

**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: 25/00408/DISCON

Highway Reference Number: 2025/0408/04/HDis27/R2

Application Address: Land Off Captains Lane Markfield Leicestershire LE67 9UY

Application Type: Discharge of Condition

Description of Application: Re-consultation. Application to discharge conditions 4 (surface water drainage), 8 (landscape and biodiversity management plan), 9 (SuDs), 14 (badger survey), 17 (boundary treatment) 22 (land contamination), 27 (public rights of way), 28 (landscaping) and 30 (play spaces) of planning application 24/00074/CONDIT

GENERAL DETAILS

Planning Case Officer: Matt Jedruch

Applicant: Mr Mitesh Rathod

County Councillor: Markfield, Desford & Thornton ED - Charles Whitford CC

Parish: Markfield

Road Classification: Class C

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

Objection

Objection to Discharge of Condition 27 (Public Right of Way).

No comments

Conditions 4 (surface water drainage), 8 (landscape and biodiversity management plan), 9 (SuDs), 14 (badger survey), 17 (boundary treatment) 22 (land contamination), 28 (landscaping) and 30 (play spaces) were not advised by the Local Highway Authority (LHA) who therefore have no comments to make on these details.

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) has been re-consulted by the Local Planning Authority (LPA) on a discharge of conditions application relating to planning application 24/00074/CONDIT - Variation of Condition 1 of planning application 23/00117/CONDIT for the revision of site layout and substitute house types, located at the land off Captains Lane, Markfield, Leicestershire, LE67 9UY.

The LHA previously advised it objected to the discharge of Condition 27 on 22nd May and 18 July 2025 and had no comments on all other conditions to be discharged.

Condition 27

For the avoidance of doubt, Condition 27 states:

'No development of Phase 2, 3 or 4 containing a public right of way shall commence until a scheme for the treatment of the public rights of ways have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include provision of their management during construction, surfacing, width, structures, signing, landscaping and their implementation in accordance with the principles set out in the Leicestershire County Councils Guidance Notes for Development. The approved scheme shall be adhered to and implemented in strict accordance with the scheme. In respect of Phase 1 the development shall be carried out in accordance with the information within the Cover Letter to all Conditions received 9 December 2021 as part of the Discharge of Conditions application reference 21/01467/DISCON.'

Reason: To protect and enhance the Public Rights of Way and access in accordance with PolicyDM17 of the Site Allocations and Development Management Policies DPD (2016) and paragraphs 114 and 116 of the National Planning Policy Framework (2023).'

Highways Comments:

This application site includes public rights of way Footpaths R4 and R29. As previously noted, a Public Rights of Way (PRoW) treatment scheme could comprise one document; or several plans; or be parts of other document(s) (e.g. a Construction Management Plan) as long as the impacts on the PRoW(s) are explicitly addressed, and the work about them is clearly identified in those documents.

