

IN THE MATTER OF

**LAND NORTH OF VIADUCT, ADJOINING
ORCHARD BUSINESS PARK, LEDBURY,
HEREFORDSHIRE, HR8 2QY**

APP/W1850/W/20/3244410

**OPENING STATEMENT
ON BEHALF OF
THE APPELLANT**

No5
CHAMBERS

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Introduction

1. This is an appeal into a proposal 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”*.
2. That this application was refused and that we are even at appeal is, quite frankly, mind boggling. This is an allocated site. The proposals are plainly policy compliant. There were no technical objections. Arguments as to allocation cannot be reopened and nor can its policy wording. The time for that has gone.
3. In that context, it is unsurprising that the application was presented to the Council's Planning Committee with a strong recommendation to approve from its Officers. It is, however, very surprising and disappointing that their Planning Committee refused planning permission against the technical advice of their own professional officers without any technical evidence in doing so. It is unsurprising that the Council later took the decision not to provide any evidence in support of their reasons for refusal, which related principally to highways matters, at this inquiry. Plainly the application should never have been refused.
4. The main arguments raised by the Town Council, who have taken up the mantle as a Rule 6 party, are similarly highways related. Importantly, there was no objection from Herefordshire Council as the Highway Authority whom, after robust assessment of the access proposals, concluded that there would be no severe impact on the road network in terms of capacity and congestion nor an unacceptable impact on highway safety.
5. Though the Town Council will in due course seek to persuade this Inquiry that an additional point of access under the Viaduct to the north of the Hereford Road/Leaddon Way roundabout is required, Network Rail will not allow the same to be built; a fundamental point in consideration of the reasons for refusal. The Council knew this in reaching their decision to refuse the application at their 11th December 2019 Planning Committee meeting by way of a letter from Network Rail to Bloor Homes dated 9th December 2019, yet chose to ignore it. This letter could not be more to the point and was read out to Councillors by the Council's Legal Advisor at the start of the meeting. They further knew that the proposed access had been appropriately assessed and found not to have any significant adverse environmental impacts, meeting the objectives of relevant planning policy.
6. The Town Council also knew of the letter from Network Rail prior to taking up their Rule 6 status for the Appeal but seem to be in complete denial that what they seek cannot happen. Network Rail have stated that such an access would introduce an undue health and safety risk to the railway through the potential for bridge strike, the risk of vibration damage to the asset and would increase the difficulty for their examiners to gain access to the Viaduct piers; a point consistently made by Bloor Homes during the determination of this application.
7. Bloor Homes are a responsible house builder and notwithstanding that there is no planning policy requirement to do so, will not introduce un-necessary risk to anyone by constructing a highway under 19th century Viaduct piers that support an operational rail

line some 20m overhead simply because of a local preference. Especially not when there is a satisfactory access to the site available off the Bromyard Road with deliverable off site mitigation measures that have been agreed with the Highway Authority.

8. The policy compliance of this scheme is set against the background of a housing crisis, and a Council which accepts that it does not have a 5YRHLS by any stretch on the Appellant's evidence. The Council also has a woefully inadequate approach to the delivery of affordable housing which, as Mr. Stacey's evidence shows, is against an acute need. The proposal is exactly the type of development that is needed to assist.
9. Though the Secretary of State has called in this appeal - the Appellant understands following representations made by his friend Bill Wiggins MP - no doubt he will sensibly be mindful of his Prime Minister's unmistakably loud and clear message at the end of last month that we need to "build, build, build"¹. The Secretary of State will no doubt rightly be focusing now on the needs of the population rather than the wants of a few, the already clear governmental message that we need to build more homes having been ramped up by Mr. Johnson heading towards the most radical reforms to our planning system since the Second World War, to include a package of measures to support home building across England.
10. Who better to provide a much-needed development to meet the Council's dire need than Bloor Homes, the UK's largest privately-owned housebuilder? This site forms an important part of Bloor Homes Western's housing delivery programme for early delivery. The appeal proposal is precisely the type of sustainable, mixed use development by a 5* housebuilder which the Government wants the industry to Build, Build, Build as the country progresses through, and hopefully out of, the global Coronavirus pandemic.

