peak. On the basis of the

¹³⁷ LTC Closing Submissions paragraphs 37, 38 & 39

¹³⁸ CD21.5

¹³⁹ LTC Closing Submissions paragraph 40

¹⁴⁰ LTC Closing Submissions paragraph 41

¹⁴¹ LTC Closing Submissions paragraph 42

¹⁴² LTC Closing Submissions paragraph 43

¹⁴³ LTC Closing Submissions paragraph 43

¹⁴⁴ LTC Closing Submissions paragraph 45

¹⁴⁵ LTC Closing Submissions paragraph 46

¹⁴⁶ LTC Closing Submissions paragraph 48

current average group size per crossing this would give rise to an additional 44 "crossing events" in the AM peak and an additional 30 "crossing events" in the PM peak. In total, that would give rise to 64 "crossing events" per hour in the AM peak and 51 "crossing events" per hour in the PM peak. Whilst some of these crossings will undoubtedly coincide with the existing clustering of crossings, the increase in demand of the crossing is so significant that – even accounting for this – the crossing is likely to be demanded every cycle.

Cycle time

- 11.24 The cycle time can be adjusted by MOVA in response to varying traffic flows. The appellant's position is that the cycle time could extend to 120 seconds during peak hours. LTC's position is that a cycle time of longer than 90 seconds will be unsafe for pedestrians.¹⁴⁷
- 11.25 The stopping sight distance for a vehicle travelling southbound on Bromyard Road, calculated in accordance with MfS is 42 metres. There is a significant extent of land to the north of the proposed crossing, on the western side of Bromyard Road that is outside the control of the appellant and therefore cannot prevent visibility being obscured at some point in the future. If this land is disregarded, a pedestrian standing 0.8 metres back from the pedestrian crossing would not be able to see the southbound Bromyard Road lane beyond a point 9.1 metres north of the crossing.¹⁴⁸ The longer the cycle time the greater the risk that pedestrians will try to cross without a green man signal.
- 11.26 There is evidence that 30 seconds is the maximum amount of time that pedestrians are prepared to wait at a signalised crossing before they become impatient. At a 120 second cycle, pedestrians will be required to wait up to 115 seconds, with an average wait of 57.5 seconds, well exceeding the 30 second threshold. A cycle length of this time is likely to occur in the peak periods, which is the period of highest pedestrian demand.¹⁴⁹ This is dangerous for pedestrians particularly given the issue with regard to visibility.
- 11.27 The appellant suggests that the existing position is unsafe for pedestrians, however, paragraph 108 of the Framework requires that the access is "*safe and suitable*" – not safer and suitable. A second access to the appeal site would mean that the junction would operate with significant reserve capacity at a 90 second cycle, meaning that cycle times of 120 seconds would not be required.¹⁵⁰

Severe impact

- 11.28 The level of impact that may be considered to be severe can be seen in the Bath Press¹⁵¹ and Lancaster¹⁵² appeal decisions. Both were recovered by the Secretary of State. The PM peak delay in the Lancaster decision was 110

¹⁴⁷ LTC Closing Submissions paragraph 52

¹⁴⁸ LTC Closing Submissions paragraph 56

¹⁴⁹ LTC Closing Submissions paragraph 54

¹⁵⁰ LTC Closing Submissions paragraph 61

¹⁵¹ CD 11.33

¹⁵² CD 11.34

seconds and 129 in the Bath Press case. This was found to be a severe delay.¹⁵³

11.29 If the LTC's primary case is accepted¹⁵⁴, there can be no doubt that the impact would be "severe". There would be a 7-minute delay at the Bromyard Road arm of the junction, and the longest queue in the peak period would stretch back along the Bromyard Road as far as the site entrance.¹⁵⁵

11.30 Mr Lee modelled a number of different scenarios. These are set out at ID24. Under a number of other scenarios the PRC of the junction would be above capacity and around or above the PRC values assessed to amount to "severe" in both the Lancaster and Bath Press decisions. On 5 of the 8 scenarios, the junction is operating above capacity in at least one of the peaks – even on a 120 second cycle – if the pedestrian crossing is called every cycle.¹⁵⁶

Rat-running

11.31 The significant delays and queuing at the junction predicted by LTC are likely to displace some traffic on to rural lanes, as drivers seek to avoid the resultant delays into the town. Traffic bound for Malvern/Worcester and beyond via the A449 will reroute via Beggars Ash and the rural lanes through the Malvern Hills AONB.¹⁵⁷

11.32 The Transport Assessment assigns 19 two-way trips to Beggars Ash in the AM peak and 19 two-way trips in the PM peak.¹⁵⁸ However, this trip assignment assumes that the Station Junction is operating within capacity. LTC considers that about 20%-40% of the development traffic which is predicted to travel to/from the east via the A449 could re-route through the AONB due to queues and delays. This would equate to an uplift of 11%-22% of the 2019 average daily traffic flow on Petty France.¹⁵⁹

11.33 The parties are agreed that on every conceivable scenario the junction would operate within capacity should a second access be provided. The congestion and delay (and associated adverse effects) identified by LTC arises from the fact that all of the development traffic is forced through a single junction, rather than because of background growth or any inherent constraints in the junction itself.¹⁶⁰

11.34 Although the scheme has been signed off by the Highway Authority this does not mean that it is acceptable. The worst-case scenario presented to Herefordshire Council, as both Planning and Highway Authority was a PRC of - 8.8% in the PM peak. None of the scenarios where the PRC is worse than that (and there are many) have been endorsed by the Highway Authority.¹⁶¹

¹⁵³ LTC Closing Submissions paragraph 64

¹⁵⁴ Mr Lee's model parameters, a 90 second cycle, pedestrian crossing called every cycle, 2017 traffic flows and Mr Bradshaw's trip rates

¹⁵⁵ LTC Closing Submissions paragraph 66

¹⁵⁶ LTC Closing Submissions paragraph 69

¹⁵⁷ LTC Closing Submissions paragraph 71

¹⁵⁸ Mr Millington POE, Appendix B - Table 2.6.

¹⁵⁹ LTC Closing Submissions paragraph 73

¹⁶⁰ LTC Closing Submissions paragraph 76

¹⁶¹ LTC Closing Submissions paragraph 77

Pedestrians and Cyclists

11.35 The pedestrian and cycle routes on the south side of the appeal site do not provide safe and suitable access for all users, particularly as there is very limited natural surveillance. As such, these routes will potentially be perceived as intimidating, especially to vulnerable people (including school children), and will likely be an unattractive option to many users.¹⁶² They would fail to comply with Core Strategy policy MT1 and the advice in MfS, as well as Hereford Council's "Highways Design Guide for New Development" (CD1.52).

Effect of the Proposal on the AONB

11.36 The Site lies outside of the boundary, but is clearly in the setting, of the AONB. Development can have an effect on an AONB, even if it falls outside of it and within its setting. Traffic increases are capable of resulting in harm to an AONB.¹⁶³

11.37 There is a significant risk of rat-running through the AONB due to congestion at the Station Junction arising from the proposal. Those queuing along the Bromyard Road approach to the junction travelling to the north/north-east (for example Cradley/Colwall/Malvern/Worcester), would be very likely to use local lanes through the AONB to avoid both the Station Junction itself, and the town centre.¹⁶⁴

11.38 As a result of the Development, in 2031 and even with the Station Junction operating below capacity there would be a 21% increase in traffic on Beggars Ash during the AM peak compared to the position without the Development. This equates to about 2 cars every minute. On the other hand, in 2031 with the Development and congestion at the junction, and 20% of Malvern/Worcester traffic diverting, during the AM peak there would be a 49% increase compared to 2031 without the Development; with a 40% diversion this would be a 76% increase compared to the position in 2031 without the Development –approximately 3 cars every minute.¹⁶⁵

11.39 The harm arising would include a reduction in the level of tranquillity, adverse effects on the quality of peoples' recreational experiences, a potential reduction in recreational use of the minor road network by cyclists and walkers due to more/faster-moving traffic, damage to/erosion and loss of characteristic and valuable landscape elements and features along narrow lanes, such as hedgebanks, grassed verges and overhanging trees (a direct effect of the Development).¹⁶⁶

11.40 As a result of this harm the proposal would be contrary to Core Strategy Policies SS6 and LD1, as well as the AONB Management Plan Policy TRP6 and paragraph 172 of the Framework.¹⁶⁷

¹⁶² LTC Closing Submissions paragraph 80

¹⁶³ LTC Closing Submissions paragraph 82

¹⁶⁴ LTC Closing Submissions paragraph 86

¹⁶⁵ LTC Closing Submissions paragraph 88

¹⁶⁶ LTC Closing Submissions paragraph 90

¹⁶⁷ LTC Closing Submissions paragraph 91 & 92

Effect on Ledbury Conservation Area

- 11.41 The additional traffic arising from the Development would cause less than substantial harm to the character and appearance of the Conservation Area.
- 11.42 The appellant failed to properly assess the impact of the development on the Conservation Area in the application. It was not identified as being relevant in the Cultural Heritage section of the ES. The assessment of the transport impact of the Development in the ES failed to note or treat the Conservation Area as a heritage asset, and therefore failed to recognise that it was more sensitive to traffic increases.¹⁶⁸
- 11.43 The special architectural and historic interest of the Conservation Area is reflected in the quality of the buildings within the centre of Ledbury. In the centre of the Conservation Area its character and appearance is influenced by its vibrancy as an active, bustling market town.
- 11.44 The town is now approaching a tipping point where the levels of traffic are beginning to detract from the character and appearance of the Conservation Area. The Development will result in at least a 25% increase in two-way trips along The Homend (which runs through the centre of the Conservation Area). Increased traffic will distract from the ability to appreciate the quality of the buildings within the centre of Ledbury, and affect the ability to park adjacent to the existing shops – affecting their viability which does so much to contribute to the character of the area.¹⁶⁹
- 11.45 This would cause harm to the character and appearance of the Conservation Area contrary to Policy LD4 of the Core Strategy. This harm to the Conservation Area must be given considerable weight by virtue of paragraph 193 of the Framework.

Planning Benefits

- 11.46 LTC recognises that the Development brings forward benefits. In particular, in light of the Council's housing supply, it attaches considerable weight to the market and affordable housing provided. That said, 665 dwellings have been granted permission since 31 March 2011 – amounting to 83% of Ledbury's minimum target set out in Policy LB1 of the Core Strategy. As for affordable housing, the recent permissions granted for the sites to the South of the town (Barratts and Bovis) amounts to 176 dwellings. Together with other commitments, over 259 affordable homes are planned to be delivered: 80% of the target of 320 for the entire plan period; with the sites referred to above having the potential to deliver the remainder.¹⁷⁰
- 11.47 The employment land provided should be given moderate weight. Whilst beneficial, as Cllr Harvey explained, the town already has numerous vacant office and industrial units as well as brownfield and greenfield employment sites on the market and available for prospective developers/employers.¹⁷¹

¹⁶⁸ LTC Closing Submissions paragraph 96

¹⁶⁹ LTC Closing Submissions paragraph 98

¹⁷⁰ LTC Closing Submissions paragraph 101

¹⁷¹ LTC Closing Submissions paragraph 103

11.48 The economic benefits would be created by any development of a similar nature, and the green infrastructure proposed is primarily to link the development with the existing riverside walk and to provide amenity space for those living and working in the development.¹⁷² Although these are benefits of the Development the weight given to them by the appellant is overstated.

Development Plan and Overall Planning Balance

11.49 Amongst other matters Policy LB2 requires development proposals for the site to provide a satisfactory access. The vehicular access arrangements are not satisfactory, and the proposal therefore fails to comply with Policy LB2. The proposed development also fails to comply with Policies SS4 and MT1.¹⁷³

11.50 In addition, it fails to comply with Policies SS6 and LD1 of the Core Strategy (in relation to the AONB) and Policies SS6 and LD4 of the Core Strategy (in relation to the Conservation Area).¹⁷⁴

11.51 Even if the Development only breaches Policy LB2, it is contrary to the development plan taken as a whole. This policy is, as Mr. Wakefield accepted, the most important policy in the development plan so far as the site is concerned.

11.52 The case of *Corbett* is of little help to the appellant here. It does not set out any new law¹⁷⁵. It simply re-iterates that the decision on compliance with the plan as a whole is a matter of judgment (and therefore only challengeable if irrational), and that the breach of "one or a few minor policies" does not necessarily mean that an application does not comply with the plan.¹⁷⁶

11.53 There is no reason not to give these development plan policies full weight. Although these policies are deemed to be out of date by virtue of footnote 7 of the Framework, that does not mean that the weight to be attached to them is automatically reduced.¹⁷⁷ These policies should be given full weight. This approach would accord with that of Inspector Raygen in the Dymock Road Appeal.¹⁷⁸ As it was put in *Crane* at paragraph 71: "...the weight to be given to such policies is not dictated by government policy in the Framework. Nor is it, or could it be, fixed in the case law of the Planning Court."¹⁷⁹

11.54 Paragraph 11(d) of the Framework is engaged because the Council does not have a 5YHLS. Paragraph 11(d)(i) ("Limb 1") must be applied first. If that paragraph is satisfied, i.e. the relevant policies in the Framework provide a clear reason for refusing the development, there is no need to move to paragraph 11(d)(ii) ("Limb 2"), as the presumption is disengaged.¹⁸⁰

¹⁷² LTC Closing Submissions paragraph 104

¹⁷³ LTC Closing Submissions paragraph 109 & 110

¹⁷⁴ LTC Closing Submissions paragraph 111

¹⁷⁵ *Corbett v Cornwall Council* [2020] EWCA Civil 508

¹⁷⁶ See quotes extracted at para. 28 from *Milne*.

¹⁷⁷ LTC Closing Submissions paragraph 116

¹⁷⁸ CD 11.32 Paragraphs 94-6

¹⁷⁹ *Crane v pCLG Admin* 23 Feb 2015

¹⁸⁰ LTC Closing Submissions paragraph 120

- 11.55 The appellant's position on Limb 1 appears to run counter to the most recent High Court authority on how the paragraph should be approached in Monkhill¹⁸¹. Limb 1 applies where the "*application of policies [in the Framework]*" relating to areas of particular importance provides a clear reason for refusal. There is nothing in the language of Limb 1 or footnote 6 that requires the Site itself to be in an area of particular importance.¹⁸²
- 11.56 It is not just the harm to the AONB that engages Limb 1; it is also the harm to the Conservation Area. The decision-maker is entitled to treat the combined application of those policies as providing a "clear reason" for refusing planning permission, even if the separate application of each policy would not provide freestanding reasons for refusal.¹⁸³ The application of paragraph 172 and 196, both individually and certainly in combination provide a clear reason for refusal here. The public benefits of the proposal (identified earlier) do not outweigh the great weight that must be given to both the harm caused to the AONB, and the harm caused to the Conservation Area.
- 11.57 When considering Limb 2 – or the tilted balance – it is clear that the adverse effects of the development do significantly and demonstrably outweigh the benefits. This is due to the impact on the highway network, the harm to the AONB, the harm to the Conservation Area and non-compliance with a number of development plan policies.¹⁸⁴
- 11.58 These harms do "*significantly and demonstrably*" outweigh the benefits of the Development. As such, there is nothing in paragraph 11 of the Framework to displace the statutory presumption that development which is contrary to the development plan should be refused. There are no other material considerations that indicate that the decision should be taken other than in accordance with the development plan.¹⁸⁵
- 11.59 The vehicular access arrangements are "unsatisfactory" even if they represent the only viable arrangement for this site. However, LTC's position is that a second access would resolve or reduce all of the harm caused by the Development to an acceptable level whilst still delivering the same public benefits. The fact that an alternative access arrangement capable of delivering all the benefits without the associated harm must reduce the weight that is attached to the benefits.¹⁸⁶
- 11.60 It is clear that, at present, Network Rail are not willing to give their agreement to a second access under the Viaduct. However, that is not decisive in that:
- The position Network Rail is taking now is inconsistent with the position it has taken historically;
 - No explanation has been put forward either by the appellant or by Network Rail to explain this change in position; and

¹⁸¹ Monkhill Ltd v SoS MHCLG [2019] EWHC 1993 (Admin)

¹⁸² LTC Closing Submissions paragraph 121

¹⁸³ LTC Closing Submissions paragraph 125

¹⁸⁴ LTC Closing Submissions paragraph 127

¹⁸⁵ LTC Closing Submissions paragraph 128

¹⁸⁶ LTC Closing Submissions paragraph 131

- It is unclear what information Network Rail has been provided with to enable it to reach its conclusion.¹⁸⁷

Conclusion

11.61 LTC did not take the decision to appear at this inquiry lightly, given the resource implications. However, the evidence it has presented has confirmed what local residents suspected: that the access arrangements proposed in this application are deeply unsatisfactory.¹⁸⁸

- LTC held a local poll on 15 August 2019 asking if the proposed access arrangements were satisfactory. The result of the poll was 1022 against and 49 in favour. There were over 400 objections to the application. This depth of local feeling has now been supported by the expert evidence called by LTC at this inquiry.¹⁸⁹

12. The Case for Other Parties Appearing at the Inquiry

*Councillor David Williams, Vice-Chair, Wellington Heath Parish Council*¹⁹⁰

12.1 The creation of what is effectively a large village surrounding a cul-de-sac will inevitably cause a substantial increase in traffic flows on the local road network much of which is ill-prepared to absorb this new demand.

12.2 The peak hour traffic at the Station Junction would very probably back up in the direction of Wellington Heath. The most effective mitigation for this traffic would be a second access beneath the Viaduct. In the absence of this there is a risk of long-term damage to the communities of Wellington Heath and Ledbury.

12.3 Wellington Heath village lies within the Malvern Hills AONB. Wellington Heath Neighbourhood Development Plan was adopted in October 2018. It aims to safeguard the rural environment and enhance the community. The impacts of the proposal would be likely to discourage potential newcomers from choosing to live within the Parish. Local development must not have a significant detrimental effect on the environment or lead to large increases in traffic along the rural roads of the Parish.

12.4 Wellington Heath has an influx of seasonal workers employed by a large fruit farm enterprise. These workers walk into Ledbury at all times of day. The risk to these and other pedestrians from the additional traffic is apparent. It has long been an aspiration for Wellington Heath and Ledbury Councils to create a safe walking and cycling route.

*Mr Colin Davis, Local Resident*¹⁹¹

12.5 Over 400 representations were lodged in relation to Policy LB2 of the Core Strategy during the consultation in respect of the Main Modifications. The

¹⁸⁷ LTC Closing Submissions paragraph 132

¹⁸⁸ LTC Closing Submissions paragraph 133

¹⁸⁹ LTC Closing Submissions paragraph 134

¹⁹⁰ ID7 Councillor William's submission

¹⁹¹ CD17.7 & ID8 Mr Davis Submissions

majority opposed a single access from Bromyard Road with a preference expressed for a second access under the Viaduct.

- 12.6 The B4214 Bromyard Road is a dangerous stretch of road. The winding nature of the road, with field defined edges, makes it particularly hazardous for pedestrians, cyclists and horse riders. A single point of access taken off a dangerous rural B road is inappropriate for such a large development.
- 12.7 The PJA Transport Evidence does not indicate the areas of Bromyard Road where flash flooding is a frequent occurrence.
- 12.8 Herefordshire Design Guide requires two access points for a development of this size. Concerns in relation to the Station Junction include impacts on vehicles emerging from the bus depot, and Bradford's Builders Merchants.
- 12.9 The appellant's junction proposals may prevent the station improvement development which would allow direct access to the northern platform. The Toucan crossing may give rise to additional queuing traffic.
- 12.10 Although there is a risk to the Viaduct, there are many similar situations elsewhere, including at Worcester. If it is acceptable for the canal to pass under the Viaduct, it should be possible for a road to do so as well. The appellant has not made a proper engineering evaluation and design for a second access under the Viaduct. It would seem that this has been disregarded for financial considerations rather than seeking the best traffic management solution for the community and future occupants of the site.
- 12.11 There are also concerns that the proposal would lead to rat-running particularly along Beggars Ash, Burtons Lane and Ledbury Road towards Wellington Heath.

Mr Stefanovic, Wye Fruit Ltd

- 12.12 There are a considerable number of traffic movements associated with Wye Fruit Farms during July and August when the traffic triples. There is also an issue with rat running in the surrounding lanes.

Councillor L'Anson, Trustee of the Malvern Hills Trust

- 12.13 The principle of housing on the appeal site is supported. The land behind the Full Pitcher Public House will deliver 93 affordable homes.¹⁹²
- 12.14 Bloor Homes cannot guarantee that there will be no flooding in the future on the appeal site or on the road. There are a number of poly-tunnels in the area and it is not possible to predict when floods will occur. A single access at Bromyard Road would not work if Bromyard Road flooded.
- 12.15 There are a number of companies based on Bromyard Road and there is the potential for traffic from the Proposed Development to have an adverse effect on these businesses. ABE Limited have 50 vehicles and there is a danger of tankers pulling out of the site into the traffic.

¹⁹² See ID9 for location. Permission was for 100 dwellings

12.16 Core Strategy Policy SS4 requires new development to limit its impact on the road network and the proposal fails to do so.

Anthony Evans, Local Resident¹⁹³

12.17 The Network Rail letter was only submitted shortly before the committee meeting. There would be an increase in traffic fumes and pollution due to slow moving traffic and the increase in HGVs. The proposal would give rise to a new traffic hazard and may frustrate the intention to provide disabled access to the eastbound platform at the station.

12.18 There is no pavement in this part of Bromyard Road due to the bend in the road. The proposed crossings would introduce delay for motorists.

Caroline Green, Chair of Ledbury Traders

12.19 The need for more housing and affordable housing is accepted, however Ledbury is a heritage site and is attractive to tourists. The proposal would increase traffic and would have an adverse effect.

12.20 There could be an increase in rat-running due to the delays at the Station Junction and that could adversely impact on businesses.

Mr Hogan, Scout Master¹⁹⁴

12.21 The Scout HQ is located on the eastern side of The Homend, to the south of the junction with The Langland. It is used on Wednesdays, Thursdays and Fridays, as well as other irregular times. It's expected that the use of the Scout HQ will increase due to the number of additional homes being built within Ledbury and the associated growth in population. At present there are pinch points around pick up and drop off times due to parents waiting or parking on both sides of the road, including on double yellow lines. The proposal will significantly increase traffic movements around the Bromyard Road junction and this will make young people less safe in walking or cycling to the Scout HQ. A second access under the Viaduct would mitigate this problem.

Susannah Perkins, Representing Ledbury Cycle Forum¹⁹⁵

12.22 The route under the Viaduct is welcomed but there will be a need to widen the access to Ballards Close. Cycle routes should be easy to use and try to avoid places where it's necessary to dismount. It will not be possible to widen the Bromyard Road junction so there needs to be a route to the Station and into the town.

12.23 A second access from the roundabout would take traffic away from the town centre. This would be in line with Government policy regarding air quality and support the vitality of the town centre. The scheme provides public open space, but this is not needed, nor does it link to other rights of way other than the Town Trail.

¹⁹³ CD10.53 & CD17.9

¹⁹⁴ CD10.104 & ID13

¹⁹⁵ CD10.24

Anthony Fussey, Interested Party¹⁹⁶

- 12.24 Outlined the planning history of the bypass, based on personal knowledge from being employed at Malvern Hills District Council in 1988. At that time the intention was to construct a road from the Leadon Way Roundabout, passing under the Viaduct and joining Bromyard Road. The reason given for this was the Station Junction was inadequate for the levels of traffic at that time. The appeal site was originally promoted on the basis of access through the Viaduct. It was intended that each carriage way would go through a separate arch.
- 12.25 There are times of day where the traffic is heavy at the bridge junction and people try to avoid using the junction, particularly towards the end of the business day.
- 12.26 Large articulated lorries struggle to turn left from Hereford Road into Bromyard Road, especially when there is oncoming traffic under the railway bridge. Some of these lorries travel around the corner to The Homend and reverse into The Langland and then turn left to proceed under the railway bridge.