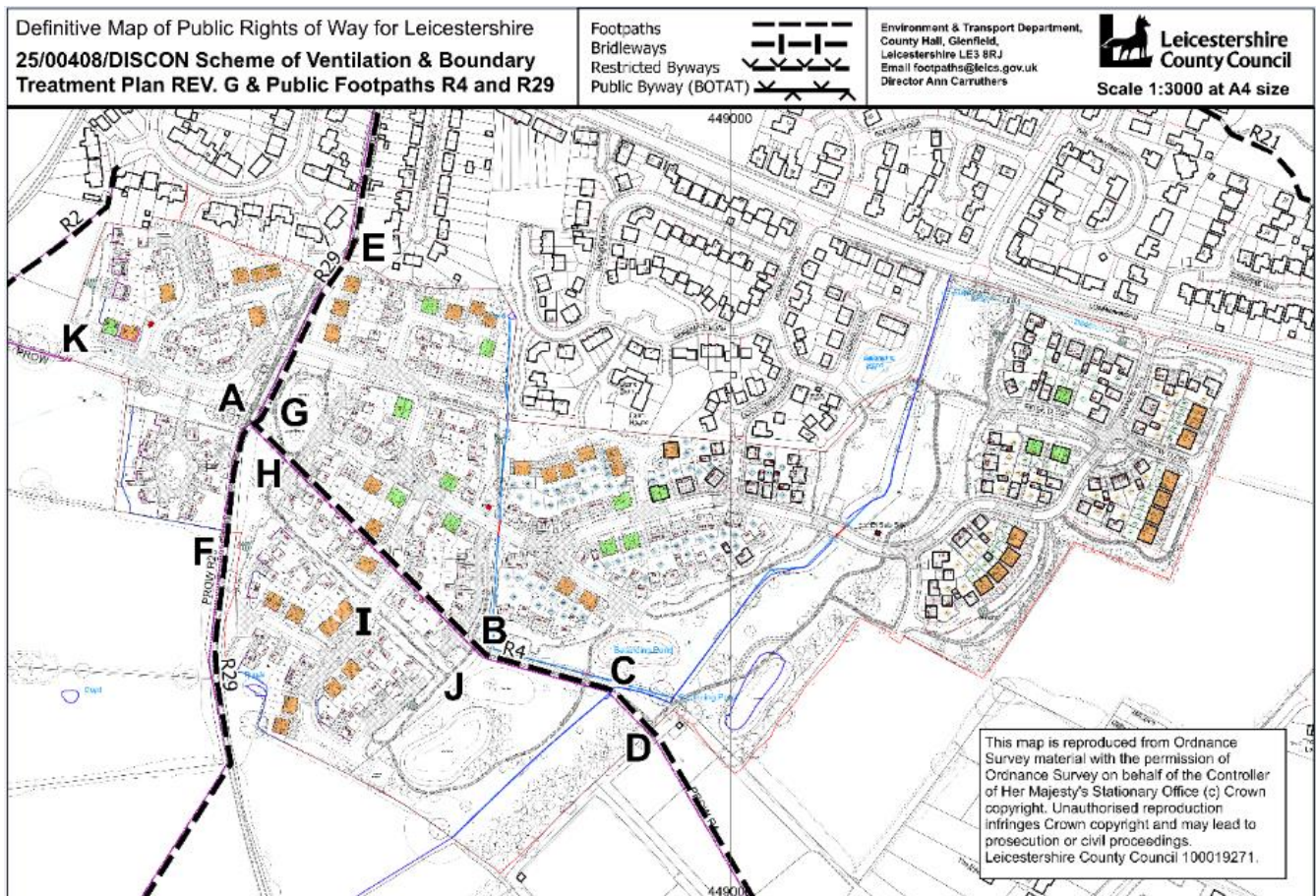
In this case the treatment of PRoWs will need to address and document the following:

- a) Management during construction, including fencing, safety signage, and marshalling of crossing points (where needed); plus legal order(s) for temporary closures and diversion(s), any proposed temporary route(s) and how these will be kept usable.
- b) Ensuring site plans reflect the correct PRoW legal alignment on the Definitive Map and, if needed, any legal order for a permanent diversion to ensure it will do so in future.
- c) Any physical construction works: including widths, surfacing, drainage, structures, and impacts on the PRoW of any landscaping and boundary treatments.

In reviewing the submitted documents:

- a) The submitted Temporary PRoW Diversion Plan Revision C is fully satisfactory. The annotation that 'Signage to be installed on inside of heras fencing to reduce likelihood of vandalism' based on past LHA comments is particularly welcome. For reference the full LHA draft guidance on Temporary PRoW Diversions is included below as an Appendix to these comments.

