

**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: 24/01050/CONDIT

Highway Reference Number: 2024/1050/04/H

Application Address: Land North East Of Triumph Motorcycles Ltd Normandy Way Hinckley
Leicestershire LE10 3BZ

Application Type: Variation of Condition (s73)

Description of Application: Application to vary condition 1 and 2 and remove condition 8 of planning permission 22/01091/REM. Amendments to approved drawings to remove land and conditions which sit outside Jelson's land ownership.

GENERAL DETAILS

Planning Case Officer: Matt Jedruch

Applicant: Mr Mitesh Rathod

County Councillor: Cllr David Bill MBE

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:

Objection

Objection to the removal of Condition 8.

No objection

No objection to the variation of Conditions 1 and 2.

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) has been consulted by Hinckley & Bosworth Borough Council as the Local Planning Authority on an application to vary conditions 1 and 2 and remove condition 8 of planning permission 22/01091/REM.

The LHA have reviewed the following documents submitted in support of the proposals:

- BRP drawing number J112-BRP-00-00-DR-A-0100 Rev. P02 (Site Location Plan);
- BRP drawing number J112-BRP-00-00-DR-A-0102 Rev. P15 (Proposed Site Layout); and

- BRP drawing number J112-BRP-00-00-DR-A-0103 Rev. P02 (Vehicle Tracking and Highways).

For the avoidance of doubt, Conditions 1, 2 and 8 have been reproduced below, along with how the Applicant wishes to vary the conditions, or the reason why they wish for the condition to be removed.

Conditions 1 and 2

The Applicant wishes to vary Conditions 1 and 2 to allow removal of strip of land on the western boundary of the site which they state sits outside of Jelson's ownership.

Condition 1

The development hereby permitted shall not be carried out otherwise than in complete 1 with the submitted application details, as follows:

- *Proposed Site Layout - Drg No. J112-BRP-00-00-DR-A-0102-P10 received 05/06/2023*
- *Proposed Landscaping Management - Drg No. J112-BRP-00-00-DR-A-0105-P02 received 05/06/2023*
- *Proposed House Type Pack received 17/11/2022*
- *Vehicle Tracking & Highways J112 0103-P01 received 06/04/2023*

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

The Applicant wishes to vary Condition 1 to:

The development hereby permitted shall not be carried out otherwise than in complete 1 with the submitted application details, as follows:

- *Proposed Site Layout - Drg No. J112-BRP-00-00-DR-A-0102-P15*
- *Proposed Landscaping Management - Drg No. J112-BRP-00-00-DR-A-0105-P02 received 05/06/2023*
- *Proposed House Type Pack received 17/11/2022*
- *Vehicle Tracking & Highways - Drg No. J112-BRP-00-00-DR-A-0103-P02*

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

Condition 2

The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with Jelson's drawing number J112-BRP-00-00-DR-A0103-P01. Thereafter the onsite parking provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with the National Planning Policy Framework (2021).

The Applicant wishes to vary Condition 2 to:

The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with Jelson's drawing number J112-BRP-00-00-DR-A-0103-P02. Thereafter the onsite parking provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to onstreet parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with the National Planning Policy Framework (2021).

Highways Comments:

The LHA note that the revised drawings show a minor amendment to the layout, notably along the boundary of the site with the Public Right of Way (PROW). In addition, the LHA notes that the red line of the site has been amended so as not to include the PROW. Notwithstanding the LHA's comments in respect of Condition 8 below, the LHA advises it has no objection to the variation of Conditions 1 and 2.

Condition 8

No development shall take place above ground level until a scheme for the treatment of the Public Rights of Way has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include provision for their surfacing, drainage, width, structures, signing, landscaping, and management during construction, in accordance with the principles set out in the Leicestershire County Council's Guidance Notes for Developers.

Reason: To protect and enhance Public Rights of Way and access in accordance with the National Planning Policy Framework (2021).

The Applicant wishes to remove Condition 8 as it is stated this is not deliverable as the land sits outside Jelson's ownership.

Highways Comments:

The LHA advise it objects to the removal of 22/01091/REM condition 8 and that it should be amended to include an agreement under Highways Act 1980 section 278, which empowers works outside a site boundary and/or applicant's ownership on any public highway (as the route in question, Public Footpath U6, is a category of highway maintainable at the public expense), for the reasons set out below.

22/01091/REM was a reserved matters application under outline permission 15/00188/OUT, the 'Hinckley West' development, of which the 22/01091/REM site constitutes Phase 8. In May 2018 permission for the 15/00188/OUT whole site was granted to Bloor Homes Limited. The whole site is covered by a Section 106 Agreement signed in April 2018 between John W. Sheppard (Wykin) Limited (J Sheppard), Bloor Homes (Bloor), the Borough Council, and the County Council. In July 2020 Bloor purchased most of the site land from J Sheppard. The J Sheppard landholding was and is land title LT303868. The purchased part of the site is land title LT523241, parts of which are being re-sold as the development progresses.

The July 2020 sale is subject to a Transfer Deed between J Sheppard (the transferor) and Bloor (the transferee) dated 17/07/2020 and filed under both land titles. The transfer to Bloor covers the 15/00188/OUT site except for what is defined on the transfer plan as the 'Purple Land' which is a 5 metre-wide strip of land along the inside western site edge where the route of Public Footpath U6 is

situated. The Purple Land is retained by J Sheppard.

However, in the transfer deed panel 12.1 outlines covenants between the transferor and transferee. These include that a 'Footpath' is to be constructed on the 'Purple Land'. Panel 12.4 states that:

'The Transferor grants to the Transferee and its successors in title and all persons authorised by them the rights set out in schedule 1 for the benefit of the Property'.

Schedule 1 item 1 confirms:

'The right to dig up, to pass and re-pass over and along the Purple Land, and to construct and lay the Footpath on the Purple Lane between points A and B on the Plan and rights of access with or without vehicles to carry out the works at all times and for all purposes connected with the use and enjoyment of the Property, and for the purpose of carrying out works to maintain and landscape the Footpath and the Purple Land in accordance with the transferee's landscaping at the Property from time to time.'

Schedule 4 item 1.1.2 concerning Works Agreements provides that:

'At the request and cost of the Transferee shall as soon as reasonably practicable consent to and join in any Planning Agreement relating to the development of the Property and for the retained land (or any part thereof) ...'

So by purchasing the land of 15/00188/OUT Phase 8 under the terms of the deed in the July 2020 transfer, as the successors in title to Bloor, Jelson Limited inherit the covenant duty to construct the 'Footpath' along that section of the 'Purple Land' which is adjacent to the land they acquire, subject to any Works Agreement or Planning Agreement which might be constituted by an agreement under section 278 of the Highways Act 1980.

Given this responsibility in the 2020 transfer to construct a physical 'Footpath' along the legally-defined alignment of public highway U6, in accordance with the highway law and the National Planning Policy Framework 2023 paragraph 104 as it relates to this location, the requirement of 22/01091/REM condition 8 is still applicable.

If further information is required, the Applicant can contact the County Council on (0116) 305 0001 or footpaths@leics.gov.uk.

Date Received **Case Officer**
20 November 2024 **Ben Dutton**

Reviewer
DH

Date issued
10 December 2024