



TOWN & COUNTRY PLANNING ACT 1990

APPEAL BY MR. N. PROUD

**SITE ADDRESS: POPLAR COTTAGE, LITTLE SHAW LANE,
MARKFIELD, LEICESTERSHIRE, LE67 9PP**

PLANNING APPLICATION No: 24/00021/FUL

APPEAL REFERENCE: APP/K2420/W/24/3347640

**Written Statement on behalf of Leicestershire County Council as
Local Highway Authority**

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APPENDIX BTD.1 – Local Highway Authority’s Final Observations for Application 24/00021/FUL dated 27th February 2024

APPENDIX BTD.2 – Local Planning Authority’s Decision Notice for Application 24/00021/FUL dated 9th April 2024

APPENDIX BTD.3 - Part 1 of the Leicestershire Highway Design Guide

APPENDIX BTD.4 - David Granger drawing number 18.3558.04 Rev. D

APPENDIX BTD.5 – Site and Speed Survey Location Plan

APPENDIX BTD.6 – Local Planning Authority’s Decision Notice for Application 22/01127/FUL dated 15th September 2023

APPENDIX BTD.7 – Leicestershire County Council Cabinet Report dated 24th October 2023

APPENDIX BTD.8 – Appeal decision reference APP/K2420/W/24/3343996 dated 5th August 2024 for application 24/00016/FUL dated 5th August 2024

PROOF OF EVIDENCE OF MR BENJAMIN TIMOTHY DUTTON BSc (hons)

1. Qualifications and Experience

- 1.1 My name is Benjamin Timothy Dutton BSc (hons). I am a Transport Planner and have worked in the field of highways, traffic, and transport for 16 years. I hold a Bachelor of Science Degree with Honours in Geography from the University of Derby (graduated in 2006).
- 1.2. I was employed by Leicestershire County Council as an Assistant Transport Planner from February 2015 to March 2017 and have been promoted to Transport Planner from March 2017. I have previously held Technician/ Senior Technician roles at Leicestershire County Council.
- 1.3. In my role I am the Transport Planner for the Hinckley & Bosworth district and comment on planning applications on behalf of Leicestershire County Council as the Local Highway Authority. I manage my own caseload and allocate/review applications for other colleagues within the team.
- 1.4. I am fully conversant with the appeal site and its surroundings.

2. Introduction

2.1 This appeal statement has been prepared on behalf of Leicestershire County Council (LCC) as the Local Highway Authority (LHA) in respect of an appeal against planning application reference 24/00021/FUL against Hinckley & Bosworth Borough Council's decision as the Local Planning Authority (LPA) to:

'Refuse planning permission for the Part change of use of site to retail to allow public access to the nursery and the provision of a car park at Poplar Cottage, Little Shaw Lane, Markfield'.

2.2 The LHA advised the following highway reason for refusal within its final observations submitted to the LPA on 27th February 2024 and provided within Appendix BTD.1 at the rear of this document:

'This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide and paragraphs 114 and 115 of the National Planning Policy Framework (December 2023).'

2.3 The LPA refused the application, with the Decision Notice listing one reason for refusal as detailed within Appendix BTD.2 at the rear of this document. This reads as follows:

- 1) *'This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide, Policy DM17 of the Site Allocations and Development Management Policies DPD (2016), Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and paragraphs 114 and 115 of the National Planning Policy Framework (2023).'*

2.4 The LHA consider that the reason for refusal satisfactorily incorporates the reason for refusal advised in the LHA's final response to the LPA, provided within Appendix BTD.1 at the rear of this document.

2.5 Following this introduction, this Proof of Evidence (PoE) is structured as follows:

- Section 3: Sets out the site and location of the proposed development;
- Section 4: Provides the relevant planning history of the site;
- Section 5: Details relevant national and local planning policy and guidance in respect of the proposals;
- Section 6: Provides further details of the Leicestershire Highway Design Guide (LHDG) review;

- Section 7: Summarises the LHA's significant concerns in respect of Part 1, Section IN5 of the LHDG;
- Section 8: Concludes the PoE; and
- In Section 9, the LHA respectfully suggest planning conditions and informative notes which it would wish to be applied to any permission should the appeal be allowed.

2.6 This PoE refers to the interim LHDG throughout, Part 1 of which is provided in Appendix BTD.3 at the rear of this document. The LHDG was the subject of a comprehensive public consultation exercise and is an adopted policy of LCC. The LHDG was adopted in October 2008 and is currently being reviewed. An interim version of the LHDG was released in January 2022.

2.7 A draft revised LHDG was published for public consultation from between 24th June to 4th August 2024 and comments are now being reviewed, with the final version of the new LHDG expected to be published in a web-based format in late 2024. Further information in respect of the LHDG review as it pertains to this appeal is provided within Section 6 of this report.

3 The Site and Location

- 3.1 The site for the proposed change of use lies to the north of the Little Shaw Lane dual carriageway (A511) between the A511 Shaw Lane/ A511 Little Shaw Lane/ B591 Copt Oak Road/ Stanton Lane (Flying Horse) roundabout and M1 Junction 22 roundabout.
- 3.2 Access to the proposed site would be via the existing dropped kerb access on to Little Shaw Lane, an A classified dual carriageway (A511) subject to a 50mph speed limit. Access to/ from the site would be left in and left out only by virtue of the existing central reservation. A drawing of the Appellants proposals (David Granger drawing number 18.3558.04 Rev. D) is provided in Appendix BTD.4 to the rear of this document. The speed limit changes from 40 to 50mph immediately to the west of the site access. A pedestrian footway runs alongside the southeastbound Little Shaw Lane (A511) carriageway and branches off towards Little Shaw Lane (unclassified). Street lighting is present along the route. A Site Location Plan is provided in Appendix BTD.5 to the rear of this document.
- 3.3 The Appellant is proposing to widen the junction radii of the existing access to 4.0m. This amendment has been subject to a Stage 1 Road Safety Audit. The LHA consider that increasing the junction radii would not be of any considerable highway benefit to the proposed development to resolve its concerns over an intensification of vehicular movements turning onto and off the A511.
- 3.4 The LHA note that this section of the A511 is part of LCC's Resilient Network¹ and the Department for Transport's Major Road Network (MRN)².
- 3.5 Details of the LHA's concerns regarding the application site are discussed in Section 7 of this PoE.

¹ <https://www.leicestershire.gov.uk/roads-and-travel/road-maintenance/the-resilient-network>

² <https://maps.dft.gov.uk/major-road-network/index.html>

4 Planning History

- 4.1 The application that is subject to this appeal is for a *'Part change of use of the site to retail to allow public access to the nursery and the provision of a car park'*. The application has been submitted in full.

Previous Applications

- 4.2 There have been several planning applications at the site since 1977. The LHA has provided details of all planning applications since the introduction of the National Planning Policy Framework (NPPF) in 2011, which are also the most relevant applications to the proposals.

- 4.3 *22/01127/FUL: Part change of use of site to retail to allow public access to the nursery (approved under 19/00623/FUL) along with the provision of car park.* That application was located at the same site as the application subject to this appeal. The application started off as application reference:

22/01127/CONDIT for the Variation of condition 02 (approved drawings) and 06 (public access to site) for Planning Permission 19/00623/FUL. Variation to include revised block plan to allow public access to the site.

The LHA previously advised objection to the variation of conditions 2 and 6 within its observations in response to application number 22/01127/CONDIT dated 22 December 2022. The Applicant subsequently submitted revised information on 8 February 2023 in support of the proposals, however after liaising with the LPA, the LHA was advised on 22 February 2023 the application was to be withdrawn and converted to a full application under LPA ref: 22/01127/FUL.

- 4.4 Application 22/01127/FUL was also refused by the LPA on 15th September 2023. The Decision Notice for that application dated 15th September 2023 and provided within Appendix BT.D.6 at the rear of this document, included one reason for refusal as follows:

- 1) *'This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide, Policy DM17 of the Site Allocations and Development Management Policies DPD (2016), Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and paragraphs 110 and 111 of the National Planning Policy Framework (2021).'*

- 4.5 The reason for refusal is similar to that on the application subject to this appeal.

- 4.6 Following the refusal of application reference 22/01127/FUL, the LHA had no further engagement from the Appellant in respect of a revised application, prior

to the submission of the application which is subject to this appeal.

- 4.7 *20/01363/FUL: Hay barn, greenhouse and water tank for horticultural use (part-retrospective).* That application was located at the same site as the application subject to this appeal and was granted planning permission by the LPA. The LHA advised no objection subject to conditions on the basis the proposals were unlikely to cause a severe intensification of an access which is on to an A classified road.
- 4.8 *19/00623/FUL: Polytunnel and associated storage building.* That application was located at the same site as the application subject to this appeal and was granted planning permission by the LPA.
- 4.9 *18/01279/FUL: Poly tunnel and associated storage building.* That application was located at the same site as the application subject to this appeal, however was withdrawn.
- 4.10 *18/00697/GDO: Agricultural building for fodder and machinery.* That application was located at the same site as the application subject to this appeal, however the application was withdrawn prior to determination. The LHA do not hold a record of being consulted on the proposals by the LPA.
- 4.11 *18/00272/FUL: Replacement access to field and dwelling.* That application was located at the same site as the application subject to this appeal and was granted planning permission by the LPA on 31st May 2018. The LHA advised no objection subject to conditions on the basis the proposals would replace a sub-standard access with a better one and not introduce additional traffic onto the highway. Whilst the proposals have been implemented, it is noted that the dropped kerbs for the previous access which require removal currently remain on-site.
- 4.12 *17/01277/HOU: Replacement access onto A511.* That application was located at the same site as the application subject to this appeal, however was withdrawn. The LHA advised additional information was required from the applicant in order to fully consider the proposals.

5 Relevant National and Local Planning Policy and Guidance

5.1 The application that is subject to this appeal has been fully assessed against the National Planning Policy Framework (NPPF, December 2023) and the LHDG.

5.2 Paragraph 114 of the NPPF states:

'In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

b) safe and suitable access to the site can be achieved for all users;

c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code 46; and

d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.'

5.3 The LHA consider part (d) of Paragraph 114 above to be relevant to this appeal.

5.4 Paragraph 115 of the NPPF states that:

'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'

5.5 The LHA considers that the proposed development would lead to an intensification of vehicular movements turning onto and off Little Shaw Lane (A511), which is a busy high-speed A classified road forming part of LCC's Resilient Network and the MRN, where 85th percentile vehicle speeds are recorded in excess of 40mph. As such, additional turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety and is contrary to Paragraphs 114 and 115 of the NPPF.

5.6 The LHA also considers the LHDG to be highly relevant. In particular, Part 1, Section IN5 (Our Access to Road Network Policy) is relevant to the appeal, as considered in the following section of this PoE. Part 1 of the LHDG is provided within Appendix BTD.3 at the rear of this document.

6 **LHDG Review**

- 6.1 As advised within Section 2 of this report, the LHDG is currently being reviewed by LCC, with a view to the final version being available in late 2024. Public consultation on the revised draft LHDG document ran between Monday 24th June and Sunday 4th August 2024.
- 6.2 Given the draft LHDG has been available for public consultation, the proposed wording for the revised IN5 policy has been provided below:

'Policy 2 Access to the Highway Network

The council will apply a risk-based assessment of proposals for new accesses onto the existing highway network and alterations to and/or intensification of existing accesses so that they do not result in unacceptable road safety and operational concerns.

Implementing Policy 2

All developments that generate significant amounts of traffic movement are required to provide a travel plan, and the application should be supported by a transport statement or transport assessment (in accordance with "Preparing Development Proposals" section of the LHDG) so that the likely impacts of the proposal can be assessed.

The council will work with developers to ensure applications do not create unacceptable road safety and operational concerns regarding new accesses or impacts on existing accesses.

The above are supported by the following text in the draft:

To ensure the provision of safe and suitable accesses for all users, the council will employ a risk-based approach to assessing the impact of proposals on new connections or alterations to the existing road network.

The council encourages early engagement to discuss issues related future accesses onto the network.

In consideration of safety and efficient operation, the council will assess access proposals using a risk-based approach that considers relevant data including Personal Injury Collision data, vehicle volumes and journey times, speed limit, actual speeds and whether the site is on the council's resilient network and/or DfT's major road network and relevant developer transport assessment information.

Where necessary data is unavailable this must be provided to the council by the developer. Please refer to the council's Data Collection section.

Where access is acceptable to the council in principle, the council will expect its layout to comply with LHDG design guidance. The council will advise refusal of any planning application that raises severe concerns regarding road safety. Approval for a new access (and any associated development)

will also depend on the planning authority where planning permission is required.'

- 6.3 As can be seen, the revised draft policy introduces a risk based approach when assessing development proposals. A report to LCC's Cabinet dated 24th October 2023³ and provided within Appendix BTD.7 at the rear of this document, states in Paragraphs 45 to 47:

'A revision to current Policy IN5 "Access to the Road Network" has been proposed. Current policy allows limited flexibility when considering the creation of new accesses or the increased use of existing accesses onto A and B roads. The current approach applied through the policy has been the source of challenge from developers during the planning process, particularly where sites are allocated in Local Plans.

It is proposed that future guidance comprises a risk-based approach to assessment, with consideration of traffic volumes, measured speeds, personal injury collisions, and proximity to sensitive receptors e.g., schools, all forming part of the evidence-based assessment. An assessment tool is under development to support this policy.

Where there is evidence to suggest that creation of new/intensification of existing accesses would have an unacceptable impact on highway safety, the LHA will seek to resist the proposals.'

- 6.4 The LHA advises that the revised LHDG is in draft form and could therefore be subject to amendments and at this time is not the current adopted policy of LCC. However, in line with national policy the interim and revised LHDG do and will continue to protect the requirement to deliver a safe and suitable access to serve developments. Nevertheless, a pragmatic approach in respect of Policy IN5 has been undertaken when reviewing the application subject to this appeal, given the recent consultation and proposed Policy 2, outlined above. Within Section 7 below, the LHA has also considered the proposed risk-based approach of Policy 2 to demonstrate that it believes the proposals would also not be considered suitable under the emerging revised LHDG. This includes consideration of the status of the A511 and the volume of traffic using the route.

³ <https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=7079&Ver=4>

7 Local Highway Authority Concerns and Consideration of Policy IN5

- 7.1 Within this section, the LHA outlines its concerns in respect of the single reason for refusal in the LPA's Decision Notice provided within Appendix BTD.2 at the rear of this document, as reproduced below.

'This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide and paragraphs 114 and 115 of the National Planning Policy Framework (December 2023).'

- 7.2 When assessing any planning application the LHA must consider its impact on the local highway network against both the NPPF (December 2023) and local guidance, the LHDG.
- 7.3 Given the location of the proposed development, Part 1, Section IN5, 'Our access to the road network policy' of the LHDG is particularly relevant. This section sets out the LHA's requirements and principles for new accesses for vehicles or the increased use of existing accesses onto A and B class roads. For the avoidance of doubt, the following extract is taken from paragraphs 1.24 to 1.28, Section IN5 of the LHDG:

'Section IN5: Our access to the road network policy Principles

1.24 To maintain safety and the free flow of traffic, policy in the past has discouraged new accesses onto A and B-class roads and avoided increasing the use of existing accesses. For the future, and in line with an integrated transport policy, we will adopt a flexible policy on new connections to the road network. We will severely restrict access to the most important high standard routes. Elsewhere, particularly in urban locations, in principle we will apply a more flexible approach. Please see paragraph 1.27 onwards for full details.

