

Substantive response of the Local Highway Authority to a planning consultation received under The Development Management Order.



Response provided under the delegated authority of the Director of Environment & Transport.

APPLICATION DETAILS

Planning Application Number: 24/00710/FUL

Highway Reference Number: 2024/0710/04/H

Application Address: 5 Market Place Hinckley Leicestershire LE10 1NH

Application Type: Full

Description of Application: Formation of new timber pergola structure, new terraces and associated works

GENERAL DETAILS

Planning Case Officer: Joseph Fleetwood HBBC

Applicant: Dr Raghu Ramaiah

County Councillor: Cllr Stuart Bray

Parish:

Road Classification: Adopted Unclassified

Substantive Response provided in accordance with article 22(5) of The Town and Country Planning (Development Management Procedure) (England) Order 2015:

The Local Highway Authority Advice is that, in its view, the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe. Based on the information provided, the development therefore does not conflict with paragraph 115 of the National Planning Policy Framework (December 2023).

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) has been consulted by Hinckley and Bosworth Borough Council (H&BBC) as the Local Planning Authority (LPA) on a full application for the formation of new timber pergola structure, new terraces and associated works at 5, Market Place, Hinckley.

The LHA is aware Leicestershire County Council (LCC) has also recently been consulted by H&BBC separately on a Pavement Licence application for the venue. LCC's Highways Inspections & Enforcement Team have responded to this separately.

The LHA has reviewed the following drawings in support of the proposals:

- Bukin Lett drawing number 22021_PL_900 Rev P2.
- Proposed visuals, received by the LPA on 23rd July 2024.

Site Access

The proposals are located in a pedestrianised area and do not result in the creation of, or amendment to a vehicular access.

Public Highway Extents/ Off-Site Implications

Based on available records to the LHA, the proposals are situated fully within the extents of the publicly adopted highway, the boundary of which is up to the building frontage. Should the Applicant require further information on the extents of the highway boundary, this can be obtained by contacting HRE@leics.gov.uk.

Notwithstanding the proposals being situated fully within the highway, this would not be a material planning consideration for the LHA. In addition, the site is in a town centre location in close proximity to a wide range of public transport options and public car parks, meaning additional car parking specifically for the site would not be required. On this basis, the LHA advises that it would not be possible to demonstrate the proposals would have a severe impact on pedestrian or highway safety and therefore would not seek to resist the proposals in line with Paragraph 115 of the NPPF.

However, given the proposals fall fully within the highway the LHA advise that Leicestershire County Council will not permit any of the proposed works, regardless of whether or not planning permission is granted.

It is advised that the land can only be developed if highway rights are first removed. This can be undertaken through Section 247 of Town and Country Planning Act 1990. However, this can only be progressed prior to any of the work taking place. Further information can be found here:

<https://www.leicestershire.gov.uk/roads-and-travel/local-authority-searches/highway-extinguishments>.

The Applicant would also need to consider acquiring title to the land as the application to stop up the highway reverts the rights back to the original landowner and not the applicant of the stopping up order. It is advised that it might be difficult to identify the landowner due the age of the road, so it is advised that the landowner examines their title deeds to see if they contain any information relating to the owner of the subsoil to the highway. If no landowner can be traced, it might be possible for them (as adjoining landowner) to register some of the land through the ad medium filium presumption, but this is something the Applicant should seek their own legal advice on or discuss with Land Registry. Further information about this legal presumption can be found on the Land Registry website here: <https://www.gov.uk/government/publications/land-registry-plans-boundaries/land-registry-plans-boundaries-practice-guide-40-supplement-3#legal-presumptions>.

In accordance with Section 130(i) of the Highways Act 1980, Protection of public rights '*It is the duty of the Highways Authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the Highway Authority, including any roadside waste which forms part of it*'. Furthermore, all utility companies have a statutory right to install apparatus within the public highway. It is highly likely that there will be statutory undertakers' apparatus near or within the area of land which the Applicant is applying to enclose, for which statutory undertakers will need to have access at all times. It should be noted that if the Applicant applies to remove highway rights, statutory undertakers may require the diversion of underground services, which could be at significant expense to the Applicant.

Furthermore, it is understood public events are held in this area and in the event the Applicant applied to remove highway rights, it may be that concerns are raised by the public in respect of loss of the area to hold events as this would become private land. In addition, it appears the proposals would require the removal of existing street furniture such as benches, and it is unclear what would be done with these following removal.

Closing

The LHA have no reasonable grounds to resist the development proposals in the context of paragraph 115 of the National Planning Policy Framework (December 2023). Notwithstanding this, irrespective of the granting of planning consent, Leicestershire County Council will not permit any of the proposed works within the public highway.

Informatives

- Planning permission does not give you approval to work on the public highway. If the proposal requires the permanent removal ("stopping up") or diversion of highway to enable the development to take place, then you must complete the legal processes required before commencing works. Further information is available at: - <https://www.leicestershire.gov.uk/roads-and-travel/local-authority-searches/highway-extinguishments> If you are unsure whether your proposal affects public highway, you can establish the Highway Authority's formal opinion of the adopted highway extent in relation to the proposal. Further information is available at <https://www.leicestershire.gov.uk/hre>
- Any works to highway trees will require separate consent from Leicestershire County Council as Local Highway Authority (telephone 0116 305 0001). Where trees are proposed to be removed, appropriate replacements will be sought at the cost of the applicant.

Date Received
30 July 2024

Case Officer
Ben Dutton

Reviewer
RD

Date issued
15 August 2024