Leenamari Aantaa-Collier, Wye Valley NHS Trust ¹⁹⁷

- 12.27 The Trust made written submissions in relation to its request for a financial contribution towards Hereford Hospital and General Medical services in Ledbury. These are set out in the Council's Statement of Compliance with CIL Regulations.¹⁹⁸
- 12.28 At the inquiry it was explained that the need for the funding was due to the lag between the need for services to be available once residents started to occupy the development and the timing of funding from the CCG.

Bob Hargreaves, Herefordshire & Gloucestershire Canal Trust¹⁹⁹

- 12.29 The Council are obliged to preserve the canal route under Policy E4 of their Core Strategy 2011-2031 and are seeking a contribution of £1 million to facilitate this. The preliminary canal design carried out for Bloor Homes indicated the need for 4 locks, 2 north of the Viaduct and 2 to the south. Current estimates for lock construction estimate a cost of between £250k and £300k per lock.
- 12.30 An alternative approach could be that Bloor Homes carry out the bulk excavation of the canal and include it in their earthworks strategy for the site and ensure that the open spaces are delivered as phases of their development are completed. This would avoid concerns regarding the timing of the works and be much more efficient using contractors already on the site and reducing costs.
- 12.31 During discussions with Bloor Homes the Canal Trust have been keen to develop a sustainable approach to the surface water run-off from the development. To this end the canal could provide the development with 1800

¹⁹⁶ 1CD10.109

¹⁹⁷ CS17.1

¹⁹⁸ ID 29

¹⁹⁹ ID34

m3 of storage using the canals freeboard. This arrangement would keep the canal topped up and avoid the need for dedicated attenuation areas within the site and their associated maintenance cost.

- 12.32 As presently drafted the whole approach is very short-term, with a maximum ten-year horizon for completion of all local canal works from the commencement of development. If the completion of the bulk excavation by Bloor Homes (out of the canal contribution) took place the concerns that the works would not be completed and so damage the image of the site would be completely overcome. It should be borne in mind that the Canal Trust is a volunteer organisation which operates with a longer timescale than a commercial business and the expectations for the completion of work on the canal should be couched in that context.
- 12.33 The canal corridor runs within the redline boundary but also extends to the North and South of this. The Canal Trust will need to raise money and considers that there should be a contribution towards the maintenance of the canal since the residents would benefit from it. The link to the south of the site and the Viaduct will need to be designed.

13. Written Representations

Written Representations in Response to the Inquiry

- 13.1 A total of 16 representations were received from parties who did not appear at or were not represented at the inquiry. In addition representations were made by the Rt Honourable Bill Wiggins MP and the Malvern Hills AONB Unit.
- 13.2 *Rt Honourable Bill Wiggins* drew attention to his constituents concerns in relation to the proposal, including traffic issues.
- 13.3 *AONB Unit* The higher numbers of vehicles using the quiet roads of the AONB will have a detrimental effect on the area. Even small-scale changes can have an eroding effect on the features and special qualities that characterise the area and that people value so highly. Tranquillity is listed in the Malvern Hills AONB Management Plan as a special quality of the area.
- 13.4 Modelling and mapping work for the AONB suggests that the area in the south west of the AONB, adjacent to the town of Ledbury and along the Bromyard Road is already classed, at best, as having only moderate tranquillity. This is likely to be a result of the area's association with the urban edge, including its man-made structures such as lights and roads. Further development in this area is likely to compound this effect and runs the risk of further reducing tranquillity. A growth in car traffic is one of the main threats to the tranquillity of the Malvern Hills AONB.
- 13.5 *Other Parties* raised the following issues:
- There is no requirement for additional housing in Ledbury. Any housing should be accompanied by significant investment in infrastructure;
 - Traffic issues in relation to the absence of a second access under the Viaduct;

- An architect should be appointed to avoid a mass of characterless housing;
- The proposal should include communal facilities such as green spaces and water;
- There is a need for affordable housing in Ledbury;
- Rainwater run-off onto Bromyard Road causes localised flooding;
- The proposal will give rise to rat-running of local lanes towards Wellington Heath;
- There will be an increase in carbon footprint due to the location of the access;
- The proposed Toucan crossing facilities will impact adversely on motorists;
- The lack of a second access under the Viaduct is contrary to Core Strategy Policies SS4, LB2, and MT1;
- The canal will not follow the original alignment and will become a static ditch;
- The provision of disabled access to the station will increase the burden on motorists using the Station Junction;
- The proposal would significantly increase the size of the population within Ledbury;
- There needs to be good pedestrian links from the appeal site to the primary school;
- A condition requiring the implementation of the footway and cycle way links to the Town Trail and the works the highway works to the junction should be imposed;
- The increase in traffic will be a danger to vulnerable road users such as walkers, horse-riders and cyclists;
- There is a conflict with the Council's highway design guidelines; and
- In a poll of local people the majority were against the proposal.

*Written Representations at the time of the application*²⁰⁰

13.6 Written representations raised the following additional issues:

- Environmental damage;
- Affordability of affordable homes;
- Not an appropriate site as it will not integrate with the town;
- Question money spent on canal;
- Site should deliver a new primary school;

²⁰⁰ CD 9.0

- Incompatibility of housing and employment uses;
- Will preclude the extension of the Ledbury bypass to North and East;
- Canal money should be spent on health, education;
- A lake would be better than a canal;
- Should be more soft landscaping for wildlife;
- Houses closest to River Leadon in danger of flooding;
- Loss of arable land and impact on food production;
- Loss of and development on 'best and most versatile' agricultural land;
- Employment land is not needed;
- Impact on the Grade II listed Viaduct;
- Impact on Wellington Heath;
- Ledbury has an under provision of sports facilities and the proposal does not help deliver or address this;

13.7 The following points were made in support of the proposal:

- Proposal would deliver affordable homes;
- Local people who can't get a home will be able to;
- Redevelopment of the canal;
- No objection to the number of houses;
- Proposal will create positive impacts on local economy and services;
- The site is the agreed housing strategy for Ledbury;
- The proposal for cycle-way / footpath from the south of the site, under the old canal bridge connecting directly to the Town Trail is a good option.

13.8 Further comments made include:

- adjoining businesses should be allowed to expand into the employment land;
- Allowing expansion of existing adjoining businesses will reduce traffic through the estate;

14. Conditions

14.1 A list of suggested conditions was included in a separate SoCG agreed between the Council and the appellant.²⁰¹

14.2 The conditions are divided into site wide conditions, housing development related conditions, employment related conditions and canal related

²⁰¹ CD4.7

conditions. As a consequence, there is duplication of some conditions that appear in both the housing related conditions, the employment related conditions and the canal related conditions. The parties submitted a further SoCG dated 10 July 2020 in relation to conditions.²⁰² This explained that the structure of conditions allows the applicant to dispose of or develop the site in a flexible manner, allows any party to easily and accessibly follow what has or needs to be discharged, and creates flexibility and assists the delivery and development of the site in the face of uncertain times with Covid-19 and Brexit.

- 14.3 These conditions were the subject of a roundtable session towards the end of the inquiry. The conditions were discussed on a without prejudice basis and were considered in light of the tests set out at paragraph 55 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. Following the close of the inquiry a post-inquiry Statement of Common Ground – Conditions document was submitted.²⁰³ This supplements the previous SoCG.
- 14.4 The parties are in agreement that the format of conditions meets the tests within the framework and Planning Practice Guidance. I have considered the comments made by the parties. Although I am not convinced that the conditions as set out would necessarily allow the site to be developed in a more flexible manner, they would provide clarity for potential developers, and the requirements imposed by them are not more onerous than would be the case should the conditions be combined. I am therefore satisfied that the approach to the conditions, namely providing separate conditions for the housing development, the employment development and the canal development is acceptable.
- 14.5 Section 100ZA(5) of the T&CP Act 1990 requires the written agreement of the applicant to any pre-commencement conditions. The submitted SoCG confirms the Applicant's written agreement to the terms of the pre-commencement conditions.
- 14.6 I have amended some conditions for clarity, precision, elimination of duplication and having taken account of advice in the Planning Practice Guidance. I have also re-ordered the conditions and the numbers in brackets now refer to the conditions as re-ordered in the schedule to this decision. Unless otherwise stated the conditions referred to below were agreed and are not controversial. A list of recommended conditions is attached at Appendix D.

Regulatory Conditions

- 14.7 Conditions (1) to (3) set out requirements in relation to the commencement of development. Condition (1) concerns the time period for the submission of reserved matters. The parties have agreed a period of 8 years for the submission the final reserved matter. This is considered to be acceptable in the light of the scale and nature of the development proposed. Condition (4) requires the development to be carried out in accordance with the site location plan and the site access roundabout plan.

²⁰² CD4.7a

²⁰³ ID39

Site Wide Pre-Commencement Conditions

- 14.8 Condition (5) relates to the phasing of the development and is necessary to ensure the satisfactory delivery of the development, the timely provision of infrastructure and that there is no adverse effect on the operation of the highway network. Condition (6) requires details of the housing mix of individual phases to be submitted and is necessary to ensure that the development meets the present and future housing needs of Ledbury. Condition (7) requires a Noise Masterplan and Acoustic Design Statement, whilst Condition (13) relates to details of noise attenuation measures for each phase of residential development. These conditions are necessary in order to provide acceptable living conditions for future occupants, due to the proximity of the railway line. Condition (8) requires contamination encountered during the course of development to be remedied and is necessary in the interest of human health. Condition (9) requires a working method for ecological works, as well as a habitat protection and enhancement scheme and is necessary to ensure that the proposed development provides a biodiversity net gain. Condition (10) requires a programme of archaeological survey and recording, whilst Condition (11) requires access for an archaeologist. These are both necessary in order to avoid irreparable harm to any identified heritage asset and allow the potential archaeological interest of the site to be investigated and recorded. Condition (12) requires an Arboricultural Method Statement and is necessary in order to safeguard any trees and hedgerows on the appeal site.

Site Wide Pre-Occupation Conditions

- 14.9 Condition (14) requires details of the control of the Emergency Access at Bromyard Road and is necessary in the interests of highway safety. Condition (15) seeks details of the landscape implementation and management of non-private garden areas and is necessary in order to enhance the character and appearance of the location and safeguard the setting of the Malvern Hills AONB.
- 14.10 Condition (16) requires details of finished floor levels and is necessary to ensure that the site is safe from flooding. Condition (17) precludes the locations of any new buildings and other structures within 8 metres of the River Leadon for the same reason, as well as to and to maintain access to the watercourse for maintenance. Condition (18) prohibits work during the bird nesting season to safeguard birds on the site. Condition (19) limits the number of dwellings on the appeal site and is necessary conforms with the environmental assessment within the ES and Policy LB2.

Housing Related Conditions

- 14.11 Condition (20) requires a Construction, Materials and Site Waste Management Plan to safeguard the environment. Condition (21) requires the submission of a Construction Management Plan, including measures requested by Network Rail in the interests of highway and railway safety. Condition (22) requires the submission of a drainage and flood risk strategy, including SuDs management and maintenance details and is necessary to ensure that the drainage proposals are satisfactory and to reduce or avoid exacerbating the flood risk.

14.12 Condition (23) requires the submission of a Travel Plan, whilst Condition (25) requires the provision of cycle accommodation. Both conditions are necessary in order to promote sustainable travel. Condition (24) requires any remediation scheme in relation to contamination (Condition (8)) to be implemented before the dwellings are occupied and is necessary in the interests of human health. Condition (26) requires the provision of turning and parking areas and is necessary in the interests of highway safety. Condition (27) deals with external lighting and is necessary in order to safeguard amenity and to maintain the Dark Skies within the AONB. Condition (28) requires the implementation of water efficiency measures in accordance with Core Strategy Policies SD3 and SD4. Condition (29) requires facilities to charge plug-in and other ultra-low emission vehicles in the interests of climate change.

Employment Related Conditions

14.13 Condition (30) requires a Construction, Materials and Site Waste Management Plan to safeguard the environment. Condition (31) requires the submission of a Construction Management Plan, including measures requested by Network Rail in the interests of highway and railway safety. Condition (32) requires the submission of a drainage and flood risk strategy, including SUDs management and maintenance details and is necessary to ensure that the drainage proposals are satisfactory and to reduce or avoid exacerbating the flood risk. Condition (33) requires details of external lighting and is necessary in order to safeguard amenity and in to maintain the Dark Skies within the AONB. Condition (34) requires the submission of a Travel Plan whilst Condition (35) requires the provision of covered cycle storage facilities. Both conditions are necessary in order to promote sustainable travel. Condition (36) requires facilities to charge plug-in and other ultra-low emission vehicles in the interests of climate change. Condition (37) requires the provision of turning and parking areas and is necessary in the interests of highway safety.

14.14 Condition (38) restricts the use of the Employment land to Use Class B1. The reasoning given for this is to safeguard amenity, deliver the economic objectives of the development plan and for reasons of highway safety.

Canal Related Conditions

14.15 Condition (39) requires a Construction, Materials and Site Waste Management Plan to safeguard the environment. Condition (40) require the submission of a Construction Management Plan, including measures requested by Network Rail in the interests of highway and railway safety. Condition (41) requires the submission of a surface water drainage and flood risk strategy and is necessary to ensure that the drainage proposals are satisfactory and to reduce or avoid exacerbating the flood risk. Condition (42) requires details of external lighting and is necessary in order to safeguard amenity and in to maintain the Dark Skies within the AONB.

14.16 Suggested Condition (14) requires details of the phasing in respect of the Station Junction works and other off-site works to be submitted for approval and subject to a Road Safety Audit. The phasing of the off-site highway works is required by Condition (5) and the scheme has already been subject to a Stage 1 Road Safety Road Audit. I therefore consider Condition (14) to be unnecessary. Suggested Condition (29) requires arrangements to facilitate

broadband. This is not considered to be necessary since it is a service that would inevitably be provided in any event. Suggested Condition (39) duplicates suggested Condition (38) and therefore is not necessary.

- 14.17 Ms Tinkler on behalf of LTC suggested an additional condition requiring an Environment Colour Assessment to ensure that the colour palettes to be used in the development do not harm the setting of the AONB.²⁰⁴ I consider the suggested condition to be unnecessary, since the proposed development would be largely separated from the AONB by the existing employment uses and the reserved matters would provide sufficient control in relation to this matter.

15. Planning Obligations

- 15.1 The appellant submitted a signed Agreement dated 2 October 2020 under S106 of the Act. It includes obligations to make financial contributions towards education, sustainable transport, waste and recycling, sports facilities, medical care, and hospital care. It also covenants to provide 40% of the dwellings as affordable housing. In addition, it covenants to provide a phase wide open space scheme, including management and maintenance.
- 15.2 The Council submitted a 'Statement of Compliance with CIL Regulations' setting out its justification for each of the contributions sought in accordance with the policy tests set out in the Framework and the statutory test in regulations 122 of the Community Infrastructure Levy (CIL) Regulations 2010.²⁰⁵ The Council and the appellant also submitted a joint note that summarises the S106 Agreement.²⁰⁶
- 15.3 The obligation requires the developer to provide 0.57 hectares of open space and 1.15 hectares of children's play area including 0.35 hectares of formal play space. Core Strategy Policies OS1 and OS2 require all new residential development to make provision for open space in accordance with all applicable set standards. The provision of open space is necessary in order to ensure a satisfactory standard of amenity for future resident. I am satisfied that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.
- 15.4 The education contribution provides for a contribution towards the enhancement of the primary and secondary education within Ledbury. The contribution is necessary to mitigate the impact of the proposed development on education facilities within Ledbury and also to comply with Core Strategy policy LB2 which requires the development of the site to provide a 210 place primary school within the development, or the expansion of the existing primary school.
- 15.5 The contributions would be used to enhance and improve facilities at Ledbury Primary School and John Masefield Secondary School. I am satisfied that the education contribution is directly related to the development proposed and is fairly and reasonably calculated in terms of scale and kind.

²⁰⁴ ID35

²⁰⁵ ID29

²⁰⁶ ID40

- 15.6 The sustainable transport contribution would be used to make improvements to the Town Trail. These include widening the footbridge over Orchard Lane, improvements to Bye Street where it is crossed by the Town Trail, refurbishment of the Town Trail between Orchard Lane and Bye Street, as well as south of Bye Street. The proposed measures are necessary in order to maximise the use of sustainable modes of transport and minimise reliance on the use of the car, particularly for local trips. The measures are also necessary to comply with Core Strategy Policies LB2 and MT1.
- 15.7 I am satisfied that the sustainable transport contribution is directly related to the development proposed and is fairly and reasonably calculated in terms of scale and kind.
- 15.8 The recycling contribution provides for a contribution per dwelling for the provision of waste recycling facilities. It would provide for 1 x waste and 1 x recycling bin per dwelling to allow their waste to be collected. I am satisfied that the waste and recycling contribution is directly related to the development proposed and is fairly and reasonably calculated in terms of scale and kind.
- 15.9 Core Strategy Policy OS1 and Policy OS2, require all new residential development to make provision for open space. Where on-site provision is not appropriate off-site contributions may be sought. The obligation requires the developer to provide on-site green infrastructure comprising 0.57 hectares of Public Open Space and 1.15 hectares of children's play area of which 0.35 hectares should be formal play provision.
- 15.10 The Council state that Ledbury requires an additional 3-4.35 hectares of land for football to meet both the current and future demands. Ledbury Swifts FC (the junior club) currently use facilities at Ledbury Rugby Club, which is already under pressure from the rugby club who need additional land to expand. Ledbury Town FC lease their ground from Property Solutions who wish to redevelop the site. The contribution sought would be used to provide a joint facility to meet all of their requirements and would enable the development of a football sports hub for Ledbury in accordance with both Sport England and the Football Foundation recommendations to deliver sustainable facilities for the future.
- 15.11 The principle of providing sports facilities accords with Policies OS1 and OS2. The contribution towards football facilities is primarily directed towards resolving existing issues with football, and to a lesser extent rugby provision for existing teams within Ledbury. Evidence from the Council indicates that new housing would contribute approximately 65% of the total investment required to bring forward the project.
- 15.12 At the inquiry the Council advised that residents of the appeal site would be expected to use the facilities, but, it would only serve a relatively small minority of residents. However, the contribution is calculated using the total outdoor sports investment costs required for Ledbury, which in turn is based on the Outdoor Sports Investment Plan 2019. Therefore, when considered as part of the overall strategy to improve sports provision across Ledbury as a whole, the contribution could be viewed as necessary to make the development acceptable in planning terms and fairly and reasonably calculated in terms of scale and kind. On balance, I consider that this contribution meets the statutory tests.

- 15.13 The Wye Valley NHS Trust seeks a contribution toward Hereford Hospital. It submitted details of the additional interventions required based on the projected population of the proposed development. The contribution sought would assist with providing capacity for the Trust to maintain service delivery during the first year of occupation of each unit of the accommodation on/in the development. This is necessary since the Trust will not receive the full funding required to meet the healthcare demand due to the baseline rules on emergency funding and there is no mechanism for the Trust to recover these costs retrospectively in subsequent years.
- 15.14 I am satisfied that the contribution is necessary to make the development acceptable in planning terms. In the absence of the contribution there would be inadequate healthcare services available to support the population increase arising from the proposed development and it would also adversely impact on the delivery of healthcare not only for the development but for others in the Trust's area. The contribution is directly related to the development and is fair and reasonable in terms of scale and kind.
- 15.15 The Trust also seeks a surgery contribution. It would provide for the provision of additional accommodation for primary medical care facilities in Ledbury. The existing GP practices do not have capacity for the additional growth resulting from the proposal. The practices would need to accommodate an additional 0.87 whole time equivalent GPs together with an increase in nursing and nonclinical staff to provide services to these patients which is not possible within their current premises.
- 15.16 I am satisfied that the contribution sought is necessary to make the development acceptable and is directly related to the development and is fair and reasonable in scale.
- 15.17 The Agreement provides for 40% of the dwellings to be provided as affordable housing in accordance with Policy H1 and Policy LB2 of the Core Strategy. It is directly related to the development and is fair and reasonable in scale.
- 15.18 The appeal site is required under policy LB2 to bring forward land and contributions to facilitate a restored canal to be delivered in partnership with the Herefordshire and Gloucestershire Canal Trust.
- 15.19 In addition to the canal corridor, the Canal Trust seeks contributions towards the construction of the canal.²⁰⁷ At the inquiry it stated that the preliminary canal design indicated the need for 4 locks, 2 north of the Viaduct and 2 to the south. Current estimates for lock construction estimate a cost of between £250k and £300k per lock and a financial contribution of £1,000,000 is sought.
- 15.20 In addition to the land and contributions, the Trust suggests that the construction of the new roundabout off the Bromyard Road (providing vehicular access into the site) and slight realignment of the Bromyard Road should provide a bridge at the point where the canal to be created effectively meets the Bromyard Road. This would be to enable the future extension of the canal to be able to continue northwards without having to carry out works to the Bromyard Road in the future.

²⁰⁷ ID34

- 15.21 The Trust also requested that the residential development, including the affordable housing units, should contribute to the future maintenance of the canal.
- 15.22 The submitted planning obligation undertakes to provide an 18 metre wide corridor of land through the site, as shown on the illustrative masterplan and a financial contribution of £1,000,000 to facilitate the canal restoration. In the event that the land is not used as canal it will be managed and maintained in perpetuity as a public open space. The Obligation also provides for an alternative reduced canal contribution of £280,000 should that be considered to be CIL compliant and it is found that £1,000,000 is not.
- 15.23 The appellant submitted a legal opinion from Martin Kingston QC in relation to the canal contribution.²⁰⁸ The appellant explains that the contribution of £280,000 was based on the cost of undertaking the works to excavate a linear depression along an agreed section of the canal corridor within the site and removing the soil/spoil off site.
- 15.24 Policy LB2 requires the proposal to facilitate the delivery of the canal. Given the considerable cost of delivering the canal, the reduced contribution of £280,000 is unlikely to be sufficient to achieve that aim. The Canal Contribution of £1,000,000 would be unlikely to meet the entire cost but would be likely to allow a sufficient proportion of the canal and associated infrastructure, such as locks and tow paths within the site to be constructed. Having regard to Policy LB2, I consider this to be necessary to make the development acceptable, directly related to the development and fair and reasonably related in scale and kind to the proposed development. I therefore do not consider that the reduced contribution would facilitate the delivery of the canal as required by Policy LB2.
- 15.25 Turning to the Canal Trust's request that the residential development, including the affordable housing units, should contribute to the future maintenance of the canal. I consider that this would place a disproportionate burden on future residents of the site, and that whilst they would derive some benefit from the canal, they would essentially be maintaining an asset that would be enjoyed by the town as a whole. I therefore do not consider it necessary for the Agreement to make such provision.
- 15.26 If the Secretary of State is minded granting planning permission for the development I am satisfied that the financial contributions requested are necessary to render the proposal acceptable in planning terms and they are directly related to the development. Having regard to the costings set out in the justification statement I am also satisfied that they are fairly and reasonably related in scale and kind to the development proposed.
- 15.27 Overall, I conclude that the obligations in the s106 agreement meet the tests in CIL regulation 122 and the same policy tests in the Framework and I would recommend that they be taken into account in assessing the application.

²⁰⁸ Mr Wakefield POE Appendix 3

16. Conclusions

In this section the numbers in [] refer to preceding paragraphs.