The Development Plan

11. Section 70(2) requires a local planning authority ('LPA') to have regard to the provisions of the Development Plan so far as material to the application and to any other material considerations in dealing with an application for planning permission. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires such determination to be made in accordance with the Development Plan unless material considerations indicate otherwise.
12. The Development Plan for this area is comprised of:
 - 12.1 The Herefordshire Local Plan Core Strategy 2011-2031; and
 - 12.2 The Ledbury Neighbourhood Development Plan.
13. The relevant planning policies are as set out in Section 4.0 of the Statement of Common Ground ('SoCG') between the Council and Appellant **[CD4.1]** and in Section 3.0 of the SoCG between the Town Council and Appellant **[CD4.3]**.
14. The policies which were relied upon by the Council in its reasons for refusal were SS1, SS4, SS6, LB2, MT1, LD1 and LD4 of the Core Strategy; the Highway Design Guide for New Developments (July 2006); TR01 and TRP6 of the Malvern Hills AONB Management Plan 2019-2024; and paragraphs 110, 172 and Chapter 16 of the NPPF.

¹ <https://www.gov.uk/government/news/pm-build-build-build>

The Principle of Development

15. The site is a strategic allocated site within the Herefordshire Local Plan 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 period².
16. Both the Council and the Town Council support the principle of development on the site³. The reasons for refusal were in the main highways focused.
17. The Council's decision to refuse the application was entirely contrary to the technical findings of its own highway authority and the advice of its officers; no evidence was provided by committee members to justify the decision. Having withdrawn its reasons for refusal, the Council now supports the proposal, which had been carefully discussed with them and other parties for over three years.
18. In policy terms, the Council agrees that the proposal is consistent with Core Strategy Policy LB2, which sets out development parameters for the site, and that it complies with the Development Plan. That is plainly correct.
19. Indeed, there are no other material considerations in this case which suggest that the plan should not be followed. On the contrary there are a number of very weighty material considerations in support of the proposal.

Alleged Harm

20. Despite the above, the Town Council maintains that the proposal should be refused on the basis of alleged harm which they say will flow from the proposed access without the provision of a second point of access under the Viaduct.
21. No policy within the Development Plan seeks to restrict where vehicular access should be taken into and out of the site nor is there any policy requirement for the provision of a second point of access. The Local Plan was specifically amended in its preparation to provide flexibility as to where the access could be taken. The Town Council could've challenged the Local Plan on this issue. They didn't. They could've made specific provision within the Neighbourhood Plan. Again, they did not.
22. Further, Network Rail have made it absolutely clear that a vehicular access would not be supported under the Viaduct. That was known by the time the application was at planning committee in December as Bloor Homes submitted a letter to the Council from Network Rail saying so.
23. Finally, the Local Highway Authority ('LHA') does not agree that the proposal would cause the alleged harm such that permission should be refused and the Appellant's evidence further demonstrates the same.
24. The Town Council's reason for seeking Rule 6 status is clearly based on local feeling rather than hard technical evidence. That is not good enough.

² This is agreed by the Town Council at 4.1(a) of the SoCG at CD4.3 and by the Council at 5.1 of the SoCG at CD4.1.

³ See 4.1(b) of the SoCG at CD4.3 – the Town Council agree subject to the provision of satisfactory access arrangements.

Highways

25. The Environmental Statement assessed all four access options identified in the Council's screening opinion. Martin Kingston QC advised on this matter previously⁴, noting that *"given that the ES confirmed the preferred option (a single vehicular access from Bromyard Road) would not have any significant adverse environmental impacts consideration of alternatives was neither necessary nor reasonable. However, the developer has studied the transport implications of the alternative access arrangements, as suggested by the Council, in the ES (Chapter 7). It concludes that "the alternative options do not offer a significant betterment in terms of traffic related environmental effects" (paragraph 7.1.9 of the ES, see also section 7.10 of the ES and paragraph 7.10.27 in particular). I note these conclusions are supported by the local highway authority who in their consultation response (18th July 2019)."*
26. Further, notwithstanding the lack of requirement for a second point of access, the implications of providing one has been considered and it has been shown to have no significant beneficial effects.
27. The transport and highways matters in this case have already been fully examined by the LHA and their appointed consultants, WSP. They made no highways objections after a full review of all the core technical matters.
28. The Town Council appointed their own consultants, TPA, to review the technical work prepared by PJA. Whilst some minor technical issues were raised, and subsequently addressed by PJA, no fundamental concerns were identified. This position was agreed with the Council in the Highways and Transport SoCG⁵.
29. It is noted that TPA were not reappointed by the Town Council to represent them at this Inquiry.
30. It is accepted that an improvement scheme at the Bromyard Road/Hereford Road junction is required in any event in order to address existing capacity and safety concerns; however, the proposed development provides a suitable mitigation scheme at this junction which balances the temporary capacity constraints in the peak hours with the permanent beneficial effects to pedestrians and cyclists. This improvement scheme has already been fully audited by the Council and their consultants, and has also been subjected to a Stage 1 Road Safety Audit⁶.
31. The residual impacts at the junction are not severe, will not result in unacceptable highway safety impacts, and will not result in inappropriate levels of traffic in the Conservation Area or the AONB.
32. The Council agrees that the vehicular access arrangements are satisfactory⁷; the increase in vehicular traffic and associated disturbance will not result in unacceptable impact on the AONB; and any increases to traffic flows through the Conservation Area