1.25 Where access is acceptable to us in principle, we will normally expect its layout to comply with the design guidance set out in Part 3. We will recommend refusal of any planning application that raises concerns about road safety. Approval for the access (and any associated development) will also depend on the planning authority where planning permission is required.

Access to A- and B-class roads

1.26 We will normally apply restrictions on new accesses for vehicles and the increased use of existing accesses on:

- roads with a speed limit above 40 mph (that is 50mph, 60mph or 70mph) or where measured vehicle speeds are in excess of 40mph;*
- roads with a speed limit of 40mph or less which are essentially rural in nature;*

- *routes where the access would affect bus-corridor or bus-priority measures being put in place;*
- *roads that are at or near capacity (cannot carry more traffic); and*
- *roads where there is an existing problem with road safety.*

1.27 Elsewhere, we will not normally restrict new accesses for vehicles, as long as they meet the conditions of paragraph 1.26. Also, where a number of developments are proposed along a section of road, the risk of accidents occurring will be reduced if they are accessed from a service road with a single point of access on the main road.

1.28 If access to a development can be gained off a minor or side road, you should normally consider this option as preferable (with improvements to the junction of the minor side road with the main road as necessary).'

7.4 When assessing a newly proposed or intensified existing/ improved access onto a high-speed A classified road in this location, the LHA consider the above points to determine the impact of the use of the access on the local highway network.

7.5 The A511 and A50 to which it leads onto, between the county boundaries with Derbyshire and Leicester City forms part of LCC's Resilient Network, whereby they are considered essential for economic activity and key services in the event of extreme weather events, major incidents, and other disruption. Due to its importance, the A511/A50 they are also listed as 'Priority 1' as part of LCC's winter gritting route⁴. Routes considered within LCC's Resilient Network comprise diversion routes for motorways and dual carriageways or are key access roads to important infrastructure, such as hospitals, food distribution centres, power suppliers and water treatment or pumping stations. The key aim is to ensure that access is always maintained on the Resilient Network for traffic, wherever reasonably practicable. The route forms a key route linking North West Leicestershire, including Coalville and Ashby de la Zouch with the A42, M1 and Leicester city and also serves a number of major industrial estates and quarries such as those at Bardon/ Bardon Hill, Stanton Under Bardon and Coalville. In addition, the route is well used by the emergency services for any incidents that occur in the surrounding areas, or on the motorway. The route fronting the site forms part of a diversion route for the M1 between J22 and J23 should there be any planned or unplanned closures.

Additionally, on 23 December 2017, the Government launched a consultation setting out proposals for the creation of a MRN. The MRN forms a middle tier of the country's busiest and most economically important local authority 'A' roads, sitting between the national Strategic Road Network and the rest of the Local Road Network. A specific new funding stream will be dedicated to improvements on MRN roads. It should be noted that the entirety of the A511/A50 is part of the

⁴ <https://www.leicestershire.gov.uk/winter-weather/gritting-and-travel-this-winter>

MRN and it is therefore important that it functions as a strategic link.

7.6 Further to Policy IN5, the proposal is located on a section of the A511 which is part of LCC's A511 MRN Growth Corridor scheme⁵. This project has the benefit of funding allocated from the Department for Transport (DfT) following the approval of the Outline Business Case. It is anticipated that construction will commence in Spring 2025 with completion expected towards the end of 2027. The objectives of the scheme, as set out in the Outline Business Case, are as follows:

- Objective 1 - Make journeys on the A511 faster and more reliable.
- Objective 2 - Provide a resilient and safer road network, resilient to road collisions.
- Objective 3 - Improve reliability and capacity for freight along the A511 MRN Growth Corridor and in so doing support the efficient operation of logistics and mineral extraction needs of the area.
- Objective 4 - Support North West Leicestershire District Council's objectives of facilitating growth by delivering transport infrastructure; and potentially deliver at least 25ha of employment land and unlock at least 3,500 new dwellings.
- Objective 5 - Improve connectivity for all road users, with particular focus on vulnerable road users with the implementation of controlled crossings.
- Objective 6 - Support the SRN by providing a reliable and resilient link to the M1 and the A42.
- Objective 7 – Improve air quality and traffic noise impact along the corridor.

The LHA is therefore concerned that the impact of the development proposal would be detrimental to the objectives of the scheme.

7.7 Between the Flying Horse and M1 J22 roundabouts on the southeastbound carriageway, aside from the existing access to the site, there is a junction which serves property no's 158-200 Little Shaw Lane, an unclassified cul de sac located approximately halfway between the Flying Horse and M1 J22 roundabouts. This is a priority junction with merge/ diverge tapers on either side and a gap in the central reservation for right turning traffic. There are also two dropped kerb agricultural accesses approximately 110m and 180m northwest of the M1 J22 roundabout. These are left in/ left out accesses only. While there is development in the vicinity of the Flying Horse roundabout including dwellings, petrol stations, a car garage and a restaurant when exiting the roundabout and driving towards M1 J22, the route is predominantly rural in nature.

7.8 The Appellant has stated there is an expectation of between five arrivals and five departures (10 two-way trips) per hour throughout the day during the low season and 13 arrivals and 13 departures (26 two-way trips) per hour throughout the day during the busier months. As part of the application, the Appellant also confirmed there would be no HGV trips generated by the proposed development and that the proposals are purely to allow the public to visit the site. In addition, it was stated that it is very rare that a HGV would visit the site currently.

⁵ <https://www.leicestershire.gov.uk/roads-and-travel/road-projects/a511-growth-corridor-scheme/scheme-overview>

7.9 Noting that no comparison of the calculated traffic flows to a similar scale plant nursery has been made, based on the information provided by the Appellant alone, the LHA considered there could be between 80 - 208 two way trips per day (10 two way trips x 8 hours = 80 daily trips or 26 two way trips x 8 hours = 208 daily trips) between the opening hours of 10:00 - 18:00 (stated in the submitted application form) depending on the season. Within Paragraph 3.2 of the Appellants Highways Report⁶ submitted in support of the application, it was accepted the proposals will result in an increase in the use of the access.

7.10 The Appellant undertook a speed survey as part of an Automatic Traffic Count (ATC) at the location of the site access between 17th and 23rd June 2023. The precise location of the survey was not provided, however the LHA reviewed its records and confirmed a survey permit was issued for a survey in the eastbound carriageway immediately to the west of the access between 15th and 23rd June 2023. The location of the ATC survey is detailed in Appendix BT.D.5 to the rear of this document. The survey indicates 85th percentile speeds for southeastbound traffic to be 50.3mph. This is clearly more than the 40mph advised within the LHDG in respect of Policy IN5. Given the survey was located immediately to the west of the access, the LHA considers it reasonable that equipment could have been mounted to the 50mph speed limit signs, suggesting drivers are accelerating to at least 50mph on exit from the roundabout and prior to the speed limit change.

7.11 The Appellants ATC also recorded traffic counts throughout the duration of the survey as detailed in Table 1.

Southeastbound Flows	08:00 – 09:00	17:00 – 18:00	07:00 – 19:00
Monday 19 th June 2023	1401	306	10878
Tuesday 20 th June 2023	1391	1320	12925
Wednesday 21 st June 2023	1341	1287	13032
Thursday 22 nd June 2023	1465	1306	13352
Friday 23 rd June 2023	1378	1160	12896
Weekday Average	1395	1076	12617

Table 1: Peak and 12 hour flows at proposed access.

The ATC demonstrates that the southeastbound section of Little Shaw Lane (A511) is a highly trafficked road, which can be expected given its status as both part of LCC's Resilient Network and part of the MRN and a key link to M1 J22.

7.12 The LHA consider the proposals could introduce a considerable number of additional turning manoeuvres to and from the A511 dual carriageway over and above the permitted use for the site, which is currently not open to the public. These manoeuvres would be on to a highly trafficked part of the network, currently with minimal access points and where it is considered reasonable that drivers are accelerating away from the Flying Horse roundabout. This is in a location where the LHA consider drivers may not be expecting other drivers to be

⁶ https://publicdocuments.hinckley-bosworth.gov.uk/PublicAccess_Live/Document/ViewDocument?id=B093C7A9BD4A446EA228236C27916E4C

slowing down or pulling out of a junction. Unlike the western arm of the A511 or the northwestern approach to the Field Head Roundabout, the southeastbound carriageway appears distinctly more rural in nature. The LHA highlight Paragraph 9 of appeal reference APP/K2420/W/24/3343996 and provided within Appendix BTD.8 to the rear of this document, which states '*...as the speed surveys show traffic in this direction would be speeding up, having to slow down again would be unexpected. Likewise vehicles which were turning right out of the access would be going much slower than traffic on the main carriageway which would be travelling at around 50mph and would be speeding up.*'. This appeal was located at a location with similar recorded vehicle speeds and a lower level of traffic anticipated to be generated by that development. The Inspector highlighted these concerns despite appropriate visibility splays being available for the recorded speeds of passing traffic at that application. Whilst that application was situated on a single carriageway, it is on an A classified road forming part of the Resilient Network and the MRN. Whilst the Inspector was referring to right turning traffic as part of that appeal, the LHA consider drivers slowing down to access or pulling out of the site subject to this appeal could lead to sudden braking or overtaking manoeuvres by other motorists who may not have expected such manoeuvres so close to the Flying Horse roundabout and given drivers would be accelerating, as well as the predominantly rural characteristics of this section of the A511 when travelling southeast.

- 7.13 Within Paragraph 10 of appeal reference APP/K2420/W/24/3343996, the Inspector also states: '*However drivers may not be fully prepared for vehicles turning into the site in advance of the 40mph zone, even if there is a warning sign in advance.*' when referring to left turning traffic into the site. The LHA highlights that at this site subject to appeal, there is no reduction in speed limit beyond the site access and that the M1 J22 roundabout is approximately 640m from the access, leaving some distance for drivers to continue accelerating to above the 50mph speed limit.
- 7.14 The LHA note the only access point on the southeastbound carriageway where it would expect any substantial daily vehicle movements to occur is accompanied by a merge/ diverge taper. In addition, this is also true for the motorway service area on the northwestern carriageway, which could generate considerable vehicle movements when fully occupied. Whilst the Appellant has proposed to provide 4.0m junction radii, the LHA consider that increasing the junction radii as shown would not be of any considerable highway benefit to the proposed development to resolve its concerns over an intensification of vehicular movements turning onto and off the A511. As such, the LHA consider an intensification in use of the existing access could be of detriment to highway safety, contrary to Paragraphs 114 and 115 of NPPF, as well as Part 1 Section IN5 of the LHDG.
- 7.15 The Appellant used information from the Crashmap database to consider Personal Injury Collisions (PIC's) within the vicinity of the site access for the five years up to the end of 2022. This analysis identified that no PIC's have occurred at the site access during the study period, with PIC's only occurring at the roundabouts at each end of this section of the A511. While the LHA advise that the Appellant's data is out of date, based on the LHA's own records, the LHA are

not aware of any additional PIC's occurring in the area up to late May 2024, which is the most recent data held on record.

- 7.16 Overall, two PICs have occurred between the Flying Horse roundabout and M1 J22 roundabout within the last five years. These were recorded as slight in severity and occurred on the northwestbound carriageway in March 2020 and July 2022 which appear to be rear end shunt PIC's on the approach to the Flying Horse roundabout. The LHA consider that even in the absence of any PIC's on the southeastbound carriageway, this does not mean that the intensification in use of the access would be safe given its location and recorded vehicle speeds/volumes. Despite adequate visibility, the access is also considered to be less prominent than the Little Shaw Lane (unclassified) junction further east. The LHA highlights Para. 12 of appeal reference APP/K2420/W/24/3343996 provided within Appendix BTD.8 to the rear of this document, whereby the Inspector considered that despite a low number of vehicle movements generated by that proposal, due to the high volume of traffic and vehicle speeds, the impact of any collision could be severe. In addition, the fact that no incidents had occurred at that existing access to date had no material bearing on the Inspector's decision given the increase in movements anticipated.
- 7.17 In Para. 2.14 of the Appellants Highways Appeal Statement, the Appellant suggests that the access is located within the existing 40mph speed limit, which is incorrect, given the 50mph speed limit signage is to the west of the access. In addition, the Appellant suggests the LHA have powers to install additional street furniture such as signing and speed cameras. The LHA advise it would not seek to install speed cameras or speed reducing measures as a direct result of the proposals. In any case, any measures to reduce speeds would usually be proposed by (and at the full expense of) the Appellant. Notwithstanding this, speed reducing measures would not be appropriate on this section of the A511 due to the recorded speeds, classification & importance of the route.
- 7.18 The Appellant has suggested that when considering access design and visibility splay requirements, it is normal practice to consider the speed of vehicles as they enter the 'visibility splay envelope' for drivers emerging from the side road, not the speed of vehicles as they pass the access point. The LHA advises Paragraphs 7.12 and 7.13 further above addresses this comment.
- 7.19 Reference is also made to several access points with two petrol filling stations, access to a Public House/restaurant, large industrial unit, motorway service area, residential estate, and the Little Shaw Lane junction. The LHA considers this is partially covered by Paragraphs 7.12, 7.13 and 7.14 above, however in addition the LHA highlights that development on the A511 around the Flying Horse roundabout is all situated within the 40mph speed limit and the western arm of the A511 has a distinctly different character to the southeastern arm in that it appears much more urban, with development on both sides of the carriageway, close to the roundabout and with access points at regular intervals. The LHA therefore considers drivers are more likely to anticipate turning manoeuvres when approaching the roundabout from the southeast, or in particular on the western arm in both directions. Vehicle speeds are also likely to be within the 40mph speed limit closer to the roundabout. It should be noted that

the approach to the Flying Horse roundabout is also predominantly rural in nature from both the Copt Oak Road (B591) and Stanton Lane approaches.

7.20 The Appellant states they would accept a condition being imposed that would restrict the hours that the public could visit the site to avoid the morning peak hour. In addition, that the proposals would likely be seasonal, with fewer movements during the winter months and most traffic occurring during the hours of daylight which would help to make the access safer. The LHA advises it's highway safety concerns are not restricted solely to the use of the access during the AM peak and hours of darkness, the Appellant still proposes use of the site during the PM peak and, in any case, such a condition would not alleviate highway safety concerns.

7.21 The Appellant has referred to a number of other developments on classified roads within their Highways Appeal Statement. Firstly, appeal reference APP/F2415/W/23/3319293 for a veterinary surgery in East Langton, Harborough District. The proposals are situated on a B classified road and the LHA advised refusal of the proposals, including a reason citing IN5 of the LHDG. The appeal was allowed. The LHA consider that the site is not comparable to the location of Poplar Cottage. Melton Road is not a dual carriageway, has a single lane in each direction and is a B classified road (B6047) and does not form a part of LCC's Resilient Network or the MRN.