Main Considerations

- 16.1 Based on the evidence submitted to the inquiry I consider the main considerations to be:
- Whether the proposed vehicular access arrangements are satisfactory;
 - Whether the proposed mitigation measures at the Station Junction would adequately mitigate the effect of the proposal on the local highway network;
 - Whether the proposal makes adequate provision for pedestrians and cyclists;
 - The effect of the proposal on the AONB, in particular its tranquillity;
 - The effect of the proposal on Ledbury Town Centre Conservation Area and other heritage assets;
 - If the proposed access arrangements are found to be unsatisfactory, whether in principle a second access under the Viaduct would overcome any concerns and whether there would be any other implications arising from a second access;
 - The housing land supply position; and
 - The planning benefits of the proposal and the overall planning balance.
- 16.2 LTC and a considerable number interested parties maintain that the proposed development should be served by a second access under the Viaduct. In their view this would resolve capacity issues at the Station Junction and potential adverse effects on the AONB and Conservation Area associated with the predicted increase in traffic. They consider that it would also provide improved facilities for pedestrians and cyclists.
- 16.3 Whilst noting these views, the proposed development does not include provision for a second access under the Viaduct and I am required to consider this appeal on the basis of the submitted scheme. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 this appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore it is necessary to assess whether the proposed vehicular access is satisfactory, and not whether there may be a preference for an alternative access under the Viaduct. I have considered the appeal accordingly. Although the implications of an access under the Viaduct are discussed later in this report the proposed development does not include any mechanism to allow the delivery of an access under the Viaduct.
- ### **Whether the proposed vehicular access arrangements are satisfactory**
- 16.4 The relevant development plan policies are Policy LB2, Policy SS4 and Policy MT1 of the Core Strategy.
- 16.5 Policy LB2 sets out the requirements for the development of the appeal site as a sustainable mixed-use urban extension to Ledbury. These include the provision of satisfactory vehicular access arrangements. The accompanying

text states: *'the speed limit along the Bromyard Road and improvements to the Hereford Road/Bromyard Road junction are also likely to be required to improve the design, safety and efficiency of this road and junction.'*

- 16.6 On behalf of LTC, Councillor Harvey outlined the evolution of policy LB2, including the consultation in relation to the adopted Core Strategy.²⁰⁹ She advised that the published draft Core Strategy required the primary vehicular access to be from Hereford Road with the option of a secondary access from the Bromyard Road to the north.
- 16.7 Following the Examination in Public the Plan was adopted with the present wording to accord with the Local Plan Inspector's Main Modifications which sought to ensure that policies were not too restrictive/prescriptive or to provide clarity/flexibility. It is not the purpose of this appeal to revisit the Local Plan examination.
- 16.8 LTC suggest that the proposal fails to comply with Policy SS4 since it fails to minimise the impacts of the proposed development on the transport network.²¹⁰ Policy MT1 sets out requirements in relation to movement and transportation. Mr Bradshaw on behalf of LTC suggested that the proposal would fail to comply with Policy MT1 in that the adverse traffic impacts of the proposed development on the highway network cannot be adequately mitigated.²¹¹ He suggests that the provision of a second access under the Viaduct would address these concerns.
- 16.9 There is agreement between the appellant and the Council, including the Highway Authority that the vehicular access arrangements as proposed are satisfactory. The agreed matters are set out at table 2.1 of the Highways and Transport SoCG.²¹² The SoCG also records that LTC's previous consultants, TPA, concluded that *"the proposals are likely to be acceptable in highways terms, subject to confirmation of a number of matters."* [7.4,7.7]
- 16.10 The appellant submits that improvements to the Station Junction would be required even in the absence of the proposed development due to capacity issues and pedestrian safety issues.²¹³ However, LTC question whether the junction is currently operating above capacity. Evidence with the Transport Assessment²¹⁴ and within the Ledbury Transport Strategy²¹⁵ indicate that there are existing problems at this junction, including in terms of capacity, particularly during the evening peak period. LTC contend that even with the proposed mitigation the Station Junction would operate above capacity resulting in severe congestion and delays. [11.4, 11.7].
- 16.11 Therefore an assessment as to whether the proposed vehicular access from Bromyard Road is satisfactory would depend on whether the capacity issues at the junction could be adequately mitigated and whether there would be any

²⁰⁹ Cllr Harvey POE Paragraph 6.94-6.9.10

²¹⁰ Cllr Harvey POE paragraph 7.2.3

²¹¹ Mr Bradshaw POE paragraphs 2.12.15, 4.1.14

²¹² CD4.2

²¹³ Mr Millington POE paragraphs 9.2.2

²¹⁴ CD 8.26 Paragraph 3.4.3-3.4.5

²¹⁵ CD 1.19 paragraph 2.5.1

highway safety concerns arising from the proposed development, including the mitigation at the Station Junction. The parties do not raise any safety concerns with the Bromyard Road access.

The proposed mitigation measures at the Bromyard Road/Hereford Road/Homend

- 16.12 A number of issues in relation to Highways matters were agreed between the Council and LTC either shortly before or during the inquiry. [8.6]
- 16.13 Station Junction is located approximately 950m south of the proposed vehicular access on Bromyard Road. It is anticipated that 93% and 88% of residential and employment trips respectively would travel through this junction.²¹⁶
- 16.14 Bromyard Road (B4214) is a single carriageway road that borders the north-eastern edge of the appeal site and runs from a priority junction with Hereford Road/ The Homend towards the A4103. To the south of the appeal site it provides access to the Bromyard Road Trading Estate. Many of the employment units within the estate are served by way of individual accesses from Bromyard Road. Hereford Road (A438) follows an east to west alignment for approximately 600m between the Station Junction and a roundabout with Leadon Way. The Homend is a single carriageway road running between the Bromyard Road junction and Ledbury Town Centre. It is the principal road through the commercial centre of the town. The existing network gives priority to Hereford Road and The Homend, with give way markings providing access from Bromyard Road.
- 16.15 Vehicular and pedestrian access to Ledbury Station is via a ramped access located on the south-west corner of the junction with access onto The Homend.
- 16.16 The parties agree that the junction will need mitigation in order to accommodate traffic from the proposed development. The proposals for the junction provide for the signalisation of the Station Junction, the provision of a right-turn lane from Bromyard Road to increase junction capacity and a pedestrian crossing at the junction to link with the Station.[7.5]
- 16.17 The position of LTC is that the proposed mitigation will not resolve the capacity issues, the modelling on which the junction capacity assessment is based is flawed, and other issues and safety concerns. I shall firstly consider the disputed modelling inputs, followed by other concerns raised by LTC, and then consider whether the impact on the junction is severe. [11.10,11.28-11.30]

Traffic modelling

- 16.18 The Transport Assessment modelled the junction and found that for both the AM and PM peak hours, the junction would operate with reserve capacity, with delays on all approaches below one minute.²¹⁷ Both parties used the LinSig computer software to model the operation and capacity of the station junction,

²¹⁶ CD 8.26 Amended Transport Assessment paragraph 3.4.1

²¹⁷ CD 8.46 Amended Transport Assessment paragraph 9.46

however a number of inputs to the model remain in dispute. ID24 sets out the various scenarios in relation to modelling inputs. [9.61,11.30]

Baseline Traffic Data

- 16.19 The parties differ as to whether the Transport Assessment should use the data from the October 2018 survey or that from September 2017. There is a difference of 8.4% in the PM peak. LTC 's case on this was initially predicated on the assumption that the 2018 survey had been conducted during half-term. Evidence from the appellant showed that Herefordshire was not on half-term during this period. [9.39,9.40]
- 16.20 It is acknowledged that some children from Ledbury may go to school in Gloucestershire and therefore may have been on half-term at the time of the 2018 survey, but the numbers are unlikely to be so significant as to skew the results of the survey. The 2018 data is more complete since it includes pedestrian counts and queuing. The significant difference between the surveys relates to the PM peak and comes within the typical levels of variation when compared with the 2017 survey. I acknowledge that since the data relates to a single day it is not possible to ascertain how representative it is. Nevertheless, in the absence of any compelling evidence to the contrary, the 2018 date is preferred since it is more complete and more up-to date. [11.12,9.39]

Residential Trip Rates

- 16.21 The main difference between the parties in relation to the residential vehicle trip rate is the AM peak. The trip rates for the employment use are agreed and the PM trip rates are not significantly different. LTC contend that using the trip data from a single site is contrary to the advice in the TRICS Good Practice Guide 2016.²¹⁸ [11.13]
- 16.22 Whilst the appellant used the TRICS data for a single site for modelling purposes, it was taken from a sample of five sites and represented the highest PM peak hour rate and the second highest rate for the AM peak. The appellant's rebuttal evidence considered a further 12 sites and these all indicated lower PM peak flows than used in the modelling, with only one AM peak figure marginally higher than that used.[9.19]
- 16.23 LTC also criticised the characteristics of the site used. Whilst it has a greater number of bus services than the appeal site, the appeal site is situated close to the station with multiple bus routes and within comfortable walking distance of a range of shops and services. On the basis of the submitted evidence I am not persuaded that the site used fails to reflect the characteristics of the appeal site. [11.13]
- 16.24 The trip rate used has not been criticised by the Highway Authority, or LTC's previous consultants Given that the issue in terms of junction capacity is most severe during the PM peak, and the difference during this period is slight, I am satisfied that the residential vehicle trip rate used is appropriate.[8.17].

²¹⁸ CD1.55 paragraph 11.2

Model Design Parameters

- 16.25 *Non-Blocking Storage* The issue relates to the extent to which vehicles waiting to turn right from Bromyard Road onto Hereford Road would block large vehicles travelling southbound from Bromyard Road to The Homend. The mitigation proposals include the provision of a right turn lane in this location. The appellant contends the right turn lane would accommodate 2 Passenger Car Units (PCUs) whilst still allowing a bus to pass, whereas LTC are of the view that it would only accommodate 1.21 PCUs. [9.25,11.16]
- 16.26 I agree with LTC that travelling to the end of the right turn lane as shown on drawing number 03468-A-010-P6 ("Drawing 010") may limit driver visibility and could also be a difficult manoeuvre for some drivers. The appellant submitted an additional plan to show that it would be unnecessary to travel to the end of the right turn lane.²¹⁹ With the vehicles in this position the distance between the bus and waiting vehicles would be tight, although in practice it would be achievable. As was found in the Trentham Appeal, bus drivers are professionals and used to manoeuvring vehicles in tight spaces.²²⁰[11.19]
- 16.27 Notwithstanding this, the appellant's evidence indicates that the number of large vehicles travelling south from Bromyard Road is low, and this is not disputed by LTC.²²¹ In practice, I consider that whilst it may be possible for a bus to pass a queuing vehicle, it is probable that the drivers of some such vehicles would wait, as at present. Whilst this could add to the delay at this junction due to the low number of large vehicles travelling southwards, any delay would be unlikely to have a significant effect on overall delay at this junction.
- 16.28 The appellant's approach to modelling at this junction was confirmed to be correct by JTC, the company responsible for the LinSig model. The design of this lane and the junction overall would be subject to detailed consideration as part of the Section 278 process. On the basis of the evidence submitted to the inquiry I am satisfied that the right turn lane could accommodate 2 PCUs as put forward by the appellant.[9.25]
- 16.29 *Intergreen Times* The intergreen is the period between the end of the green signal giving right of way for one phase, and the beginning of the green signal giving right of way for the next conflicting phase. The Traffic Signs Manual states that it can be thought of as the 'safety margin' to allow traffic to clear the junction safely.²²² It can be extended by external factors, but never shortened. It comprises the 3 second amber for the phase losing the right of way; the 2 second starting red/amber for the phase that gains the right of way; plus a period where both phases are on red, based on local factors. The minimum duration is generally 5 seconds, made up of 3 seconds stopping amber after one green and 2 seconds starting red/amber before the next.

²¹⁹ Drawing A-030-P1 Viewpoint 3

²²⁰ ID12

²²¹ CD7.2 Nigel Millington's Rebuttal to Mr Lee Table 3-1

²²² CD1.33

- 16.30 Intergreens may be extended by adding an additional all-red period if required, to take account of local factors. LTC suggest that the intergreen time may need to be extended by 3 seconds to allow right-turning traffic from Bromyard Road to Hereford Road to clear the junction before the next stage begins. [11.20]
- 16.31 LTC submit that the intergreen time modelled would be insufficient to allow vehicles queuing to turn right from Bromyard Road to clear and if this period is extended post-development there could be a severe impact on the highway network. [11.21]
- 16.32 The intergreen period was calculated by JCT who designed the LinSig software. JTC has reviewed the effect of this change on the operation of the junction and state that it would not be an issue. They also suggest that there would be more efficient means of addressing this issue without causing unnecessary additional delay. I appreciate that JTC did not attend the inquiry, but the correspondence between them and the appellant was submitted, and I have no reason to doubt that this was anything other than their professional opinion. Given that JTC designed the software, I afford this view considerable weight and find the intergreen period used by the appellant to be acceptable. [9.31,9.32]
- 16.33 *Pedestrian Crossing Demand* The proposal includes provision for a pedestrian crossing at Bromyard Road near the junction with Hereford Road/The Homend. The number of pedestrians crossing at this point will increase as a consequence of the proposed development. LTC submit that based on the average group size per crossing during the peak hours the crossing is likely to be called every cycle and this would impact on capacity. [11.22,11.23].
- 16.34 The capacity model assumes that during the peak periods the crossing would be called every other cycle. I consider it to be unrealistic to assume that the group size will remain the same such that the number of crossing events will increase to the extent suggested by LTC. It is probable that pedestrians would be grouped and include family and other groups walking to and from school (perhaps more than one family at a time), and those arriving and departing by particular trains. [9.37]
- 16.35 I agree with the appellant that the increase in the number of times the crossing is called is unlikely to be on a pro-rata basis with the increase in the number of pedestrians. On this basis I consider that the appellant's assumption that the crossing will be called every other cycle to be reasonable for the purposes of the model, although in practice it may be called on consecutive cycles followed by periods when it is not called. This would reflect the existing pedestrian patterns. [9.37]

Cycle time

- 16.36 The Transport Assessment considered a cycle time of 110 seconds. LTC consider that a cycle time longer than 90 seconds would be unsafe for pedestrians. It is accepted that the greater the delay the more likely it is that a pedestrian will risk crossing without a green man signal. The research relied upon by LTC suggesting that 30 seconds is the maximum pedestrians are

prepared to wait at a signalised crossing dates from the 1960's.²²³ There has been a significant change in the level and nature of traffic since then, and therefore I do not consider this to be a reliable guide. In practice I consider that pedestrians will have regard to a number of factors including the volume and speed of traffic, visibility and the complexity of the junction. At a crossing away from a junction with good visibility in both directions, pedestrians may be less inclined to wait for the green man, however, at a more complex junction at busy periods they would be more likely to wait. [9.28, 11.24,11.25]

16.37 No substantive evidence was submitted to indicate that a cycle time greater than 90 seconds was intrinsically unacceptable. The Department of Transport's Traffic Signs Manual does not support this position but advises that cycle times greater than 120 seconds are not recommended. The appellant submitted details of several junctions where the cycle time was 120 seconds or greater.²²⁴ [9.28]

16.38 The 110 second cycle time was assessed as part of the Transport Assessment and found to be acceptable. Moreover, the use of a MOVA controller could manage the demand and change the cycle time accordingly[9.29].

Whether the modelled outputs represent a severe impact

16.39 The appellant submits that there are existing capacity issues at the Station junction and that an improvement scheme would be required in any event. This is disputed by LTC. Considerable anecdotal evidence alleging congestion at this junction during peak hours was submitted by interested parties. However, the issue for this appeal is whether the proposed development, together with the mitigation measures at Station Junction, would have a severe impact on the operation and capacity of the junction. [9.59,11.7,11.9]

16.40 The traffic models show the Practical Reserve Capacity for the junction, however the results vary according to the inputs. Tables 1-8 of ID24 model the various scenarios for the Station Junction. For the reasons given above, I prefer the PJA trip rates and the 2018 data. I also consider that calling the crossing 1 in 2 times to be realistic.

16.41 On this basis even if Mr Lee's model parameters are used, during the AM peak the junction would have a PRC of between 3.8 and -2.7. The negative value only occurs on the 90 second cycle. In the PM peak the PRC varies from 5.1 to -5.4. On the 110 second cycle as proposed by the appellant there would be a PRC of 2.4. The 2017 traffic counts show a similar pattern.

16.42 When the PJA model parameters, which for the reasons given above are preferred, the PRC is between 9.6 and 6.5 in the morning peak. During the PM peak it would vary from 12.1 to 3.7 and would be 9.1 with a 110 second cycle as proposed by the appellant. Therefore the junction would be operating within capacity. It is possible that the use of MOVA would assist with optimising traffic movements and thereby improve capacity further.

16.43 From this modelling it is apparent that the most significant constraint on junction capacity are the cycle time and the frequency at which the pedestrian

²²³ CD1.96

²²⁴ ID2 & ID27

crossing is called. The 110 second cycle time has been found to be acceptable by the Highway Authority and is used at many other junctions. It is also notable that even if the crossing is called 2 in 3 times, with a 110 second cycle that it would operate in capacity on the basis of the PJA model parameters.

Other matters in relation to Station Junction

- 16.44 Although LTC raised concerns regarding the turning radius for The Homend approach this has not been entered in the model. Nonetheless, the parties agreed that it would not make a significant difference. [9.36]
- 16.45 *Pedestrian Visibility* The land to the north of the proposed crossing on Bromyard Road is not under the control of the appellant or Highway Authority and LTC suggest that should visibility be obscured at some point in the future (for example, through the planting of a tree, or if consent was granted to relocate the advertising hoarding), this would impact on pedestrian visibility, and due to the impact of this on sight stopping distances it could have an impact on safety.[11.25]
- 16.46 The Road Safety Audit did not raise the lack of full inter-visibility as a concern. Whilst it noted the effect of the bridge on visibility to the north, it found that when “weighed against the existing situation and the introduction of a signalised facility this would demonstrate a betterment to the existing route to the station”. [9.57]
- 16.47 There is no evidence to indicate that it is probable that a structure would be erected in this location, and the relocation of the advertisement hoarding would need to ensure that there was no adverse effect on highway safety. In the unlikely event that visibility were to be compromised in the future, I consider that the pedestrian crossing in this location would be a significant benefit, and such a change to visibility would be likely to encourage pedestrians to wait for the signal to change. [9.58]
- 16.48 *Rat Running* LTC consider that the delays at the Station Junction are likely to displace some traffic onto rural lanes including those in the AONB, and in particular Beggars Ash. The parties agree that there are no safety issues associated with the displacement of traffic. LTC considers that the number of trips assigned to Beggars Ash within the Transport Assessment is an underestimate and is based on the assumption that the junction is operating within capacity. LTC consider that about 20-40% of the traffic predicted to travel to/from the east via the A449 could re-route through the AONB. [11.31,8.6].
- 16.49 The appellant’s position is that even if LTC is correct about junction capacity a review of the routes suggests that this would not be the case, since although the distance is shorter due to the standard of the roads the journey would take longer. I drove the route concerned and found it to be variable with areas where it was narrow and passing places needed to be relied upon. I consider that this would deter many drivers from choosing this route in preference to the A449 unless it was likely to provide significant time savings. [9.53]
- 16.50 Based on my findings above in relation to junction capacity, I consider that although there may be some increase in the number of drivers using Beggars Ash and other rural roads, the numbers would not be as substantial as

suggested by LTC. I also note that neither the Highway Authority, nor TPA, LTC's previous consultants raised any concerns in this regard.

- 16.51 A number of other highway matters were raised by LTC during the course of the inquiry. These included egress from the industrial units in Bromyard Road, buses manoeuvring into the bus depot, traffic turning right into the Station and Masefield Avenue, the on carriageway bus stops on The Homend, the access to Bradfords Building supplies. [8.42,8.43,8.44,8.45,8.46]
- 16.52 It is possible that some vehicles leaving the industrial units and turning right may encounter a queue of traffic. This is not an unusual situation within an urban area and would not appear to be significantly different from the present situation.
- 16.53 The bus depot is located on the corner of Hereford Road and The Homend, close to the junction. It only accommodates a small number of buses. Drawing 03468 A 019 P1 demonstrated the buses using the depot would be able to leave and enter in forward gear, and therefore be unlikely to adversely impact on the operation of the junction, particularly given the low overall number of buses using the depot.²²⁵
- 16.54 Drawing 10 shows a right turning lane for traffic turning into Masefield Avenue and the industrial area. This would avoid traffic turning right interrupting the traffic flow.²²⁶ Moreover, the number of traffic movements are low, and The Homend would operate within capacity. [8.44]
- 16.55 LTC contends that the bus stops on The Homend will block traffic approaching the signals. The effect of these buses on the junction will be little different from at present and given the low overall number of buses would have a negligible effect on traffic flows. [8.45]
- 16.56 Bradfords Building Supplies is situated about 180m from the junction. LTC consider that HGVs manoeuvring into and out of the site would interrupt the flow of traffic to the junction. No evidence was submitted in relation to the number of overall movements, but they are likely to be low, especially during peak hours and there is no reason to suppose that they would change as a consequence of the proposed development. Having regard to the appellant's evidence in relation to the length of queues I do not consider that the Builders Yard would have any adverse impact on the junction capacity. [8.46]
- 16.57 I find the model inputs and design parameters used by the appellant to be acceptable. In terms of capacity the most significant variants in terms of junction capacity are the number of times the junction is called and the length of the cycle. On the basis of a 110 second cycle and the crossing called 1 in 2 times the junction would operate within capacity and would not give rise to severe delays. That is not to say that there would not be any delays, but they would not be severe or give rise to significant congestion. Moreover the proposed mitigation includes a pedestrian crossing to the Station and whilst this may introduce some delay, particularly when it is called back to back, such delay would quickly dissipate, and must be balanced against the considerable

²²⁵ ID23

²²⁶ Mr Millington POE Appendix A

benefits of providing safe facilities for pedestrians. It is also apparent from the appellant's evidence and that from local residents that there are existing delays at the junction.

- 16.58 I have taken account of all of the other matters raised by LTC in relation to the junction, and do not consider that these matters would give rise to any safety concerns.
- 16.59 The proposals would assist with resolving the existing problem whereby large vehicles turning left from Hereford Road into Bromyard Road generally cross the centre line to a very considerable extent. This has implications both for delay and safety. Overall, in terms of safety, the signalisation of the junction and provision of facilities for pedestrians would be a clear benefit of the proposal.
- 16.60 I therefore conclude that the proposed mitigation measures at the Station Junction would adequately mitigate the effect of the proposal on the local highway network and the impact of the proposal on the capacity of the junction would not be severe. For this reason the findings of The Secretary of State in relation to the Bath Press and Lancaster appeals in relation to what constitutes a severe delay do not apply in this case. The proposal would therefore comply with Core Strategy Policies LB2, MT1 and SS4.
- 16.61 Amongst other matters paragraph 110 of the Framework advises that pedestrian and cycle movements, both within the scheme and with neighbouring areas should be prioritised, and as far as possible proposals should facilitate access to high quality public transport. In addition, proposals should minimise the scope for conflicts between pedestrians, cyclists and vehicles. Therefore should the Secretary of State disagree with my conclusion above, and conclude that notwithstanding the proposed mitigation measures the impacts of the additional traffic would be severe, it would be necessary to balance any delay motorists may experience at Station Junction against the benefits, including safety benefits for pedestrians and cyclists.

Provision for Pedestrian and Cyclists

- 16.62 The proposed development includes three access points for pedestrians and cyclists. [6.4]
- 16.63 It is intended that the primary route would be the link beneath the Viaduct through Ballard Close linking to the Town Trail with 70% of pedestrian demand predicted to use it. It would use the existing tunnels under the Viaduct. LTC suggest that this route would be intimidating and unattractive, and as such would not provide safe and suitable access for pedestrians and cyclists. [9.47,11.35]
- 16.64 LTC previously not only supported this route, but described it as "*essential for the connectivity of the site, creating a safe, pleasant and direct link to the Town Trail and the Town Centre, encouraging both cycling and walking.* Moreover, LTC's previous Highway Consultants only identified matters of detailed design relating to the proposed pedestrian facilities and no general concerns. [9.47]
- 16.65 Whilst some parts of this route would not be overlooked, other parts would be subject to surveillance from the existing dwellings at Ballards Close. Layout is

a reserved matter and I see no reason why the proposed dwellings could not be arranged to overlook the proposed pedestrian link. Moreover, the detailed alignment of the proposed pedestrian route, together with appropriate lighting could ensure that the route is attractive to pedestrians. The route would provide access to the Station, and together with other measures proposed, would provide a safe traffic free route for pedestrians and cyclists. Since it would be the main link to the town centre there is likely to be pedestrian traffic at most times of day. I am satisfied that it would provide a suitable and logical route from the appeal site to the Town Centre and would be used by future residents travelling to the station, schools and shops.