- b) It is recognised that a permanent PRow diversion is also needed. That will require a separate legal order made by the LPA. The LHA response to 25/00408/DISCON dated 22/05/2025 included a plan of the submitted Scheme of Ventilation & Boundary Treatment Plan Revision E with the Definitive Map, the official record, which legally fixes the exact alignment of public rights of way and which all planning should conform with. Below is an updated plan incorporating the recently submitted Scheme of Ventilation & Boundary Treatment Plan Revision G:



The issues highlighted in the 22/05/2025 LHA response still remain, which are:

A-B: Is where the Applicant knows Footpath R4 must be diverted to reflect their plans.

B-D: The Applicant's plan has a different route for R4 compared with the Definitive Map.

A-E: The legal alignment of Footpath R29 is different from the physical route on the ground for historical reasons. Changing that legal alignment also needs to be included in the Applicant's diversion application so that the PRow aligns with the Applicant's layout, or otherwise the new development may be technically an unlawful highway obstruction.

A legal diversion of a PRow requires a separate legal order made by the Local Planning Authority, a separate application for which must be submitted and also be legally confirmed before the development is substantially complete. The PPG Government guidance on this in Circular 1/09 paragraph 7.11 cautions that: *"It cannot be assumed that because planning permission has been granted that an order ..., for the diversion or extinguishment of the right of way, will invariably be made or confirmed."*

- c) This application includes a drawing Site Footpath Surfacing Material which specifies 'Tarmac Surfacing To Footpaths' which includes all the proposed future routes of PRowS. This is welcome as it reflects the Leicestershire Highway Design Guide (LHDG) policy that urban PRowS for active travel should have an all-weather asphalt surface.
- d) Condition 27 also mentions signposting. Signs are a legal requirement where a PRow exits from or crosses a surfaced road. Where the need for the new sign is due to development, the developer who creates the need for a new sign is responsible for paying for it. So, any PRow treatment scheme should include a signage scheme, approved by the LPA. The LHA specification for these is LHDG dwg SD/FP/7. The Applicant may install the signs themselves or, by agreement with the LHA, the LHA can source and install suitable signs the costs being recharged to the Applicant. For this reason, new PRow signs will be required at the road junctions at points B and I.

Also, the LHDG policy on permanent PRow diversions is that new paths should be through public open space and separate from roads and their footways, as far as possible, to preserve the identity of rights of way as through-routes. The Applicants' plans show the future route of Footpath R4 mainly separate from roads. However, there are numerous junctions with other paths, so to maintain the identity of Footpath R4 as a through-route additional new PRow signs will also be required at the new path junctions which are at points A, G, H and J.

- e) The drawing Scheme of Ventilation & Boundary Treatment Plan Revision G also shows, from the far western extremity of the site at grid reference SK4856609513, a section of path labelled 'PRow' heading westwards for 75 metres to connect with the existing route of Footpath R2 which is part of the 'Leicestershire Round' long-distance trail leading to the reservoir and Thornton village.

Any such new path link would be a positive benefit to the local community and strongly reflects the National Planning Policy Framework paragraph 105 which says *"Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks ..."* The LHA PRow section would welcome clarification about the future status of this path and whether it is to be formalised as a PRow to protect it in perpetuity. If it is to be a formal PRow route, a new PRow signpost will also be required at point K.

To fully satisfy 24/00074/CONDIT Condition 27 the following are required:

1. To reflect item (b) above, the Applicant needs to submit a draft plan for the legal diversion which fully addresses the issues noted above between points B-D and A-E. For a fee the LHA can provide a diversion plan which matches the requirements of the Town and Country Planning (Public Path Orders) Regulations 1993.
2. To reflect item (d) above, the Applicant should submit a signage scheme confirming that new PRow signs matching the LHA specification LHDG dwg SD/FP/7 will be provided, or funded by the Applicant, at the points A, B, G, H, I and J; and potentially at point K if the new route linking to Footpath R2 is to become a PRow, or to be treated as similar to one.

For the reasons set out above, the LHA is unable to discharge Condition 27 (Public Right of Way) at this time.

Date Received
8 April 2026

Case Officer
Emma Peacock

Reviewer
BD

Date issued
27 April 2026