In addition, a development on the A6 in Kegworth (North West Leicestershire District Council [NWLDC] reference 23/00129/FULM) to which the LHA advised refusal and a large industrial estate development further along the A511 towards Coalville (NWLDC reference 18/01890/OUT) to which the LHA advised approval have been referenced by the Appellant. This is due to the LHA advising they *may* withdraw their objection to application 23/00129/FULM if a central island was provided to prevent right turns and such measures were considered acceptable as part of application 18/01890/OUT. The Appellant suggests that the LHA is not being consistent with decision making due to a central island already being present to prevent right turns at the access. The LHA has addressed this point within its 27th February 2024 observations under the '*Policy IN5*' section included within Appendix BTD.1 to the rear of this document.

7.22 The LHA consider each application on its own merits. It is believed that advising refusal of the application that is subject to this appeal, which is on a dual carriageway unlike the applications referred to in Paragraph 7.21, does not demonstrate a rigid and blanket approach to Part 1, Section IN5 of the LHDG, as claimed within Paragraph 2.17 of the Appellants Highways Appeal Statement.

7.23 When considering Part 1, Section IN5 of the LHDG as well as Policy 2 of the revised draft LHDG in respect of a risk based approach discussed within Part 6 of this PoE, should this approach be implemented, the LHA advise it would still seek to resist the proposals. This is based on the importance of the A511 route, forming part of the MRN and LCC's Resilient Network, the high volume of traffic passing the site access, the speed limit and recorded speeds, and the street scene.

Summary

7.24 The LHA consider the proposed development would result in an intensification in use of an access located where both vehicle speeds and traffic volumes are high. It is considered that drivers are unlikely to anticipate turning manoeuvres associated with the site in such a location, given the surrounding street scene and that this could pose an additional source of danger to road users. In addition, the A511 forms part of both the MRN and the LHA's Resilient Network and is therefore a key route on the County highway network. Given this, the LHA considers the proposals are contrary to Part 1, Section IN5 of the LHDG. In addition, based on the emerging risk-based approach set out in the draft LHDG, should this be implemented and become adopted Policy of LCC, the LHA would still seek to resist the proposals.

8 Conclusion

8.1 The LHA conclude that the proposals would lead to an intensification of vehicle movements turning on to and off the A511, a key strategic link on the County highway network at a location where the speed and volume of vehicles is high, and drivers may not be expecting such movements in such a location. It is considered this is not in the interests of highway safety, and is contrary to Policy IN5 of the LHDG. Accordingly, the LHA concludes that the proposals are contrary to Paragraph 114 and 115 of the NPPF. The LHA therefore respectfully requests the Inspector to dismiss the appeal.

9 Conditions

9.1 In the event of this appeal being allowed, the LHA respectfully request that the planning conditions below are considered by the Inspector in order to ensure the access is delivered as safely as can practicably be achieved:

1. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown David Granger drawing number 18.3558.04 Rev. D have been implemented in full.

REASON: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with the National Planning Policy Framework (December 2023).

2. The development hereby permitted shall not be occupied until such time as the parking (and turning facilities) have been implemented in accordance with David Granger drawing number 18.3558.04 Rev. D. Thereafter the onsite parking and turning provision shall be kept available for such uses 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 (December 2023).

Informative Notes

- It is an offence under Section 148 and Section 151 of the Highways Act 1980 to deposit mud on the public highway and therefore you should take every effort to prevent this occurring.
- Planning Permission does not give you approval to work on the public highway. To carry out off-site works associated with this planning permission, separate approval must first be obtained from Leicestershire County Council as Local Highway Authority. This will take the form of a major section 184 permit/section 278 agreement. It is strongly recommended that you make contact with Leicestershire County Council at the earliest opportunity to allow time for the process to be completed. The Local Highway Authority reserve the right to charge commuted sums in respect of ongoing maintenance where the item in question is above and beyond what is required for the safe and satisfactory functioning of the highway. For further information please refer to the Leicestershire Highway Design Guide which is available at <https://resources.leicestershire.gov.uk/lhdg>
- To erect temporary directional signage you must seek prior approval from the Local Highway Authority in the first instance (telephone 0116 305 0001).

Appendix BTD.1

**Local Highway Authority's Final Observations for Application 24/00021/FUL
dated 27th February 2024**

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: 24/00021/FUL

Highway Reference Number: 2024/0021/04/H

Application Address: Poplar Cottage Little Shaw Lane Markfield Leicestershire LE67 9PP

Application Type: Full

Description of Application:

Part change of use of site to retail to allow public access to the nursery and the provision of a car park

GENERAL DETAILS

Planning Case Officer: David Spring

Applicant: Mr Nathan Proud

County Councillor: Cllr Peter Bedford

Parish: Markfield

Road Classification: Class A

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 the residual cumulative impacts of the development are severe in accordance with the National Planning Policy Framework (December 2023) and the Local Planning Authority is advised to consider refusal on transport/highway grounds for the reasons outlined in this report.

- 1. This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide and paragraphs 114 and 115 of the National Planning Policy Framework (December 2023).**

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) are in receipt of a consultation for a full application for the part change of use of site to retail to allow public access to the plant nursery (approved under 19/00623/FUL) along with the provision of a car park at Poplar Cottage, Little Shaw Lane, Markfield. The proposed internal floorspace of the area open to the public would be 350sqm.

The LHA is aware of previous applications at the site for similar proposals, including reference 22/01127/CONDIT to vary conditions 2 (approved drawings) and 6 (public access to the site) of application 19/00623/FUL. The LHA previously advised objection to the variation of conditions 2 and 6 within its observations dated 22nd December 2022. That application was however withdrawn and converted to a full application under reference 22/01127/FUL. The LHA subsequently advised refusal of that application on 4th September 2023 with an identical reason for refusal as per the above, albeit reflecting a now superseded version of the NPPF.

The LHA is also aware of other applications at the site, including 18/00272/FUL for a replacement access to a field and dwelling and 20/01363/FUL for a hay barn, greenhouse and water tank for horticultural use (part-retrospective). While the LHA advised no objection subject to conditions of both applications, this was on the basis that the new access would not result in an increase in traffic along with replacing a sub-standard access and that there was a minimal, if any, daily increase in use of the access as a result of the barn/ greenhouse.

The Applicant has submitted an Accompanying Highways Report dated 13th December 2023 and authored by Edwards & Edwards in support of the current proposals.

Site Access

Access to the site is proposed off Little Shaw Lane, an A classified dual carriageway (A511). The speed limit changes from 40mph to 50mph immediately to the west of the proposed site access.

The Applicant undertook a speed survey as part of an Automatic Traffic Count at the location of the site access between 17th and 23rd June 2023. The precise location of the survey and the raw survey data has not been provided, however the LHA has checked its records and can confirm a survey permit was issued for a survey in the eastbound carriageway immediately to the west of the access between 15th and 23rd June 2023. The Applicant states that the 85th percentile speeds for eastbound traffic were 50.3mph.

Details of the site access are proposed on David Granger drawing number 18.3558.04 Rev. D. The Applicant has stated that whilst not previously requested by the LHA, the Applicant has now agreed to provide increased (4.0m) junction radii at the site access. The proposed improvements have been accompanied by a Stage 1 Road Safety Audit and a Designer's Response.

The LHA consider that increasing the junction radii as shown would not be of any considerable highway benefit to the proposed development in order to resolve its concerns over an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway.

Highway Safety

The Applicant has used Crashmap to consider Personal Injury Collisions (PIC's) within the vicinity of the site access for the five years up to the end of 2022. This identified that no PIC's have occurred at the site access during the study period, with PIC's only occurring at the roundabouts at each end of this section of the A511. While the LHA advise that the Applicant's data is considered to be out of date, based on the LHA's own records, the LHA are not aware of any additional PIC's occurring in the area during 2023.

Overall, two PICs have occurred between the A511 Saw Lane/ A511 Little Shaw Lane/ B591 Copt Oak Road/ Stanton Lane (Flying Horse) roundabout and M1 Junction 22 roundabout within the last five years. These were recorded as slight and occurred on the westbound carriageway in March 2020 and July 2022 which appear to be rear end shunt PIC's on the approach to the Flying Horse roundabout.

Trip Generation

Based on application 20/01363/FUL for the demolition of an existing hay barn, erection of a replacement hay barn and the erection of a greenhouse for horticulture at the site, the Applicant stated that use of the site would vary throughout the year, dependant on growing cycles. Some days the site would not be accessed at all, while other days, when the plants are ready, may result in the use of the access by between 6-10 journeys in total per day (to and from the site counting as a total of two journeys). Other works on the site would include potting up which would involve other staff, but these would be limited in number and period. Staff carrying out such duties would be from the Rothley site and the Applicant stated that they could travel together from there. It was also stated that working on site would mostly involve the client who lives in the adjacent cottage and that large vehicles would generally not visit the site.

In terms of the current application, the Applicant has provided the same information in respect of trip generation as per application 22/01127/FUL, which is based on till roll transactions for their existing site in Rothley.

The Applicant has advised from January to the end of March, the Rothley site generates an average of 5 – 10 cars an hour. From April to the end of June (which are stated to be the busiest months), there is an average of between 16 and 25 vehicles per hour. From July through to September the site generates up to 14 vehicles per hour, reducing down to around 9 per hour from October to December.

The Applicant advises however that a direct comparison between the sites cannot be drawn. This is because the site at Rothley is a little more like a 'Garden Centre' in that it sells a wider range of goods than will be sold at Poplar Cottage. Also the site at Rothley contains a very popular café. The café draws customers to that site and those customers can then also make purchases at the 'Garden Centre'. The Applicant considers that as a result, the number of visitors to the application site will be a lot lower than those to the Rothley site. The Applicant therefore expects that the number of cars visiting the site would be around half of those visiting Rothley. Therefore the predicted number of cars per hour would be between 5 an hour during the low seasons and 13 an hour during the busier months.

As part of the previous application, the LHA requested clarification as to whether the proposed levels of trips were inclusive of both arrivals and departures (two way trips), or whether they were one way trips. The Applicant subsequently confirmed there is an expectation of between five arrivals and five departures (10 two-way trips) per hour throughout the day during the low season and 13 arrivals and 13 departures (26 two way trips) per hour throughout the day during the busier

months. It was also confirmed by the Applicant that no additional HGV trips would be generated by the proposed development and that the proposals are purely to allow the public to visit the site. In addition, it was stated that it is very rare that a HGV would visit the site currently.

Noting that no comparison of the calculated traffic flows to a similar scale plant nursery has been made, based on the information provided by the Applicant alone, the LHA considers there could be between 80 - 208 two way trips per day (10 two way trips x 8 hours = 80 daily trips or 26 two way trips x 8 hours = 208 daily trips) between the opening hours of 10:00 - 18:00 (stated in the submitted application form) depending on the season. Within Paragraph 3.2 of the Applicants Highways Report it is accepted the proposals will result in an increase in the use of the access, however the Applicant considers there is no evidence the proposals could lead to an unacceptable impact on highway safety. This is due to a number of existing access points in the areas such as petrol stations and industrial units and no evidence of PIC injuries occurring.

The LHA consider the proposals could introduce a considerable number of additional turning manoeuvres to and from the A511 dual carriageway over and above the permitted use for the site. These manoeuvres would be on to a highly trafficked part of the network, currently with minimal access points and where drivers are accelerating away from the Flying Horse roundabout towards Junction 22 of the M1. As such, the LHA consider an intensification in use of the existing access could be of detriment to highway safety, contrary to paragraphs 114 and 115 of NPPF, as well as Part 1 Section IN5 of the Leicestershire Highway Design Guide (LHDG), which can be found at resources.leicestershire.gov.uk/lhdg.

Policy IN5

Part 1, Section IN5, Paragraph 1.26 of the Interim Leicestershire Highway Design Guide states: *We will normally apply restrictions on new accesses for vehicles and the increased use of existing accesses on:*

- *roads with a speed limit above 40 mph (that is 50mph, 60mph or 70mph) or where measured vehicle speeds are in excess of 40mph;*
- *roads with a speed limit of 40mph or less which are essentially rural in nature;*
- *routes where the access would affect bus-corridor or bus-priority measures being put in place;*
- *roads that are at or near capacity (cannot carry more traffic); and*
- *roads where there is an existing problem with road safety*

The A511 is part of LCC's resilient road network. It is considered essential for economic activity and for key services in the event of extreme weather events, major incidents and other disruption. It forms a key route linking North West Leicestershire, including Coalville and Ashby de la Zouch with the A42, M1 and Leicester city.

Further, the A511/ A50 between the county boundaries with Derbyshire and Leicester City forms part of the Major Road Network (MRN), which forms a middle tier of the country's busiest and most economically important local authority 'A' roads, sitting between the national Strategic Road Network (SRN) and the rest of the local road network.

Leicestershire County Council holds traffic count data at the Flying Horse roundabout, which indicates on Wednesday 6 October 2021 there were 13,989 vehicles travelling along the eastbound carriageway past the site access between the hours of 07:00 – 19:00. This indicates that the road is a highly trafficked part of the road network. The LHA is also aware of capacity issues at the Flying Horse roundabout, partly due to the increase in traffic using the route as a result of a number of major residential/ employment developments which are coming forward in the

surrounding area. Those permitted have been required to contribute towards the Coalville Transport Strategy in order to mitigate the otherwise severe highway impact of the specific development, where considered appropriate by the LHA. This aims to deliver improvements to key junctions in the area including the Flying Horse roundabout.

The Applicant considers that while recorded speeds are in excess of 40mph at the location of the site access, they would be 'well below 40mph' at the roundabout junction to the west and at the start of the visibility splay envelope and if policy IN5 was considered at that point, the proposals would not be contrary to policy. Furthermore, the Applicant has highlighted North West Leicestershire District Council (NWLDC) application reference 18/01890/OUT for an industrial development which was accessed directly off the A511 approximately 1.5 miles from this application site. It is stated that the access to that development has now been constructed with visibility splays 'far less' than those available at this application site and with development flows of 100 vehicles in the peak hour. The Applicant has quoted part of the LHA's response to that application which states 'the criteria set out in Policy IN5 was not formed as conduit to resist development, rather as a context in which to ensure that the appropriate levels of care and attention to maintain traffic flow and safety.' It is also highlighted that a central island was installed at the access to prevent right turns and address the LHA's concerns in respect of Policy IN5 and that the available visibility splays are shorter than those available at Poplar Cottage.

NWLDC application 23/00129/FULM at Molehill Farm, Kegworth for the change of use of agricultural land to a motorcross training park has also been identified by the Applicant. Access to that development is proposed off the A6 and the Applicant highlights the LHA suggested that measures to physically prevent right turns may be sufficient to counter-balance highway safety concerns.

The Applicant suggests that the main concern for the LHA in both instances appears to be right turning traffic, however in the case of Polar Cottage this is already not possible. The Applicant considers the proposals would have been 'waived' on a site at the A6 and in addition the proposed development would not generate considerable numbers of HGVs unlike the recent development further down the A511.