- 16.66 The Ballards Close route is part of an overall package of measures proposed both on and off-site. The proposal also makes provision for a crossing at the Station Junction. The appellant submitted photographs showing a lorry turning left from Hereford Road towards Bromyard Road passing close to a pedestrian waiting to cross the road.²²⁷ A similar situation arose at the time of my site visit, and I noted that the majority of large vehicles turning into Bromyard Road pass very close to the pavement. The damage to the footway in this location suggests that it is not unusual for vehicles to encroach upon the pavement. In these circumstances a controlled pedestrian crossing and the changes to the junction geometry would be a significant safety benefit of the proposal. [6.5,9.27]
- 16.67 Taken together with the provision of the two routes through the site, the improved connections with Bromyard Road Trading Estate, the proposed crossings and improvements to the Town Trail secured by way of a planning obligation, I conclude that the proposal would provide satisfactory access for pedestrians and cyclists as well as benefits for the town as a whole.
- 16.68 I conclude that the proposal would provide safe and suitable access for pedestrians and cyclists and would comply with Core Strategy policies LB2, and MT1, as well as paragraph 108 of the Framework in so far as it requires proposals to provide safe and suitable access to the site for all users.

The Effect of the Proposal on the AONB

- 16.69 Core Strategy policies SS6 and LD1, as well as the AONB Management Plan policy TRP6 and paragraph 172 of the Framework are relevant to this issue.
- 16.70 The appeal site lies outside of the boundary of the AONB, but within its setting. LTC consider that there is a significant risk of rat running through the AONB due to congestion at the Station Junction.
- 16.71 Paragraph 172 of the Framework requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty.
- 16.72 Beggars Ash runs through the AONB and meets Bromyard Road to the north of the junction. It continues into the village of Wellington Heath and then onwards to Colwall and eventually continues to Malvern. There are alternative

²²⁷ ID17

routes to Malvern both to the north and the south of the site access, the parties agree that a proportion of traffic is likely to divert through the AONB.

- 16.73 Mr Millington's Proof of Evidence includes a technical note setting out the assignment of trips to different routes.²²⁸ This assignment has been agreed with the Highway Authority and is based on the appellant's traffic modelling and parameters. On this basis the proposed development will give rise to a 20-23% increase in peak hour levels resulting in about one extra vehicle every three minutes on average. With the development the total traffic using Beggars Ash during the AM peak would equate to about 2 cars every minute. [7.6,9.53,9.74]
- 16.74 If LTC's position in respect of capacity at Station Junction is accepted and 20% of Malvern/Worcester traffic diverted during the AM peak there would be a 49% increase compared to 2031 without the Development. Whereas if 40% of traffic diverted there would be a 76% increase compared to the position in 2031 without the Development, equating to a two way traffic flow of about 3 cars every minute.[10.38]
- 16.75 For the reasons given above, I prefer the appellant's junction capacity assessment, and have no reason to doubt the trip assignment rates agreed with the Highway Authority. On this basis I find that the increase in traffic along Beggars Ash would not be significant even during the peak hours. Whilst I agree that tranquillity is an important quality of the AONB a two-way traffic increase of about 19 vehicles during the AM peak would not have an adverse impact on the tranquillity of the AONB.
- 16.76 For the same reason I do not consider that the proposed development would give rise to any significant adverse effects on the quality of peoples' recreational experiences, or damage to/erosion and loss of characteristic and valuable landscape elements and features along narrow lanes, such as hedge-banks, grassed verges and overhanging trees within the AONB.
- 16.77 Councillor David Williams drew attention to the seasonal workers employed at Wellington Heath and their walking route into Ledbury and the aspiration to provide a safe walking route between Ledbury and Wellington Heath. In the light of the low number of additional vehicles that would pass through the AONB as a consequence of the proposed development I do not consider that there would be an adverse effect on the safety of these or other workers.[12.4]
- 16.78 I therefore conclude that the proposal would not be contrary to Core Strategy policies SS6 and LD1, as well as the AONB Management Plan policy TRP6 and paragraph 172 of the Framework.

The Effect of the Proposal on Ledbury Town Conservation Area and other Heritage Assets

- 16.79 Policies LD4, SS6 and paragraph 193 of the Framework are relevant.

²²⁸ Mr Millington's POE Appendix B

Conservation Area

- 16.80 The issue between the parties is whether the additional traffic travelling along The Homend and the High Street would give rise to harm to the character and appearance of the Conservation Area.
- 16.81 LTC state that the appellant failed to properly assess the impact of the development on the Conservation Area in the application. It was not identified as being relevant in the Cultural Heritage section of the Environmental Statement ("ES") arising from the proposal.[11.42]
- 16.82 The Cultural Heritage Chapter of the ES was informed by the desk-based Heritage Assessment.²²⁹ This identified heritage assets within the Conservation Area and concluded that there would be no harm to these assets or their significance. There was no assessment of the indirect impacts associated with the increase in traffic on the Conservation Area itself. The need to consider such impacts within the ES is a matter of judgement and the Council did not question the appellant's decision not to include it. The appeal site lies about 1km to the north of the Conservation Area and I do not consider the failure to include this matter renders the Cultural Heritage chapter of the ES fundamentally flawed.
- 16.83 Historic England were consulted on the proposed development and raised no objection to the application on Heritage Grounds.²³⁰ It is also notable that LTC did not raise this matter, or indeed the effect of the proposal on the Conservation Area at the time of the application.
- 16.84 On behalf of LTC Mr Howells criticised the assessment within the Transport chapter of the ES. However, the Transport Chapter is not concerned with assessing heritage issues. I therefore afford little weight to this matter. [9.82,11.42]
- 16.85 Notwithstanding the above, the effect of additional traffic from the proposed development on the character and appearance of the Conservation Area is a material consideration. The fact that it was not considered at the time of the application or as part of the ES does not detract from the statutory duty in Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 16.86 Nonetheless as part of the Heritage Desk-Based Assessment the appellant did assess heritage assets within 1 km of the appeal site.²³¹ This assessment included many of the listed buildings with the Conservation Area and it was concluded that there would be no non-physical harm has been identified to the significance of any other heritage assets within the wider Site environs, as a result of changes to setting.
- 16.87 There is no published Conservation Area Appraisal or Management Plan for the Conservation Area. The parties are in general agreement that the special architectural and historic interest of the Conservation Area is reflected in the

²²⁹ CD8.47

²³⁰ CD9.34

²³¹ CD8.47

quality of the buildings within the centre of Ledbury. The open, verdant areas around the Church and within the Park contrast and provide relief to the urban form while maintaining a character relevant to their historic interest. The character and appearance of the Conservation Area is also clearly influenced by its vibrancy as an active, bustling market town. [9.79,11.43]

- 16.88 The appellant suggests that the current two-way hourly flow of vehicles along The Homend through the Conservation Area of c.650 vehicles per hour during the peak hour in the morning and the evening, and to the forecast of an additional c.160 trips per hour post-development. These figures were not disputed by LTC, but it nonetheless considers that Ledbury is at a tipping point in terms of traffic. This is a view shared by the Ledbury Traders Association. At the time of my visits which included the evening peak hour the town was bustling, but not congested. I acknowledge that the additional traffic may at times make it more difficult to appreciate the quality of some of the buildings than at present, but this would have little impact for pedestrians or drivers, and there would be no direct harm to the buildings or their significance. [9.80,11.44,12.19]
- 16.89 It was also suggested that the proposed development would make it more difficult to park adjacent to the shops and thereby affect their viability. At the time of my visits, which included the late/afternoon evening and the daytime there were a considerable number of on-street parking places available within The Homend. Moreover, there are several car parks just a short walking distance from the High Street, none of which appeared to be full at the time of my visits. It may be that the number of visitors to the town centre were lower than in the past, but on the basis of the evidence submitted to the inquiry I am not persuaded that the proposal would increase traffic levels to the extent that there would be an adverse impact on the viability of businesses.[11.44]
- 16.90 Overall I conclude that the proposal would preserve the character and appearance of the Conservation Area and would comply with Policies LD4, SS6 and paragraph 193 of the Framework.

Viaduct

- 16.91 The Viaduct is a grade II listed structure constructed in 1859-60. It draws significance primarily from the evidential and historical value embodied within its fabric as an example of mid 19th-Century infrastructure. The Viaduct is a prominent and visually imposing example of 19th-Century industrial architecture and the aesthetic appeal – including the early Victorian brickwork and impressive arcade – and the scale of the structure both make a major positive contribution to its significance, as does its status locally. The Viaduct also derives some significance from the associations with notable local architects and brickworks. Ledbury Viaduct is an active railway Viaduct, and the railway line itself forms part of the setting of this asset. There is no element of ‘formal design’ to the landscape through which the Viaduct passes and the siting of the Viaduct was for purely functional purposes and, as such, this wider setting makes a neutral contribution towards the understanding of the significance of the Viaduct.
- 16.92 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act (1990) states that ‘In considering whether to grant planning permission for development which affects a Listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have ‘special

regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses’.

16.93 Design measures incorporated into the proposed development, include view corridors, and a green buffer. These measures would ensure that the viaduct remains a key and conspicuous feature within the landscape. The proposed development would not harm the significance of the Viaduct either physically or as a result of an alteration to its setting. I therefore conclude that there would be no harm to the Viaduct or its setting arising from the proposed development. Moreover, the proposed development would provide increased access to the Viaduct and this, together with the view corridors, could be considered to be a heritage benefit.

Other Heritage Assets

16.94 There are a number of other designated heritage assets that lie in proximity to the Appeal Site. These were assessed in the ES and the Heritage desk-based assessment.²³² There would be no direct harm to these assets or harm to their significance as a result of changes to the setting of any of these assets.

Second Access under the Viaduct

16.95 It is the position of LTC and a number of other parties that any harm arising from the proposed development could be significantly reduced were a second access under the Viaduct from the adjoining Hereford Road/Leadon Way roundabout provided. The current proposal does not include provision for such an access, nor could it be secured by way of a condition or an amendment to the application.

16.96 I have concluded above that the proposed development would not have a severe effect on the local highway network and would also make satisfactory provision for pedestrians and cyclists. However should the Secretary of State reach a different conclusion on these matters, he may wish to give consideration to the implications of a second access under the Viaduct and the extent to which it would be likely to overcome some of the concerns raised by LTC and other parties.

16.97 The Transport Chapter of the ES considered four access options:

- All development traffic would access the site from the north via a new roundabout onto Bromyard Road (the appeal scheme);
- All development traffic would access the site from the south via the existing A438 Hereford Road/New Mills/Way/Leadon Way Roundabout;
- Access would be taken from the north via a new roundabout onto Bromyard Road and from the south via the existing A438 Hereford Road/New Mills/Way/Leadon Way Roundabout. This option would not provide a link through the development from the southern area to the northern area; and
- Access would be taken from the north via a new roundabout onto Bromyard Road and from the south via the A438 Hereford Road/New

²³² ES section 6 & CD8.47

Mills/Way/Leadon Way Roundabout. A link road would be provided through the development from the A438 Hereford Road to Bromyard Road.

The ES concluded that “*none of the alternative options considered would offer a significant betterment in terms of traffic related environmental effects*” [9.68].

Network Rail

16.98 Network Rail own the Viaduct and the railway line which crosses along the top of it and will not permit vehicular access under the Viaduct. This was confirmed in a letter dated 9 December 2019.²³³ Mr Bradshaw, on behalf of LTC pursued this matter further with Network Rail prior to the commencement of the inquiry, but their position was unchanged. [9.4,11.60]

16.99 LTC accept that at the present time Network Rail will not permit an access under the Viaduct, but do not consider this to be decisive. Network Rail’s decision is based on operational and safety reasons. The railway line is used by services to Birmingham, Hereford and London Paddington amongst other destinations. In the light of the importance of this stretch of railway to these services, and the safety concerns expressed by Network Rail, the available evidence does not suggest that Network Rail’s position is likely to change.

Junction capacity

16.100 The appellant accepts that a second access under the Viaduct would reduce the traffic flow through the junction. LTC suggest that based on Tables 5-4 and 5-5 of the Transport Assessment 65.9% of the residential traffic and 65.5% of the employment traffic would use the second access and not travel through the Station Junction.²³⁴[9.69]

16.101 This equates to 362 fewer trips using Station Junction during the AM peak and 316 fewer trips in the PM peak.²³⁵ This has been modelled by Mr Lee, the results show a PRC of +12.3% in the AM peak and +6.7% in the PM peak based on LTC’s parameters at the Station Junction.²³⁶ This compares to a PRC of -2.2 using a 110s cycle with the crossing called 1 in 2 times and using LTC’s model parameters, including the 2017 trip rates.

16.102 It would seem that a through route would be necessary if both the residential and the employment traffic were to travel under the Viaduct to the extent suggested by Mr Lee. All of this traffic would not only pass under the Viaduct but would also pass close to the rear boundary of the residential properties in Saxon Close. A through route may also encourage other drivers to divert through the proposed development to the detriment of the living conditions of future residents. Should measures be put in place to prevent through traffic then the impact on the capacity of Station Junction would not be as great as suggested by Mr Lee.

Pedestrian Routes

²³³ CD 8.37

²³⁴ CD8.26

²³⁵ Mr Bradshaw POE 2.11.5 & 2.11.6

²³⁶ Mr Lee POE Table 2.7

16.103 The introduction of traffic adjacent to the pedestrian and cycle routes would allow for greater surveillance of pedestrians and cyclists. Any benefits arising from greater surveillance must be balanced against the potential conflict with traffic on what would otherwise be a traffic free route. It is probable that most people would use the pedestrian link at the south east corner of the site since it would provide a more direct route to the Station, and Town Centre and would also be traffic free.

16.104 A vehicular access under the Viaduct may also bring traffic much closer to the linear park and the tow path that would be delivered as part of the canal restoration scheme. When the potential for greater surveillance is balanced against these considerations, I am not persuaded that it would provide any improvement over the pedestrian and cycle routes proposed as part of the appeal scheme.

AONB

16.105 LTC submit that should a second access be provided the number of vehicles diverting through the AONB would be significantly reduced due to the lower overall number of vehicles using Station Junction and the reduced delay at the junction. Whilst this may be the case, I have found the number of vehicles diverting through the AONB as a consequence of the development to be relatively low.

Conservation Area

16.106 The appellant states that a second access is likely to reduce traffic flows by about 3% along The Homend and High Street and this is not discernible, nor would it change the way in which the heritage significance is experienced. [8.83]

16.107 Mr Bradshaw submitted a Technical Note in relation to Traffic Flows.²³⁷ This sets out LTC's updated position in relation to the impact of a second access on traffic flows. Whilst the model is based on Connect Consultant's methodology and the overall number of vehicles is higher than that projected by the appellant, the difference in two way traffic is about 3% in the AM peak and close to 1.3% during the PM peak despite the overall reduction in the number of vehicles using the junction. Accordingly, the provision of a second access would provide little if any benefit to the Conservation Area.

Viaduct

16.108 The appellant submitted two access options to show how a road, together with a pedestrian/cycleway could be accommodated under the Viaduct.²³⁸ One involves both carriageways extending under a single arch whilst the other uses an archway for each carriageway, as well as one for pedestrians/cyclists.

16.109 The appellant submits that the Viaduct piers would need to be protected from the potential impact of a vehicle due to the danger to the railway line and suggests that a crash barrier (Road Restraint System - RRS) for a distance

²³⁷ ID26

²³⁸ Mr Millington's POE Appendix C

of 30m on each approach to the Viaduct would be required.²³⁹ The precise nature of any RRS would be a matter to be agreed with Network Rail and Historic England given the listed status of the Viaduct. The harm to the Viaduct or its setting from any such restraint would need to be balanced against the public benefits of such provision.

- 16.110 The approach to the Viaduct from Hereford Road is along an unmade track that runs through a wooded area. The land falls away sharply to the west in places, whilst to the east it is separated from the rear boundaries of the dwellings in Saxon Way by a narrow band of woodland. Whilst the proposed footway/cycle way could be accommodated with minimal impact on the existing woodland, the provision of a road in this location is likely to require the removal of many, if not all of the existing trees. Although some of them are not of particularly high quality, taken together they form an attractive woodland area that would be significantly diminished by the provision of a road. The loss of these trees would also have consequences for biodiversity that would need to be assessed and mitigated.
- 16.111 To ensure an overall net gain as required by the Framework paragraph 170 and mitigate this loss, a reduction in the amount of development proposed may be necessary. Notwithstanding this, on the basis of the evidence submitted to the inquiry, I am also doubtful that there would be sufficient space to accommodate the road and associated infrastructure that a second access under the Viaduct would entail.
- 16.112 LTC suggest that the access under the Viaduct would be a second access. No evidence was submitted to indicate how the proposed development traffic would be assigned to each access. The alignment of the access would have implications for the layout of the site, including the linear park, the location of the children's play area and residential amenity. It is also possible that there would be structural considerations in relation to the road itself.²⁴⁰
- 16.113 Overall the provision of a second access would reduce the number of vehicles using the Station Junction, and thereby would be likely to reduce the occasions when congestion may occur at that junction. It would deliver marginal benefits in terms of the reduction in traffic through the AONB and the Conservation Area. In the case of the latter, even on LTC's figures the benefit would be almost indiscernible.
- 16.114 The introduction of a second access is not straight-forward. Should the access provide a link through the site the implications of the second access for rat-running and residential amenity, as well as for the layout of the site and public open space must be taken into account. In addition, there may be implications for the safety of pedestrian routes, the loss of woodland and biodiversity. The effect of a second access on the structure of the Viaduct and its historic interest and setting must also be weighed in the balance.
- 16.115 It is also far from clear on the basis of the available evidence as to how the link to the south of the Viaduct would be accommodated given the manner in which the land falls away and the proximity to the rear of the dwellings in

²³⁹ CD20.3

²⁴⁰ Mr Millington's POE Appendix D

Saxon Close. Therefore even if Network Rail were agreeable to the provision of vehicular access under the Viaduct, I am not persuaded that it would be beneficial by comparison with the proposed development.

Housing Land Supply Position

16.116 The parties agree that the Council does not have a five-year supply of housing land. The Council's position, based on its 2020 Position Statement, shows that the Council has a 3.69 year supply of housing land. The appellant submits that the shortfall is even greater, and that the Council only has a 2.8 year supply of housing land. [9.94,11.54]

16.117 In the light of its overall position in relation to this appeal the Council has not submitted any additional evidence, but states that it relies on the figure within its 2020 Position Statement.

16.118 It is evident from the submitted evidence that the Council's position in relation to housing land supply continues to deteriorate. Moreover, the Council has failed to pass the Housing Delivery Test and must prepare an action plan. Given the extent of the shortfall within Herefordshire, even based on the Council's own evidence, there is substantial shortfall in the 5 year housing land supply, and this adds substantial weight in favour of the proposed development.[9.93,9.94]

Planning Benefits

16.119 The Proposal would be likely to deliver 625 dwellings. Whilst this is a large phased development, evidence from both the Council's Position Statement and the appellant suggest that it would contribute 136 dwellings to the 5 year housing land supply. In the light of the existing shortfall in the 5 year supply this would be a considerable benefit.[9.94]

16.120 The appellant attributes very significant weight to this benefit whilst LTC suggest that it should only attract considerable weight. LTC's position relies on the quantum of housing that has been permitted within Ledbury and the extent of the housing land supply within Ledbury.[11.46]

16.121 LTC distinguished between the weight to be given to the supply of housing within Herefordshire as a whole, and that in Ledbury on the basis that there were sufficient planning permissions in place within Ledbury to meet 83% of its housing requirement for the period up to 2031 and that Ledbury should not be expect to the shortfall in housing land supply for Herefordshire as a whole. Whilst I sympathise with this position, and such an approach would not accord with the spatial strategy within the development plan. Nonetheless the housing requirement, both for Hereford and for Ledbury, is a minimum, not a ceiling, and Policy LB2 specifically identifies the appeal site for housing. Some of the proposed housing on this site is included in the 5 year housing land supply and the delivery of housing on the site would accord with the development plan. I therefore do not consider that the delivery of housing on other sites within Ledbury should reduce the weight afforded to the delivery of housing on the appeal site.[11.46]

16.122 The proposal would also deliver 250 affordable dwelling. The need for affordable dwellings is set out in detail by Mr Stacey, on behalf of the

appellant. It is clear that there is a longstanding and sizeable shortfall in the provision of affordable dwellings within Herefordshire. [8.94,8.95]

16.123 LTC state that 259 affordable dwellings have been permitted in Ledbury in recent years. Notwithstanding this, only one affordable dwelling has been built in Ledbury since 2011. During my site visit I noted that the sites to the south of the town were currently under construction, and these may contribute to the supply of affordable housing, but due to the failure to deliver affordable homes over a period of many years there remains a considerable and pressing need for such housing. I therefore give substantial weight to the delivery of affordable housing.[11.46,9.98]

16.124 The proposal would also bring forward the delivery of employment land in accordance with Policy LB2 and Policy LB1. Whilst the appellant considers this to be a very considerable benefit of the proposed development, LTC are of the view that it should be given moderate weight due to the number of vacant office and industrial units elsewhere within the town, as well as brownfield and greenfield employment sites on the market. The delivery of employment land is required by Policy LB2 and would be consistent with the Ledbury Neighbourhood Plan which seeks to strengthen and grow key employment sectors by a deliverable mix of sustainable employment sites to cater for future growth. I consider the delivery of employment land to be a substantial benefit of the proposal. The proposal would also provide economic benefits through construction related employment, and additional household income within the area.

16.125 Whilst the signalised junction at Bromyard Road is necessary to mitigate the effects of the proposal on Station Junction, it would nonetheless provide benefits to the town overall in that it would assist with addressing an existing problem. It would seem that this is a long-standing problem and I consider that it is likely to get worse even in the absence of the development. Together with the provision of pedestrian crossing facilities it would be a significant benefit of the proposal. [9.30]

16.126 The provision of green infrastructure including Public Open Space, improved footpath and cycle links and biodiversity gains would be further benefits of the proposal. The safeguarding of land and the financial contribution to facilitate a restored canal would support the delivery of the restored canal in accordance with Policy E4. Due to its location close to the town centre and the pedestrian and cycle links the canal would be likely to provide an attractive amenity for the residents of Ledbury. The proposal would also provide heritage benefits of improved accessibility and appreciation of the listed Viaduct.

Other Matters

16.127 A number of other matters were raised by interested persons and these are addressed below.

Flooding

16.128 A number of parties raised concerns regarding the potential of Bromyard Road to flood. The appellant submitted a statement on Flooding and a plan showing the location of the flooding shown in the photographs submitted by

interested parties.²⁴¹ This confirmed the proposed development is outside of the high-risk fluvial floodplain. Surface water flood risk has also been accounted for in the development proposal through the proposed inclusion of a corridor along the southern boundary to contain flood flow routing in extreme storm conditions.[9.89,9.90,12.7,13.5,13.6]

- 16.129 Photographic evidence of flooding in the locality, including close to the junction, was submitted. The view of the flooded land adjacent to the Viaduct does not include the appeal site. The Flood Risk Assessment, supporting Technical Note and key Environment Agency correspondence confirm that the site is not at risk of flooding and would not increase the risk of flooding elsewhere.
- 16.130 It is suggested that there is no need for additional housing in Ledbury. This matter is addressed above in relation to the evidence from LTC.[13.5]
- 16.131 There is a suggestion that the proposed Toucan crossing facilities, and any proposed provision of disabled access to the station could impact adversely on motorists in terms of delay. The proposed development does not include provision for disabled access to the station. The proposed Toucan crossing may cause some minor delay for motorists, but the evidence demonstrates that this would not be severe, and any delay for motorists must be balanced against improvements in safety for pedestrians and cyclists.[12.5]
- 16.132 Some parties question the need for the re-instatement of the canal. The canal is a commitment in the Core Strategy and is a requirement under Policy LB2 and part of a wider commitment under Policy E4.[13.5,13.6]
- 16.133 It is suggested that due to their proximity to each other the proposed housing and employment uses are incompatible. The provision of both uses on the site is a requirement of Policy LB2 which suggests that the B1 employment use would provide a buffer Between the existing employment uses in Bromyard Road and the proposed housing.[13.6]
- 16.134 The parties agree that it is not necessary for the scheme to safeguard the route of the Ledbury bypass to the north and east. [8.5,13.6]
- 16.135 I am aware that the proposed development was subject to a large number of objections and in a poll of local people most people opposed it. However, local support or opposition to a scheme is not in itself a reason for granting or refusing planning permission. There is a statutory duty under S38(6) of the Planning and Compulsory Purchase Act 2004 to determine applications in accordance with the development plan unless material considerations indicate otherwise. In this case the appeal proposal relates to a site allocated within the Core Strategy for development of the nature proposed.[12.5]

Planning Balance

- 16.136 I have found above that the proposed development would provide satisfactory access arrangements and would comply with Core Strategy Policies LB2, MT1 and SS4, as well as the Framework. I have also concluded

²⁴¹ CD20.1& ID6

that the proposal would not harm the AONB or Ledbury Town Centre Conservation Area and therefore would comply with Core Strategy Policy LD4. The provision of the canal corridor and financial contribution would comply with Policy E4. Therefore the proposal would comply with the development plan as a whole and in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004 planning permission should be granted.

