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Oliver Jones
Herefordshire Council
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VIA EMAIL ONLY

Dear Oliver,

**PLANNING APPLICATION P163932/0: LAND AT HARDWICK BANK,
BROMYARD, HEREFORDSHIRE**

I am writing on behalf of Vistry Homes (the Applicant) in response to the comments made by the Local Highway Authority (LHA) on 20 December 2023, in relation planning application P163932/0.

As you will be aware, this planning application was submitted over seven years ago and during the intervening period has been subject to ongoing discussions with the LHA. We have previously received bulleted comments from the LHA on specific matters and the Applicant has gone to great lengths to address these comments. However, the comments received in December 2023 were the first received from the LHA to provide a full assessment of transport issues related to the proposals. Whilst we welcome the LHA's confirmation that they do not object to the proposals, we do not consider the comments to accurately reflect discussions to date or be entirely reasonable. I therefore feel that it is necessary to respond to some of the matters raised to clarify the Applicants position.

Flaggoners Close Pedestrian Access

The proposed sustainable transport strategy for the site is a result of extensive engagement with the LHA. Throughout, the Applicant has raised concerns regarding pedestrians using Upper Hardwick Lane (UHL) to access the A44 and the deliverability of improvements to UHL and the footway along the A44 to an appropriate standard. Despite these concerns the LHA insisted upon the route being included, along with improvements to UHL and the A44 footway. This resulted in an objection from the Town Council who are otherwise supportive of the proposals. Subsequently, a planning application related to the site to the south (ref: 190111) was refused by Herefords Planning Committee, contrary to officers recommendations, with the primary reason relating to insufficient width of the proposed footway taken with the unsatisfactory nature and environment of the A44. In light of that decision, the Applicant reverted to their preferred sustainable transport strategy, which provides a suitable alternative pedestrian connection and seeks to discourage pedestrians using UHL to access the A44.

The access proposals, including pedestrian access, have been the subject of a Stage 1 Road Safety Audit (RSA) with issues identified being addressed to improve the route further. It is therefore disappointing that the LHA have made the following comment:

"The LHA very strongly disagree with the removal of the proposed improvement scheme from the application and believe it is prejudicial to pedestrian safety, especially to school age children."

No evidence has been provided to substantiate these comments, which run contrary to the findings of the RSA, and the recent decision of the planning committee in relation to planning application ref: 190111. Whilst it is acknowledged that the opportunity to walk along UHL to connect to the A44 exists, the difference in the length of the route is only circa 70m. The difference in time between the prescribed route and UHL is non-consequential and as such the vast majority of residents are likely to follow the lit and improved signed links along Flaggoner's Close and Winslow Road.

The LHA goes on to state that the only reason the removal of the improvements has not resulted in an objection is because the Applicant has agreed to provide a sum of money of equal value to the cost of the scheme in lieu of carrying out the works via S278. To clarify, the applicant stated they were open to discussions about re-directing monies set aside for S278 works, if it can be demonstrated that it would go towards necessary improvements required to make the scheme acceptable in planning terms. However, the Applicant does not consider these improvements to be necessary as a suitable alternative connection is proposed. Moreover, there is an already substantial sustainable transport contribution being sought, which equates to circa £466,895 based on the current housing mix. An indication of the specific projects this contribution could be spent on has been requested to ensure that they are directly related to the development but that information has not been forthcoming. Therefore it has not been demonstrated that an additional transport contribution is fairly and reasonably related in scale and kind to the proposed development, in accordance with NPPF Para 57.

Cycle Connections

A 3m shared footway/cycleway is proposed along the length of the spine road, terminating where UHL crosses the spine road, linking to the Flaggoners Close connection to Winslow Road. This footway/cycleway previously extended to the site access at the A44, in an iteration of the scheme where a footway link to the site access along the A44 was proposed. However, the stretch south of UHL was removed when the footway connection along the A44 was removed, as there is no further housing proposed south of UHL and no suitable connection at the A44 access.