The LHA advises that the location of both the above developments, on a single lane section of the A511 and the A6 are not comparable to that of the proposed development, which is situated on a dual carriageway on approach to Junction 22 of the M1.

In the case of the development on the A511, recorded 85th percentile speeds were 44.1mph westbound and 39.4mph eastbound at the site access. The LHA is also aware that access was only taken from the A511 due to environmental and flooding constraints preventing access off the C classified Reg's Way and that appropriate vehicular visibility splays were secured as part of that application. The Officers Report for that development dated 17 March 2020 also states that the proposals would meet an immediate demand for B1c/B2 and small scale employment uses in the area.

Given the above, the LHA considers that if the proposed development would intensify the use of the access then it would be contrary to Policy IN5, increasing the risk to road users of vehicular movements turning onto and off the busy high-speed dual carriageway.

Internal Layout

The internal layout of the site is detailed on David Granger drawing number 18.3558.04 Rev. D. This details 20 car parking spaces within the site. Based on the information available from the Applicant, it would appear that sufficient parking provision is proposed within the site.

Whilst not submitted as part of the current application, swept path analysis of an HGV turning within the site was provided by the Applicant as part of the previous application using an identical layout drawing (Edwards and Edwards drawing number 001), which is accepted by the LHA.

Transport Sustainability

The site is located an approximate 200m from bus stops served by half hourly bus services between Leicester and Swadlincote/ Coalville, which may be of benefit for staff in particular. Given the location of the site however, which is detached from any particular settlement, the LHA considers customers are more likely to drive to the site.

Date Received
15 January 2024

Case Officer
Ben Dutton

Reviewer
AW

Date issued
27 February 2024

Appendix BTD.2

**Local Planning Authority's Decision Notice for Application 24/00021/FUL
dated 9th April 2024**

Hinckley & Bosworth Borough Council

Town and Country Planning Act 1990

Refusal of Planning Permission

Name and Address of Applicant

Mr Nathan Proud
Poplar Cottage
Little Shaw Lane
Markfield
Leicestershire
LE67 9PP

Name and Address of Agent (if any)

Mr Joe Mitson
GHM Planning Ltd
87 Park Road
Chilwell
NG9 4DE

Part I - Particulars of Application

Date of Application

9 January 2024

Application No.

24/00021/FUL

Particulars and location of development:

Part change of use of site to retail to allow public access to the nursery and the provision of a car park

Poplar Cottage Little Shaw Lane Markfield Leicestershire LE67 9PP

Part II - Particulars of decision

In dealing with the application, through ongoing dialogue and the proper consideration of the proposal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the local planning authority have attempted to work with the applicant in a positive and proactive manner by offering a pre-application advice service and by seeking solutions to problems arising in relation to dealing with the planning application as required by the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). However, in this instance, it has not been possible to overcome the concerns raised and the proposal remains in conflict with the provisions of the Development Plan and therefore the application has been refused.

In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council refuses to permit the carrying out of the development referred to in Part I hereof for the following reason(s):-

1. This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide, Policy DM17 of the Site Allocations and Development Management Policies DPD (2016), Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and paragraphs 114 and 115 of the National Planning Policy Framework (2023).



Christopher Brown MRTPI
Head of Planning

Date :9 May 2024

IMPORTANT - PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT

NOTES

1. It will be most helpful if the application number shown overleaf is quoted on all correspondence.
2. If you consider that this decision has been made invalidly through the Council failing to follow a procedure correctly, not having the legal power to make the decision in the way it did or through its decision being so unreasonable as no reasonable local authority would make the same decision based on the same facts, then you may enter a claim for judicial review to quash the decision. In order to proceed with a claim for judicial review an initial application for permission will need to be made to the Administrative Court, this application is required to be made “promptly and in any event within three months of the decision”. The initial permission application will decide if you have an arguable case, whether you are sufficiently materially affected by the decision to bring the claim. If you are granted permission to bring the claim it will proceed to a full hearing at the Administrative Court. Although there is no requirement for you to do so it is highly recommended that you seek independent legal advice before bringing forward a claim for Judicial Review
3. If you are aggrieved by the decision of the Local Planning Authority to refuse permission you may appeal to the Planning Inspectorate in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. If your appeal is against a Minor Commercial Development, we would advise you to view the guidance on the Planning Portal website under Procedure Guidance, to confirm the time frame for appealing. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, tel. 0303 444 5000 or online at <https://www.gov.uk/appeal-planning-decision>). You must use a Planning Appeal Form when making your appeal. If requesting forms from the Planning Inspectorate, please state the appeal form you require. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, (or could not have been so granted otherwise than subject to the conditions imposed by them,) having regard to the statutory requirements as set out in Section 78 of the Town and Country Planning Act 1990, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him. Appeals- new time rules. Appeals relating to applications made to the Local Planning Authority on, or after, 14 October 2004 must be made within six months of the date of this notice. If you intend to submit an appeal that you would like examined by inquiry then you must notify your Local Planning Authority (planning@hinckley-bosworth.gov.uk) and the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details can be found on GOV.UK.
4. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application then, you must do so in accordance with the guidance found using the following link <https://www.gov.uk/appeal-enforcement-notice/>.
5. If permission to develop land is refused whether by the Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
6. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

Appendix BTD.3

Part 1 of the Leicestershire Highway Design Guide

Part 1: Introduction

Section IN1: Document status

THIS VERSION OF THE LHDG IS AN INTERIM UPDATE AND IS CURRENTLY UNDER REVIEW (LAST UPDATED JANUARY 2022).

- 1.1 The [Leicestershire Highway Design Guide](#) (LHDG) deals with highways and transportation infrastructure for new developments in areas for which Leicestershire County Council is the highway authority (Please see Figure IN1).

A glossary of terms is provided in Part 8 of the LHDG suite of documents.

Section IN2: Our responsibilities

- 1.2 Leicestershire County Council is the Local Highway Authority for the areas covered by

- Blaby District Council
- Charnwood Borough Council
- Harborough District Council
- Hinckley and Bosworth Borough Council
- Melton Borough Council
- North West Leicestershire District Council
- Oadby and Wigston Borough Council



Figure IN1 Local Planning Authorities in Leicestershire

Please note that Leicester City is a unitary authority and is responsible for both planning and highways functions within its administrative boundary.

Leicestershire Highway Design Guide

The role Leicestershire County Council as Local Highway Authority

- 1.3 Leicestershire County Council is responsible for a range of highways and transport issues including:
- **all publicly-maintained highways in Leicestershire except for the M1, M6, M42, M69 motorways, and the A1, A5, A42, A46 and A50 west of M1 Junction 24 which are the responsibility of National Highways (see Section IN5). (Note: Please see our ['Highways Status Search'](#) page for details of which existing roads are adopted);**
 - providing socially-necessary local bus services, publishing bus and bus information strategies and promoting high-quality rural and urban services that encourage greater use of public transport; and
 - preparing the Leicestershire [Local Transport Plan](#)
- 1.4 LCC's Environment and Transport Department deals with those roads the County Council is responsible for. The Highways and Transportation Branch of the Department is responsible for providing highways advice on development proposals which affect the highways and transportation infrastructure. It deals with all highways and transportation matters, including:
- discussions with developers before they submit planning applications;
 - providing advice on applications (substantive response) to local planning authorities;
 - construction and adopting works for new development;
 - commuted sums; and
 - travel plans.

Section IN3: About this document

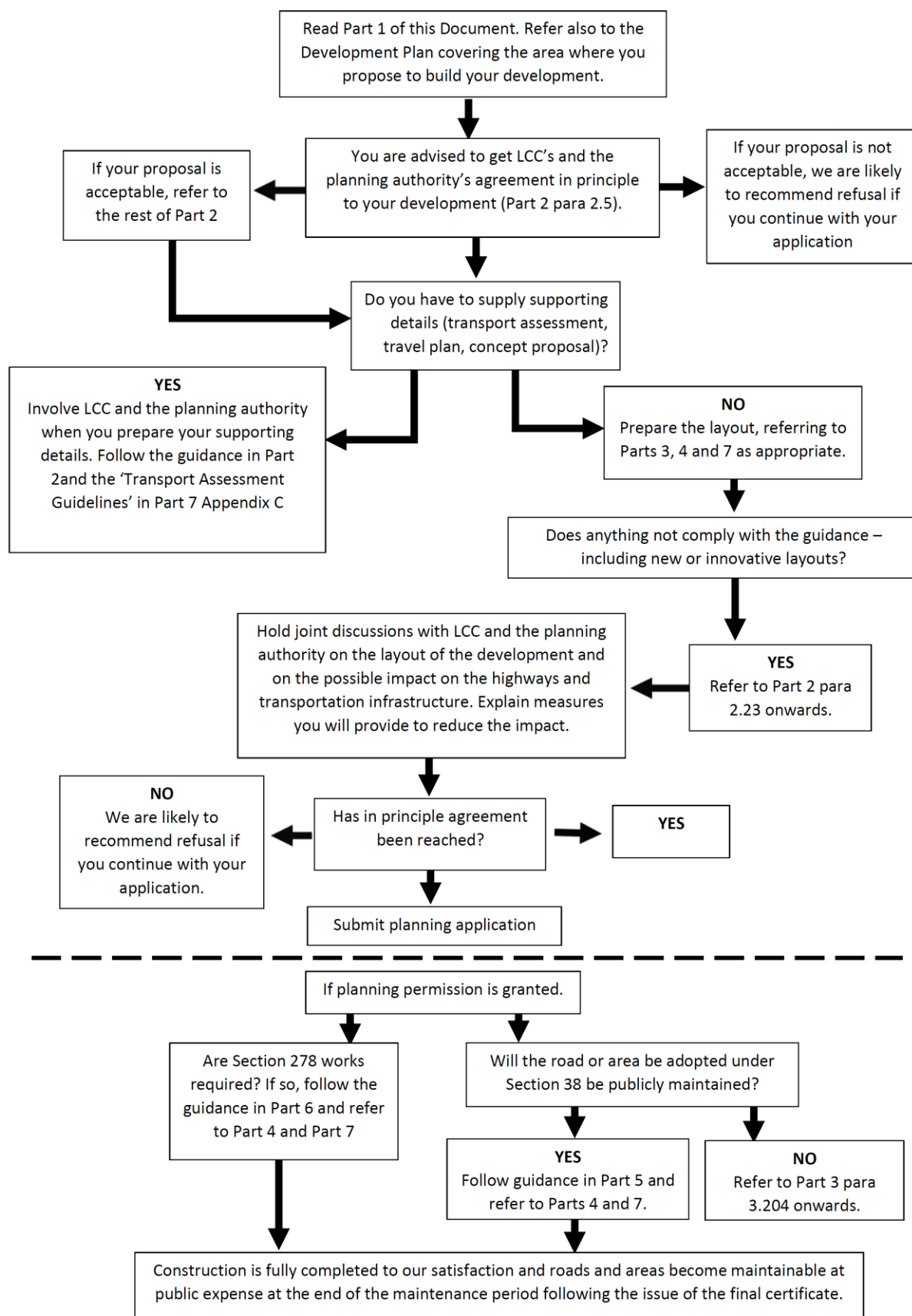
Background

- 1.5 This version of the Leicestershire Highway Design Guide replaces the 6Cs Design Guide, which had previously replaced Highways, Transportation and Development. It references:
- the Government's most recent planning policy and guidance.
 - initiatives that continue to emerge as a result of the publication of research reports ['Paving the Way'](#) and ['Better Streets, Better Places'](#) (a research project that we took part in, see paragraph 1.7).
 - the Guidance on Transport Assessments published by the Department for Communities and Local Government; and
 - Local policies and strategies, including the [Local Transport Plan](#).

Leicestershire Highway Design Guide

- 1.6 LHDG was originally prepared by Leicestershire County Council after significant consultation. This included:
- carrying out 'fact-finding' consultations with a wide range of public and private bodies to seek views on 'Highways Requirements for Development' document;
 - carrying out a survey of around 2900 Leicestershire households in developments laid out in line with the standards contained in the 'Highway Requirements for Development' document;
 - actively taking part in the Office of the Deputy Prime Minister's research projects '[PPG3](#) and Highway Adoption Procedures' (which resulted in publication of '[Better Streets, Better Places](#)') and on residential parking; and in the Government's national project on commuted sums
 - consultations with other highway authorities in the region, both directly and through the East Midlands Development Control Forum and Midlands Service Improvement Group;
 - organising specific regional meetings on commuted sums for future maintenance and on shared-surface roads and Home Zones; and
 - holding a six-week consultation covering around 150 public and private bodies, including all Leicestershire planning authorities and many development companies.
- 1.7 Please see Part 7, appendix B for further details of all the above.
- 1.8 Figure IN2, below, shows how the various parts of this document relate to the overall development process, from initially considering the site through to completing works. You should follow it so your development proposals progress efficiently.

Figure IN2 Overall development procedure



Leicestershire Highway Design Guide

Applying the guidance

1.9 The guidance in this document applies to:

- roads (streets) in residential areas or; areas of mixed residential / local facilities as defined in appendix L and roads serving employment and commercial developments
- the overall development concept in terms of site access and highways and transportation impacts;
- areas to be adopted as publicly maintained highways;
- the safety, ease of access to, and future maintenance responsibilities of areas not for adoption; and
- impacts of new developments on existing highways and transportation infrastructure.

1.10 We recognise that due to conditions at a site it may sometimes be difficult to comply with the guidance, particularly on urban, brownfield sites. We also recognise that the Government and planning authorities are encouraging new, innovative residential layouts that reflect local character while providing for more houses.

1.11 Where an acceptable case with supporting evidence that explains a layout is being proposed that is not explicitly covered by these guidelines, we will consider it if:

- the proposals meet the overall policies and objectives set out in this document (refer to Section IN4 onwards);
- also meet any other policies and objectives of Leicestershire County Council;
- you approach both us, and the relevant local planning authority, for early joint discussions to make sure that we can consider matters before you prepare any layout proposals; and
- you supply a concept proposal and full supporting details in line with Part 2 of this document, and in particular paragraphs 2.17 onwards.

1.12 You must start thinking about and preparing the required details as soon as possible, and certainly before you submit a planning application. Otherwise, even if the development is granted planning permission, there is no guarantee that we will agree to adopt any roads or areas.

1.13 When you prepare the required details, you should work closely both with LCC and the planning authority. You are likely to find that planning authorities will not favour developments that lack quality layout and design.

Leicestershire Highway Design Guide

Developing the document

1.14 Long-term experience of reduced off-street parking and 'innovative' (unusual) residential developments is limited. There is still much to learn about:

- public opinion of these concepts;
- how safely the layouts will operate; and
- how easily they can be maintained.

What evidence there is suggests there have been some successes, but problems have been identified too, for example, in achieving low vehicle speeds and addressing residents' concerns about on-street parking.

1.15 There are also still issues relating to national guidance on the design of residential streets and this guidance can be contradictory, for example in terms of shared surfaces and providing for those with disabilities.