16.137 Should the Secretary of State disagree that the proposed development would fail to provide satisfactory access in accordance with Policy LB2 it will be necessary to consider whether other material considerations, including the delivery of housing and affordable housing and the other benefits outlined above justify a decision other than in accordance with the development plan.

16.138 In the event that the Secretary of State does not consider that either of the above scenarios justify granting planning permission, it will be necessary to consider the proposal in relation to paragraph 11d) of the Framework. Such consideration will need to consider whether any harm to the AONB, the Conservation Area, or other heritage assets, is such that the application policies in the Framework provide a clear reason for refusing the development proposed. The views of the parties in relation to this matter, including their views in relation to Monkhill are set out in their closing submissions. [9.91,11.55]

17. Recommendation

17.1 I recommend that the application should be approved, and planning permission granted subject to the attached Schedule of conditions and all the obligations in the Legal Agreement.

Lesley Coffey

Planning Inspector

Appendix A

APPEARANCES

Andrew Byass, of Counsel

Yvonne Coleman (Planning Obligations Manager) and Carl Braces assisted the Inquiry on behalf of the Council during the discussion on the S106 Agreement and possible conditions.

FOR THE APPELLANT:

Christopher Young QC of Counsel

He called:

Nigel Millington BSC(Hons) MRTPI MCIHT	Managing Director, PJA
Ben Pyecroft BA (Hons), DipTP, MRTPI	Emery Planning (Housing Land Supply)
Robert Sutton (MCIfA)	
Timothy Jackson BA(Hons) DipLA, CMLI	Cotswold Archaeology FPCR Environment and Design Ltd
Guy Wakefield BA (Hons) MRTPI	Ridge & Partners LLP
James Stacey BA (Hons) MRTPI	Tetlow King Planning (Affordable Housing)
Stuart Nelmes BSc(Hons), MRes, MCIWEM, CEnv	BWB Consulting Ltd
Cairo Nickolls (S106 session)	Solicitor

FOR LEDBURY TOWN COUNCIL:

Andrew Parkinson of Counsel

He called:

Nicholas Bradshaw CILT MCIHT	Director Connect Consultants
Graham Lee AVC, HNC	Amber Signal Services
Robert Sutton (MCIfA)	
Councillor Phillip Howells	Ledbury Town Council (Heritage)
Carly Tinkler BA CMLI FRSA MIALE	Ledbury Town Council (Landscape/AONB)
Councillor Harvey	Ledbury Town Council (Planning)

OTHER PARTIES APPEARING AT THE INQUIRY

Councillor David Williams
Mr Colin Davis
Mr Stefanovic

Vice-Chair, Wellington Heath Parish Council
Local Resident
Wye Fruit Ltd

Councillor L'Anson
Anthony Evans
Caroline Green
Mr Hogan
Susannah Perkins
Anthony Fussey
Leenamari Aantaa-Collier
Bob Hargreaves

Trustee of the Malvern Hills Trust
Local Resident
Chair of Ledbury Traders
Scout Master
Ledbury Cycle Forum
Interested Party
Wye Valley NHS Trust
Herefordshire & Gloucestershire Canal Trust

Appendix B**DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY**

ID1	Email from JCT- Turning Radius at Bromyard Signals
ID2	Examples of Cycles Times 110s and above
ID3	5 mile population vs Trip Rate with Trendline 12/07/2020
ID4	1 mile population vs Trip Rate with Trendline 12/07/2020
ID5	JCT Email HGV's 13/07/2020
ID6	Images of Past Flooding: Location and Direction
ID7	Cllr David Williams Representation
ID8	Colin Davis Representations
ID9	Herefordshire Council Update on Applications following request from Inspector
ID10	Email chain between Nick Bradshaw and Network Rail
ID11	Summary of Supplemental Statement of Common Ground Rev B 14/07/2020
ID12	Appeal Decision APP/M3455/W/18/3204828 Land off Meadow Lane/ Chessington Crescent, Trentham, Stoke-on-Trent
ID13	Edd Hogan Representations
ID14	Junction Pedestrian Survey - AM Peak Hour (Source Data: CD8.26 PJA TA Appendix K)
ID15	Junction Pedestrian Survey - PM Peak Hour (Source Data - CD8.26 PJA TA Appendix K)
ID16	The Design of Pedestrian Crossings Local Transport Note 2/95 (April 1995)
ID17	Photographs of Bromyard Road, Hereford Road Junction
ID18	Drawing 03468-A-037-P0 The Homend Existing and Proposed Footway Widths
ID19	Bromyard Road/ The Homend/ Hereford Road PJA Model and Graham Lee Model
ID20	Highways Case Summary- Outstanding Matters
ID21	Email re RSA
ID22	Email re RSA and copy of RSA Log v3 019-03-29
ID23	Email re RSA and associated attachments <ul style="list-style-type: none"> • Ledbury Travel Plan Rev C • RSA Issue Log v3 2019-03-29 • RSA Designer's Response • 2019-04-01 Response to HC Comments • Appendix A RSA Log Decision • 03468-A-020-P0 Signal Junction pedestrian visibility • 03468-A-016-P4 Site Access Roundabout • 03468-A-019-P1 Bus Depot Manoeuvres • 03468-A-015-P1 Highway Proposal Hereford Road • 03468-A-010-P5 Signalised Junction and Tracking

ID24	Bromyard Road/ The Homend/ Hereford Road PJA Model and Graham Lee Model <i>(note: this is an amended version of ID19 following a request for clearer labelling)</i>
ID25	Technical Note- Traffic Flows (dated 17 th July 2020) prepared by Connect Consultants- <i>sent to PINS on 23/07/2020</i>
ID26	Technical Note- Traffic Flows (dated 3 rd August 2020) prepared by Connect Consultants- <i>Sent to PINS on 03/08/2020</i>
ID27	Example Junctions Running Cycle Time over 110s (dated 15/07/2020) prepared by PJA- Sent to PINS on 15/07/2020
ID28	Five Year Housing Land Supply (2020-2025) Annual Position Statement and Appendices at 1 April 2020 (dated September 2020) prepared by Herefordshire Council
ID29	Statement of Compliance with CIL Regulations <ul style="list-style-type: none"> • Paul Cairnes Opinion • S106 Decisions
ID30	Draft S106 Agreement- SUPERSEDED BY SUBSEQUENT SUBMISSIONS
ID31	Wye Valley NHS Trust 21.09.2020 Comments
ID32	Leadon Way Delegated Report
ID33	Monkhill Ltd v Secretary of State for Housing Communities and Local Government and another [2019] EWHC 1993 (Admin)
ID34	Herefordshire & Gloucestershire Canal Trust comments on S106 Agreement 22-09-2020
ID35	Ledbury SHLAA Map
	<i>Closing Submissions</i>
ID36	Closing Submissions on behalf of Herefordshire Council
ID37	Closing Submissions on behalf of Ledbury Town Council
ID38	Closing Submissions on behalf of Bloor Homes
	<i>Documents Submitted following the Close of the Inquiry</i>
ID39	Updated list of Conditions - Statement of Common Ground
ID40	Summary Note on s106 Agreement
ID41	Signed s106 Agreement dated 2 October 2020

APPENDIX C**Core Documents**

CD1.0 Planning Documents	
CD1.1	National Planning Policy Framework (NPPF)
CD1.2	Local Plan Core Strategy – Agent
CD1.3	Local Plan Core Strategy Policies
CD1.4	Appendix 4 – Detailed Annualised Trajectory
CD1.5	Local Plan Inspectors Report
CD1.6	Appendix to Local Plan inspectors report (Main Modifications-September 2015)
CD1.7	Herefordshire Local Plan Core Strategy Proposed Main Modifications Consultation Document – March 2015
CD1.8	Herefordshire Local Plan Core Strategy Minor Modifications – October 2015
CD1.9	Herefordshire Local Plan Core Strategy Pre-Submission Publication – May 2014
CD1.10	Herefordshire Local Plan Core Strategy Draft – March 2013
CD1.11	Ledbury Neighbourhood Development Plan October 2018
CD1.12	Ledbury Parish Policies Map
CD1.13	Ledbury Town Centre Policies Map
CD1.14	Ledbury Town Policies Map October 2018
CD1.15	Herefordshire UDP Chapter 6 Employment
CD1.16	Herefordshire UDP Chapter 8 Transport
CD1.17	Malvern Hills AONB Management Plan 2019 24 v06
CD1.18	Herefordshire Council Landscape Character Assessment
CD1.19	Ledbury Transport Strategy FINAL
CD1.20	5 Year Housing Land Supply Document April 2019
CD1.21	Appendices to 5 year housing land supply document April 2019
CD1.22	Herefordshire housing delivery action plan 2019
CD1.23	Housing and Economic Land Availability Assessment PPG
CD1.24	Housing and Economic Needs Assessment PPG
CD1.25	Housing Supply and Delivery PPG
CD1.26	Housing Delivery Test Measurement Rule Book
CD1.27	Travel Plans, Transport Assessments and Statements PPG
CD1.28	Planning (Listed Buildings and Conservation Areas) Act 1990
CD1.29	Conservation Area Designation, Appraisal and Management - Historic England 2016 Advice Note
CD1.30	Policies and Guidance for the Sustainable Management of the Historic Environment - Historic England 2008
CD1.31	The Setting of Heritage Assets - Historic England 2017 Historic Environment Good Practice Advice in Planning Note 3
CD1.32	Manual for Streets 2
CD1.33	DfT Traffic Signs Manual – Volume 6 Traffic Control
CD1.34	Herefordshire Strategic Housing Land Availability Assessment (SHLAA) 2011
CD1.35	PPG Historic Environment
CD1.36	Ledbury Rapid Townscape Assessment

CD1.37	Fixing our Broken Housing Market (February 2017)
CD1.38	Interim Housing Strategy 2016-2020
CD1.39	Homelessness Review 2016-2020
CD1.40	Homelessness Prevention Strategy 2016-2020
CD1.41	Homelessness Prevention and Rough Sleeping Strategy 2020-2025
CD1.42	Herefordshire County Plan 2020-2024
CD1.43	Herefordshire Strategic Housing Market Assessment (June 2008)
CD1.44	Herefordshire Local Housing Market Assessment 2012 Update (November 2013)
CD1.45	Guidelines for Landscape and Visual Impact Assessment (3rd Edition, 2013) (GLVIA) RELEVANT EXTRACTS ONLY
CD1.46	National Character Areas 100 'Herefordshire Lowlands' and 103 'Malvern Hills' RELEVANT EXTRACTS ONLY
CD1.47	Not used
CD1.48	Urban Fringe Sensitivity Analysis: Hereford and the Market Towns (2010) RELEVANT EXTRACTS ONLY
CD1.49	Identification of Key Views to and from the Malvern Hills AONB (2009) RELEVANT EXTRACTS ONLY
CD1.50	Conservation Principles Policies and Guidance for the Sustainable Management of the Historic Environment 2008 - Historic England
CD1.51	Manual for Streets 1
CD1.52	Herefordshire Design Guide for New Developments.
CD1.53	Countryside and Rights of Way Act 2000
CD1.54	Green Infrastructure Strategy Herefordshire (February 2010)
CD1.55	TRICS Good Practice Guide 2016
CD1.56	Herefordshire Conservation Areas and Assessment- Appendix 1 (it is not clear what document this relates to)
CD1.57	An Analysis of the Historic Fabric of Late 16th and early 17th Century Buildings in Ledbury, Herefordshire
CD1.58	Ledbury Town Plan 2016
CD1.59	1967 Civic Amenities Act
CD1.60	Guidelines for providing for journeys on foot published by the Chartered Institution of Highways and Transportation 2000
CD1.61	Heritage at Risk Conservation Areas by English Heritage
CD1.62	Guidelines for the Environmental Assessment of Road Traffic, Institute of Environmental Assessment, 1993
CD1.63	Examiners Report on Ledbury Neighbourhood Plan
CD1.64	Core Strategy Examination Matter 7 Policies LB1, LB2, Representations on behalf of Ledbury Farm Partnership
CD1.65	Core Strategy Development Options Results Report January 2009
CD1.66	Free Write Analysis Schedules for Market Towns, Rural Area and General Polices (December 2010)
CD1.67	Ledbury 2011 Census Statistics
CD1.68	Herefordshire Core Strategy 2011-2031 Draft March 2013 (DUPLICATE OF CD1.10)
CD1.69	Draft Core Strategy Version July 2013- Place Shaping

CD1.70	Core Strategy 2011-2031 Pre-Submission Publication May 2014 (DUPLICATE OF CD1.9)
CD1.71	Email from Blencowe Associates re Core Strategy Pre-Submission Draft 15/09/2014
CD1.72	Core Strategy Pre-Submission Consultation Response 03/07/2014
CD1.73	Examination of Herefordshire Local Plan Core Strategy. Statement on Matter 7 prepared by RPS
CD1.74	Summary of Main Points Raised Herefordshire Local Plan September 2014
CD1.75	SoCg between Hawkins and Lane Families and Herefordshire Council in relation to policy LB1 and LB2 (February 2015)
CD1.76	Email received from the Agents for the viaduct site on 15/09/14
CD1.77	Herefordshire Local Plan Core Strategy Main Modifications September 2015 (DUPLICATE OF CD1.6)
CD1.78	Local Plan Inspectors Report (Duplicate of CD1.5)
CD1.79	Core Strategy Draft Inspectors matters and Issues December 2014
CD1.80	Duplicate of CD1.76
CD1.81	Core Strategy Proposed Main Modifications March 2015 (DUPLICATE OF CD1.7)
CD1.82	Herefordshire Council Local Transport Plan 2016-2031 Strategy
CD1.83	Declaration of Result of Poll- 15th August 2019
CD1.84	Response from Emergency Planning dated 5th June 2020
CD1.85	Herefordshire Council UDP Map- Ledbury
CD1.86	Core Strategy Pre-Submission Consultation Responses
CD1.87	Herefordshire Local Plan Core Strategy Consultation Statement (September 2014)
CD1.88	Herefordshire Local Plan Core Strategy Minor Modifications (October 2015)
CD1.89	UDP Report on Objections- Section 5 Housing
CD1.90	UDP Report on Objections- Section 6 Employment
CD1.91	UDP Report on Objections- Section 8 Transport
CD1.92	Email from Cllr Harvey to Kevin Singleton re Viaduct Site (dated 17/04/2015)
CD1.93	Email correspondence from Kevin Singleton to Cllr Harvey (dated 07/07/2015)
CD1.94	Email from Cllr Harvey to Philip Price (dated 11/10/2015)
CD1.95	The Prediction of Saturation Flows for Road Junctions controlled by Traffic Signals (Research Report 1986)
CD1.96	Factors influencing pedestrian safety: A Literature Review by A Martin (TRL limited) February 1996
CD1.97	Department for Transport Traffic Advisory Leaflet (March 2006)
CD1.98	Wellington Heath Neighbourhood Development Plan
CD1.99	Email from Cllr Harvey to Fire and Rescue Services on Access Provision (dated 8th July 2020)
CD2.0 Appellant Proof of Evidence	
CD2.1	Planning PoE prepared by Guy Wakefield
CD2.2	Summary Planning PoE prepared by Guy Wakefield

CD2.3	Highways PoE prepared by Nigel Millington
CD2.4	Summary Highways Summary PoE prepared by Nigel Millington
CD2.5	Landscape PoE prepared by Tim Jackson
CD2.6	Heritage PoE prepared by Robert Sutton
CD2.7	5YHLS PoE prepared by Ben Pycroft- SEPTEMBER 2020 UPDATE
CD2.8	5YHLS Summary prepared by Ben Pycroft- SEPTEMBER 2020 UPDATE
CD2.9	Appendices to Proof of Evidence of Ben Pycroft
CD2.10	Affordable Housing PoE prepared by James Stacey
CD3.0 Local Planning Authority Proof of Evidence	
CD3.1	5YHLS Position Statement
CD4.0 Statements of Common Ground	
	<i>Statements of Common Ground between Appellant and Herefordshire Council</i>
CD4.1	Planning SoCG
CD4.2	Highways and Transport SoCG
	<i>Statements of Common Ground between Appellant and Ledbury Town Council</i>
CD4.3	Planning SoCG
CD4.4	Heritage SoCG
CD4.5	Highways SoCG
CD4.5a	Supplemental Highways SoCG
CD4.6	Landscape and Visual Matters SoCG
	Statement of Common Ground – Planning Conditions
CD4.7	Agreed Planning Conditions SoCG
CD4.7a	Further Agreed Planning Conditions SoCG
CD5.0 Statement of Case	
CD5.1	Appellant Statement of Case
CD5.2	Local Planning Authority Statement of Case
CD5.3	Local Planning Authority Statement of Case – Conditions
CD5.4	Ledbury Town Council Statement of Case
CD6.0 S106 Agreement and Associated Documents	
CD6.1	Draft Section 106 Agreement
CD6.2	CIL Compliance Statement prepared by Herefordshire Council To be submitted by the LPA
CD7.0 Rebuttals	
CD7.1	Planning Rebuttal prepared by Guy Wakefield
CD7.2	Rebuttal to Mr Lee prepared by Nigel Millington
CD7.3	Rebuttal to Mr Bradshaw prepared by Nigel Millington
CD7.4	Affordable Housing Rebuttal prepared by James Stacey
CD8.0 Documents upon Which The Council Made its Decision	
CD8.1	Amended Application Form 26.6.18
CD8.2	Covering Letter

CD8.3	Amended Planning Support Statement 26.6.18 prepared by Hunter Page Planning
CD8.4	Amended Design and Access Statement 10.1.19
CD8.5	Change of Housing Mix 10.1.19
CD8.6	Amended Affordable Housing Statement 30.6.17
CD8.7	Statement of Community Involvement (February 2017)
CD8.8	Confirmation of S106 Contribution Canal 5.9.19
CD8.9	25634 9000 Red Line Plan Revision J – A3
CD8.10	25634 9600 Land Use Revision G – A3
CD8.11	25634 9601 Scale Revision F – A3
CD8.12	25634 9602 Density Revision F – A3
CD8.13	25634 9603 Green Infrastructure Revision E – A3
CD8.14	25634 9604 Access and Movement Revision E – A3
CD8.15	25634 9701 Illustrative Masterplan Revision L – A1
CD8.16 – CD8.25 Not used	
CD8.26	<p>Transport Assessment</p> <ul style="list-style-type: none"> • Amended Transport Assessment 8.1.19 • Amended Transport Assessment Appendices C – E 8.1.19 • Amended Transport Assessment Appendices F – G 8.1.19 • Amended Transport Assessment Appendices H – M 8.1.19 • Amended Transport Assessment Appendix A 8.1.19 • Amended Transport Assessment Appendix B 8.1.19
CD8.27	Amended Travel Plan 8.1.19
CD8.28	Amended Residential Travel Plan 26.6.18
CD8.29	Employment Framework Travel Plan
CD8.30	Road Safety Audit 3.5.19
CD8.31	Stage 1 RSA Designers Response 3.5.19
CD8.32	PJA Signal Mitigation Scheme – Full Input Data and Results
CD8.33	Walking, Cycling and Horse-Riding Assessment and Review 26.8.18
CD8.34	Highway Access Letter from Bloor Homes 22.6.18
CD8.35	Cover Letter to Further Highway Plans and Details 3.5.19
CD8.36	Updated Response to Town Council Transport Assessment 12.11.19
CD8.37	Letter from Network Rail to Bloor 09/12/2019
CD8.38	Response to AONB Office Objection 16/10/2019
CD8.39	LUE-BWB-HML-XX-DR-D-100 S2 Rev P3 Amended 4-Axle Large Refuse Vehicle Tracking Assessments
CD8.40	03468-A-018-P0 Hereford Road – The Homend – Bus Depot Manoeuvres Existing Layout
CD8.41	03468-A-019- P1 Amended Hereford Road – The Homend Bus Depot Manoeuvres Proposed Layout
CD8.42	Amended Hereford Road Highways Proposals LUE-BWB-HML-XX-DR-D-114 S2 Rev P6
CD8.43	03468-A-015-P1 Amended Highway Proposal
CD8.44	03468-A-016-P4 Amended Proposed Site Access Roundabout
CD8.45	03468-A-010-P5 Amended Signalised Junction and Vehicle Tracking
CD8.46	Archaeological Field Evaluation 27.6.17
CD8.47	Heritage Desk-Based Assessment

CD8.48	Heritage Note 26.6.18
CD8.49	Technical Note – Response to HC Comments 3.5.19
CD8.50	Amended Landscape and Visual Impact Assessment 7.6.17
CD8.51	Flood Risk Assessment
CD8.52	Flood Risk and Drainage Technical Note 26.6.18
CD8.53	Foul Water and Utilities Assessment
CD8.54	Water Framework Directive Compliance Statement
CD8.55	Air Quality Assessment
CD8.56	Noise Report
CD8.57	Air Quality and Noise Technical Note 14.6.18
CD8.58	Ecological Assessment
CD8.59	Briefing Note – Ecology Addendum June 2018
CD8.60	Amended Arboricultural Assessment 14.6.18
CD8.61	Earthworks Technical Note 14.6.18
CD8.62	Physical Survey Report
CD8.63	PJA Response to HC Comments V5 18/06/2019
CD8.64	BWB Residential Travel Plan (February 2017)
CD8.65	BWB Residential Travel Plan (May 2017)
CD8.66	BWB Residential Travel Plan (June 2018)
CD8.67	Transport Assessment prepared by BWB (dated 18/04/2017)
CD8.68	Email from Roland Close to Councillors regarding holding application in abe
CD8.69	Letter from Bloor Homes re Access under viaduct dated 22/06/2018
CD8.70	Email from Roland Close to Jeff Troake re amended highways information (
CD8.71	Email from Jeff Troake to Mike Edwards re Highways Information (dated 26
CD8.72	Letter from Bloor Homes following deferral of application (dated 25/11/201
CD8.73	BWB Amended Transport Assessment (17/07/2018)
CD9.0	Consultee Comments to the Original Application
CD9.1	AONB Unit Comments
CD9.2	Archaeology Officer Comments 02/07/2018
CD9.3	Archaeology Officer Comments 2 28/06/2017
CD9.4	Archaeology Officer Comments 3 09/05/2017
CD9.5	Bosbury & Coddington PC Comments 08/02/2019
CD9.6	Bosbury and Coddington PC 06 10 17
CD9.7	Canal Trust 09 06 17
CD9.8	Councillor P Howells Comments 08/08/2018
CD9.9	V Low Councillor Comments 07/08/2018
CD9.10	Drainage Comments 12 06 17
CD9.11	Ecology Officer Comments 09/06/2017
CD9.12	Ecology Officer Comments Amended Plans 10/05/2019
CD9.13	Ecology Officer Final Comments 06 06 17
CD9.14	Ecology Officer Further Comments 07/07/2018
CD9.15	Ecology Officer Further Comments 1 8 19
CD9.16	Economic Development Comments
CD9.17	Education Comments 30 05 17
CD9.18	Education Officer Comments 03/07/2018
CD9.19	Environment Agency Comments 25 05 17
CD9.20	Environment Agency Comments on amended sub 29 08 18
CD9.21	Environmental Health Air Quality Comments 02/10/2019

