

MINUTES of the meeting of Planning and regulatory committee held at Council Chamber, The Shire Hall, St Peter's Square, Hereford, HR1 2HX on Wednesday 11 December 2019 at 10.00 am

Present: Councillor John Hardwick (Chairperson)
Councillor Alan Seldon (Vice Chairperson)

Councillors: Paul Andrews, Polly Andrews, Toni Fagan, Bernard Hunt, Terry James, Tony Johnson, Mark Millmore, Jeremy Milln, Paul Rone, John Stone, David Summers and William Wilding

In attendance: Councillors Liz Harvey, Phillip Howells and Helen I'Anson

58. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Graham Andrews, Foxton and Watson.

59. NAMED SUBSTITUTES

Councillor Summers substituted for Councillor Foxton and Councillor Wilding for Councillor Watson.

60. DECLARATIONS OF INTEREST

None.

61. MINUTES

In relation to minute 48 it was noted that the correct description of the role of Mr Rawlings, who had spoken in support of the application during the time allocated for public speaking was: Planning Director – Bloor Homes.

RESOLVED: That the minutes of the meetings held on 13 November, 2019 as amended be approved as a correct record and signed by the Chairman.

62. CHAIRPERSON'S ANNOUNCEMENTS

The legal advisor to the Committee read a statement to the meeting reminding all present of the requirements of the purdah period preceding the general election on 12 December 2019.

The Chairperson reported receipt of an email from Bloor Homes to Officers with attached letter at 9.50 am, shortly before the meeting, in relation to agenda item 6: application 171532 – Land North of Viaduct, Ledbury. The letter was dated 9 December 2019 and was from a Senior Surveyor Network Rail to Bloor Homes This was circulated to members present.

63. 171532 - LAND NORTH OF VIADUCT, ADJOINING ORCHARD BUSINESS PARK, LEDBURY, HEREFORDSHIRE. OUTLINE PLANNING PERMISSION

(Site for a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works.)

The Principal Planning Officer gave a presentation on the application, the Committee having deferred consideration of it on 13 November. Updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these minutes.

In addition, the legal advisor read the letter dated 9 December 2019 from a Senior Surveyor Network Rail to Bloor Homes. This had been made available to members of the Committee shortly before the meeting, as referred to in the Chairperson's announcements.

This stated:

"We refer to your query regarding the possibility of installing a public highway beneath Ledbury Viaduct to serve your land to the north and as you will be aware the current agreement between Bloor Homes and Network Rail Structure Limited (NRIL) does not allow for such a proposal. Any departure from the current agreement would require both internal and industry wide consultation and approval.

Having held conversations with NRIL's Structures Asset Engineer we would not allow a public highway to be built beneath the structure as it would introduce undue risk to the railway. These risks would include making the piers susceptible to bridge strikes and increasing the difficulty for our examiners to gain access to the piers for inspection. The vibrations caused by the construction and continued use of any highway would also increase the risk profile of the asset going forward."

In accordance with the criteria for public speaking, Mr J Bannister, of Ledbury Town Council spoke in opposition to the scheme as did Mr D Williams of Wellington Heath Parish Council. Mr N Rawlings, Planning Director – Bloor Homes, spoke in support.

In accordance with the Council's Constitution, the local ward member and adjoining ward members were invited to speak.

Adjoining ward member Councillor l'Anson made the following principal comments. The application, consideration of which had been deferred by the Committee in November, had been returned to the Committee without amendment. The question of access was a key part of the application. However, other aspects of the site's suitability needed to be considered, given, for example, increased risk of flooding as a result of climate change. She questioned whether the inclusion of the site as a strategic site in the core strategy should be reviewed. The single access was described as "satisfactory". However, she doubted that assessment.

Adjoining ward member Councillor Howells expressed disappointment that the concerns that had been expressed at the Committee's meeting in November had not been addressed. The letter from Network Rail dated 9 December had been provided to members that morning. This did not suggest that the developer was giving weight to the views of the local community. He made the following principal points:

- Ledbury Town Council supported the provision of much needed housing the development would bring. However, the proposal to provide a single access was not acceptable. The intention throughout the site's planning history had been that there

would be access off the A438 Leadon Way/Hereford Road roundabout. There had been no technical objection during that time. Improvements to the junction of the Homend and the Bromyard Road by the railway station had always been viewed as problematic. The change to the wording of the core strategy made following the public examination to provide for “satisfactory vehicular access arrangements” had never been explained and understood. The term was vague and open to interpretation. The proposed access could not cope with the increased volume of traffic the site would generate.

