

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: 24/00863/REM

Highway Reference Number: 2024/0863/04/H

Application Address: 130 Stamford Street Ratby Leicester Leicestershire LE6 0JU

Application Type: Reserved Matters

Description of Application: Approval of reserved matters (access, appearance, landscaping, layout and scale) of outline planning permission (24/00243/OUT) for erection of a single dwelling

GENERAL DETAILS

Planning Case Officer: David Spring

Applicant: Mr Max North

County Councillor: Cllr Ozzy O'Shea

Parish: Ratby

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 does not consider that the application as submitted fully assesses the highway impact of the proposed development and further information is required as set out in this response. Without this information the Local Highway Authority is unable to provide final highway advice on this application.

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) has been consulted by the Local Planning Authority (LPA), Hinckley & Bosworth Borough Council (HBBC), on a planning application which seeks the:

'Approval of reserved matters (access, appearance, landscaping, layout and scale) of outline planning permission (24/00243/OUT) for erection of a single dwelling.'

The proposals are at 130 Stamford Street, Ratby, Leicestershire, LE6 0JU.

Proposals

The LHA have reviewed the information provided by the Applicant and note that it appears to propose an encroachment on the public highway and also the proposed layout is contrary to the National Planning Policy Framework (NPPF) December 2023, the Leicestershire Highway Design Guide (LHDG), a copy of which can be found at <https://resources.leicestershire.gov.uk/lhdg>.

Public Right of Way (PRoW) footpath R50 is already a well-used route. It is expected is this will increase with the housing sites currently being constructed and further consented developments along Markfield Road with the recent application for development between Stamford Street and Burroughs Road, all of which connect with or include the route of Footpath R50.

The section of Public Footpath R50 adjoining the application site is enclosed by fences on both sides. A public footpath is a category of public highway. Where a highway is enclosed by boundaries, the common law rule known as the 'hedge to hedge' presumption (which also applies to routes enclosed by walls or fences) is that the public's highway rights extend to the whole width between the boundaries. This applies regardless of who owns the boundaries or who owns the sub-soil beneath the highway.

The southern side of the footpath is defined by a brick retaining wall and the northern side of the footpath is now bounded by a high close-boarded fence located approximately 1 metre away from the edge of the crushed stone surface of the footpath. The space between the stone surface and high fence forms an area of grass verge. Drawing 'Landscape Plan', drawing number 107-04 does not show this verge but shows the property boundary and the south wall of the proposed house as being immediately beside the stone surface of the footpath. Under the Highways Act 1980 section 130(4) the LHA has a duty to prevent encroachments.

The NPPF, Paragraph 104 requires that '*Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users ...*' This application neither enhances nor protects the neighbouring public right of way. The NPPF is applied in a local context by the Leicestershire Highway Design Guide an annex to which is the guidance on 'Development and Public Rights of Way' at:
<https://tinyurl.com/devprowguide>.

As that guide notes in Paragraphs 7 and 8 '*Narrow enclosed paths are not desirable and if proposed within a planning application will attract objections from the County Council ... Paths should ideally be routed through public open space which is well overlooked. If it is not possible to do this then a grass strip of at least one metre width should be provided either side of the public right of way so that the path does not appear narrow and threatening.*' In particular, high fencing or buildings constructed immediately next to the walked surface of a path are intimidating and deter use of a footpath which may constitute an unlawful interference with the public's legal rights to go back and forth along a public right of way.

Public Footpaths are a category of green infrastructure asset. The draft new Hinckley and Bosworth Local Plan green infrastructure policy SP20 (f) requires that: '*Proposals should take account of the existing on-and off-site green infrastructure assets and developments should demonstrate how the design and layout has been informed by and developed in response to these assets.*' With this application the site design and layout appear to have taken no account of the neighbouring footpath as well as not protecting or enhancing it.

Also, where Footpath R50 exits from the end of Stamford Street there is a gate onto the path at the end of a wall which appears to be associated with the existing house number 130. Under the Highways Act 1980 section 146 stiles and gates on paths are the landowners' responsibility. Stiles and gates on paths are mainly justified to stop livestock from escaping from fields which no longer applies in this location. Reflecting the Equality Act 2010, government policy is that barriers on public rights of way should be the 'least restrictive' option necessary to ensure that paths are accessible to users with reduced mobility.

The 'least restrictive' option principle is outlined in British Standard 5709:2018. Entry points on paths should be defined gaps or gates which should be a minimum of 1 metre wide. The footpath gate beside the wall associated with 130 Stamford Street appears significantly narrower than 1 metre and is potentially a barrier to users with particular mobility needs. If there is to be development on the land adjoining the Footpath here, reflecting the NPPF 104 enhancement policy, the developer should replace the existing gate and entrance with a design agreed with the LHA that matches current accessibility best practice.

The Applicant may wish to contact Highway Record Enquiry via HRE@Leics.gov.uk in order to establish the definitive highway extent including Footpath R50.

Furthermore, the Applicant should contact Leicestershire County Councils PRoW team via footpaths@leics.gov.uk in order to move this application forward, this may require revised, scaled drawings.

Date Received **Case Officer**
19 September 2024 **Neal Chantrill**

Reviewer
BD

Date issued
8 October 2024