

**From:** Close, Roland  
**Sent:** 18 May 2017 13:12  
**To:** 'Wharf House' <[thewharfhouse@yahoo.co.uk](mailto:thewharfhouse@yahoo.co.uk)>  
**Subject:** FW: Planning application 171532  
**Importance:** High

Dear Mr Penny,

Below is a copy of an e-mail that I have sent to the agent for the applicant and copied to you. You will note that I am inviting a response from yourself also (including provision of a legal opinion).

Regards

Roland Close

Principal Planning Officer

**From:** Close, Roland  
**Sent:** 18 May 2017 13:10  
**To:** 'Guy Wakefield' <[Guy.Wakefield@hunterpage.net](mailto:Guy.Wakefield@hunterpage.net)>; 'Wharf House' <[thewharfhouse@yahoo.co.uk](mailto:thewharfhouse@yahoo.co.uk)>  
**Subject:** Planning application 171532  
**Importance:** High

Dear Mr Wakefield,

I refer to the above planning application.

This e-mail is written in relation to one specific issue only. I shall write to you at a later date with regard other aspects of the application.

Policy LB2 of the Herefordshire Local Plan Core Strategy 2011-2031 has a number of bullet points within it. One of those bullet points, the fourth one, relates to the Canal. The policy states:-

“[Development Proposals north of the viaduct in Ledbury will be expected to bring forward the following to achieve a sustainable mixed use urban extension of the town:-](#)

- The provision of developer contributions to facilitate a restored canal to be delivered in partnership with the Herefordshire and Gloucestershire Canal Trust”

I regard a submitted application to essentially be a request for a determination as opposed to a request for a negotiation. Lengthy negotiations need to take place at the pre-application stage.

Therefore the purpose of me writing to you is to establish precisely what you are proposing with respect bullet point 4 of the aforementioned policy.

As I read the submission Bloors are proposing to:-

- Provide an 18 metre wide corridor for the provision of the canal as shown upon the Illustrative Master Plan drawing number 9701 Revision E (Reference:- para. 4.21 of the ‘Planning Supporting Statement’). I *assume* that Bloors are proposing that corridor of land be transferred to the Herefordshire & Gloucestershire Canal Trust free of charge (or at a nominal fee of say £1). Is that correct? Also, I would like to know precisely when Bloors envisage such a transfer taking place (e.g. prior to commencement of development). I am not helped in this matter by the apparent failure to Deposit Draft Heads of Terms. I also need to be clear as to whether the land to be transferred to the Herefordshire & Gloucestershire Canal Trust includes the land that would accommodate the tow path (on the eastern side of the Canal). I understand that the tow path would act as a combined footway / cycleway. I would be grateful if you would clarify the width of that tow path? I need to be clear as to who would provide this tow path and at what stage of the development? I assume that it may not be possible to provide the footway / cycleway that forms the tow path separately from the Canal as it may form part of the same engineering operation; and
- You intend providing what you regard as a physical contribution towards the Canal in that “...the Canal will be fed with water from the on-site ditch networks, as well as the development proposals (Reference:- Page 73 of the submitted ‘Design & Access Statement’) and “ When the Canal comes forward for detailed design arrangements, surface water from the northern catchment

could be re-routed into the Canal in order to provide a water source” (Reference:- page 112 of the submitted ‘Design & Access Statement’). What is the extent of the proposed physical contributions to facilitate the delivery of the Canal and how precisely (i.e. what legal mechanism), do you intend those being secured? I am also unclear as to whether these really do represent a physical contribution towards the Canal as surely one would need to undertake all of these works in any event as part of one’s water management strategy. If you can identify physical works that are solely being provided to facilitate the canal, I would be grateful if you would identify them. If there are physical works that you are undertaking (that you would not otherwise provide if a Canal was not to be provided), I would be grateful if you would provide costing of any such works.; and

- A financial contribution. It is stated on page 25 of the ‘Planning Supporting Statement’ that “The applicant has also committed a financial contribution to facilitate the restoration of the Canal”. I would be grateful if you would now provide the financial contribution that is being proposed. You suggest that “A contribution regarding the Canal has been discussed with the Council” (Reference:- paragraph 5.6 of the ‘Planning Supporting Statement’). From my perspective no discussions regarding a sum of money has taken place.
- I note that it is stated in the ‘Design and Access Statement’ (Page 23) that the Canal will be delivered by the Canal Trust. However, as I read the policy it clearly states that it needs to be “delivered in partnership”. From the outset Officers of this council have encouraged Partnership working between Bloors and the Canal Trust but I need to be clear as to the precise mechanism(s) you propose (and presumably would have sought to agree with the Canal Trust) to ensure delivery of the Canal.