- The Malvern Hills AONB Unit objected to the application considering increased traffic would damage the special qualities and features of the AONB. It would lead to a reduction in the recreational use of the minor road network as well as contributing to vehicular damage to banks and verges. This was counter to the principal objective of the AONB Management Plan in relation to transport and accessibility. The application did not address this concern.
- Wellington Heath Parish Council had expressed concern about the development of “rat runs” and the ongoing financial costs of repairs. It was contrary to the provision in policy SS6 that “the management plans and conservation objectives of the county’s international and nationally important features and areas will be material to the determination of future development proposals.”
- The independent traffic management study commissioned by the Town Council had shown traffic modelling conclusions were flawed, and in every instance biased in support of the finding the access would be satisfactory. The impact of traffic from the town backing up at the railway station blocking accesses to residential areas had not been considered.
- Bloor Homes previous position had been that they could not provide an access off the A438 Leadon Way/Hereford Road roundabout because of the physical constraints and the prohibitive technical measures that would be necessary. This was contrary to the long held view in the history of the site that this was the preferred access. Hunter Page on behalf of Bloor Homes in an e-mail of 23 March 2016 were advised that the environmental statement would need to include as a minimum a full assessment as to alternative arrangements with respect to 4 vehicular access options including under the viaduct. There was no evidence this has been conducted. The transport assessment made it clear Network Rail had no objections and there were no insurmountable technical issues to using a route under the viaduct. The Herefordshire and Gloucestershire Canal Trust had had no objection to their proposals.
- Planning Officers had commented that the proposal did not have an unacceptable impact on the highway network that could not be mitigated. However, Bloor Homes original transport consultants dismissed a similar proposal because the junction would be operating beyond its design capacity and would create an unacceptable tail back of traffic at peak times. Bloor Homes had employed new consultants who concluded a junction could be developed that would operate adequately. He viewed this with some scepticism.
- The local community did not consider a single access was satisfactory. There was clearly potential for judicial review if the application were approved as it stood.
- Network Rail was not saying that a road under the viaduct was not feasible. The letter circulated at the meeting said that the current agreement between Bloor Homes and Network Rail did not allow for such a proposal. It went on to say that any departure from the current agreement would require both internal and industry wide consultation and approval. He suggested a provision could be considered allowing development to proceed on the basis a second access was negotiated and provided by the time the development reached a certain size.

Councillor Harvey, the local ward member, then spoke on the application. She made the following principal comments.

- Ledbury as a community was not objecting to growth. However, proposals had to be satisfactory and sustainable. The parish poll had demonstrated the community's view that a single access to a development of the scale proposed was not satisfactory.
- The application had been under discussion since 2014/2015. It had always been made clear to Bloor Homes that an access under the viaduct was a pre-requisite. The site had been preferred to others in developing the core strategy because with an access primarily off the A438 Leadon Way/Hereford Road roundabout it was closer to Ledbury. With the access point moved to the Bromyard Road there were a number of other deliverable sites with access closer to the Town.
- Turning to the letter of 9 December from Network Rail she stated that this did not say that an access under the viaduct could not be achieved. In 2016 Network Rail had written a response to a local resident stating that in principle a road under the viaduct may be feasible. Bloor Homes in 2017 had included a statement in their Residential Travel Plan that having discussed the matter with Network Rail they had been told that Network Rail would not accept a road under the viaduct. Bloor Homes had removed that statement from the Plan when made aware of the 2016 correspondence. That had remained the position until the letter of 9 December.
- Given the focus on the access point off the A438 Leadon Way/Hereford Road roundabout the late receipt of this letter was surprising. In addition the letter still did not say that a road under the viaduct was not possible.
- Malvern Hills District Council and Hereford and Worcester County Council had had this site in their strategic plans with the access under the viaduct.
- Possible obstacles to achieving the access included additional cost and the difficulty of negotiating with Network Rail. However, it was not an impossible option.
- The junction by the railway station in Ledbury had been operating in excess of its design capacity since the mid-1980s. The proposals were a betterment but had to be seen in that context. The impact on the highway network and road safety was described as "not severe". The traffic assessments identified that additional vehicles would use Knapp Lane to access the Worcester Road avoiding the crossroads at the centre of Town. However, that crossroads would also have to accommodate extra traffic. Neither junction had good visibility that met highway design criteria. An access off A438 Leadon Way/Hereford Road roundabout would better serve traffic from the development. Advice was that junctions should operate at 15% below capacity. The calculations of the second consultant employed by Bloor Homes indicated that the junction by the railway station would be operating at 85% capacity.
- She detailed 3 reasons for refusal. In summary these were: the vehicular access arrangements proposed were not satisfactory, the adverse effect on the sense of remoteness, limited noise and disturbance and tranquillity of the landscape within the Malvern Hills AONB and the material increase in traffic flow along the Homend and The Southend through the heart of Ledbury Town Centre harming the character of the Conservation Area. (*The detailed reasons subsequently formed the basis of the Committee's decision and are set out in full in the resolution below.*)

(The meeting adjourned between 11.39-11.51)

In the Committee's discussion of the application the following principal points were made:

- A single access point was not sufficient for such a large development.