Notwithstanding the above, the LHA has requested that a 3m strip south of UHL to the A44 access is offered up for adoption to safeguard a future connection should development come forward on the site to the south or further development on Hardwick Bank to the east. It is for these reasons that the LHA request that a condition is attached to the planning consent, should it be granted, that the 3m strip of land be provided. As such the following condition has been attached to the recommendation for approval:

For a period of 5 years from the date of this permission, should development to the south of the A44 and / or the extension of the Hardwick Bank Strategic in an easterly direction to Tenbury Road be permitted, a 3-metre wide strip of land on the eastern side of the access road between the A44 and the shared footway/cycleway along the spine road shall be made available for adoption by Herefordshire Council and shall be kept free of development and any landscaping, in order to provide links to the wider network.

Reason: To enable future connectivity and to safeguard against the sterilisation of wider development and future land uses within Bromyard through the plan period and in the interests of encouraging active travel, in accordance with Policy BY1, BY2, MT1 and SS4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

The LHA comments and the condition wording openly states that this condition is being requested to enhance cycle links for future residential development outside of the application site. The developments referred to do neither benefit from planning permission nor are they subject to a current planning application. The proposed condition does not meet the tests set out in Para 56 of the NPPF, which states:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

There is no suggestion that the 3m strip is intended to deliver a footway/cycleway to serve the current application proposals, the condition cannot therefore be said to be necessary within the context of the development proposed. The condition is also expressly for the benefit of future development outside of the application site and is therefore not relevant to the development to be permitted. The suggestion that by not providing this strip, other land would be sterilised is false, as the development to be permitted would not worsen the connectivity of any other site.

The condition is also not reasonable in all other respects as it requires the dedication of land for adoption. The recent case of *DB Symmetry Ltd v Swindon Borough Council [2022] UKSC 33* confirms the position that planning conditions cannot be used to dedicate land as a public highway and that dedication of the roads and accesses should be secured through a planning obligation or compulsory purchase powers, where the landowner is entitled to compensation for the acquisition of the land. The Supreme Court held that the statutory provisions relating to planning conditions in Town and Country Planning Act 1990 does not exist in a vacuum and that it must be interpreted in the context of the Act as a whole including the provisions relating to compulsory purchase and planning obligations. The Supreme Court referred to the case of *Hall & Co Ltd v Shoreham by Sea Urban District Council [1964] WLR 240*, which is the leading authority, that you cannot use planning conditions to require a landowner to dedicate land as public highway without paying compensation to the landowner. The Supreme Court held that it would have been ultra vires to require dedication of the access roads as a highway through a planning condition.

I also note LHA's comments that *"in view of the sterilising of any future cycle connections at this location the LHA would not wish to adopt the site, therefore the site will have to remain private. This is due to a s38 requirement that the adoption of developments should be in the wider public interest and it is the LHA's view that the removal of this potential link would mean that the wider public would not benefit from the LHA adopting the site."*

The LHA will no doubt be aware that the adoption of the roads pursuant to s.38 will be considerably preferable to the Applicant. It therefore appears that the LHA is attempting to 'ransom' the Applicant to provide the strip by stating that it will not enter into a s.38 Agreement. Whilst the Council's preference for the strip is noted by the Applicant, the Council cannot legitimately argue that the absence of the strip renders the adoption of the roads to not be in the public benefit. As the roads will be in line with the Council's technical requirements and the Manual for Streets, there is no 'technical' reason for a failure to adopt the roads. The council's argument would, in effect, mean that no highway infrastructure serving new residential development should be adopted under s.38.

In any event, the necessity for the strip is a planning concern as opposed to highways concern and as set out above the strip is not necessary to mitigate the impact of the development. If the application is approved based on the highways layout as currently offered by the Applicant, it can be assumed that the Council as Local Planning Authority have considered the highway safety aspects of the development (in line with its duty) and will have found them to be satisfactory. In this case the council appears to be arguing not that the new roads would not be of benefit, but that they are not as beneficial as they would be if the strip were included. That is a very different argument and not one contemplated by s.38. It is not for the LHA to then seek additional infrastructure which was not considered necessary to ensure that the highways were safe or to mitigate the impact of the development.