I look forward to clarity upon the above. However, as I understand it from a series of conversations with Nick Rawlings, Mr David Penny of the Canal Trust and yourself that effectively your discussions have not reached a mutually acceptable conclusion. Effectively agreement has not been reached and that there is not an agreement as to how the Canal will be delivered and by what date. As I understand it you have two opposing views as to what the policy requires that I shall attempt to summarise.

## **Bloors view**

The view of Bloors appears to be that the policy requirement is limited in scope. Bloors concentrate on the word “facilitate” (meaning “make an action easy or easier”) and suggest that by transferring the land to the Canal trust and making a partial physical and / or financial contribution they meet the policy requirement.

## **Canal Trust view**

The Canal Trust, however, draw specific attention to the words “..to be delivered in partnership with the Herefordshire and Gloucestershire Canal Trust”.

The word deliver normally is defined as:-

- Bring and hand over to the proper recipient; or
- Provide something promised or expected; or
- Formally hand over.

As I understand it the view of the Canal Trust is that the only way that the canal can be delivered is if Bloors provide:-

- a) The requisite land;
- b) The full cost of constructing the Canal (I understand that the Canal Trust cost this at £2.45m – I would be grateful if you would confirm that this is your understanding as to the figure); and
- c) A continual financial contribution from each dwellinghouse to ensure maintenance of the Canal – I understand that the Canal Trust are seeking an average of £250 per plot per annum (index linked) - I would be grateful if you would confirm that this is your understanding as to the figure.

I am interested to know how, if Bloors do not provide the financial contribution sought by the Canal Trust, they envisage the Canal being financed and delivered (delivery apparently being a requirement of the policy) together with the timescale for such delivery?

I appreciate and respect that both parties who should be working “in partnership” (Bloors and the Canal Trust) have materially different interpretations of the policy. In that respect I have consistently advised both parties to seek their own independent legal advice on that matter and supply me with the legal opinion that they receive. I have assured both parties that such a legal opinion received from either party would be kept confidential and not shared with the other party (unless otherwise agreed). To date, I have not received any such legal opinion and would be grateful if you could provide me with any legal opinion within the next 21 days. I have copied this e-mail to the Canal Trust as I invite them to forward me with any legal opinion they may wish to obtain within the next 21 days also.

I would also be grateful if any view that you supply also addresses the issue as to the relevance and implications of policy E4 of the Herefordshire Local Plan Core Strategy 2011-2031.

For your information I attach below an e-mail trail that sets out what I understand the Canal Trust regard as the costs that they consider Bloors should be meeting.

I would be grateful to receive your full written reply and both parties legal opinion as to the meaning of the policy (if you are to obtain & supply one) within the next 21 days.

Regards

Roland Close

Principal Planning Officer

**Note:- E-mail trail of costs relating to delivery of the Canal**

**From:** Wharf House [<mailto:thewharfhouse@yahoo.co.uk>]

**Sent:** 15 December 2016 13:20

**To:** Close, Roland <[rclose@herefordshire.gov.uk](mailto:rclose@herefordshire.gov.uk)>

**Subject:** Re: ledbury cost

Cost will be dependent upon the cut and fill balance and the exact position in co-operation with Bloor as to where the locks are. In addition if we can dispose of all soil within say 50m of the line of the Canal that will be different to if we are carting to form screening on far side of site from the industrial area. I have taken a risk and lumped the cost in within the £2.45m requested we have requested which only allows us about £65k, however I have looked at it as the whole and am content within the whole project cost as there will be swings and roundabouts here in cost savings over-runs.

The offer is for us to take liability to deliver for a fixed price of £2.45m, which is a good saving for Bloor from the £3m which has been the contract rate we have previously worked to for this site. That is requiring disposal on site [or nearby off road] and us working together. It is also on the basis that we talk seriously on us adopting the SUDS and open space estate and securing the annual payments etc and resolution of matters related to affordable housing and play equipment. We are happy to provide a one-stop shop solution for them if they start playing with us as a proper partner.