- A technical solution could be found to develop a second access under the viaduct off the A438 Leadon Way/Hereford Road roundabout. The issue was one of cost. If the developer did not provide this solution now, the taxpayer would have to fund solutions in the years ahead to problems that a development with a single access would present.
- A member, whilst supporting the need for a second access, expressed a contrary view in that the narrowness of the viaduct arches would at best permit a single lane of traffic between a span and the risk of an accident was too high to countenance.
- If the development were to proceed with a single access additional traffic would use the narrow roads around Ledbury.
- The developer had not maximised the scope for sustainable transport. This meant the development was car dependent thereby creating the need for a second access.
- The letter from Network Rail of 9 December merely indicated that insufficient effort had been made to explore the possibility of an access under the viaduct.
- There appeared to be an inconsistency in that Network Rail seemed content for a canal to be built under the viaduct.
- The current proposal would have significant adverse consequences for Ledbury for years ahead.

The Lead Development Manager commented that the Core Strategy identified the proposed site as a strategic site subject to a satisfactory access. That access was not required to be under the viaduct. He noted that the letter of 9 December did state, “we would not allow a public highway to be built beneath the structure as it would introduce undue risk to the railway”. The Canal Trust had not yet discussed their proposal to put the canal through the viaduct with Network Rail. It was an indicative route and a matter for them to progress. There were no other deliverable sites north of Ledbury viaduct. The Strategic Housing Land Availability Assessment analysis had considered sites that came forward to be not capable of development because of their impact on the AONB. The Malvern Hills local plan clearly identified that the extension of Ledbury bypass to the north did not form part of the strategic highway network plans. Any proposal would have to be brought forward by a developer. In any event that Plan had been superseded by the Core Strategy. Highways officers had carefully considered the proposals requesting improvements that had been made. The proposal contained enhanced provision for cycling and walking. It could be argued that the provision of a second access would encourage car use in preference to these sustainable travel options. It was not unusual for there to be deviations from highway standards. These would be addressed as part of the conditions or a S278 agreement. Schemes were built to a level that was acceptable, safe and satisfactory. The proposed housing was not on land that was liable to flood. The proposal was policy compliant and would deliver a significant contribution to the council’s housing land supply. A claim had been made that failure to deliver the site would bring the council’s housing land supply below 3 years with implications for the Neighbourhood Development Plans across the County.

The legal advisor commented that officers were obliged to advise the Committee of the potential implications of not following an officer recommendation including the potential appeal implications.

The local ward member and adjoining ward members were given the opportunity to close the debate.

Councillor l’Anson referred to photographs in the Ledbury Reporter described as showing flooding in the area of the site.

Councillor Howells questioned the feasibility of some of the active travel measures in the proposal.

Councillor Harvey acknowledged the obligation on officers to advise the Committee of the potential financial consequences if an appeal against refusal of the application were to be successful and costs were awarded against the council.

Councillor Summers proposed and Councillor Johnson seconded a motion that the application be refused citing the reasons advanced by Councillor Harvey in her opening remarks. In summary these were: the vehicular access arrangements proposed were not satisfactory, the adverse effect on the sense of remoteness, limited noise and disturbance and tranquillity of the landscape within the Malvern Hills AONB and the material increase in traffic flow along the Homend and The Southend through the heart of Ledbury Town Centre harming the character of the Conservation Area.

The Lead Development Officer cautioned that he considered that there was a risk of costs being awarded against the council in the event of a successful appeal.

The motion was carried with 10 votes in favour, 3 against and 1 abstention. The reasons are set out in full in the resolution below.

RESOLVED: That planning permission be refused for the following reasons:

Reason 1

In the opinion of the Local Planning Authority the vehicular access arrangements proposed are not “satisfactory” by virtue of:-

- **The discrepancies in operating load between the two transport assessments provided by the developer for the same junction configuration and vehicle volumes when the site is fully built out, which result in the applicant having failed to satisfactorily and convincingly demonstrate that the proposed signalised layout at the junction of the Hereford Road (A438) and Bromyard Road (B4214) would have sufficient capacity to provide a sustainable solution.**
- **The more recently forecast operational loading of the proposed junction, restricts any further housing or employment growth of Ledbury in a northerly direction in the future (i.e. both now and beyond the current Core Strategy period post 2031) thus prejudicing and constraining the proper future planning of the area;**
- **There would not be clear inter-visibility between the stop lines of the proposed signalised arrangement at the junction of the Hereford Road (A438) and Bromyard Road (B4214), as clearly annotated on drawing number 010 - P5 prepared by PJA, would present a hazard to highway safety in the event of the signals failing or drivers of motor vehicles or non-motorised users “jumping the lights”;**
- **The proposal would result in a material increase in undesirable trips, frequently referred to as “rat running”, along Knapp Lane (U67005) and Cut Throat Lane (U67005) which are sub-standard in design terms as:-**
 - a) **Knapp Lane (U67005) has inadequate visibility at its south-western end at its junction with ‘The Homend’ (A438) and does not have footways; and**

