

- 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 Stefanonvic, 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 Trust¹⁹⁷

- 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