⁴ See Appendix 1 of Mr. Wakefield's rebuttal

⁵ See Section 3.0 of the Highways and Transport SoCG between the Appellant and the Council at CD4.2

⁶ See Section 2.0 of the Highways and Transport SoCG between the Appellant and the Council at CD4.2, in particular Table 2-1 matter 5

⁷ See Section 2.0 of the Highways and Transport SoCG between the Appellant and the Council at CD4.2, in particular Table 2-1 matter 6

(namely along The Homend and the Southend) would have no effect on its character and appearance⁸.

33. The scheme would not conflict with Local Plan LD4 or SS6, nor conflict with the provisions with the NPPF or section 72 of the Planning (Listed Building & Conservation Area) Act 1990⁹.
34. Additionally, the proposed walking and cycling routes have been demonstrated to be appropriate for the development and further support the overall access strategy for the site¹⁰. Travel Plans have been prepared, are acceptable, and can be secured by an appropriate condition¹¹.

Landscape

35. The Town Council contend that there are direct and/or indirect landscape and visual effects on the AONB as a result of increased vehicular use resulting from the proposed development. They also now seek to suggest that there could be landscape/visual effects on the setting of the AONB for the same reason; however, this did not form part of their Statement of Case and is thus being inappropriately raised late in the day.
36. In any event, the Town Council are entirely misguided.
37. In AONB terms, the Town Council and Malvern Hills AONB Unit's objections are predicated solely on the basis that alternative access arrangements are achievable and would disperse and minimise the effects on the AONB. This is not supported by the evidence.
38. Further, the increased traffic on the minor roads within the AONB will be confined to a single minor road/ route (via Beggars Ash) and will be minimal. In real terms, it will equate to less than one extra vehicle every 3 minutes in the peak hour. When assessed correctly, the resultant effects of this in landscape and visual terms upon the special qualities and features of the AONB will be negligible.
39. The proposals occupy a well-defined and visually contained location, well related to the existing settlement and will deliver valuable landscape and green infrastructure benefits, extending to around one third of the total site area. It will also deliver an improved entrance to Ledbury along Bromyard Road, as recognised and stated in the Officer's report¹².
40. Based upon the Urban Fringe Sensitivity Analysis, which is the most relevant and detailed published study¹³, the site represents the most logical and appropriate location in landscape and visual terms for new development at Ledbury. This is unsurprising given

⁸ See Section 5.0 of the main SoCG between the Appellant and the Council at CD4.1, in particular at 5.1

⁹ Ibid

¹⁰ See Section 2.0 of the Highways and Transport SoCG between the Appellant and the Council at CD4.2, in particular Table 2-1 matter 7

¹¹ See Section 2.0 of the Highways and Transport SoCG between the Appellant and the Council at CD4.2, in particular Table 2-1 matter 8

¹² See paragraph 6.82 of CD12.3

¹³ CD1.48

its status as an allocated site pursuant to Policy LB2, such that its landscape sensitivity has already been appropriately assessed.

41. The Council's Officer had it right when they stated in their report for committee that the landscape and visual impact assessment undertaken for the proposed development was *"robust in assessing the impacts of the development"* and that the proposed development *"would not give rise to any unacceptable long term landscape and visual harm"*¹⁴.
42. Indeed, the site includes no national, local or other landscape designations. The more sensitive landscape of 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 more elevated land.
43. None of the authorities or any other organisations consider that the site is unsuitable in landscape or AONB terms for the size, nature and scale of development proposed. This includes the Town Council, the Malvern Hills AONB Unit and the Council. The Malvern Hills AONB Unit confirm that *"the AONB Unit does to object to the quantity or siting of the proposed development"*¹⁵.