1.16 To try and address some of these issues, we will continue to work with other highway authorities, planning authorities and developers to share, learn and develop good practice. We will also try to take part in any national research that is carried out.

1.17 If you have examples of what you consider to be good practice that you are willing to share, please contact us at hdc@leics.gov.uk.

1.18 This document will undergo periodic review to make sure that it:

- contains no errors or omissions;
- reflects good practice, operational experiences, national research and policy initiatives, and
- reflects any other relevant changes in circumstances.

1.19 If you have any comments about how we can improve this guide, please let us know by filling in the form at Appendix K. We will consider your comments as part of our next review. You can find details of our review process at Appendix K.*

Section IN4: Our highways development management policy

1.20 We will work with developers and planning authorities to make sure new development is only permitted:

- in areas where there is a choice of safe and accessible methods of transport for all road users (including pedestrians and cyclists);
- on roads suitable for the type of development; and
- if the environment is not harmed, including through increased congestion.

Leicestershire Highway Design Guide

1.21 Any highway or transport infrastructure required to support the development must integrate with the existing infrastructure and be built in a way that enhances the quality of a development and does not place a burden on our resources.

1.22 We aim to meet the following specific policy objectives.

- **Road and personal safety:** To achieve developments that:
 - are safe for all users;
 - promote road safety; and
 - reduce personal safety risks (whether real or imagined).
- **Accessibility:** To achieve developments accessible to all vehicles and people, including those with sensory and mobility impairments.
- **Sustainability:** To promote sustainable, high-quality alternatives to the private car and to encourage using sustainable materials wherever possible.
- **The impact on highways and transportation infrastructure:** To make sure the:
 - highways and transportation infrastructure is not adversely affected by developments, including safety and congestion; and
 - impact on people and the environment is minimised.
- **Design quality and future maintenance:** To achieve highway and transportation infrastructure that:
 - contributes to high-quality developments that can be properly and efficiently maintained; and
 - encourages development layouts to be adopted, wherever possible, to safeguard frontagers interests.

Whole-life costs should be considered when materials and methods of construction are considered.
- **Occupants' and users' satisfaction:** To achieve developments that are appreciated by occupants and users and that meet their likely needs. This will reduce the possibility of future complaints and problems, particularly in residential areas.

1.23 We will assess your development proposals against these objectives. Where we consider that your proposals have material implications, we will normally seek to resist your development proposals (for example, by recommending refusal of any planning application).

Section IN5: Our access to the road network policy

Principles

- 1.24 To maintain safety and the free flow of traffic, policy in the past has discouraged new accesses onto A and B-class roads and avoided increasing the use of existing accesses. For the future, and in line with an integrated transport policy, we will adopt a flexible policy on new connections to the road network. We will severely restrict access to the most important high-standard routes. Elsewhere, particularly in urban locations, in principle we will apply a more flexible approach. Please see paragraph 1.27 onwards for full details.
- 1.25 Where access is acceptable to us in principle, we will normally expect its layout to comply with the design guidance set out in Part 3. We will recommend refusal of any planning application that raises concerns about road safety. Approval for the access (and any associated development) will also depend on the planning authority where planning permission is required.

Access to A- and B-class roads

- 1.26 We will normally apply restrictions on new accesses for vehicles and the increased use of existing accesses on:
- roads with a speed limit above 40 mph (that is 50mph, 60mph or 70mph) or where measured vehicle speeds are in excess of 40mph;
 - roads with a speed limit of 40mph or less which are essentially rural in nature;
 - routes where the access would affect bus-corridor or bus-priority measures being put in place;
 - roads that are at or near capacity (cannot carry more traffic); and
 - roads where there is an existing problem with road safety.
- 1.27 Elsewhere, we will not normally restrict new accesses for vehicles, as long as they meet the conditions of paragraph 1.26. Also, where a number of developments are proposed along a section of road, the risk of accidents occurring will be reduced if they are accessed from a service road with a single point of access on the main road.
- 1.28 If access to a development can be gained off a minor or side road, you should normally consider this option as preferable (with improvements to the junction of the minor side road with the main road as necessary).

Access to other classified roads and unclassified roads

- 1.29 New accesses for vehicles and the increased use of existing accesses will normally be restricted on:
- routes where there are proposals for bus-priority measures;

Leicestershire Highway Design Guide

- roads where there is an existing problem with road safety;
 - roads where there are proposals to establish quiet lanes; and
 - other routes that are not suitable to carry the additional traffic and type of traffic from the development.
- 1.30 Elsewhere, new accesses for vehicles will not normally be restricted, if they meet the conditions of paragraph 1.26. Also, if access to a development can be gained off a minor or side road, you should normally consider this option as preferable.
- 1.31 In rural areas, new accesses for vehicles and the increased use of existing accesses will not normally be resisted in principle to:
- land allocated for development in the local plan;
 - agricultural land (that is remaining in agricultural use); and
 - a new, better access to replace an existing one.
- 1.32 This is subject to the conditions in paragraph 1.26.

IN6: Sustainability Standards for Residential Developments

Principles

- 1.33 Our Local Transport Plan (LTP) sets out transport policy for the relevant to Leicestershire. Our LTP is based on extensive evidence and is aligned to national transport and planning policies, which are set out in the National Planning Policy Framework, Circulars and Guidance Notes.
- 1.34 To help deliver our LTP we will seek to support new development in suitable locations and where the possibility of home-working is considered. These locations will be accessible by walking, cycling and public transport and will also have good access to key services, thereby reducing reliance on the private car. This is particularly necessary in order to:
- tackle the significant challenges posed by an increasing population
 - meet the statutory CO₂ reduction requirements of the Climate Change Act
 - tackle the health and social issues posed by a population that is becoming increasingly obese.
- 1.35 The overall aim of introducing these standards is to reduce the need to travel, particularly by car, and to promote more sustainable patterns of development.
- 1.36 We will expect applicants, as part of their planning application, to demonstrate that their proposals are consistent with the approach set out in the LTP. As we may adopt different approaches, particularly in urban and rural areas, the guidelines below have been provided to give general guidance only. You are advised to contact LCC regarding the specific local sustainability. Your attention is also drawn to the guidance in Part 3 (Section DG6: Public Transport).

Leicestershire Highway Design Guide

General standards / guidelines

- 1.37 The following guidelines for sustainable development have been derived from national guidance and are based on the following assumptions:
- Average walk speed of 1.4m/s or 400m every 5 minutes¹
 - Cycling speeds 12 mph/or 1.6km every 5 minutes²
- 1.38 Applicants should be aware of the following guidelines when submitting planning applications for new development within the Principal Urban Area³ (PUA) and Sub Regional Centres (SRC)⁴:
- Major employment areas should be within 2km (25min) walk or 5 km (15min) cycle ride. For applications involving new employment uses the same standards will apply in respect of major residential areas⁵
 - Public transport to a main public transport interchange should be within 800m (10min) walk⁵
- 1.39 In more rural areas i.e. those outside the PUA and SRC the following will apply:
- Minimum of hourly bus service to SRC within 800m (10min) walk
 - PUA / SRC within 5km
 - 800m (10min) walk to village centre offering access to key services for example education facilities, local convenience shop/Post Office, public house, community facilities, health services, employment areas
- 1.40 Please contact us if your proposed development fails to meet these guidelines. This will enable you to discuss your application in more detail before submitting a formal planning application.

Notes

1. Planning for Walking CIHT.
2. LTN1/20 Cycle Infrastructure Design
3. The distances / times quoted above should be viewed as maximums. In assessing them for your particular development proposal, you should take into account such other factors as may be appropriate, for example the availability of pedestrian footways, street lighting, cycle lanes and gradients / terrain.

Section IN7: About National Highways

- 1.41 National Highways is responsible for the motorway and trunk road network in England.
- 1.42 National Highways has its own approach to considering the impacts of development proposals on roads it is responsible for. It also has its own requirements where it is necessary to alter or improve one of its roads to accommodate a development.
- 1.43 If your development proposal requires a change to a road that National Highways is responsible for, you will need to complete a legal agreement with them before you can carry out the works. (This is in addition to any agreement that you might need to enter in to with us.)

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Appendix BTD.4

David Granger drawing number 18.3558.04 Rev. D



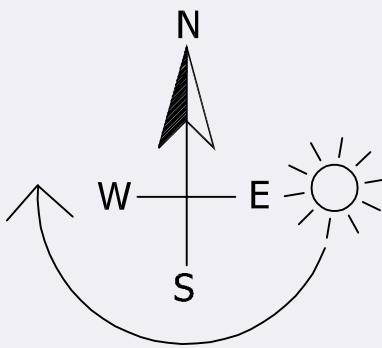
Proposed Site Plan
Scale 1:500



PLANNING DRAWING

PROPOSED CAR PARKING ~ POPLAR COTTAGE ~ LITTLE SHAW LANE ~ MARKFIELD ~ LEICESTERSHIRE

This drawing is based off Ordnance Survey Information
and is subject to Topographical Survey



D	Drawing updated	30.10.23
C	Drawing updated	16.03.23
B	Drawing updated	06.02.23
A	Drawing updated	16.11.22

Revisions :

Figured dimensions must be taken in preference to scaled dimensions
and any discrepancies are to be referred to David Granger Architectural
Design Limited. Contractors, subcontractors and suppliers must verify
all dimensions on site before commencing any work or making any
workshop drawings. All drawings are copyright of David Granger
Architectural Design Limited. Ordnance Survey Data © Crown
Copyright. All rights reserved. Licence No. AR100020449. Landmark
Ref. LI68816



Project
Proposed Car Parking
Poplar Cottage
Little Shaw Lane
Markfield

Drawing Title
Planning Proposals
Sheet 1 of 1

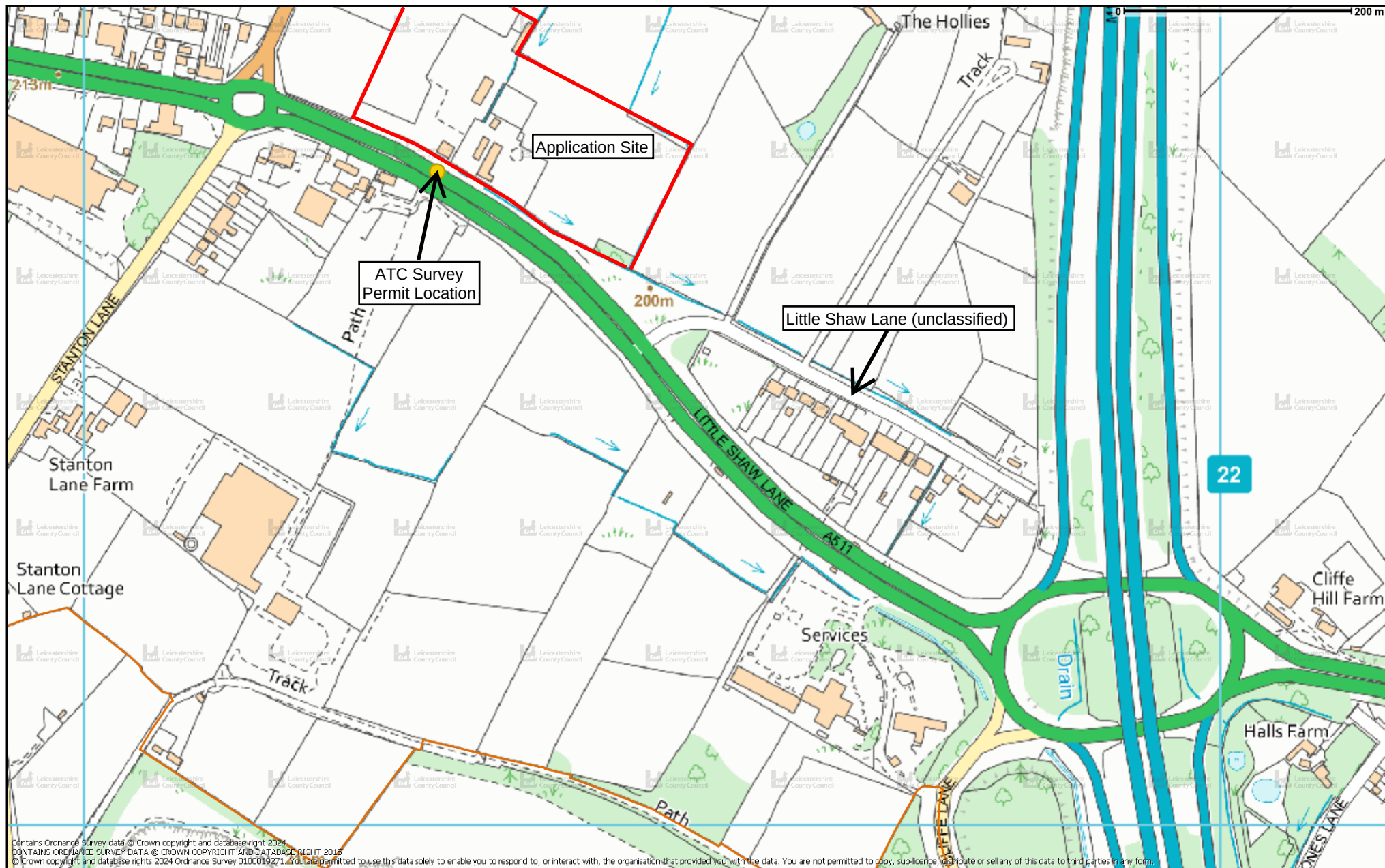
Client
Garden Creation Services Ltd
Drawing No.
18.3588.04D

Date	November 2022	Scale (A1 Size)	As Shown
Drawn by	MS	Checked by	DG

The Old Dairy, Mill St., Packington,
Ashby-de-la-Zouch, Leics. LE65 1WN
Tel: 01530 560939 Fax: 01530 560115
www.davidgrangerdesign.com
Company Reg. No. 550812

Appendix BTD.5

Site and Speed Survey Location Plan

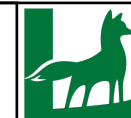


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Not to Scale



Site and Speed Survey Location Plan



**Leicestershire
County Council**

Appendix BTD.6

**Local Planning Authority's Decision Notice for Application 22/01127/FUL
dated 15th September 2023**

Hinckley & Bosworth Borough Council

Town and Country Planning Act 1990

Refusal of Planning Permission

Name and Address of Applicant

Mr Nathan Proud
Poplar Cottage
Little Shaw Lane
Markfield
Leicestershire
LE67 9PP

Name and Address of Agent (if any)

Mr Joe Mitson
GHM Planning Ltd
87 Park Road
Chilwell
NG9 4DE

Part I - Particulars of Application

Date of Application

24 November 2022

Application No.

22/01127/FUL

Particulars and location of development:

Part change of use of site to retail to allow public access to the nursery (approved under 19/00623/FUL) along with the provision of car park

Poplar Cottage Little Shaw Lane Markfield Leicestershire LE67 9PP

Part II - Particulars of decision

In dealing with the application, through ongoing dialogue and the proper consideration of the proposal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the local planning authority have attempted to work with the applicant in a positive and proactive manner by offering a pre-application advice service and by seeking solutions to problems arising in relation to dealing with the planning application as required by the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). However, in this instance, it has not been possible to overcome the concerns raised and the proposal remains in conflict with the provisions of the Development Plan and therefore the application has been refused.