CD9.22	Environmental Health Air Quality Comments 01 08 17
CD9.23	Environmental Health AQ Comments 09/09/19
CD9.24	Environmental Health Comment 19/06/2019
CD9.25	Environmental Health Noise Response to Amended Sub 25 07 18
CD9.26	Environmental Health Officer Contaminated Land Comments 06 06 17
CD9.27	Environmental Health Officer Noise Comments 05 07 17
CD9.28	HBO Officer Comments (2) 28/08/2019
CD9.29	HBO Officer Comments 08 06 17
CD9.30	HBO Officer Comments 06/07/2018
CD9.31	HBO Officer Further Comments Amended Plans 10/05/2019
CD9.32	HCCG Comments 31/07/2017
CD9.33	Herefordshire & Gloucestershire Canal Trust Comment 01/11/2019
CD9.34	Historic England Comments 18/03/2019
CD9.35	Land Drainage Comments Amended Submission 30 07 18
CD9.36	Landscape Officer Comments 16 09 19
CD9.37	Landscape Officer Comments 22 06 17
CD9.38	Landscape Officer Comments 30 07 18
CD9.39	Landscape Officer Comments Amended Plans 23/05/2019
CD9.40	Ledbury Town Council Comments 2 26/05/2017
CD9.41	Ledbury Town Council Comments 08/02/2019
CD9.42	Ledbury Town Council Traffic Response 01/11/2019
CD9.43	Malvern Hills AONB Unit Comments 16 06 17
CD9.44	Minerals and Waste Officer Comments (2) 09/06/2017
CD9.45	Minerals and Waste Officer Comments 28/08/2019
CD9.46	Natural England Comments 08 06 17
CD9.47	Natural England Comments Amended Sub 21 07 18
CD9.48	Natural England Comments 28/05/2019
CD9.49	Network Rail response to Amended Sub 23 07 18
CD9.50	Response from Network Rail 30 05 17
CD9.51	NHS HCCG Comments 22 08 17
CD9.52	Parks and Countryside Officer Comments 24/07/2018
CD9.53	Parks and Countryside Officer Comments 2 31/05/2017
CD9.54	PROW Officer Comments 11 05 17
CD9.55	PROW Officer Comments Further Amended Plans 10/05/2019
CD9.56	PROW Officer Further Comments 18 01 19
CD9.57	Severn Trent Water Comments 19 05 17
CD9.58	Severn Trent Water Amended Sub 25 07 18
CD9.59	Strategic Housing 30/05 17
CD9.60	Strategic Housing Comments 19/09/2019
CD9.61	Strategic Housing Comments (2) 30/05/2017
CD9.62	Transportation Comments 17/08/2018
CD9.63	Transportation Officer Comments 31/07/17
CD9.64	Comments from Transportation final 18/07/2019
CD9.65	Tree Officer Comments 20 06 17
CD9.66	Tree Officer Comments.doc 30/07/2018
CD9.67	Waste & Recycling Officers Comments 10/05/2017
CD9.68	Wellington Heath PC Comments 1 10 08 18

CD9.69	Wellington Heath PC Comments 2 10 08 18
CD9.70	Wellington Heath PC Comments 15 06 17
CD9.71	Wellington Heath PC Comments 21/08/2019
CD9.72	Welsh Water Comments 31 05 17
CD9.73	Welsh Water Comments 19 07 18
CD9.74	Amended Response from Welsh Water 28 07 17
CD9.75	Wye Valley NHS Trust Comments 18 07 18
CD9.76	Wye Valley NHS Trust Comments 11 01 18
CD10.0 Consultation Responses	
CD10.1	A & T Bishop
CD10.2	A Basheer
CD10.3	ABE Ledbury Ltd Comments
CD10.4	C C Price 7 W J Bartlett
CD10.5	C Fletcher, Wye Fruit
CD10.6	C Mocatta
CD10.7	CPRE Comments 09 06 17
CD10.8	D Hughes
CD10.9	D Longman
CD10.10	Dee Aust
CD10.11	Dr G Edmonson-Jones
CD10.12	F Lewis
CD10.13	Gavin James Helping Hand – 16 07 18
CD10.14	Griff Holiday 14 08 18
CD10.15	H Gates
CD10.16	Helping Hand – Mr D Dutton 23 07 18
CD10.17	I A Mackie
CD10.18	I C Carmichael
CD10.19	J A Kieran
CD10.20	John Masefield Secondary School 05 03 18
CD10.21	Ledbury Allotment Assoc 94 Members
CD10.22	Ledbury Area Cycle Forum
CD10.23	Ledbury Cycle Forum 10 08 18
CD10.24	Ledbury Cycle Forum Comments
CD10.25	Ledbury Primary School 23 05 18
CD10.26	M D Thomas & M A Thomas
CD10.27	M Westwood
CD10.28	Mr and Mrs A Gilder
CD10.29	Mr and Mrs A Gilder 2
CD10.30	Mr and Mrs A Jones
CD10.31	Mr and Mrs A Taylor
CD10.32	Mr and Mrs B Hudson
CD10.33	Mr and Mrs C Price
CD10.34	Mr and Mrs D and J Queripel
CD10.35	Mr and Mrs D Darwood
CD10.36	Mr and Mrs D Lowe
CD10.37	Mr and Mrs G Spence

CD10.38	Mr and Mrs J Dening 16 07 18
CD10.39	Mr and Mrs J Dening
CD10.40	Mr and Mrs K Bayles
CD10.41	Mr and Mrs P and A Cowley
CD10.42	Mr and Mrs P Carter
CD10.43	Mr and Mrs S Y J Robinson
CD10.44	Mr and Mrs T Bishop
CD10.45	Mr A Bateman
CD10.46	Mr A Bateman Further Comment
CD10.47	Mr A Bateman Further Comment 1
CD10.48	Mr A Davis
CD10.49	Mr A Davis Further
CD10.50	Mr A Davis Further Comment
CD10.51	Mr A Davis 4
CD10.52	Mr A Edge
CD10.53	Mr A Evans
CD10.54	Mr A Fussey – redacted
CD10.55	Mr A Gibson
CD10.56	Mr A Pratt
CD10.57	Mr A Pritchard
CD10.58	Mr A Sims
CD10.59	Mr A Sims further comment
CD10.60	Mr A Squires
CD10.61	Mr A Thompson
CD10.62	Mr A Williams
CD10.63	Mr A Wilson – Helping Hand
CD10.64	Mr A Wilson The Helping Hand Company
CD10.65	Mr A Wood
CD10.66	Mr A Wood Further 2 08 19
CD10.67	Mr B & Mrs C Speakman 27 08 19
CD10.68	Mr B Lewis
CD10.69	Mr B Littlefair
CD10.70	Mr B Merrick
CD10.71	Mr B Schofield
CD10.72	Mr B Speakman 19 05 17
CD10.73	Mr Bosley
CD10.74	Mr C Davis
CD10.75	Mr C Davis Further
CD10.76	Mr C Dickenson
CD10.77	Mr C Fletcher
CD10.78	Mr C Glennie
CD10.79	Mr C Hopkins
CD10.80	Mr C Hopkins 2
CD10.81	Mr C Longman
CD10.82	Mr C Newall
CD10.83	Mr C Newall – Bevisol Ltd

CD10.84	Mr C Palmer
CD10.85	Mr C Ponter
CD10.86	Mr C Treanor Comments
CD10.87	Mr D Beason
CD10.88	Mr D C Barnes
CD10.89	Mr D Darwood
CD10.90	Mr D Dutton
CD10.91	Mr D Furnival Chairman HHCT
CD10.92	Mr D Hewitt
CD10.93	Mr D Horne
CD10.94	Mr D James
CD10.95	Mr D Neale
CD10.96	Mr D Vesma
CD10.97	Mr D Whattler
CD10.98	Mr D Williams – 23 07 18
CD10.99	Mr D Williams
CD10.100	Mr D Wood-Robinson
CD10.101	Mr David Hughes
CD10.102	Mr Dillon
CD10.103	Mr E Ebden
CD10.104	Mr E Hogan
CD10.105	Mr E Hogan Further Comment
CD10.106	Mr E Sinclair
CD10.107	Mr E Watson
CD10.108	Mr F Rozelaar
CD10.109	Mr A Fussey – unredacted
CD10.110	Mr G Holliday Comment
CD10.111	Mr G Holliday Further Comment
CD10.112	Mr G James
CD10.113	Mr G Kirk
CD10.114	Mr G Kirk 2
CD10.115	Mr G Kirk Further Comment
CD10.116	Mr G Kirk Further Comment 27 08 19
CD10.117	Mr G Wilson
CD10.118	Mr H Cameron
CD10.119	Mr H Edwards
CD10.120	Mr I Beer (President Sports Fed of Ledbury)
CD10.121	Mr I Mackie
CD10.122	Mr I Mackie Further Comments
CD10.123	Mr J & Mrs M Dening 27 08 19
CD10.124	Mr J Andrew
CD10.125	Mr J Bannister
CD10.126	Mr J Bates Comment
CD10.127	Mr J Cornish
CD10.128	Mr J George 18 08 18
CD10.129	Mr J Grove

CD10.130	Mr J Powell
CD10.131	Mr J Stock
CD10.132	Mr J Vickerman
CD10.133	Mr J Wadley
CD10.134	Mr J Wolfe Comments
CD10.135	Mr J Wynne
CD10.136	Mr J Wynne 23 08 19
CD10.137	Mr K Chambers
CD10.138	Mr K Hough
CD10.139	Mr K Rigby
CD10.140	Mr M Bailey
CD10.141	Mr M Bain Obj
CD10.142	Mr M Bain Further Comment
CD10.143	Mr M Beaumont
CD10.144	Mr M Beaumont 1
CD10.145	Mr M Beaumont 2
CD10.146	Mr M Beaumont 09 07 18
CD10.147	Mr M Beaumont 16 08 19
CD10.148	Mr M Colman
CD10.149	Mr M Farrington 1
CD10.150	Mr M Farrington 3
CD10.151	Mr M Farrington 11 10 18
CD10.152	Mr M Gear
CD10.153	Mr M Hakes
CD10.154	Mr M Harding
CD10.155	Mr M Harding 28 01 19
CD10.156	Mr M Hatcher
CD10.157	Mr M Jolly
CD10.158	Mr M Low
CD10.159	Mr M Low 2
CD10.160	Mr M Pope 1
CD10.161	Mr M Pope 2
CD10.162	Mr M Sessarego
CD10.163	Mr M Sessarego 31 01 19
CD10.164	Mr M Sutton
CD10.165	Mr M Thomas
CD10.166	Mr N Brown
CD10.167	Mr N Brown 2
CD10.168	Mr N Brown 3
CD10.169	Mr N Dykes
CD10.170	Mr P & Mrs R Butler
CD10.171	Mr P Adams
CD10.172	Mr P Adams 2
CD10.173	Mr P Adams 09 08 18
CD10.174	Mr P Atkins
CD10.175	Mr P Brown

CD10.176	Mr P Constantine
CD10.177	Mr P Constantine 27 07 18
CD10.178	Mr P Constantine 27 08 19
CD10.179	Mr P Grindley
CD10.180	Mr P Harrison
CD10.181	Mr P Harrison 1
CD10.182	Mr P Kinnaird
CD10.183	Mr P Martin
CD10.184	Mr P Neep
CD10.185	Mr P Newton
CD10.186	Mr P Simons
CD10.187	Mr R Allsop
CD10.188	Mr R Barr
CD10.189	Mr R Cooper
CD10.190	Mr R Dillom
CD10.191	Mr R Gates
CD10.192	Mr R Gates Further 31 08 18
CD10.193	Mr R Gates Further Comment
CD10.194	Mr R Gilmore
CD10.195	Mr R Halford
CD10.196	Mr R Hughes
CD10.197	Mr R Hughes 2
CD10.198	Mr R Hurley
CD10.199	Mr R Hurley 2
CD10.200	Mr R Kitto
CD10.201	Mr R Kitto Further
CD10.202	Mr R Lee-Buxton
CD10.203	Mr R Lee-Buxton 01 09 19
CD10.204	Mr R McNae
CD10.205	Mr R Smith
CD10.206	Mr R Smith 1
CD10.207	Mr R Wolstenholme
CD10.208	Mr S Ashworth
CD10.209	Mr S Betts
CD10.210	Mr S Brookes
CD10.211	Mr S Glennie-Smith
CD10.212	Mr S Porter
CD10.213	Mr S Porter 23 07 18
CD10.214	Mr T Cooke
CD10.215	Mr T Cooke 1
CD10.216	Mr T Evans 21 05 19
CD10.217	Mr T Evans 22 05 19
CD10.218	Mr T Fell
CD10.219	Mr T Goode
CD10.220	Mr T Leathwood
CD10.221	Mr T Nunn

CD10.222	Mr T Smart
CD10.223	Mr T Smart 2
CD10.224	Mr T Wilkins
CD10.225	Mr W Howes
CD10.226	Mrs A Hill
CD10.227	Mrs C Farrington
CD10.228	Mrs C Kellet
CD10.229	Mrs H Tierney
CD10.230	Mrs J Hopkins
CD10.231	Mrs J Kirk
CD10.232	Mrs J M Hammil
CD10.233	Mrs Mowbray
CD10.234	Mrs P Perks
CD10.235	Mrs P Yorke 1
CD10.236	Mrs R Rope
CD10.237	Mrs V Parker
CD10.238	Ms A Bennett
CD10.239	Ms A Crowe
CD10.240	Ms A Dex & Mr G Phillips
CD10.241	Ms A Dillon
CD10.242	Ms A Houlbrooke
CD10.243	Ms A Hume
CD10.244	Ms A Lambourne
CD10.245	Ms A Low
CD10.246	Ms A Sims
CD10.247	Ms A Stenning
CD10.248	Ms B Kinnaird
CD10.249	Ms C Adams
CD10.250	Ms C Ellis
CD10.251	Ms C Evans
CD10.252	Ms C Farrington
CD10.253	Ms C Farrington Obj 2
CD10.254	Ms D Beetlestone
CD10.255	Ms D Currant
CD10.256	Ms E Brookes
CD10.257	Ms E Clough
CD10.258	Ms E Cotton
CD10.259	Ms E Morris
CD10.260	Ms E Whattler
CD10.261	Ms F Robinson
CD10.262	Ms H Ashman
CD10.263	Ms H Davies
CD10.264	Ms H Davis
CD10.265	Ms H Gates
CD10.266	Ms H Gates 1
CD10.267	Ms H Gates 2

CD10.268	Ms H Pull Obj
CD10.269	Ms J Bradnock
CD10.270	Ms J Dodds
CD10.271	Ms J Hadley
CD10.272	Ms J Haiselden
CD10.273	Ms J Hooley
CD10.274	Ms J Horton
CD10.275	Ms J Jones
CD10.276	Ms J Jones 2
CD10.277	Ms J Kelly
CD10.278	Ms J Kirk
CD10.279	Ms J Lee-Buxton
CD10.280	Ms J Limb Comments
CD10.281	Ms J Mackie
CD10.282	Ms J Mackie 1
CD10.283	Ms J McNae
CD10.284	Ms J Michell
CD10.285	Ms J Peyton
CD10.286	Ms J Peyton 2
CD10.287	Ms J Preston
CD10.288	Ms J Yorke
CD10.289	Ms K Bain
CD10.290	Ms K Bain 1
CD10.291	Ms K Darwood
CD10.292	Ms K Davis
CD10.293	Ms L Allwright
CD10.294	Ms L Pratt
CD10.295	Ms L Preece
CD10.296	Ms L Turner
CD10.297	Ms L Watson
CD10.298	Ms M Carson
CD10.299	Ms M Carson 08 08 18
CD10.300	Ms M Chapman
CD10.301	Ms M Fielding
CD10.302	Ms M Fielding PPG Comment
CD10.303	Ms M Gilmore
CD10.304	Ms M Gilmore 23 08 19
CD10.305	Ms M Mackness 1
CD10.306	Ms M Mackness 2
CD10.307	Ms N Newby
CD10.308	Ms N Shields
CD10.309	Ms N Vandenberg
CD10.310	Ms P Beaumont
CD10.311	Ms P Beaumont 22 05 17
CD10.312	Ms P Malpas
CD10.313	Ms P Yorke

CD10.314	Mr R Adams
CD10.315	Mr R Adams 1
CD10.316	Ms R Keighley
CD10.317	Ms R Keighley 2
CD10.318	Ms R Keighley 3
CD10.319	Ms R Pope
CD10.320	Ms S Andrew
CD10.321	Ms S Barnes
CD10.322	Ms S Black
CD10.323	Ms S Cooper
CD10.324	Ms S Cooper 2
CD10.325	Ms S Fletcher
CD10.326	Ms S Hill
CD10.327	Ms S Holliday
CD10.328	Ms S Merrick
CD10.329	Ms S Phillips
CD10.330	Ms S Staines
CD10.331	Ms T Potter 1
CD10.332	Ms V Mclean
CD10.333	Ms V Mclean 1
CD10.334	Ms V Nunn
CD10.335	Ms W A Howes 09 08 18
CD10.336	Ms Wagstaff
CD10.337	Ms Y Allsop
CD10.338	Ms Y White
CD10.339	Ms Z Mayo 05 08 18
CD10.340	Peter Constantine 17 07 18
CD10.341	Phillip Howells 08 08 18
CD10.342	Richard Kitto 09 08 18
CD10.343	Robert Wainwright & Jenny Scott 30 07 18
CD10.344	Sequani Ltd 09 06 17
CD10.345	Sequani Ltd Comments
CD10.346	The Occupier – 4 Elmtree Cottages
CD10.347	W D Stump
CD10.348	Wye Fruit Ltd
CD11.0 Relevant Appeal Decisions and Court Cases	
CD11.1	2212671 – Land off Darnhall School Lane, Winsford
CD11.2	2222641 – Bath Road, Corsham
CD11.3	Land South of Leadon Way, Ledbury
CD11.4	Land to the rear of former Dylon International Premises, Station Approach, Lower Sydenham (1)
CD11.5	Land East of Gleneagles Way, Hatfield Peverel
CD11.6	Entech House, London Road
CD11.7	Land on East Side of Green Road, Woolpit
CD11.8	Land South of Kislingbury Road, Rothersthorpe

CD11.9	Land to the rear of former Dylon International Premises, Station Approach, Lower Sydenham (2)
CD11.10	Land off Colchester Road, Bures
CD11.11	Land off Popes Lane, Sturry
CD11.12	Land South of Cox Green Road, Rudgwick
CD11.13	[2013] EWHC 2074 <ul style="list-style-type: none"> • 2013 EWHC 2074 Stratford on Avon • Stratford on Avon DC v Secretary of State for Communities and Local Government • Stratford upon Avon DC 2014 JPL 104. pdf
CD11.14	[2016] EWHC 267 <ul style="list-style-type: none"> • 2016 EWHC 267. WB DCpdf • West Berkshire DC v Secretary of State for Communities and Local Government 2017] UKSC 37
CD11.15	[2017] UKSC 37
CD11.16	Land North of Nine Mile Ride, Finchinhampstead
CD11.17	Land at Longden Road, Shrewsbury, Shropshire
CD11.18	Land at the corner of Oving Road and A27, Chichester
CD11.19	Land at Franklands Drive, Addlestone
CD11.20	Land Between Leasowes Road and Laurels Road, Offenham
CD11.21	Land at Pulley Lane, Droitwich Spa
CD11.22	Land north of Upper Chapel, Launceston
CD11.23	Land Surrounding Sketchley House, Burbage
CD11.24	Land adjacent to Cornerways, High Street, Twyning, Tewkesbury
CD11.25	Land rear of 62 Iveshead Road, Shepshed
CD11.26	Land at Foldgate Lane, Ludlow, Shropshire
CD11.27	Land north of Oldmixon Road, Weston-super-Mare
CD11.28	Land East of Park Lane, Coalpit Heath, South Gloucestershire
CD11.29	Land to the North of Dark Lane, Alrewas, Burton Upon Trent, Staffordshire
CD11.30	City of Edinburgh Case 1997
CD11.31	Land South of Lloyd Close, Hampton Magna
CD11.32	Dymock Road, Ledbury
CD11.33	Former Bath Press, Lower Bristol Road, Bath
CD11.34	Land to the West of Scotchforth Road, Scotchforth, Lancaster
CD11.35	APP/P1133/W/18/3205558 Land At Wolborough Barton, Coach Road, Newton Abbot
CD12.0 Planning Committee Documents	
CD12.1	Minutes Planning and Regulatory Committee 11 12 19
CD12.2	Minutes Planning and Regulatory Committee 13 11 19
CD12.3	Officers Committee Report 11 12 19
CD12.4	Officers Committee Report 13 11 19
CD12.5	Question 20 d – Environmental Statement Correspondence
CD12.6	Schedule of Updates 13 11 19 Planning and Regulatory Committee

CD13.0 Decision Notice	
CD13.1	Decision Notice
CD14.0 Heritage Listings	
CD14.1	Barn to South East of Groves End Farmhouse Listing
CD14.2	Barn to South of Wall Hills Farmhouse Listing
CD14.3	Former Cider House to South West of Rhea Farm House Listing
CD14.4	Groves End Farmhouse Listing
CD14.5	Ledbury Viaduct Listing
CD14.6	Old Plaistow and Attached Cider Mill Listing
CD14.7	Rhea Farmhouse and Attached Oast House at Rear Listing
CD14.8	Wall Hills Camp Listing
CD15.0 Site and Press Notices	
	<i>Site Notices Amended Plans</i>
CD15.1	Site Notice 1 – Aug 2018
CD15.2	Site Notice 2 – Aug 2018
CD15.3	Site Notice 3 – Aug 2018
CD15.4	Site Notice 4 – Aug 2018
CD15.5	Site Notice 5 – Aug 2018
CD15.6	Site Notice 6 – Aug 2018
CD15.7	Site Notice 7 – Aug 2018
CD15.8	Site Notice 8 – Aug 2018
CD15.9	Site Notice 9 – Aug 2018
CD15.10	Site Notice 10 – Aug 2018
CD15.11	Site Notice 11 – Aug 2018
CD15.12	Site Notice 12 – Aug 2018
CD15.13	Site Notice 13 – Aug 2018
CD15.14	Site Notice 14 – Aug 2018
CD15.15	Site Notice 15 – Feb 2018
CD15.16	Site Notice 16 – June 2018
	<i>Site Notices 2017</i>
CD15.17	Site Notice 1
CD15.18	Site Notice 2
CD15.19	Site Notice 3
CD15.20	Site Notice 4
CD15.21	Site Notice 5
CD15.22	Site Notice 6
CD15.23	Site Notice 7
CD15.24	Site Notice 8
CD15.25	Site Notice 9
CD15.26	Site Notice 10
CD15.27	Site Notice 11
CD15.28	Site Notice 12
	<i>Press Notices</i>
CD15.29	Press Notice – 12 July 2018
CD15.30	Press Notice – 16 May 2019
CD15.31	Press Notice – 18 May 2017

CD15.32	Press Notice – 24 January 2019
CD16.0 Appeal Documents	
CD16.1	Appeal Form
CD16.2	Appeal Notification Letter
CD16.3	Appeal Notification List
CD17.0 Representations From Interested Parties	
CD17.1	Wye Valley NHS Trust <ul style="list-style-type: none"> • Wye Valley NHS Trust - Letter to Inspector • Wye Valley NHS Trust – Consultation Response • Wye Valley NHS Trust - Evidence for S106 Developer Contributions for Services • Wye Valley NHS Trust - Appeal Decisions List 1-8 • Wye Valley NHS Trust - Appeal Decisions Bundle • Wye Valley NHS Trust - DOC Legal Opinions • Wye Valley NHS Trust - Email Correspondence
CD17.2	Bailey M
CD17.3	Banister J
CD17.4	Basil Merrick
CD17.5	Constantine P
CD17.6	Davis A
CD17.7	Davis C
CD17.8	Driver G- Natural England
CD17.9	Evans A
CD17.10	Gates R
CD17.11	Burgess J
CD17.12	Johnson B
CD17.13	Johnson C- Ledbury and District Civic Society
CD17.14	Kellett C
CD17.15	Kinnaird P
CD17.16	Ledbury Town Council
CD17.17	Tinkler C
CD17.18	Winfield M
CD17.19	AONB Unit 20/02/2020
CD17.20	AONB Unit 05.06.2020
CD17.21	Cllr David Williams (received 10/07/2020)
CD17.22	Colin Davis (received 10/07/2020)
CD18.0 Environmental Statement including Further Reg 25 Information	
CD18.1	EIA Screening and Scoping Report and Decision
CD18.2	Environmental Statement Volume 1 – Non-Technical Summary
CD18.3	Environmental Statement Volume 2 – Introduction Chapter
CD18.4	Environmental Statement Volume 2 – Assessment Methodology Chapter
CD18.5	Environmental Statement Volume 2 – The Proposed Development Chapter
CD18.6	Environmental Statement Volume 2 – Planning Context Chapter
CD18.7	Environmental Statement Volume 2 – Landscape and Visual Impact Assessment Chapter
CD18.8	Environmental Statement Volume 2 – Cultural Heritage Chapter