Heritage

44. As to Heritage, the Town Council accepts that the proposed development will have no material impact on the significance of any designated heritage asset apart from, they say, the Conservation Area¹⁶. The alleged harm on the appearance and/or character of the Conservation Area is predicated entirely on the purported increase in traffic flow along 'The Homend' (A438), High Street and 'The Southend' (A449) through the same.
45. This is another matter in respect of which the Town Council is sorely misguided.
46. Rather than harm, the Appeal Scheme delivers, in the round, heritage benefits; specifically, improved access to the Viaduct, an iconic and monumental listed structure. Paragraph 200 of the NPPF directs the decision-maker to *'treat favourably'* those schemes that *'better reveal the significance'* of heritage assets; this is exactly what this Scheme can achieve.
47. The increased traffic flow through the Conservation Area of two or three extra vehicles per minute is in no way discernible, and certainly not sufficient, to bring about a change to the character or appearance of the area.
48. The Town Council accepts through their witness that the proposed second access will make no discernible difference to the traffic flows through the Conservation Area¹⁷. Furthermore, if safety features are needed to be fixed to the listed piers, this will plainly cause harm to the heritage significance of the structure.

¹⁴ See paragraph 6.83 and 6.192 of CD12.3

¹⁵ See paragraph 2 of CD17.19

¹⁶ See Section 4.0 of the Heritage SoCG between the Appellant and the Town Council at CD4.24, in particular 4.1

¹⁷ See paragraph 4.1.4, POE of Cllr Howells

Benefits

49. There are very significant and considerable benefits that would result from allowing this appeal and granting planning permission¹⁸.

Need for market and affordable housing

50. It is undeniable that there is a well-established national housing crisis in this country. It is a manifestation of an underlying persistent and pervasive trend over many decades. We build too few homes and far too few affordable homes, added with increasing house prices. The Government acknowledged this in the Housing White Paper: Fixing the Broken Housing Market.
51. The extent of the national shortfall is enormous. The housing crisis is everywhere, including Herefordshire, which is not in a vacuum. It affects young people and young families who do not own their own home. The main group of people who object to proposals like this are homeowners, many of retirement age, whose own homes were built on greenfield land, often at the edge of settlements. We need to think about everyone.
52. Bringing forward allocated sites like this in the face of a substantial shortfall in the 5YRHLS supply is needed to address the housing crisis in this country and support the instruction to significantly boost the supply of housing in this country. Mr. Johnson has made that all the more clear with his recent message that we must 'build, build, build'.
53. Given the current pandemic there is an even greater need to continue granting planning permissions and to build more homes, of all types. This is of utmost importance; not only from a social aspect but also an economic one.
54. The Appeal Scheme will deliver a very significant quantum of much needed affordable housing on site: 40% affordable housing, up to **250 dwellings on site**. This is in accordance with Policy H1 of the Herefordshire Local Plan Core Strategy 2011-2031 and will be secured via the submitted planning obligation.
55. The mix of affordable housing is for 50% rented (125 homes) and 50% intermediate (125 homes). The rented is further split 75% social rent (93 homes) and 25% affordable rent (32 homes). This is agreed and in accordance with the Council's requirements.
56. The Town Council appear to downgrade the weight to the housing and economic benefits by suggesting only moderate weight and linking such weight to the provision of two access points, ignoring the benefits of the appeal scheme as presented to this inquiry. However, as set out in the Appellant's affordable housing evidence, *"the fact that the much needed affordable housing ... are elements that are no more than that required by policy is irrelevant – they would still comprise significant social benefits that merit substantial weight"*¹⁹.
57. The benefits of affordable housing must be substantial given (a) the shortfall in delivery, (b) lamentable affordable housing delivery in Ledbury, (c) rising house prices and

¹⁸ See paragraph 8.48 of Guy Wakefield's POE.

¹⁹ See the comments of Inspector Fagan at CD11.28

worsening affordability ratios along with (d) 944 households on the housing register and (e) increasing number of households housed in temporary accommodation.

58. There has been just one new affordable home built in Ledbury since 2011/12 and that was in 2011/12 some 9 years ago. This is inexcusable.
59. The Council acknowledge that a recognised measure of house price affordability is the ratio of median quartile house price to median quartile earnings²⁰ and highlight that, *“For 2018, the ratio in Herefordshire was 9.5, **which is the worst affordability ratio out of the 14 West Midlands Authorities**”*.
60. The recipients of new affordable homes are real people, in real need now. In the words of Inspector Young²¹, *“it is sometimes easy to reduce arguments of housing need to a mathematical exercise, but each one of those households represents a real person or family in urgent need who have been let down by a persistent failure to deliver enough affordable houses”*.
61. The Council is clearly letting these people down. Due to these circumstances the Appellant contends that nothing less than **substantial weight** should be afforded to the affordable housing benefits of this proposal.