Hope that helps...Thanks

I am around later this pm and in tomorrow morning. Although in meetings tomorrow pm I am here and if you say I am to be interrupted team will break me out of meeting to talk to you.

## David Penny

Commercial & Technical Director

The Wharf House/Herefordshire & Gloucestershire Canal Trust

T 01452 33 2 900

F 01452 332901

[www.thewharfhouse.co.uk](http://www.thewharfhouse.co.uk)

[www.h-g-canal.org.uk](http://www.h-g-canal.org.uk)

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*"When at your busiest you must find your next challenge, when you have time it is too late"*

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**From:** "Close, Roland" <[rclose@herefordshire.gov.uk](mailto:rclose@herefordshire.gov.uk)>

**To:** Wharf House <[thewharfhouse@yahoo.co.uk](mailto:thewharfhouse@yahoo.co.uk)>

**Sent:** Thursday, 15 December 2016, 12:43

**Subject:** RE: ledbury cost

Dear David,

Unless I am mistaken your costing excludes a figure for the actual canal excavation and spoil removal / re-distribution.

If I am mistaken, I apologise.

If I am not, please supply me with that figure ASAP.

Thanks

Roland

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**From:** Wharf House [<mailto:thewharfhouse@yahoo.co.uk>]

**Sent:** 14 December 2016 16:59

**To:** Close, Roland <[rclose@herefordshire.gov.uk](mailto:rclose@herefordshire.gov.uk)>

**Subject:** ledbury cost

Further to our discussion last week. I should indicate that we have had no communication at all from Bloor since way back in the summer. Further to the request from you for costings I set out below the basis upon on which we are working based on a partnership.

4 locks at £275k each [HGCT cost of construct not contract - contract = c. £5-600k each] = £1.1m

3 tail bridges [5 ton cycle] at £8k each = £24k

1 tail bridge [20 ton maintenance access] at £50k

4 by-weirs at £16k each at 4cumec [add £3k per cumec for lower structures] = c.£82k

4 backpump units including pipework and all structures [excluding electricity connection] at £34k each = £136k

1 borehole by Bromyard Road including headwall and pumphouse [excluding electricity connection] £18k



Bromyard Road bridge as part of Bloor road contract

towpath/cycleway £75k

landscaping, signage, seating £75k

excavation and grade out - depends on disposal sites and cut and fill balance

site establishment, welfare, design, supervision and HGCT overhead to project over 4 years at £150k/year

+ Optimism Bias at 10%

HGCT is prepared to contract with Bloor and the Council to construct the Canal from Bromyard Road to Hereford Road [excluding under viaduct] for £2.45m and carry full risk provided that the Bromyard Road bridge is undertaken by Bloor as part of their Road contract.

We will deliver against stage targets and be paid against matching house sales. We are happy to deliver the primary track of Canal and byweirs first so that water carrying function of the waterway can be delivered by an early target date. spoil to be disposed on site.

***This equates to only just over £3k per house plot.***

We would suggest that our payments are based on initial payment of £400k at commencement and then £5k per plot sale for the first 390 plots sold.

As agreed at Holmer we would require average £250 per plot index linked to upkeep and maintenance. We are happy to take all areas excluding play equipped areas

with this subject to such areas not being less than 25sqm. We are happy to take play equipped areas subject to additional commuted sum. We are happy to take responsibility for SUDS management within this as we are doing elsewhere.

Our partnership will be based on agreeing to work together to design the site so that the end of a road is located alongside each lock location to facilitate 80 ton crane access for long term operational maintenance as already agreed with Bloor.

Developer will provide electricity and water connection at 33mm and suitable for pump rating to each lock location. Housing will be designed to front the Canal not to back onto it.

We previously discussed property in lieu of affordable contribution as at Dymock.

legal costs to be covered as elsewhere.

We welcome the opportunity to try close this off ASAP and I have good availability next week. Should you want a chat I may be in the office tomorrow morning.

Many thanks

**David Penny**

Commercial & Technical Director

The Wharf House/Herefordshire & Gloucestershire Canal Trust

T 01452 33 2 900

F 01452 332901

[www.thewharfhouse.co.uk](http://www.thewharfhouse.co.uk)

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*"When at your busiest you must find your next challenge, when you have time it is too late"*

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