CD18.9	Environmental Statement Volume 2 – Transport Chapter
CD18.10	Environmental Statement Volume 2 – Earthworks Chapter
CD18.11	Environmental Statement Volume 3 – Appendices
	Reg 25 Request
CD18.12	Reg 25 Request for Further Information
	Addendum
CD18.13	Non-technical summary addendum
CD18.14	Climate Change Chapter
CD18.15	Landscape Chapter Addendum <ul style="list-style-type: none"> • Appendix A GLVIA Criteria • Appendix B LVIA Figures • Figure 1 Cumulative Sites
CD18.16	Heritage Addendum
CD18.17	Volume 1: Non- Technical Summary (February 2017)
CD18.18	Volume 2: Main Body (February 2017)
CD18.19	Volume 1 Appendices Part 1 and Part 2 (February 2017)
CD18.20	Non-Technical Summary (June 2017)
CD18.21	Amended Environmental Statement Volume 2 Transport Chapter (08/01/2019)
CD19.0 Ledbury Town Council Proof of Evidence	
CD19.1	Heritage PoE prepared by Cllr Howells
CD19.2	Highways PoE prepared by Nick Bradshaw
CD19.3	Landscape PoE prepared by Carly Tinkler
CD19.4	Traffic Signals PoE prepared by Graham Lee
CD19.5	Planning PoE prepared by Cllr Harvey
CD19.6	Email dated 29/06/2020 and plan labelled Figure CT-1 R's Map of Assessed Route
CD20.0 Additional Documents Requested by the Inspector	
CD20.1	Statement on Flooding and Flood Risk prepared by BWB
CD20.2	Letter from Ridge and Partners (dated 3rd July 2020) providing clarification on additional matters raised at CMC & Plan showing viaduct width prepared by PJA
CD20.3	Summary Note from LTC on implications of a Second Access (received 10/07/2020)
CD21.0 Additional Documents Submitted Prior to the Inquiry Opening	
CD21.1	Email from Graham Lee to Leanne Palmer and attachments dated 9th July 2020 <ul style="list-style-type: none"> ▪ Storage in front of Stoplevel Graph ▪ Non-Blocking Storage
CD21.2	Email from Nick Bradshaw to Leanne Palmer and attachments dated 10th July 2020
CD21.3	Email from Graham Lee to Leanne Palmer dated 12th July 2020 <ul style="list-style-type: none"> ▪ Position Summary G lee ▪ Station Junction G Lee LinSig Detail Summary Tables ▪ Station Junction G lee LinSig PRC Summary ▪ 90 Second cycle LinSig Results ▪ 110 Second Cycle LinSig Results

	▪ 120 Second Cycle LinSig Results
CD21.4	Email from Mike Edwards to Leanne Palmer and Attachments dated 12th July 2020 <ul style="list-style-type: none">▪ Position Summary G Lee▪ PJA LinSig Results- Bromyard Signals▪ Station Junction G Lee LinSig PRC Summary
CD21.5	Email from Mike Edwards to Leanne Palmer and attachments dated 10/07/2020 <ul style="list-style-type: none">▪ JCT email▪ GL Position Cars▪ Refined Alignment
CD21.6	Proposed Additional Condition from Ledbury Town Council

Appendix D

RECOMMENDED CONDITIONS IN THE EVENT THAT PLANNING PERMISSION IS GRANTED

General Conditions applying to all parts of the development

1. Application for approval of the first reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission or within three years of final completion of any legal challenge under S288 of the Town & Country Planning Act 1990. The last of the reserved matters shall be submitted before the expiration of eight years from the date of this permission.
2. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of the approval of the last reserved matters to be approved, whichever is the later.
3. Approval of the details of the layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced. The development shall be implemented in accordance with the approved details
4. The development shall be carried out strictly in accordance with the approved plans and supporting details:
 - Site Location Plan 9000 Rev J
 - Site Access Roundabout - 3468-A-016-P4except where otherwise stipulated by conditions attached to this permission.

Site wide Conditions

Pre-Commencement Conditions

5. No development shall commence until a plan has been submitted to and approved in writing by the local planning authority identifying the phasing for the development and shall identify the following:
 - Residential phase(s)
 - Employment phase(s)
 - Canal phase(s)
 - Timing of delivery of on-site highway works (including but not limited to on site roads, footways, cycleway, emergency access opening)
 - Timing of delivery of off-site highways improvements (Section 278 works)
 - Timing of delivery of public open space (site wide strategy)

The development, including the completion and delivery of infrastructure shall be constructed in accordance with the agreed phasing plan.

6. Proposals for the number, size and type of open market housing on any individual phase of the development shall be submitted to the Local planning authority for approval either prior to or as part of any reserved matter application(s) relating to Layout. The size and type of the open market housing for each phase shall comply with the following Table, unless otherwise agreed by the local planning authority:

Dwelling type	Quantity (%)
2 bed	25 - 35
3 bed	30 - 45
4 bed 'Small**	20 - 37.5***
4 bed 'large***' & 5 bed	0 - 7.5***

*4 bed small = 150sqm GIA or less (1,615sqft or less GIA)

** 4 bed large = more than 150sqm GIA (more than 1,615sqft GIA)

*** The combination of 4-bed 'small' and 4 bed 'large'/ 5 bed dwellings shall be no more than 37.5% of the total Open Market Mix.

The development shall thereafter be implemented in accordance with the approved scheme.

7. Development shall not begin, including works of site clearance, until a Noise Masterplan and Acoustic Design Statement for the development of the site as a whole has been submitted to the local planning authority for written approval. The Statement and Plan shall also identify how the matter of noise will be considered and addressed in the Reserved Matters submissions for each phase of the development. Reserved Matters submissions and works shall be carried out in accordance with the approved Masterplan and Acoustic Design Statement.
8. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for additional measures for the remediation of this source of contamination. The remediation of the site shall incorporate the approved additional measures.

On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which shall be submitted before any development within that phase is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the local planning authority in advance of works being undertaken.

9. Prior to commencement of development a site wide Biodiversity Enhancement Plan / Strategy shall be submitted to and approved in writing by the local planning authority.

The plan shall contain a full working method statement for ecological works including the species mitigations with the full habitat protection and

enhancements proposed. The plan shall accord with the principles within Ecology Solutions Ltd Ecological Assessment dated February 2017. An appropriately qualified and experienced clerk of works should be appointed (or consultant engaged in that capacity) to oversee the mitigation work thereafter.

The approved site wide strategy and individual phase details shall be implemented in full and thereafter maintained.

10. No development shall take place until the developer has secured the implementation of a programme of archaeological survey and recording to include recording of the standing historic fabric and any below ground deposits affected by the works. This programme shall be in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority and shall be in accordance with a brief prepared by the County Archaeology Service.
11. The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority and shall allow him/her to observe the excavations and record items of interest and finds. A minimum of 5 days' written notice of the commencement date of any works shall be given in writing to the County Archaeology Service.
12. No development shall commence, including any works of site clearance or ground preparation, until a site wide Arboricultural Method Statement specifying the measures to be put in place during the construction period, for the protection of those trees and hedgerows to be retained, has been submitted to and approved in writing by the local planning authority.

The Method Statement shall be prepared in accordance with the principles set out in BS 5837:2012 – Trees in relation to design, demolition and construction: Recommendations. Development shall be carried out in accordance with approved Method Statement.

13. The reserved matters submission relating to layout, scale, appearance and landscaping for each phase of residential development submitted pursuant to Condition 1 shall be accompanied by details of a scheme of noise attenuating measures for the proposed dwellings based upon the Noise Masterplan required under Condition 7 of this Decision. The scheme shall have regard to the most recent and relevant ProPG: Planning & Noise *Professional Practice Guidance on Planning & Noise – New Residential Development*, advice, the advice provided by BS 8233:2014, Guidance on sound insulation and noise reduction in buildings and the World Health Organisation Guidelines for Community Noise.

The approved scheme shall be implemented before the first occupation or use of the dwellings.

Pre Occupation

14. The development shall not be occupied until the details, including the proposed control method relating to the use of the Emergency Access to be located on Bromyard Road (B4214), has been submitted to and approved in writing by the local planning authority. The Emergency Access shall be implemented in accordance with the approved details within the timescale

identified in the Phasing Plan to be submitted in accordance with Condition 5.

15. Before any phase of the development is first occupied or brought into use, a schedule of landscape implementation and maintenance for that phase, excluding private garden areas, shall be submitted to and approved in writing by the local planning authority. Delivery of the approved landscape matters and maintenance shall be carried out in accordance with this approved schedule.

Compliance Conditions

16. Finished floor levels of all dwellings and employment buildings shall be set no lower than 600mm above the adjacent 1 in 100 year plus 35% modelled River Leadon node level shown in Table 2.4 and Figure 2.2 of BWB Consulting's FRA dated 24 January 2017 (Revision P2).
17. There shall be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the bank of the River Leadon.
18. No development in any phase, including any works of site clearance, shall commence during the bird nesting season (1 March – 31 August inclusive) unless it has been demonstrated through the submission of a method statement (that shall previously have been submitted to and approved in writing by the local planning authority), that nesting birds can be adequately protected. Development shall be carried out only in accordance with the approved details which may include, but are not confined to, the timing of work, pre-work checks, avoidance of nesting areas, and protection zones around nesting areas.
19. No more than 625 dwellings shall be constructed on the site.

Housing Development Related Conditions

Prior to Commencement Conditions

20. No phase of residential development shall commence until a Construction Materials and Site Waste Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The Management Plan is to ensure waste management provisions compliment the construction activities on site and that all waste emanating from the development are dealt with in an appropriate manner and follows the waste hierarchy.

The Management Plan shall include, but not be limited to:

- i. a description of the likely quantity and nature of waste streams that will be generated during construction of the development;
- ii. measures to monitor and manage waste generated during construction including general procedures for waste classification, handling, reuse, and disposal, use of secondary waste material in construction wherever feasible and reasonable, procedures for dealing with green waste including timber

and mulch from clearing activities and measures for reducing demand on water resources;

- iii. measures to monitor and manage spoil, fill and materials stockpiles, including details of how spoil, fill or material will be handled, stockpiled, reused, disposed of, and locational criteria to guide the placement of stockpiles;
- iv. details of the methods and procedures to manage construction related environmental risks and minimise amenity impacts associated with waste handling;
- v. a description as to how soils and their function will be protected during and after construction. Works shall be carried out in accordance with the approved plan.

Construction works shall thereafter be carried out in full accordance with the details of the Management Plan.

21. No phase of residential development shall commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction Management Plan shall include, but is not limited to, the following matters:
- i. site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles (including cycle parking for staff and visitors); and provision for the loading/unloading of plant and materials within the site;
 - ii. wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
 - iii. measures for managing access and routing for construction and delivery traffic;
 - iv. hours during which construction work, including works of site clearance, and deliveries can take place;
 - v. Tree / hedge protection plan for the phase of development;
 - vi. Construction Traffic Management Plan;
 - vii. Address construction phase related matters listed by Network Rail in letter dated 23 July 2017.

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

22. No phase of residential development shall commence until a Drainage (foul and surface water) and Flood Risk Strategy for that phase has been submitted to and approved in writing by the local planning authority:

The Strategy shall address, but is not limited to the following:

- i. Demonstration that there is no increase in flood risk to the site associated with the proposed canal;
- ii. Demonstration that floor levels of all residential properties are above the 1 in 1000 annual probability flood depths in areas of the site shown to be at risk of flooding;
- iii. Demonstration that land has been profiled and property levels and thresholds have been designed to prevent the entrance of surface water into properties in areas show to be at risk by the EA's surface water flood map;
- iii. Demonstration that opportunities for the use of SuDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features, supported by results of infiltration testing and groundwater monitoring;
- iv. A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;
- v. Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;
- vi. Details of the proposed crossings of the ordinary watercourses and assessment of flood risk, demonstrating no increased flood risk up to the 1 in 100 annual probability event and allowing for climate change;
- vii. A detailed foul water drainage strategy showing how foul water from the development will be disposed of;
- viii. Demonstration of the management of surface water during events that overwhelm the surface water drainage system and/or occur as a result of blockage;
- ix. Details of any proposed outfall structures;
- x. SuDs management and maintenance details.

The development shall be carried out in accordance with the approved details, before the dwelling within that phase are first occupied and thereafter maintained as such.

23. Prior to the commencement of above ground works associated with the first phase of residential development, a Travel Plan which contains measures to promote alternative sustainable means of transport for residents and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the local planning authority.

The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the first phase of housing development.

A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.

Prior to Occupation Conditions

24. No dwelling within any phase of residential development hereby approved shall be occupied until the Remediation Scheme, if required, is approved pursuant to condition 8 above, has been fully implemented.
25. Prior to the first occupation of each dwelling hereby permitted full details of a scheme for the provision of covered and secure cycle parking facilities within the curtilage of each dwelling (or scheme for shared provision if apartments) within that phase shall be submitted to and approved in writing by the local planning authority. The covered and secure cycle parking facilities shall be carried out in strict accordance with the approved details and available for use prior to the first occupation of each dwelling hereby permitted. Thereafter these facilities shall be retained.
26. Prior to the first occupation of each dwelling the access, turning area and parking facilities serving that dwelling approved as part of the reserved matters or subsequent conditions shall have been laid out, consolidated, surfaced and drained in accordance with the approved details. Such areas shall thereafter be retained and kept available for those uses at all times.
27. No dwelling within any phase of residential development hereby approved shall be occupied until details including illumination areas, luminance levels and control systems of any floodlighting or external lighting proposed to illuminate that phase of the housing development, as relates to non-domestic fixings, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development (apart from domestic fixings).
28. Prior to the first occupation of any dwelling within any phase of residential development hereby permitted, a scheme for that phase of the development demonstrating measures for the efficient use of water as per the optional technical standards contained within Policy SD3 of the Herefordshire Local Plan Core Strategy shall be submitted to and approved in writing by the local planning authority and implemented as approved.
29. Prior to the first occupation of any dwelling within any phase of residential development hereby permitted, a scheme for that phase to enable the charging of plug in and other ultra-low emission vehicles (e.g. provision of outside electric sockets) to serve the occupants of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwellings within that phase.

Employment Related Conditions

Prior to Commencement Conditions

30. No phase of the employment development hereby approved shall commence until a Construction Materials and Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The Management Plan is to ensure waste management provisions compliment the construction activities on site and that all waste emanating from the development are dealt with in an appropriate manner and follows the waste hierarchy.

The Management Plan shall include, but not be limited to:

- (i) a description of the likely quantity and nature of waste streams that will be generated during construction of the development;
- (ii) measures to monitor and manage waste generated during construction including general procedures for waste classification, handling, reuse, and disposal, use of secondary waste material in construction wherever feasible and reasonable, procedures or dealing with green waste including timber and mulch from clearing activities and measures for reducing demand on water resources;
- (iii) measures to monitor and manage spoil, fill and materials stockpiles, including details of how spoil, fill or material will be handled, stockpiled, reused and disposed of, and locational criteria to guide the placement of stockpiles;
- (iv) details of the methods and procedures to manage construction related environmental risks and minimise amenity impacts associated with waste handling;
- (v) a description as to how soils and their function will be protected during and after construction. Works shall be carried out in accordance with the approved plan.

Construction works shall thereafter be carried out in full accordance with the details of the Management Plan.

31. No phase of employment development shall commence until a Construction Management Plan that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction Management Plan shall include, but is not limited to, the following matters:

- i. site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
- ii. wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;

- iii. measures for managing access and routing for construction and delivery traffic;
- iv. hours during which construction work, including works of site clearance, and deliveries can take place;
- v. Construction Traffic Management Plan;
- vi. Tree / hedge protection plan;
- vii. Address construction phase related matters listed by Network Rail in letter dated 23 July 2017.

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

32. No phase of employment development shall commence until a Drainage (surface and flood risk) Flood Risk Strategy for that phase has been submitted to and approved in writing by the local planning authority.

The Strategy shall address, but is not limited to, the following:

- i. Demonstration that floor levels of all buildings are above the 1 in 1000 annual probability flood depths in areas of the site shown to be at risk of flooding;
- ii. Demonstration that land has been profiled and property levels and thresholds have been designed to prevent the entrance of surface water into properties in areas show to be at risk by the EA's surface water flood map;
- iii. Demonstration that opportunities for the use of SuDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features, supported by results of infiltration testing and groundwater monitoring
- iv. A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;
- v. Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;
- vi. Details of the proposed crossings of the ordinary watercourses and assessment of flood risk, demonstrating no increased flood risk up to the 1 in 100 annual probability event and allowing for climate change.
- vii. A detailed foul water drainage strategy showing how foul water from the development will be disposed of.
- viii. Demonstration of the management of surface water during events that overwhelm the surface water drainage system and/or occur as a result of blockage;
- ix. Details of any proposed outfall structures;

x. SuDS maintenance and management details.

The development shall be carried out in accordance with the approved details before the buildings are first occupied and thereafter maintained as such.

33. Prior to the first occupation or use of the buildings hereby approved details including illumination areas, luminance levels and control systems of any floodlighting or external lighting proposed to illuminate any phase of the employment development, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development.

34. Prior to the commencement of above ground works associated with the employment development, a Travel Plan which contains measures to promote alternative sustainable means of transport for employees and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the local planning authority.

The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the employment development.

A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.

Pre Occupation or First Use Conditions

35. Prior to the first occupation of each unit or building sited within the employment phase of the development hereby permitted full details of a scheme for the provision of covered and secure cycle parking facilities for staff and visitors shall be submitted to the local planning authority for their written approval.

The covered and secure cycle parking facilities shall be carried out in strict accordance with the approved details and be made available for use prior to the first occupation of each unit / building within the employment phase. Thereafter these facilities shall be maintained as such.

36. Prior to the first occupation of each unit or building sited within the employment phase of the development hereby permitted a scheme to enable the charging of plug-in and other ultra-low emission vehicles (e.g. provision of outside electric sockets) to serve the staff and visitors of that unit or building shall be submitted to and approved in writing by the local planning authority. The scheme shall be completed in accordance with the approved details prior to the first use of the unit or building and the provision retained and kept available for use thereafter.

37. Prior to the first occupation of each unit or building sited within the employment phase of the development hereby permitted, the access, turning area and parking facilities (including areas for the manoeuvring, parking, loading and unloading of vehicles) as detailed within the reserved matters submissions relating to layout and landscaping (or subsequent

conditions) have been laid out, consolidated, surfaced and drained. Such areas shall thereafter be retained and kept available for those uses at all times.

Compliance Conditions

38. The land allocated for the employment phase of the development hereby permitted shall be used for Class B1 use only of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Canal Related Conditions

39. No phase of the canal development hereby approved shall commence until a Construction Materials and Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The plan is to ensure waste management provisions compliment the construction activities on site and that all waste emanating from the development are dealt with in an appropriate manner and follows the waste hierarchy.

The Management Plan shall include, but not be limited to:

- i. a description of the likely quantity and nature of waste streams that will be generated during construction of the development;
- ii. measures to monitor and manage waste generated during construction including general procedures for waste classification, handling, reuse, and disposal, use of secondary waste material in construction wherever feasible and reasonable, procedures or dealing with green waste including timber and mulch from clearing activities and measures for reducing demand on water resources;
- iii. measures to monitor and manage spoil, fill and materials stockpiles, including details of how spoil, fill or material will be handled, stockpiled, reused and disposed of, and locational criteria to guide the placement of stockpiles;
- iv. details of the methods and procedures to manage construction related environmental risks and minimise amenity impacts associated with waste handling;
- v. a description as to how soils and their function will be protected during and after construction. Works shall be carried out in accordance with the approved plan.

Construction works shall thereafter be carried out in full accordance with the details of the Management Plan.

40. No phase of canal development shall commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction Management Plan shall include, but is not limited to, the following matters:

- i. site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
- ii. wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- iv. measures for managing access and routing for construction and delivery traffic;
- v. hours during which construction work, including works of site clearance, and deliveries can take place;
- vi. Tree / hedge protection plan;
- vii. Construction Traffic Management Plan;
- viii. Consultation with and written approval of the construction methods and mitigation from Network Rail.

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

41. Prior to the commencement of the canal development hereby permitted a detailed surface water and flood risk strategy shall be submitted to and approved in writing by the local planning authority.

The Drainage Strategy shall include, but is not limited to the following:

- i. Demonstration that there is no increase in flood risk to the site associated with the proposed canal;
- ii. Details of any proposed outfall structures;
- iii. Disposal of any foul flows (if any).

The development shall be carried out in accordance with the approved details and thereafter maintained as such.

42. Details of any proposed illumination areas, luminance levels and control systems of any floodlighting or external lighting proposed to illuminate any phase of the canal development shall be submitted to and approved in writing by the local planning authority before the installation of any method of illumination.

Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development.

End of Schedule



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Ministry of Housing,
Communities &
Local Government

15 March 2021

Guy Wakefield
Ridge and Partners LLP

Our Ref: APP/W1850/W/20/3244410

Dear Sir

**LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPEAL MADE BY BLOOR HOMES WESTERN AT LAND NORTH OF VIADUCT,
ADJACENT TO ORCHARD BUSINESS PARK, LEDBURY
APPLICATION REF: 171532**

APPLICATION FOR AN AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying you of his decision on the above named appeal.
2. This letter deals with Bloor Homes Western's application for a full award of costs against Herefordshire Council and Ledbury Town Council. The application as submitted and the response of the Herefordshire Council and Ledbury Town Council are recorded in the Inspector's Costs Report (CR), a copy of which is enclosed.
3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.
4. The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR72-74. The Inspector recommended that a partial award of costs is justified on the basis that Herefordshire Council behaved

Andrew Lynch, Decision Officer
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unreasonably in refusing the application (CR63) and that Ledbury Town Council behaved unreasonably in pursuing an objection to a pedestrian route that it specifically requested to be provided and therefore gave rise to unnecessary and wasted expense (CR71).

5. Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendations. Accordingly, he has decided that a partial award of costs, as specified by the Inspector at paragraph CR74 is warranted on grounds of unreasonable behaviour on the parts of Herefordshire Council and Ledbury Town Council
6. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that Herefordshire Council and Ledbury Town Council shall pay to Bloor Homes Western its partial costs of the inquiry proceedings, limited solely to the unnecessary or wasted expense incurred in respect of, for Herefordshire Council, these costs should be limited to those incurred up to the point where it withdrew its reasons for refusal and for the time spent at the inquiry discussing the planning obligations and the draft conditions and for Ledbury Town Council, these costs should be limited to paragraphs 3.1.6- 3.1.11 of Mr Millington's Rebuttal Proof and the time spent discussing this matter at the Inquiry, such costs to be taxed in default of agreement as to the amount thereof.
7. You are invited to submit to Herefordshire Council and Ledbury Town Council details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at <http://tinyurl.com/ja46o7n>

Right to challenge the decision

8. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.
9. A copy of this letter has been sent to Herefordshire Council and Ledbury Town Council.

Yours faithfully,

Andrew Lynch

Andrew Lynch

This decision was made by the Secretary of State and signed on his behalf.