Lack of 5YS of HLS

62. All parties accept that the Council cannot demonstrate a deliverable 5YRHLS against its adopted housing requirement plus a 20% buffer as it is required to under paragraph 73 of the NPPF²².
63. It is painfully clear that the Council has not been able to demonstrate a deliverable 5YRHLS for at least 4 years even on its own figures²³.
64. One of the reasons why it has been unable to do so is because the strategic sites in the Herefordshire Local Plan Core Strategy and other committed sites have not progressed as the Council had hoped they would. Even when a planning application has been made on a strategic site, there is no guarantee that the Council will approve it, as is the case with the appeal site.
65. It is agreed that:
- 65.1 The base date is 1st April 2019 and the five-year period runs to 31st March 2024;
 - 65.2 The adopted housing requirement should be used to measure the supply against;
 - 65.3 That the shortfall in delivery since the start of the plan period in 2011 is 1,729 and this should be added to the five-year housing requirement.
 - 65.4 That in addition a 20% buffer applies because the Council has failed to pass the Housing Delivery Test.
66. The extent of the deliverable supply and the years supply is not agreed. The Council's position statement states that the deliverable supply is 5,966 dwellings, which against the adopted housing requirement and a 20% buffer equates to 4.05 years. Notably, this

²⁰ See Appendix JSr3

²¹ See Appendix JS10

²² This is agreed by the Town Council at 4.1(e) of the SoCG at CD4.3

²³ BP PoE pages 6 and 7, including table 3.1 and chart 3.1 on page 7

includes 162 dwellings, which the Council itself considers to be deliverable at the appeal site within the five-year period.

67. Mr Pycroft's evidence tells a more woeful tale. He concludes that 1,647 dwellings should be removed from the supply essentially because:

67.1 The LPA has failed to provide the necessary "clear evidence" that housing completions will begin on large sites without detailed consent; and

67.2 The LPA has not provided the "compelling evidence" necessary to support a windfall allowance within the five years.

68. In conclusion, the deliverable supply is 4,319 dwellings (including 162 dwellings at the appeal site), which equates to 2.94 years; 2.83 years if the appeal site is removed.

69. The shortfall in the 5YRHLS is very significant and very serious. Allocated sites such as the appeal site are urgently required to address the shortfall in the short term. This shortfall and the absence of any realistic prospect that this will be made up in the next five years makes plain that substantial weight should be attached to the delivery of up to 625 new homes through this proposal.

Other benefits

70. The proposals will plainly bring a number of other benefits including:

70.1 the delivery of employment land (very significant);

70.2 construction, employment and additional disposable income in the area (moderate);

70.3 green infrastructure including the provision of Public Open Space, Improved Footpath and cycle links and improved biodiversity (moderate);

70.4 wider landscape impacts (limited);

70.5 improved services and facilities (limited);

70.6 sustainable construction and operation (limited); and drainage (limited);

70.7 The safeguarding of land and financial contribution to facilitate a restored canal (either no weight or moderate benefit where land and one of the proposed contributions is considered necessary²⁴).

71. There will also be the highway safety benefits relating to the operation of the Hereford Road/Bromyard Road junction (moderate) and heritage benefit of improved safety at the Bromyard Road/Hereford Road junction.

Planning Balance

72. The proposal plainly accords with the Development Plan and should therefore be allowed in accordance with paragraph 11c) of the NPPF and Section 38(6) of the PCPA 2004. Whilst the Local Plan is out of date given the 5YHLS position, those policies which seek to encourage housing should continue to be given full weight, and the benefits of delivering new housing in a scenario where the Council has less than 5 years' worth of housing, substantial weight.

²⁴ See paragraphs 8.41 to 8.43 of Mr. Wakefield's POE

73. If the Inspector considers there to be conflict with the Development Plan, in accordance with Section 38(6), the other very substantial material considerations under the 'normal planning balance' weigh in favour of the scheme.
74. With regard to the Neighbourhood Plan, though it is suggested that there is plainly no conflict, even if there were, paragraph 14 of the NPPF isn't triggered as it doesn't allocate sites and the Council has less than 3 years' worth of supply. Perhaps more fundamentally the purpose of paragraph 14 is to protect local communities from unplanned development; the appeal site is planned and acknowledged within the Neighbourhood Plan to be a strategically planned or allocated site.
75. In any event, limb 2 of paragraph 11(d) of the NPPF is engaged and it is clear that the adverse impacts of granting planning permission do not, and cannot, significantly and demonstrably outweigh the benefits of the scheme.

Conclusion

76. In light of the above the Secretary of State will be invited in due course to allow this appeal.

13 JULY 2020

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