In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council refuses to permit the carrying out of the development referred to in Part I hereof for the following reason(s):-

1. This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide, Policy DM17 of the Site Allocations and Development Management Policies DPD (2016), Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and paragraphs 110 and 111 of the National Planning Policy Framework (2021).



Christopher Brown MRTPI
Head of Planning

Date :15 September 2023

IMPORTANT - PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT

NOTES

1. It will be most helpful if the application number shown overleaf is quoted on all correspondence.
2. If you consider that this decision has been made invalidly through the Council failing to follow a procedure correctly, not having the legal power to make the decision in the way it did or through its decision being so unreasonable as no reasonable local authority would make the same decision based on the same facts, then you may enter a claim for judicial review to quash the decision. In order to proceed with a claim for judicial review an initial application for permission will need to be made to the Administrative Court, this application is required to be made "promptly and in any event within three months of the decision". The initial permission application will decide if you have an arguable case, whether you are sufficiently materially affected by the decision to bring the claim. If you are granted permission to bring the claim it will proceed to a full hearing at the Administrative Court. Although there is no requirement for you to do so it is highly recommended that you seek independent legal advice before bringing forward a claim for Judicial Review
3. If you are aggrieved by the decision of the Local Planning Authority to refuse permission you may appeal to the Planning Inspectorate in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. If your appeal is against a Minor Commercial Development, we would advise you to view the guidance on the Planning Portal website under Procedure Guidance, to confirm the time frame for appealing. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, tel. 0303 444 5000 or online at <https://www.gov.uk/appeal-planning-decision>). You must use a Planning Appeal Form when making your appeal. If requesting forms from the Planning Inspectorate, please state the appeal form you require. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, (or could not have been so granted otherwise than subject to the conditions imposed by them,) having regard to the statutory requirements as set out in Section 78 of the Town and Country Planning Act 1990, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him. Appeals- new time rules. Appeals relating to applications made to the Local Planning Authority on, or after, 14 October 2004 must be made within six months of the date of this notice. If you intend to submit an appeal that you would like examined by inquiry then you must notify your Local Planning Authority (planning@hinckley-bosworth.gov.uk) and the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details can be found on GOV.UK.
4. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application then, you must do so in accordance with the guidance found using the following link <https://www.gov.uk/appeal-enforcement-notice/>.
5. If permission to develop land is refused whether by the Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
6. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

Appendix BTD.7

Leicestershire County Council Cabinet Report dated 24th October 2023



CABINET – 24 OCTOBER 2023

**LEICESTERSHIRE HIGHWAY DESIGN GUIDE REFRESH -
APPROVAL OF POLICIES AND PRINCIPLES**

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to:
 - a) Provide the Cabinet with an update on the work of the Leicestershire Highway Design Guide (LHDG) refresh project and to seek approval of the draft policies, principles and approaches set out in Part B of this report for the purposes of engagement and consultation.
 - b) Seek agreement for the approach to consultation on the draft LHDG.

Recommendations

2. It is recommended that the Cabinet:
 - a) Notes the key influencing factors and work undertaken to date during the development of the new Leicestershire Highway Design Guide (LHDG) as set out in Part B of this report, with particular reference to:
 - i. the draft policies and principles developed in the context of changes to national policy and guidance and the potential for subsequent additional maintenance requirements for the Council.
 - ii. the proposed approach to commuted sums and road adoption.
 - b) Approves the draft policies, principles and approaches presented in paragraphs 32-65 of the report and appended for the purposes of consultation on the draft LHDG.
 - c) Delegates the authority to make minor changes as needed in advance of the consultation to the Director of Environment and Transport, in consultation with the Cabinet Lead Member.
 - d) Delegates the authority to agree non-material changes to core policy, principles, guidance and standards during future reviews to the Director of

Environment and Transport, in consultation with the Cabinet Lead Member.

Reasons for Recommendation

3. The LHDG needs updating following changes to national policy and guidance. A particular focus is required on the Council's approach to facilitating active travel and environmental sustainability elements of highway the Council adopts, alongside a detailed review of the commuted sums schedule and LHDG policy.
4. Changing national policy and guidance could increase pressures on diminished maintenance budgets due to the requirement to maintain additional assets within adopted highway that deliver environmental sustainability and active travel outcomes. The Council is supportive of the ambition to help tackle climate change and deliver on its carbon net zero commitments. In meeting this critical challenge additional burden on budgets should be minimised so that the Council can continue to provide its essential services.
5. The Government funding that contributes towards the maintenance of "standard" elements of the adopted highway (carriageway, footway etc.), has been in decline in real terms over recent years and is far from sufficient to cover the costs of maintaining even existing highway assets in their current states of condition.
6. Commuted sums are attracted from new development for the future maintenance of alternative materials or areas that are "extra over" standard provision (that do not contribute to the safe functioning of the highway) within adopted highway. A Schedule of rates and items that the Council recovers maintenance income for is included in the LHDG. The rates and assets included under the Council's Schedule need reviewing, particularly at a time when inflation is markedly increasing the costs of materials and labour.
7. Project development work has indicated additional areas for review and update, including how the Council permits new accesses onto the existing road network (current LHDG Policy IN5).
8. The confirmation of the policies and principles of the LHDG is critical in drafting the remaining detailed technical guidance and approval processes and will ensure that work progresses in the right direction. The delegation of authority to approve the undertaking of consultation on the draft LHDG, subject to non-material changes, to the Director of Environment and Transport will minimise the requirement for reporting to critical junctures in the project.

Timetable for Decisions (including Scrutiny)

9. The Highways and Transport Overview and Scrutiny Committee will be asked for its views on the draft LHDG as part of the consultation activity scheduled to begin in Spring 2024.

10. Following consultation on the draft LHDG, a report will be presented to the Cabinet to highlight the outcomes of consultation, present the draft guidance for adoption and seek approval to publish.

Policy Framework and Previous Decisions

11. On 16 December 2022, the Cabinet noted the early work undertaken on the development of the new LHDG and the key influencing factors regarding national policy and budgetary constraints. Additionally, the Cabinet agreed that the proposed engagement could proceed with key stakeholders.
12. The Council's Strategic Plan (adopted in March 2022) outlines the Council's five key outcomes for 2022 to 2026. As a tool providing policies and guidance for development and the basis for the Council's highway observations as a statutory consultee in the planning process, the LHDG helps to support these outcomes, and particularly that of a "Strong Economy, Transport and Infrastructure".
13. The LHDG is also a key supporting document of the Local Transport Plan 3 2011-2026 (LTP3), helping to deliver the Plan's six priorities.
14. On 15 May 2019, the County Council declared a Climate Emergency, with a commitment to achieve carbon net zero by 2030 for its own emissions and 2050 for Leicestershire emissions. The Council's Environment Strategy sets out how it will reduce the environmental impacts of travel and transport and a Net Zero Strategy is in the final phase of development.
15. The outcome of this work will help to inform the development of the next Local Transport Plan and its associated programmes. Through provision of guidance on the development of active travel options, the LHDG supports this ambition. The LHDG project will undertake a Strategic Environmental Assessment of the LHDG to evaluate opportunities to integrate environmental and net zero carbon objectives.
16. In line with new national guidance, the Council adopted its Cycling and Walking Strategy in 2021, which presents a vision "for Leicestershire to become a county where walking and cycling are safe, accessible and obvious choices for short journeys and a natural part of longer journeys, helping to deliver healthier, greener communities." The LHDG supports this ambition through provision of guidance on the design of new development that supports active travel.

Resource Implications

17. The LHDG project work is being delivered almost entirely in-house and is funded from the Highways and Transport Programmes within the refreshed Medium Term Financial Strategy 2023-27, approved by the Cabinet in September 2023. Consultant support is required to deliver a Strategic Environmental Assessment (SEA) and an estimated cost of £27,000 is included within the current forecast.

18. Current spend on the development of the LHDG is £201,000 with an estimated cost forecast for the remaining work of £112,000. This cost is for internal staff time with the exception of the SEA work. Costs and the volume of work will be dependent on the outcomes of consultation and engagement work and changes in related policy during the delivery programme.
19. The highway maintenance budget is under huge pressure at a time when the number of highway assets requiring maintenance is increasing. This is against the fact that, for 12 of the past 13 years, there has been a real term year on year reduction in Government funding.
20. Leicestershire's population is projected to rise by 19% between 2021 and 2043. This population increase will require growth in housing and associated highway infrastructure to support this. At the same time, the new National Planning Policy Framework (NPPF) and National Design Guidance emphasise that development should create "beautiful places" where street trees should be a prominent feature. These factors have the potential to worsen the already significant pressures on maintenance budgets, putting into question the future affordability to the Council of maintaining ever more highway assets.
21. The highway maintenance budget is supplemented through developer contributions, the details of which are set out within the LHDG's commuted sums policy. It is considered that current rates charged within LHDG do not reflect levels of inflation or changes in the national context. The LHDG refresh project includes a review of the current commuted sums schedule.
22. Project activities such as the production of limited palettes of materials acceptable for use within adopted highway (see paragraphs 58-61 of this report) will enable environmental sustainability considerations to be built into the new LHDG but also help evaluate the durability and resilience of assets the Council agrees to take on, thereby minimising impacts on maintenance budgets.
23. The Director of the Corporate Resources has been consulted on the content of this report.

Legal Implications

24. The LHDG supports the Council's responsibilities as the Local Highway Authority (LHA). There are matters that will require consideration by the Council's Legal Services in the development of the LHDG refresh, including issues of road adoption, liability, and risk management that form part of the LHDG.
25. The Director of Law and Governance has been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

26. This report will be circulated to all members.

Officer(s) to Contact

Ann Carruthers
Director, Environment and Transport
Tel: (0116) 305 7000
Email: ann.carruthers@leics.gov.uk

Janna Walker
Assistant Director Development and Growth, Environment and Transport
Tel: 0116 305 0785
Email: janna.walker@leics.gov.uk

PART B

Background

27. The Leicestershire Highway Design Guide (LHDG) provides guidance regarding highways and transportation infrastructure for new developments.
28. The LHDG is the basis for the Council's highway observations on planning applications as a statutory consultee to the planning process.
29. A full refresh of the LHDG is now underway. The key influencing factors on the development of the new LHDG, as detailed in the report presented to the Cabinet on 16 December 2022, are:
 - a) A change in emphasis within the latest NPPF, which necessitates that all planning authorities create design guides or codes consistent with the National Design Guide and National Model Design Code, updated in 2021 and that they reflect an aspiration for places to be “beautiful, healthy, greener, enduring and successful”.
 - b) The Government's introduction of Local Transport Note (LTN) 1/20, which provides new guidance for local authorities on designing high-quality, safe cycle infrastructure in tandem with the announcement that Active Travel England (ATE) is to be made a statutory consultee on planning developments.
 - c) The publishing of the Council's Net Zero Strategy and Action Plan in response to the Climate Emergency. The Action Plan requires that environmental and net zero carbon objectives are integrated into the new LHDG.
 - d) The financial pressures faced by both the Council and private developers, brought on by high inflation and in the case of the Council, a reduction in real terms Government funding.
30. The Council is supportive of new national policies and guidance, but its application within a new LHDG needs to be carefully considered if it is not to place undue pressure on already stretched maintenance budgets.
31. To date the project has focused on the policies, principles and approaches that underpin the guidance within the LHDG in the light of new national policy and guidance.

Commuted Sums and Road Adoption

Scenario Testing

32. The purpose of commuted sums as set out in the national guidance document “Commuted Sums for Maintaining Infrastructure Assets”, now managed by the Association of Directors of Environment, Economy, Planning and Transport (ADEPT), is to ensure there is a mechanism by which the highway authority can recover costs from a developer for the maintenance of adopted “extra over”

assets and areas (that do not contribute to safe functioning of the highway), or alternative materials that may incur additional maintenance costs. These assets represent a small proportion of new adopted highway infrastructure adopted by the Council.

33. All other “standard” highway assets such as the carriageway, footways and signals are not eligible for attracting commuted sums. The Government funding for road maintenance that contributes towards the maintenance of “standard” assets has been in decline in real terms over recent years and is no longer sufficient for the Council to satisfactorily maintain both the existing and future adopted highway network.
34. In consideration of the future approach to commuted sums, an assessment has been undertaken on two options that may assist in alleviating the short fall in maintenance funding:
 - a) **Option 1(a):** A full review of the base rates charged and items and maintenance activities considered under the current commuted sums schedule.
 - b) **Option 2:** Charging commuted sums for the maintenance of all adopted highway infrastructure, including those items considered as standard under current national guidance.
35. The options were tested against financial and qualitative criteria, including an assessment of the commuted sums charged, Council policy and priorities, legal implications and potential impacts on growth. A financial appraisal of the options was carried out by comparing the outcomes in terms of costs recovered to recently delivered residential development in Leicestershire.
36. Option 2 was assessed favourably from a financial perspective, with an increase in maintenance costs recovered through commuted sums of 175% increase in comparison with 34% increase for Option 1a. However, significant concerns have been raised regarding the non-financial implications of Option 2, including:
 - a) The likely impact on the viability of development of significant increases in commuted sums and the consequential effects on the Leicestershire economy. Highways are only one aspect of many obligations placed on developers by local authorities to provide contributions towards the provision and future maintenance of community. These pressures are already being seen to influence the viability of development. The current additional demand of inflation is expected to exacerbate the situation.
 - b) Reputational risk to the Council of adopting an approach outside the principles of ADEPT guidance that is followed by the majority, if not all, highway authorities.
 - c) The heightened risk of legal challenge by developers regarding the type of assets the Council asks commuted sums for.
 - d) The potential increase in the number of private roads within new estates as developers opt not to seek adoption, which could lead to sites being constructed below the Council’s expected standards.

- e) Typically, a new road is adopted through a legal agreement entered into between the landowner and the LHA under Section 38 of the Highways Act. Section 38 agreements set out the conditions of adoption and the commuted sums payable for future maintenance of new highway. Where negotiations between the LHA and a developer/landowner break down over the terms of the agreement, including demands for excessive commuted sums, the developer can employ Section 37 of the Highways Act and can give notice to the authority that it intends to dedicate a road or street as a public highway. Although a Section 37 can be challenged, should the developer be successful, the LHA must adopt the road but without entitlement to claim commuted sums or inspection.

37. On the balance of risk and with consideration of the principle set out in national guidance and the views of the primary internal LHDG users, it was agreed by Project Board that support should be sought from the Cabinet for Option 1(a).

Road Adoption Policy

38. In most cases, roads within new housing and larger employment developments will be adopted by the LHA. This means that roads will become the responsibility of the LHA to maintain once completed and will be constructed to its expected standards. The adoption process normally takes place through an agreement under Section 38 of the Highways Act 1980 (the Act).

39. In assessing opportunities to minimise the future maintenance burden on the Council, consideration was given to amending current road adoption policy so that:

- a) Roads would need to serve a larger number of dwellings before being considered for adoption, and/or
- b) More stringent criteria would apply regarding the requirement for wider community benefit.