- b) Vehicles travelling in a south-westerly direction along the A449 turning into the Cut Throat Lane end of Knapp Lane (U67005) (a dangerous right hand turn where a number of accidents have occurred) have inadequate forward visibility.

As a consequence highway safety, including pedestrian and cyclists safety, would be prejudiced; and

- In the event of an emergency (e.g. a bridge strike, flooding of Bromyard Road and / or Rhea Lane) closing the road between the proposed vehicular access onto the Bromyard Road (B4214) and the junction of Bromyard Road (B4214) and Hereford Road (A438), or indeed at the aforementioned junction itself, there would be undesirable trips frequently referred to as “rat running” via Rhea Lane (U67003) by traffic wishing to travel along the A438 towards Hereford or towards the M50. Rhea Lane (U67003) is sub-standard in its width and at its junction with Hereford Road (A438) has sub-standard visibility in a south-easterly direction. As such highway safety would be prejudiced. Furthermore, that route north along the Bromyard Road (B4214) to the Hereford Road (A438) via Rhea Lane (U67003) cannot be relied upon as it floods both before and after Storesbrook Bridge.

As a consequence the proposed development is considered to be contrary to:

- paragraph 110 of the National Planning Policy Framework (February 2019),
- policies SS1, SS4, LB2 (seventh bullet point) and MT1 of the Herefordshire Local Plan Core Strategy adopted 16 October 2015 and
- the provisions of Herefordshire Council’s ‘Highways Design Guide for New Developments’ (July 2006).

In forming this decision the Local Planning Authority have been fully conscious of the provisions of paragraph 109 of the National Planning Policy Framework (February 2019) and indeed consider that the proposal would have an unacceptable impact on highway safety and would have severe residual impacts on the local road network.

As such, the proposal is not considered to represent sustainable development.

Reason 2

A sense of remoteness, limited noise and disturbance and the tranquillity of the landscape are all special qualities that contribute to the character of the Malvern Hills Area of Outstanding Natural Beauty. The proposed development would result in a significant increase in vehicle traffic travelling up Beggars Ash (C1172) and Burtons Lane (C1171) and through minor roads within the Parish of Wellington Heath harming the aforementioned tranquillity of the Malvern Hills Area of Outstanding Natural Beauty a defining element of its character.

Furthermore the increased use of these minor roads within this part of the Malvern Hills Area of Outstanding Natural Beauty by motorised vehicles is likely to lead to a reduction in their recreational use as well as leading to vehicular damage of banks and verges as a result of motor vehicles attempting to pass each other.

As a consequence the proposed development is considered to be contrary to:

- paragraph 172 of the National Planning Policy Framework (February 2019),
- policies SS6 and LD1 of the Herefordshire Local Plan Core Strategy adopted 16 October 2015 and

- objective TRO1 together with policy TRP6 of the adopted Malvern Hills Management Plan 2019-2024.

As such the proposal is not considered to represent sustainable development.

In forming this view the Local Planning Authority are conscious that whilst it may be the case that only a small proportion of the traffic generated by the proposed development is likely to take place though Beggars Ash (C1172) and Burtons Lane (C1171), compared to the existing baseline number of motor vehicles that currently use these routes the increase in vehicular movements would be substantial.

Reason 3

The proposed development would materially increase vehicular traffic flow along both 'The Homend' (A438) and 'The Southend' (A449) through the heart of the Ledbury Town Centre Conservation Area harming the character of the Conservation Area contrary to the provisions of Section 16 of the National Planning Policy Framework (February 2019) entitled 'Conserving and enhancing the historic environment' and policies SS6 and LD4 of the Herefordshire Local Plan Core Strategy adopted 16 October 2015.

INFORMATIVE

Statement of Positive and Pro-active Working – All of the above reasons for refusal are easily capable of being overcome by the applicant providing a second vehicular means of access off the Leadon Way (A417) / Hereford Road (A438) roundabout. Being a positive and pro-active Local Planning Authority rather than refuse the application on the 13th November 2019 Herefordshire Council deferred the application to allow the applicant to amend the application to provide this second vehicular means of access (which the applicant has never claimed could not physically be provided). The applicant as is their prerogative, chose not to do so.

The meeting ended at 12.28 pm

CHAIRPERSON