Further, the condition wording above demonstrates that there is no certainty about the delivery of the cycle link either on the strip of land. The LHA therefore appears to be withholding its approval to adopt the roads on a speculative (and unnecessary) request for a cycle link. If the provision of the cycle link was absolutely necessary on highway safety grounds (and therefore public utility), the LHA would have sought its provision as part of the development to be permitted. A decision

by the LHA therefore not to adopt the roads on such grounds would be an abuse of power, ultra vires and at risk of a judicial review.

The LHA cannot use the ability to enter into a s.38 Agreement as a bargaining tool to obtain infrastructure which is not needed in the interests of highway safety. To do so would be in bad faith and irrational.

The LHA are reminded of the case of *R (on the application of Trafford) v Blackpool BC [2014] EWHC 85 Admin* where as an act of retaliation, Blackpool BC refused to renew a firm of personal injury solicitors' lease due to the claims they had made against the Council. The Courts found that the Council had acted in a retaliatory way and that the Council had a duty not to exercise its discretion for improper or immaterial purposes. We would therefore caution the Council against acting in an improper manner or trying to exert inappropriate pressure on the Applicant to provide infrastructure which is not necessary to mitigate the impact of the development.

Visibility Splays

The visibility splays on the internal primary road are provided in accordance with Herefordshire Highway Design Guide for New Developments (2006), for speeds of 20mph. The visibility splays of 2.4 x 33m are provided at the junctions along the internal primary road. However, the secondary roads and other minor roads are provided with lower visibility splays of 23m in accordance with 15mph as per the Herefordshire Design Guide. A design speed of 15mph has been assumed on minor roads due to narrower road widths, spacing of junctions, access to driveways, and the road curvature.

It should be noted that Herefordshire Design Guide was prepared prior to the publication of Manual for Streets (MfS) and Manual for Streets 2 (MfS2). As such the requirements in the Herefordshire Highway Design Guide are step above the requirements set out within MfS. MfS advocates place making and provides evidence that reduced visibility at minor junction reduces speeds in residential developments. For ease of reference, the Table below presents a comparison of visibility splays between MfS and the Herefordshire Highway Design Guide.

Speed in miles per hour (mph)	Stopping Sight Distance (SSD) as per MfS (m)	Stopping Sight Distance (SSD) as per Herefordshire Design Guide (m)
15	17	23
20	25	33
25	33	45

MfS is widely accepted as the industry standard for residential streets such as those proposed for the application site. The proposed layout has been designed to provide a safe highway network in accordance with these design standards, with the visibility splays provided on secondary roads in accordance with MfS requirements for a design speed of 15mph given they are lower than that required by the Herefordshire Highway Design Guide as a 23m splay for the former is suitable for one of 19mph.

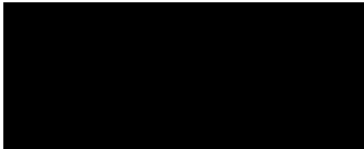
Notwithstanding the above, the applicant is willing to accept the request to provide visibility splays in accordance with the requirements set out by LHA in their recent consultation response. The below screenshot shows visibility splays of 2.4 x 33m on the secondary road in accordance with Herefordshire Design Guide for 20mph. As a result of this visibility splay a minor amendment to the position of plot 72 and associated parking and footway will be required (see extract below), which you have confirmed, subject to details, could be dealt with via approval of condition or non-material amendment.

11 January 2024



I would be grateful if the contents of this letter could be taken into consideration and placed on the planning record for the application.

Yours sincerely



Russell Smith MTCP
Director

cc. Cllr Polly Andrews, Cllr Bruce Baker, Cllr Dave Boulter, Cllr Simeon Cole, Cllr Clare Davies, Cllr Dave Davies, Cllr Elizabeth Foxton, Cllr Catherine Gennard, Cllr Peter Hamblin, Cllr Terry James, Cllr Daniel Powell, Cllr Stef Simmons, Cllr John Stone, Cllr Richard Thomas, Cllr Diana Toynbee