40. However, there are several critical drawbacks to this approach, including:

- a) As raised in paragraph 36, the risk to standards of road construction and adoption through Section 37 of the Highways Act 1980
- b) A reduction in the costs recovered through developer contributions for highway maintenance through commuted sums in the shorter-term.
- c) The increase in private roads is likely to be controversial among key stakeholders, including future residents. Residents may raise concerns about their future interests not being protected and object if they feel that they have future financial and legal responsibilities for maintenance of highway infrastructure.
- d) The greater risk of challenge against an approach that does not align with most other highway authorities.
- e) Increasing the number of dwellings that a road would need to serve before being considered for adoption could impact disproportionately on small housing scheme developers, who may consider challenging the approach.

41. The resource required to assess the financial benefits of reduced maintenance across the network against loss of income through commuted sums/inspection fees is significant and would impact the LHDG delivery programme. Furthermore, avoiding successful challenges would require establishing robust rationale based on data evidence.
42. Although this matter may be reconsidered in future, it is proposed that for the purposes of this review the Council's current road adoption policy is retained, specifically adoption will be considered for:
 - a) Residential roads that serve more than five dwellings, or
 - b) Multiple-building, multiple-occupation industrial and commercial developments (developments occupied by more than one company).

Other Commuted Sum Matters

43. As reported to the Cabinet in December 2022, a small number of local authorities have taken the decision not to adopt new "standard" street lighting on certain road types as a matter of course. This would be a fundamental shift from the current approach by the County Council, and given implications such as the challenge of securing a third party to take on the maintenance of lighting in these circumstances, this matter will be considered further in addition to the LHDG refresh.

LHDG Highway Development Management Policy

44. As a general principle, any revised policy proposals for inclusion within the LHDG that relate to highway observations the LHA makes to the local planning authority on planning applications, will reflect NPPF (2023).
45. A revision to current Policy IN5 "Access to the Road Network" has been proposed. Current policy allows limited flexibility when considering the creation of new accesses or the increased use of existing accesses onto A and B roads. The current approach applied through the policy has been the source of challenge from developers during the planning process, particularly where sites are allocated in Local Plans.
46. It is proposed that future guidance comprises a risk-based approach to assessment, with consideration of traffic volumes, measured speeds, personal injury collisions, and proximity to sensitive receptors e.g., schools, all forming part of the evidence-based assessment. An assessment tool is under development to support this policy.
47. Where there is evidence to suggest that creation of new/intensification of existing accesses would have an unacceptable impact on highway safety, the LHA will seek to resist the proposals.
48. The intended purpose of the existing LHDG Policy IN6 "Sustainability Standards for Residential Developments" is to assist the LHA when making observations on walking, cycling and passenger transport provision within

planning application submissions. However, the policy has limited weight compared with policies within the NPPF which the LHA relies on.

49. It is therefore proposed that it is withdrawn. However, the Council is committed to aligning with the values of the Government's 'Gear Change' document by delivering a step change in the creation of new cycling and walking facilities by developing clear principles and technical guidance. The new LHDG will include changes to reflect LTN 1/20 guidance and the Council's own Cycling and Walking Strategy.

LHDG Principles

50. The Project Board has agreed the following seven draft principles (as appended to this report) that provide the foundation for the LHDG:
- a) Working Collaboratively
 - b) Facilitating Safe and Effective Highway
 - c) Creating Road Types for All Road Users
 - d) Creating Durable and Easily Maintained Highway
 - e) Encouraging Active and Sustainable Travel
 - f) Supporting Inclusive Highway
 - g) Tackling Climate Change and Protecting the Environment.
51. Paragraph 29 of this report identifies the key influencing factors on the development of the LHDG, with a particular focus on major changes to national policy and guidance. The principles above have been developed following consideration of how new national policy and guidance should be observed in relation to LHDG, and the implications of decisions to endorse them on the future affordability of highway maintenance.
52. The significant issues raised during this process are:
- a) The consequences of an increase in adoption of assets that are not currently a common component of the road network such as segregated cycle infrastructure or enhanced green infrastructure.
 - b) The Council's responsibilities further to the adoption of its own Cycling and Walking Strategy and Net Zero Strategy.
 - c) The implications of Active Travel England's role as statutory consultee to the planning process.
 - d) The reputational and financial risk of not endorsing new policy and guidance. For instance, being ambitious about the delivery of active travel infrastructure is an important step in achieving a higher "Active Travel and Capability" rating, thereby accessing enhanced Government funding.
 - e) Increased pressure on authorities to assess the carbon impacts of large transport projects that are bidding for Government funding to enable delivery.
 - f) The challenge of delivering carbon reductions through LHDG guidance across the whole lifecycle of highway projects. Issues have been discussed regarding the use of materials that claim to deliver carbon

reduction benefits but that are relatively unknown in terms of their performance and durability.

53. Despite the challenges highlighted in this report, adhering to these Principles can provide the basis from which positive benefits for Leicestershire can be delivered. Although there are likely to be increased maintenance liabilities that could intensify pressure on budgets, conversely there are also financial and reputational risks to not becoming an early adopter of new policy and guidance.
54. Furthermore, the early-stage impact assessments undertaken have highlighted the potential for substantial community benefits from supporting a step change in environmental sustainability for health and wellbeing, resilience of assets, accessibility for all road users, meeting net zero ambitions and biodiversity.
55. Discussions will continue to take place regarding ensuring the Council covers its costs in relation to new developments and reducing future liability and costs regarding maintenance. This work will progress outside of the LHDG project so that the original scope can continue to be delivered effectively.
56. To ensure that green infrastructure, which is intended to be adopted as part of the highway, does not place an unnecessary maintenance burden on the Council, it is proposed that it is treated consistently with other highway assets. The suggested approach comprises:
 - a) Stricter specification requirements, including the adoption of the Value of Trees approach in design.
 - b) The appointment of dedicated staff for the technical approval of green infrastructure elements of highway development. This option requires further discussion, alongside the review of fees and charges relating to LHDG work. However, it is considered that there would be future maintenance savings in ensuring that tree planting and landscaping schemes are properly designed and delivered.
 - c) In accordance with other highway assets, investigating the opportunity for pre-submission requirements related to green infrastructure for inclusion in Section 38 agreements.
57. The Government has stated that it will expect a commitment to adoption of LTN 1/20 if local authorities are to access future funding for active travel schemes. The LHDG Refresh will therefore develop an approach to integration of LTN 1/20 that ensures delivery of any new infrastructure within the Leicestershire context.

The Development of Acceptable Palettes of Materials

58. The use of alternative materials can help support local distinctiveness in new development. However, the inclusion of these materials within new development can also be the cause of future maintenance issues. Problems regarding availability of like-for-like materials during future maintenance activities or statutory undertaker works can result in a patchwork appearance that undermines the original intention of their use.

59. The Department for Transport's Manual for Streets advocates that:
 "One way of enabling designers to achieve local distinctiveness without causing excessive maintenance costs will be for highway authorities to develop a limited palette of special materials and street furniture. Such materials and components, and their typical application, could, for example, be set out in local design guidance and be adopted as a Supplementary Planning Document".
60. To consider how this guidance might be applied in Leicestershire two limited palettes of surfacing materials are being developed comprising:
- a) A standard palette of materials that are easily available within the local supply chain, have a history of successful use and are easy to maintain.
 - b) An enhanced palette of materials that will offer a balance between a desire for local distinctiveness and the Council's requirements relating to environmental sustainability, performance and on-going maintenance. Items from the enhanced palette will usually attract a commuted sum for future maintenance.
61. It is proposed that any materials that are not included within the palettes, but that are being promoted for use in new highway schemes, will be subject to stringent assessment. The developer will be required to evidence that the material meets key criteria such as: availability, maintenance requirements and sustainability.

Electric Vehicle Charging

62. To help to decarbonise transport and contribute to the Council's net zero ambitions for the county, the Council is keen to support residents in switching to electric vehicles (EV).
63. The Council is working with district councils, businesses and other parties to help develop a countywide EV infrastructure strategy. This will define the role of the Council and evaluate options for a public charging point network in on and off-street locations.
64. In the forthcoming iteration of the LHDG the Council will define the legal requirements for the provision of EV infrastructure in new development. It will also state the current position regarding the provision of on and off-street charging facilities in Leicestershire. The new LHDG guidance will be updated following the adoption of the EV Strategy.

Web Proposals and Technical and Approvals Guidance

65. A new web-based format and structure is being developed for the new LHDG that is intended to be user friendly, interactive, accessible across multiple devices, adaptable and intuitive.

Engagement and Consultation

66. The Council's approach to engagement and consultation was detailed in the report presented to the Cabinet on 16 December 2022.
67. It is the intention that the engagement activities with key stakeholders, chiefly private developers and district councils in their role as local planning authorities, will continue until the start of the formal consultation scheduled for Spring 2024.
68. A web-based consultation exercise, principally aimed at users of the LHDG and other primary stakeholders, will take the form of a questionnaire prompting responses to any significant changes and an open opportunity to comment on the draft text. The focus of the consultation will be on the written content of the new LHDG. However, it is also the intention to present example pages of how the new LHDG will look and feel, including illustrative drawings and diagrams.
69. The Highways and Transport Overview and Scrutiny Committee will consider a report during the formal consultation exercise.
70. A further report detailing the outcomes of formal consultation and presenting the draft LHDG will be presented to the Cabinet in Autumn 2024.

Proposed full LHDG refresh programme

71. The timetable (Table 1) below is subject to the Cabinet approval and ongoing refinement further to engagement and consultation work.

Action	When
Consultation on the Draft LHDG	Spring 2024
Highways and Transport Overview and Scrutiny Committee – Draft LHDG consultation	Summer 2024
Cabinet LHDG final version approval	Autumn 2024
LHDG published	Autumn 2024

Future Review Proposal

72. It is proposed that an annual LHDG review schedule is devised to ensure that any updates to national and local policy, standards and guidance are considered at regular intervals. The schedule will comprise a regular yearly publishing date at which point key stakeholders will be notified that either a new version of the LHDG has been published with revisions or that the document has been reviewed and no changes made. A cover sheet will detail any revisions made for easy reference by stakeholders.

Equality Implications

73. The Equality Act 2010 requires the Council to consider the need to eliminate discrimination and to promote equality of opportunity between different protected groups.

74. The current LHDG guidance has been developed with the intention of facilitating developments that are “accessible to all people”. Throughout the course of the Refresh project, impacts on protected characteristic groups will continue to be assessed.
75. An Equality Impact Screening Assessment exercise has been undertaken and presented to the Departmental Equalities Group. At this stage, it is thought that the overall impact of the refreshed LHDG is likely to be neutral or positive. However, as further detailed work and evidence gathering needs to be completed to confirm this, the overall impact is currently classed as unknown.
76. It has been assessed that age and disability protected characteristic groups have the greatest potential to be impacted by the project. Consultation will be undertaken to ensure the views of these groups are properly understood.
77. The LHDG draft Principle 6 “Supporting Inclusive Highway” states that the LHDG will aim to be a ‘beacon for inclusive design’ and create highway where people feel safe, enjoy spending time, and that function in a way that meets the needs of communities.

Human Rights Implications

78. A Human Rights Impact Screening Assessment has been undertaken. It has been determined that the LHDG has the potential to have positive and negative impacts on human rights and that further assessment is required to ensure that full consideration is given to these issues through the development of the guidance.
79. Examples of where the LHDG has the potential to impact on Human Rights includes:
 - a) Access to services such as education or health care facilities;
 - b) The potential for new highway development to impact on an individual's peaceful enjoyment of property;
 - c) Ensuring accessibility of transport infrastructure for all.

Health Implications

80. The World Health Organisation defines a Health Impact Assessment (HIA) as ‘a practical approach used to judge the potential health effects of a policy, programme or project on a population, particularly on vulnerable or disadvantaged groups.’
81. A HIA E-Form screening exercise has been undertaken to assess the likely impacts of the new LHDG on highway users in Leicestershire.
82. Although the assessment recognises that the transport sector can have negative effects on communities, including noise and air pollution, there are significant changes that can be made to the LHDG to deliver positive benefits, including:

- a) Improving social inclusion and the health of residents by supporting active travel infrastructure within highway schemes.
- b) Encouraging the use of low carbon materials and methods of construction to help lessen effects of climate change. Research has found that climate change can disproportionately impact low-income neighbourhoods, where there can be less resilience to issues such as flooding.
- c) Creating attractive environments through facilitation of green infrastructure that can deliver ecosystem services such as reducing flooding and the impact of higher temperatures and encourage people to leave their cars behind and participate in active travel.
- d) The provision of inclusive cycling and walking infrastructure that enables those without private vehicles to access employment opportunities or critical health services.

83. A full Health Impact Assessment will be undertaken on completion of the draft LHDG, informed through consultation with stakeholders, including key protected characteristic groups under the Equality Act.

Crime and Disorder Implications

- 84. The delivery of highway design approaches that design out crime and create positive spaces is dependent on adoption of principles by designers. The Council's ability to influence design is largely restricted to roads the Council is being asked to adopt.
- 85. Regarding highway safety, the LHDG draft Principle 6 "Supporting Inclusive Highway" states that: 'Consideration must be given to methods of designing out crime as part scheme design including issues relating to natural surveillance, access control (physical and symbolic barriers to opportunities for crime), territorial reinforcement (defensible space) and space management.'
- 86. Design factors relating to provision of green infrastructure or other built assets can provide opportunities for crime to take place. For example, how communal car parks are designed could present issues with regard to safety.
- 87. The new LHDG will aim to ensure that developers follow the latest national guidance regarding designing out crime so that new highway minimises perceived and real personal safety risk.
- 88. The impact of the LHDG on crime will be assessed through via Health Impact Assessment.

Environmental Implications

- 89. The LHDG refresh is a significant project where there is potential for policy and guidance to have consequential impacts, both negative and positive, on the environment. A screening exercise has been carried out and the decision taken to undertake a Strategic Environmental Assessment to understand the implications of any changes to the LHDG.

90. There are several key areas where the LHDG has the potential to impact on the environment, including:
- a) Setting standards regarding criteria for acceptable materials such as their carbon impacts.
 - b) How the LHDG facilitates active travel to reduce dependency on the car.
 - c) Supporting green infrastructure within the highway that can deliver ecosystem services.
 - d) The resilience of the Council's future road network.

Partnership Working and Associated Issues

91. Discussions will be undertaken with district councils, primarily regarding their role as Local Planning Authorities and any concerns relating to new proposals for the LHDG. Additionally, it is the intention to engage with other highway authorities to understand their approach to highway design guidance and any recent experience of reviewing their guides within the context of more recent national policy and guidance.

Risk Assessment

92. A project risk assessment has been established to identify potential issues that could impact on project delivery. In addition to this, a strategic risk assessment will be maintained and updated through the course of the project. This will assess the risks in relation to changes in policy and approach.
93. Financial risk relating to the project are presented in Part A "Resource Implications".