Costs Report to the Secretary of State for Communities and Local Government

by Lesley Coffey BA Hons BTP MRTPI

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

Date 14 December 2020

TOWN & COUNTRY PLANNING ACT 1990

HEREFORDSHIRE COUNCIL

APPEAL BY BLOOR HOMES WESTERN

PROPOSED DEVELOPMENT AT

LAND NORTH OF VIADUCT,

ADJACENT TO ORCHARD BUSINESS PARK, LEDBURY

Inquiry Held on 13-17 July and 22-25 September 2020

Land North of Viaduct, Adjacent to Orchard Business Park, Ledbury

File Ref: APP/W1850/W/20/3244410

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Land North of Viaduct , Adjacent to Orchard Business Park, Ledbury

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Bloor Homes Western for a full award of costs against Herefordshire Council & Ledbury Town Council.
- The inquiry was in connection with an appeal against the refusal of the Council to grant subject to conditions planning permission for a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works.
- The proposal is for outline planning permission with all matters reserved for future consideration with the exception of access. Only the means of access into the site is sought as part of this outline application, not the internal site access arrangements (i.e. they are not formally form part of the application). Vehicular access is proposed off the Bromyard Road.

Summary of Recommendation: The application for an award of costs against Hereford Council and Ledbury Town Council is allowed in the terms set out below.

The Submissions for The Applicant

1. This is an application for a full award of costs against Herefordshire Council and Ledbury Town Council who are jointly and severally liable for the Applicant's full costs of the appeal. It is not for the Applicant to have to decipher precisely which party is responsible for each item.
2. The Applicant seeks a substantive award of costs against Herefordshire Council and Ledbury Town Council. Procedural costs are also sought against Ledbury Town Council. The Applicant refers to the relevant paragraphs in Planning Practice Guidance (PPG)¹.
3. The proposals plainly comply with the Development Plan when read as a whole and, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 11(c) of the National Planning Policy Framework (The Framework), should be approved. That was the conclusion of the professional Planning Officers of the Council and more latterly the Council itself.
4. The appeal site is an allocated strategic site by way of Policy LB2 of the Herefordshire Core Strategy. Bloor Homes landowners and their agents engaged fully in the whole development plan process which led to the allocation.
5. Herefordshire Council is the party primarily responsible for the Applicant's costs since they were responsible for the decision-making in this case. The Council refused the application on highway grounds without the evidence to do so. Although it quickly appreciated its error and withdrew any objection to the proposal, it is the decision to refuse the application which has triggered the need for this appeal.

¹ Paragraph: 049 Reference ID: 16-049-20140306

6. The costs decision for Bloor Homes and Hallam Land's appeal at Crowmarsh Gifford, Oxfordshire illustrates why the costs of an appeal arising from a refusal fall squarely on a Local Planning Authority.²
7. The whole refusal was focused on the desire to provide a second road access into the site under the Listed Victorian railway viaduct. Yet Network Rail made clear in their letter before the application was determined that they would not allow this due to very obvious and very serious safety and operational concerns.
8. The Town Council has continued to pursue a case on a wide variety of matters, none of which have any merit. In respect of the highway matters, Bloor Homes have incurred repeated expense in the points taken by Ledbury Town Council, many of which have been subsequently dropped. The remaining highway objections from Ledbury Town Council are wholly unreasonable.
9. The planning, heritage and landscape case against this proposal, on a site allocated for the same amount of development in a recently adopted development plan are hopeless.
10. If it is considered necessary for the Applicant to have to decide at this stage who pays for what, it is suggested that Herefordshire Council should pay 70% of the Applicant's costs and Ledbury Town Council should pay 30%.

The Response by Herefordshire Council

11. If it is found that the appeal scheme should not have been permitted, then no award for costs should be made in this matter against the Council, since the grant of permission has not been unreasonably delayed.
12. If it is found that planning permission should clearly have been granted, then any award of costs has to consider the respective conduct of the Council and Ledbury Town Council, as well as whether all the Applicant's costs were reasonably incurred in any event.
13. The unnecessary costs caused by the Council should be limited to the Applicant's costs up to the time that Ledbury Town Council became a Rule 6 party and adopted the reasons for refusal which the Council had withdrawn. In addition, the Applicant's costs relating to the separate witnesses on housing land supply and affordable housing should not be recovered.
14. PPG does not indicate that withdrawing reasons for refusal in itself justifies the award of costs. Rather, a judgement must be reached. The logical way in which to approach the Applicant's costs application is to consider the costs application made against Ledbury Town Council first. The Town Council adopted, and in some respects supplemented, the reasons for refusal that the Council withdrew.
15. If the matters raised by Ledbury Town Council in support of the reasons for refusal are concluded to show properly arguable points, or points that acted to show that this was not a scheme that should clearly have been permitted, then it must follow that the Council's actions in refusing planning permission do not fall within the terms of the guidance in the PPG.

² APP/Q3115/W/17/3186858

16. So far as whether any of the costs would be attributable to Ledbury Town Council, the Council makes the following points:

- From the time of Ledbury Town Council becoming involved as a Rule 6 Party, it has in effect adopted the reasons for refusal relied on previously by the Council but which it withdrew;
- But for Ledbury Town Council becoming a Rule 6 Party, it can be reasonably assumed that the appeal in this matter would have taken far less time and involved significantly less costs in terms of preparation for the inquiry and the inquiry itself;
- The whole of the first week of the inquiry, was taken up with highways evidence, which can reasonably be assumed to have taken a very small comparative amount of appeal time if it had not been contested by Ledbury Town Council in the way it was;
- If the Council were to share any costs of the inquiry, this should be limited to time at the inquiry relating to conditions and the s.106 agreement. It was Ledbury Town Council that led to evidence submitted in respect of the other matters at the inquiry.

17. For the avoidance of doubt, the Council rejects the Applicant's submission that the Council and Ledbury Town Council can be jointly and severally liable for the Applicant's full costs. This wrongly assumes that we are in a "*costs follow the event*" regime (as in general civil litigation), as opposed to a regime which requires identification of unreasonable behaviour which directly causes unnecessary or wasted expense. That is, because what is necessary is identifying how particular behaviour directly caused unnecessary or wasted expense, it is wrong to say that all costs must be paid one way or the other. Costs are only payable if they can be justified in accordance with the guidance.

18. The Council also rejects the Applicant's suggestion that it has withdrawn its reasons for refusal in order to somehow hide behind Ledbury Town Council making the same points. This is a pejorative suggestion, unsupported by evidence, and not able to even begin to establish unreasonable behaviour by the Council.

The Response by Ledbury Town Council

19. Whilst the Applicant has made numerous (and unwarranted) derogatory remarks about Ledbury Town Council's case throughout the inquiry (and in its closing submissions), Ledbury Town Council responds only to the matters raised in the cost application and on the basis it has been made.

20. In this respect, it is suggested that both substantive and procedural costs are sought against Ledbury Town Council.³ However, no procedural unreasonableness is pleaded in the costs application (or set out in sufficient detail that Ledbury Town Council is in a position to adequately respond). In particular, none of the factors set out appear relevant here (or the relevance is not adequately explained in the costs application).⁴

³ Costs Application paragraph 6

⁴ Costs Application paragraph 9

21. As for substantive unreasonable behaviour, at no point in the inquiry did the Applicant suggest that Ledbury Town Council's reasons for objecting to the development can be addressed through planning conditions. It is suggested that "some" of Ledbury Town Council's highways points are more appropriately addressed at the section 278 stage.⁵ In fact, there is only one point made by Ledbury Town Council that the Applicant suggests in its highway closing is a section 278 matter – the right turn lane storage capacity. The reason why this is not appropriate for the section 278 stage is addressed in Ledbury Town Council's Closing Submissions.⁶
22. The question of whether or not the application complies with the development plan turns on a number of considerations, including whether the access arrangements are satisfactory or not. The Town Council's highways case has been supported by expert evidence, and fully justified. The evidence on that point is highly detailed and contested. It is not "clear" and/or "obvious".
23. Mr. Wakefield accepted that if the access arrangements were unsatisfactory, the development would not comply with Policy LB2; and also, that this was the most important policy in the development plan so far as the application was concerned. In those circumstances, it cannot be said that this is a development which is obviously policy compliant. This to a large extent pivots on the highways evidence – expert evidence which is heavily contested.
24. The reliance on the North Worcestershire Golf Club appeal is misguided.⁷ It is clear from the Inspector's report (paras. 20-23 and 31-50) that in that case the Council (i) proceeded on a complete misinterpretation of one policy in the development plan; (ii) the misinterpretation was plain/obvious; (iii) the Council had taken an inconsistent approach on the interpretation of that one policy; and (iv) that without that policy misinterpretation, the Council's case evaporated.
25. Even if it were true that a second access is not possible, that is not an answer to Ledbury Town Council's case, for the reasons set out in Ledbury Town Council's closing at para. 130. The dispute on the base traffic data did not turn on the half-term point, for the reasons set out in Ledbury Town Council's Closing Submissions.⁸ There are reasonable grounds for suggesting that the crossing would be called every cycle, for the reasons set out in Ledbury Town Council's Closing Submissions.⁹ The fact that the 120 cycle will only occur during peak hours does not mean that this point was taken unreasonably. The Town Council's concern about a cycle time of this length is a safety concern, and therefore it is immaterial that these cycle times will only occur in peak hours – see Ledbury Town Council's Closing Submissions.¹⁰ The Town Council has taken into account and given weight to the existing safety issues at the junction.
26. In reaching a judgment on whether or not the impact on the highway network was severe, Ledbury Town Council took into account a range of factors, including

⁵ Costs Application paragraph 30

⁶ Paragraph 41(3)

⁷ Costs Application paragraph 14 & Appeal Ref: APP/P4605/W/18/3192918

⁸ Paragraphs 20-24

⁹ Paragraphs 47-51

¹⁰ Paragraphs 52-61

- queues (see Town Council's Closing Submissions).¹¹ Previous appeal decisions (including recovered appeal decisions) have focussed on the peak hours, and queuing at this time, when reaching a judgment on highways impact
27. Finally, it is said that "the claims about an unacceptable traffic impact on the Area of Outstanding Natural Beauty (AONB) are hopeless." The only explanation given on what was hopeless about the case put forward on AONB is "as to the argument which evolved about the traffic not using a second access impact on the setting of the AONB". This sentence is not particularly coherent, and in any event does not even begin to explain why Ledbury Town Council's AONB case is unreasonable. For a start the argument did not "evolve" – the argument set out in closing is based on the evidence of Ms. Tinkler in her Proof of Evidence, which in turn was derived from Ledbury Town Council's Statement of Case (and in turn from concerns of the AONB unit). In any event, the Applicant does not explain what is unreasonable about the AONB case.
28. Finally, that the "*planning, heritage and landscape case*" are "*hopeless*". It is impossible to respond to this. It is totally unreasonable to submit a costs application that just lazily describes large parts of a parties' case as "*hopeless*" without even bothering to explain why.
29. Either way, Ledbury Town Council's case is supported by expert evidence and proceeds on a correct understanding of national and local planning policy and the law. It is not unreasonable. The Applicant may disagree with it – but that is not the basis for a costs application. The costs application is totally without merit and should be refused.

The Response to Herefordshire Council

30. Herefordshire Council caused the appeal. It makes no attempt to suggest the Applicant should have re-applied for permission.
31. In withdrawing any objection and presenting no evidence against the proposal, Herefordshire Council recognised the proposal should have been granted planning permission since it is entirely consistent with the development plan. See Bloor Homes full award of costs at North Worcestershire Golf Course in 2019.¹²
32. The Council's only point seems to be that it should pay very little costs because most of the expense has been derived from the action of Ledbury Town Council. The Council suggest the costs Bloor should pay are limited to one afternoon session of the inquiry. Once a refusal has been issued, then the Council must accept the consequences of their actions
33. The Applicant has to act diligently and appropriately for both itself and on behalf of the landowners for whom it has a serious responsibility and duty of care. It will self-evidently have to call evidence from relevant experts. It is also entirely foreseeable that once an appeal has been triggered that local residents will wish to appear, either on their own or as a Rule 6 party represented by witnesses and of course the Applicant will have to deal with all that. That is why the Inspector who awarded Bloor Homes and Hallam Land its costs in the Crowmarsh Gifford

¹¹ Paragraphs 62-70

¹² APP/P4605/W/18/3192918

case had no time for South Oxfordshire District Council's submission that its exposure to costs ended when it withdrew all its evidence in that case.

34. It was also foreseeable that the Secretary of State would wish to recover the appeal, and in so doing the Applicant has to explore every consequence and permutation, including the 5 year land supply, because the Inspector is not the decisionmaker and the Secretary of State may place more weight on a greater shortfall – there is simply no way of knowing, unlike situations where the Inspector is making the decision and can make an indication at the Case Management Conference.
35. The Applicant simply suggests Ledbury Town Council should pay 30% of the total given the enormous amount of work its position has required PJA to carry out. But for the avoidance of any doubt, if it is necessary to nominate one party upon whom all the costs should land, then it is Herefordshire Council.

The Response to Ledbury Town Council

36. The starting point has to be Ledbury Town Council's case on walking and cycling accessibility and access to facilities and services. Whilst claiming not to question the principle of development, Ledbury Town Council proceeded to do so by questioning its very location. The Town Council might have been able to legitimately question the application if there was no pedestrian and cycle access from the site to the Hereford Road. But of course, there is such access, granted with the permission of Network Rail. So to pursue these points on an allocated site, with exactly the pedestrian and cycle access that is set out in the development plan is utterly hopeless. It would require the decisionmaker to ignore an up-to-date development plan.
37. There seems to be virtually no recognition from Ledbury Town Council of the fact the site is allocated for precisely what the planning application proposed. The Town Council has pursued their case as if the allocation can be questioned. It is well documented that Ledbury Town Council did not want the site allocated.¹³ Much of this case seems to be an attempt to now try and delay a permission which plainly should have been granted.
38. It is important to make clear that for Ledbury Town Council's evidence on junction capacity to be accepted it needs the base traffic to be higher; the pedestrian crossing to be called every time; and the cycle time to be set at 90 seconds. It also needs the junction to be designed as if it were a new junction and with no regard to the wholly unsatisfactory existing junction arrangements. These are fundamental inputs into Ledbury Town Council's model and case against the Applicant.
39. That Ledbury Town Council's assumptions are unreasonable is revealed from the evidence itself. But that unreasonableness can also be verified by the fact that Herefordshire Council, their own consultants and Ledbury Town Council's own consultant TPA all accepted the modelling assumptions made by PJA.
40. Moreover, Ledbury Town Council have never suggested the Bromyard Road access was unacceptable. It accepts the legitimacy of that access, but simply argues for a second access under the Viaduct. Yet at no stage did Ledbury Town

¹³ CD11.1 Ledbury Neighbourhood Plan page 22, first paragraph

Council ever address its mind to what it felt was the acceptable level of traffic using the single access. No attempt was ever made to identify where the limit was in terms of what was acceptable even on their own evidence of capacity.

41. The case against the Applicant in respect of rat-running traffic through the AONB and traffic through the Town is equally misjudged and unreasonable. Again, in presenting its case Ledbury Town Council has sought to rely on its own traffic modelling, which is deeply flawed.
42. The Town Council try to make a virtue out of the points it raised and dropped. But they were not dropped until the Applicant had been put to considerable expense in investigating each of these points. The same is true for the new points which were not in its statement of case. Yet any conceivable point which could be raised was raised, without any regard to how minor it was, or how inconsequential it was to the question of whether there is a severe impact or a genuine safety concern.
43. It is not enough to just call an expert witness on a matter. Witnesses need to be reasonable in the evidence they give and behave reasonably in the points they are pursuing on behalf of their client.

Conclusions

44. The application is for a full award of costs. A procedural award is sought against Ledbury Town Council and a substantive award against both parties.
45. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Procedural Award

46. PPG states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceedings or only for part of the process.¹⁴
47. The Applicant has provided no details of the behaviour that is alleged to have given rise to the claim for a procedural award of costs or why such behaviour resulted in unnecessary or wasted expense.
48. It is acknowledged that during the period leading up to the inquiry LTC failed to meet the deadline for the submission of its Statement of Case, on more than one occasion, such that the pre-inquiry programme needed to be amended. Whilst this undoubtedly caused delay and inconvenience to other parties, no evidence has been submitted to indicate that this gave rise to unnecessary or wasted expense. Therefore I conclude that an award of costs in relation to procedural matters is not justified.

Substantive Costs

49. The claim for substantive costs is based on the decision of the Council to refuse planning permission for development that ought to have been permitted. The

¹⁴ Paragraph: 032 Reference ID: 16-032-20140306

Applicant's position is that the Council and Ledbury Town Council are together responsible for the wasted expense of defending the case at inquiry.

50. I have found the proposal to be acceptable and in accordance with the Development Plan. However, since an award of costs does not necessarily follow the decision, this in itself, does not mean that the Council's behaviour was unreasonable.
51. PPG¹⁵ provides examples as to when a substantive award of costs may be made against a Local Planning Authority. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and, not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
52. All of the professional advice before the Council, including the comments of Ledbury Town Council's previous highways consultants, found the proposal to be acceptable in highway terms, and that there was a consensus that the modelling used was appropriate. The Council refused permission, contrary to the advice of its Officers and the Highway Authority. There appeared to be no substantive evidence to support their decision, which they were advised would be difficult to defend at appeal.
53. I conclude that Herefordshire Council's actions prevented or delayed development which should clearly be permitted, and accorded with the development plan, and national planning policy.
54. The evidence strongly suggests that the Council reviewed its case promptly following receipt of the appeal. Indeed, this is acknowledged within the Applicant's costs claim. The Council's letter dated 18 February confirmed that it withdrew the reasons for refusal, whilst acknowledging that the appeal would need to proceed.¹⁶ A Statement of Common Ground dated 25 February 2020 stated that :
- "In light of the fact that the Council has now withdrawn the three reasons for refusal, there is no longer disagreement between the Applicant and the Council. The appeal should be allowed, subject to the satisfactory use of planning conditions and planning obligations."*¹⁷
55. The first Case Management Conference (CMC) was held on 26 February 2020. Following the CMC it was confirmed that the Inquiry would last 2-3 days. At the time of the CMC Ledbury Town Council was not a Rule 6 party.
56. The Inquiry was deferred due to Covid-19 and sat for 9 days. It undoubtedly took longer due to the constraints of a virtual event. Much of the first week was occupied hearing evidence from local residents and other interested parties and the evidence in relation to highway matters. The second week considered other issues, including the submitted Planning Agreement and the planning conditions.

¹⁵ Paragraph: 047 Reference ID: 16-047-20140306

¹⁶ The start date for the appeal was 17 January 2020

¹⁷ CD 4.1 SoCG 6.2

57. The Council co-operated throughout the Inquiry. The submitted Annual Housing Position Statement confirmed that it did not have a 5 year supply of housing land. Although the Council was clear that it did not agree with the Applicant's 5 year housing land supply figure, it did not submit any additional evidence in relation to this matter. It provided a CIL Compliance Statement and agreed a list of draft conditions with the Applicant. The only parts of the Inquiry the Council took an active part in were the roundtable discussions in relation to the planning agreement and conditions.
58. The Applicant submitted extensive evidence in relation to housing land supply and affordable housing to the inquiry. It was clear from the SoCG with the Council and Ledbury Town Council that the evidence in relation to housing land supply would be uncontested and that the housing and affordable housing benefits of the appeal scheme weigh in favour of the proposal. Therefore I do not consider that it was necessary for the Applicant to call two expert witnesses in relation to housing matters, or to prepare such substantial Proofs of Evidence.
59. There can be little doubt that had the Council not refused planning permission, contrary to the recommendation of its professional officers, that an appeal would have been unnecessary. To that extent I consider that the Council is liable for some of the costs of the appeal. Balanced against this the Council reviewed its decision at an early stage in the appeal process and took all reasonable steps to assist and limit the duration of the inquiry.
60. The Applicant's suggestion that the Council 'hid behind' Ledbury Town Council is not supported by the evidence.
61. In relation to the Council I therefore conclude that it behaved unreasonably in refusing planning permission for a development that ought to have been allowed and this gave rise to the expense of an appeal. However, the Council reviewed its case promptly and withdrew the reasons for refusal early in the process, before the Proofs of Evidence were prepared. It also agreed a Statement of Common Ground that accepted that planning permission should be granted. In this regard the Council's behaviour is not comparable with that in the Crowmarsh Gifford decision.
62. That the behaviour of the Council led to the need for an appeal is undisputed. However, to expect the Council to meet the costs of either the entire inquiry, or even 70% would not fairly reflect the efforts it made to limit the duration of the event and would run counter to the aims of the costs regime.
63. I conclude that the Council behaved unreasonably in refusing the application and should be liable for the Applicant's costs. These costs should be limited to those incurred up to the point where it withdrew its reasons for refusal and for the time spent at the inquiry discussing the planning obligations and the draft conditions.

Ledbury Town Council

64. PPG states that interested parties who choose to be recognised as Rule 6 parties under the inquiry procedure rules, may be liable to an award of costs if they behave unreasonably.
65. It was a main tenet of Ledbury Town Council's case that a second access under the viaduct should be provided. The fact that it was pursued although Network Rail were unwilling to allow such access is not in itself unreasonable. If I had

found the proposed access to be unsatisfactory, Network Rail's position would be a material consideration to be weighed in the balance but would not alter the conclusions as to whether the proposed development was acceptable in terms of access.

66. It is evident that Ledbury Town Council considered the access proposed to be unsatisfactory and they sought to appoint consultants to support that view. It represented the local population who strongly objected to the proposed access arrangements. The fact that the consultants representing Ledbury Town Council at the inquiry reached a different conclusion from their previous consultants does not amount to unreasonable behaviour.
67. The consultants at the inquiry went into a level of detail in relation to a number of matters that was not merited and ultimately would not make much difference to their case. A number of points pursued in relation to the junction were inconsequential and when taken together undoubtedly added to the length of the inquiry. The Applicant's modelling was scrutinised in detail. Had the case for Ledbury Town Council been accepted then it would have been necessary to conclude that the proposed access was unsatisfactory, and in the light of the impacts of its case on junction capacity my conclusion regarding the effects on the ANOB and Conservation Area may have been different. Notwithstanding this, Ledbury Town Council's approach to the assessment of the effect of the additional traffic on the Conservation Area misinterpreted the Environmental Statement and failed to recognise the relatively small difference in the volume of traffic passing through the Conservation Area should the proposal include a second access. However, the impact of the proposal on the Conservation Area is a material consideration, and looked at in the round, I therefore do not consider that Ledbury Town Council behaved unreasonably in relation to these matters.
68. The Town Council's objection to the pedestrian and cycle links would appear to be contrary not only to the views of their previous Consultant, but also its own consultation response to the application that specifically requested that *"Consideration that a combined cycle way/footway link, from the southeast corner of the site, through the old canal bridge, connecting to Ballard Close is essential for the connectivity of the site, creating a safe, pleasant and direct link to the Town Trail and the Town Centre, encouraging both cycling and walking."*
69. That inquiry time was spent considering an access in a location that was specifically requested by Ledbury Town Council cannot be considered to be anything other than unreasonable behaviour. This matter was addressed at Mr Millington's Rebuttal Proof of Evidence paragraphs 3.1.6 – 3.1.11 and was discussed at the inquiry.
70. The objection to the impact on the AONB and the Conservation Area were predicated on the increase in traffic using Station Junction and the consequential delays. The fact that I reached a different conclusion in this matter does not detract from Ledbury Town Council's case in relation to these matters.
71. I conclude that Ledbury Town Council behaved unreasonably in pursuing an objection to a pedestrian route that it specifically requested to be provided and therefore gave rise to unnecessary and wasted expense. These costs should be limited to paragraphs 3.1.6- 3.1.11 of Mr Millington's Rebuttal Proof and the time spent discussing this matter at the Inquiry.

Conclusion

72. I find that unreasonable behaviour on the part of Herefordshire Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. For the reasons given above, a partial award of costs is justified.

73. I find that unreasonable behaviour on the part of Ledbury Town Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. For the reasons given above, a partial award of costs is justified.

Recommendations

74. For the reasons set out above I recommend:

- In respect of Herefordshire Council that, subject to the Secretary of State's conclusions in relation to the planning appeal, the application is allowed, and a partial award of costs should be made against the Council in the terms set out above.
- In respect of Ledbury Town Council that, subject to the Secretary of State's conclusions in relation to the planning appeal, the application is allowed, and a partial award of costs should be made against the Council in the terms set out above.

Lesley Coffey

PLANNING INSPECTOR



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.