Background Papers

Report to the Cabinet 16 December 2022 - Leicestershire Highway Design Guide Refresh: Approval to Undertake Engagement.

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6746&Ver=4>

National Planning Policy Framework – Section 9. Promoting sustainable transport

<https://www.gov.uk/guidance/national-planning-policy-framework/9-promoting-sustainable-transport>

Commuted Sums for Maintaining Infrastructure Assets

<https://bit.ly/3H617KQ>

Leicestershire Highway Design Guide webpage

<https://bit.ly/3OZNnTF>

Appendix

Draft Leicestershire Highway Design Guide Principles

Appendix BTD.8

**Appeal decision reference APP/K2420/W/24/3343996 dated 5th August 2024
for application 24/00016/FUL dated 5th August 2024**



Appeal Decision

Hearing held on 16 July 2024

Site visit made on 16 July 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2024

Appeal Ref: APP/K2420/W/24/3343996

Land south of Normandy Way, adjacent 12 Newquay Close, Hinckley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr D Winter against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref is 24/00016/FUL.
 - The development proposed is change of use of land to provide 4 no. gypsy and traveller pitches including day rooms with associated landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The four proposed pitches would be shared by five families. The families are all part of the appellant's wider family. All the families are known to the County Council's Multi Agency Traveller Unit (MATU) who are aware of their lifestyle and work patterns. There is no dispute regarding their gypsy status and I have no reason to disagree.
3. Following the hearing, a draft revision to the National Planning Policy Framework was issued for consultation alongside a Written Ministerial Statement. Neither introduce issues relevant to the pertinent considerations in this appeal and therefore I have not sought comments on it from the parties.

Main Issues

4. The main issues are the effect of the proposal on highway safety and the effect on the character and appearance of the area with particular regard to the site's location within the Green Wedge.

Reasons

Highway safety

5. It is not disputed that the development would involve an increase in vehicle movements using the existing access over and above the existing movements involved in the maintenance of the site and the horse that grazes on it. A figure of 30 two way trips was agreed to be a reasonable estimate accounting for the fact that the site is within reasonable walking distance of some of the shops and facilities in Hinckley. There is also agreement that there is sufficient

- visibility from the access based on the measured speeds of traffic on the road, and that the geometry of the access would meet the required standards.
6. Normandy Way (the A47), at the site access, has a speed limit of 60mph. It is a busy road, acting as a bypass around Hinckley and connecting the town to nearby villages. This has resulted in it being designated part of the County Council's Resilient Network and the Major Road Network.
 7. Speed survey data has shown average speeds of vehicles passing the site are around 50mph with speeds of vehicles travelling westwards into Hinckley slightly slower than the speed of vehicles travelling eastwards out of Hinckley. This is because a short distance to the west of the access the speed limit is 40mph so vehicles would be slowing down, whereas the opposite is true for eastbound vehicles.
 8. The character of the A47, at the point of access, is rural; being flanked by trees, having no street lighting and with no side roads. The access, which would be around six metres width, emerging between trees and serving residential development, would be unexpected. When the 40mph zone starts, there is street lighting, the junction of Cornwall Way is close by and the houses on Newquay Close and Cornwall Way are prominent, so the road is more urban in character.
 9. For vehicles turning right into the site, a dedicated turning space would be provided on the central reservation area where vehicles could wait clear of the flow of traffic. I understand there would be sufficient room for this to be provided and for vehicles to pass. However any vehicles in the waiting area would visually narrow the road and I consider it likely most passing vehicles would slow down as they passed. Moreover as the speed surveys show traffic in this direction would be speeding up, having to slow down again would be unexpected. Likewise vehicles which were turning right out of the access would be going much slower than traffic on the main carriageway which would be travelling at around 50mph and would be speeding up.
 10. Vehicles travelling westwards towards the site would be slowing down in preparation for the 40mph zone and so braking would not be unexpected. However drivers may not be fully prepared for vehicles turning into the site in advance of the 40mph zone, even if there is a warning sign in advance. Vehicles turning left out of the site would very quickly be in the 40mph area. As visibility from the access to the right is good and vehicles would be slowing down, I consider the risk here is minimal.
 11. I understand there is no guidance relating to safe distances between vehicles on the road, rather it is expected that all drivers would be driving with due care and attention. Nonetheless, in my view, vehicles emerging from and entering the access would be out of character with the nature of the road at this point. This could lead to vehicle conflict and so would represent a compromise to highway safety.
 12. The low number of vehicle movements generated by the site would mean that such conflicts would be infrequent. However there is a high volume of traffic carried on the road and at high speed, and if such conflicts did occur the consequences could be severe. The fact that there have been no incidences so far associated with the existing infrequent movements of horses also has no

material bearing on my view, given the increase in movements the development would result in.

13. There has only been one accident on the A47 in the last five years near the site, which involved a vehicle turning right into Cornwall Way. The other recorded accidents nearby occurred at the junction of Ashby Road and Normandy Way which is a much busier junction. Nonetheless this does not suggest the intensification of the access would be safe, especially bearing in mind it is on a faster part of the road than the Cornwall Way junction and less prominent.
14. The appellant suggests that were the A47 a trunk road, the access would most likely be acceptable as the National Highways guidance is that accesses that meet the technical standards are likely to be acceptable. However, it would be inappropriate to suppose what National Highways' view would be even if this were a trunk road.
15. In Summary, the development would conflict with policy DM17 of the Site Allocations and Development Management Policies document (2016) (SADMP) which states that development will only be supported where it is demonstrated there is not a significant adverse impact on highway safety. It would also conflict with Core Strategy policy 18 which requires gypsy and traveller development to have safe access.
16. It would also conflict with section IN5 of the Leicestershire Highway Design Guide which says the increased use of existing access will not normally be permitted on roads with a speed limit above 40mph. The Council advise this policy is being reviewed and the emerging equivalent policy takes a more risk-based approach. However, that emerging policy states that intensification of existing accesses will be assessed to ensure they do not result in unacceptable road safety concerns. The proposal would therefore conflict with this draft policy too.

Character and appearance

17. The site is bounded to the west by the houses in Newquay Close and to the south by a vegetative buffer separating it from more dwellings. All these houses are within the development boundary of Hinckley, whereas the site is outside that boundary and in the open countryside for planning policy purposes. There is open land to the west.
18. The north boundary of the site, alongside the A47, is demarked by a tree screen. The south and eastern boundaries are similarly vegetated. The trees are currently in full leaf but I would anticipate that even in winter, views through this vegetation to the site are limited. However there is a clear view of the site through the access. There is some vegetation on the western boundary, but it is lower in height than that on other boundaries and the adjacent house at No 12, and some of its neighbours, are clearly visible over it. Likewise, there would be a view over the site from some of the windows at No 12 as well as from other houses, aided by their position on slightly higher ground.
19. As set out above, the A47 is a heavily trafficked road. Despite the site visit taking place in the early afternoon and during the school holidays, noise from traffic was a constant feature while on the site. This noise and the visibility of

the adjacent houses from the site lend an urban characteristic to the area, whilst the vegetated boundaries and the site's current grazing use contribute a rural feel. Overall, they combine to give the site an urban fringe character. The proposal would be fairly low density and, with a significant amount of buffer landscaping, would not be inconsistent with its urban fringe setting.

20. However the site is also designed as Green Wedge. The explanatory text to Policy 6 of the Core Strategy (2009) states that the aims of the Green Wedge are to protect the separation of Hinckley, Barwell and Earl Shilton, and to provide easy access to green spaces for residents in the urban areas. The site is private land so the parties agree it is not expected to contribute to the second aim.
21. It does however contribute to the separation of Hinckley from Barwell. Due to the presence of the A47 the development would project no further north than the adjoining houses. It would also project no further east than the houses to the south. However it would be further to the northeast than the neighbouring houses, and it is in that direction that Barwell lies. Furthermore, when travelling along the A47, which is from where this part of the Green Wedge is most readily be appreciated, it would appear to extend Hinckley further along the A47 towards Barwell. The provision of the static and touring caravans, the dayrooms, the hardsurfacing and other residential paraphernalia would visually represent works that would result in the loss of Green Wedge. This would be apparent when seen through the access to the site, and also from the adjacent houses, particularly as proposed landscaping cannot be relied upon completely. I accept that it is not necessary for gypsy and traveller development to be completely hidden from public view. Nonetheless, in this case, clear views from nearby houses and from the A47 by pedestrians, cyclists and motorists would be possible.
22. The site represents a very small part of the Green Wedge. However the loss of even a small part of the green wedge would have an impact and cumulatively such small impacts would undermine the purpose of the Green Wedge. Policy 6 says that any land use in the Green Wedge should retain the function of the Green Wedge. The proposal would fail to do this.
23. Some forms of development are identified by policy 6 as being acceptable in the Green Wedge, but the list does not include gypsy and traveller development. The Planning Policy for Traveller Sites (PPTS) recognises that gypsy and traveller development is not unacceptable in the countryside, other than in the Green Belt. However, I do not consider there to be conflict between policy 6 and the PPTS because the list of forms of development that the policy says are acceptable is not exhaustive. It does not suggest that gypsy and traveller development is unacceptable in the Green Wedge. Rather, it says any development should retain the function of the Green Wedge, which is a matter of judgement.
24. Likewise, Core Strategy policy 18, which refers to the provision of gypsy and traveller accommodation, states that permission will be granted for such accommodation providing it is within or adjacent to the settlement boundaries of Hinckley Burbage, Barwell and Earl Shilton. The development would accord with this. As set out above, the land between Hinckley, Barwell and Earl Shilton is Green Wedge. However there are areas in or adjacent to Hinckley, Burbage, Barwell and Earl Shilton which are not Green Wedge, so it would be possible for

- gypsy and traveller development to accord with both policy 6 and 18. There is therefore no direct conflict between these two policies either.
25. However, it is understood that much of the land outside the Green Wedge and on the edge of the settlements is in demand for housebuilding, so naturally is of higher value and hence most likely beyond the means of the Gypsy and Traveller community. The planning permission for 475 houses on the north edge of Hinkley is indicative of this. It is also the case that the south western edge of Hinckley is in a neighbouring Borough. So I appreciate in practical terms, in this respect, there is a degree of conflict.
26. Furthermore as the site is adjacent to the settlement boundary, there would be no conflict with paragraph 25 of the PPTS which says local planning authorities should very strictly limit new traveller sites away from existing settlements. In addition it is noted that gypsy and traveller sites are not uncommon features in the countryside.
27. The parties disagree on the interpretation of policy DM4 of the SADMP which aims to protect the character of the countryside. However both parties agree the list of forms of development which the policy identifies as being sustainable, is not exhaustive. That being the case, it would seem to me that the criteria listed in points i) to v) should apply to all forms of development. Indeed, paragraph 13.11 of the explanatory text to the policy would also suggest this, as it says the criteria in the second half of the policy apply to any development. Criteria iv) says that development in the Green Wedge needs to protect its role and function in line with policy 6. As I have found it does not protect its function, it would conflict with part iv) of Policy DM4.
28. Notwithstanding this it is not disputed between the main parties that the site is not in an unsustainable location, would cause no ecological harm and that the provision of four pitches would be a social benefit. However, the harm that would be caused to the Green Wedge by virtue of the development on a currently undeveloped field would, in my view conflict with the environmental strand of sustainability.
29. Overall the proposal would harm the character and appearance of the area by virtue of resulting in the loss of a part of the Green Wedge. It would therefore conflict with policies 6 and DM4 as set out above. It would also therefore conflict with Core Strategy Policy 20 which also seeks to maintain the Green Wedge.
30. My attention was directed to the development of an allocated site on the southwest side of Barwell which, I was advised, closed the gap to Hinckley by 55m. Nonetheless that does not affect my view. Indeed it raises the importance of the remaining land in the Green Wedge in retaining the function of separation. I also understand there are a number of sports facilities, a short distance away, that are in the Green Wedge, but these would be supported by policy 6. The nearby Dorothy Goodman School is also located in the Green Wedge, but I am not aware of the circumstances that lead to this. In any case, such other development should not be used to justify an unacceptable encroachment into the Green Wedge that would result from the current proposal.
31. With regard to the planning permission for 475 houses on land on the north edge of Hinckley, the officer's report identified conflict with policy DM4.

However, it was considered that the existing developed edge of Hinckley and the A47 strongly influenced the character of the site. I agree that in this respect that site is comparable with the appeal site. However, that site was not in the Green Wedge, which is a key material difference. Similarly though planning permission was granted for 10 pitches on a site next to Dalebrook Farm, which is in the countryside and is detached from any settlement, that was also not in the Green Wedge. It was also approved before the SADMP was adopted.

Other Matters

32. The Council accept they have no five years supply of gypsy and traveller pitches. This is contrary to paragraph 10 of the PPTS and is a matter to which I give substantial weight. Moreover, there presently appears little prospect of sites being allocated for several years yet as evidenced by three call for sites exercises producing no responses.
33. A Gypsy and Traveller Accommodation Assessment was prepared in 2022 to support an emerging Local Plan which indicated a need for 53 pitches. But that Plan has now been withdrawn and I was advised that the GTAA should carry no weight. However in the absence of any other figure it is at least a broad indication of the need. The broad size of the unmet need carries significant weight.
34. There are no public sites in the Borough and all public sites in Leicestershire are full or are in such poor condition such that there is no effective capacity. I understand a site at Whitegates in Blaby Borough is to open in the autumn, but the Council could provide no other details of this. Despite this, they accept there is still an unmet need.
35. The 2016 GTAA identified a need for 7 pitches which were to be provided at Dalebrook. I understand Dalebrook has never been built despite being granted planning permission. I also understand permissions for 14 pitches elsewhere have been granted since 2016. Clearly then, despite the failure of Dalebrook to be realised, the Council have granted permissions to meet the previous identified need, even if that figure now appears to be out of date.
36. With regard to personal circumstances, the appellant and the other families that would occupy the site are currently living at a variety of sites elsewhere. Mr Winter lives at a transit site in Nuneaton and has been doing so for about three years. There is no security of tenure here and no private sanitary facilities. Moreover the site is cramped and there is little space for his mother, who needs care, to come and stay occasionally to reduce the burden on his father.
37. The appellant's cousin, Mr Sykes, has lived in a bricks and mortar house in Hinckley for 17 years and has a bowel disease. One of his sons and his wife have been living on the adjacent transit site for around two years. His other son lives in an adjacent bricks and mortar house and has a daughter who has significant disabilities and learning difficulties.
38. Another of the appellant's cousins, Mr Mulvenna, lives at a site in Market Harborough and has done so for 20 years. However the pitch is large enough only for a touring caravan. He has a young son with autism and his wife has a

heart condition. Both his son and his wife have appointments at Glenfield Hospital in Leicester a few times a year.

39. Altogether, there are five children of school age who would live at the site. Three of them are teenagers and are home-schooled. Of the other two, one is enrolled at Dorothy Goodman special school which is close to the appeal site. The other is currently in mainstream school but, because of his autism, requires a place at a special school.
40. All of the intended residents of the site are registered with doctors' surgeries in Burbage.
41. Clearly it is untenable for the families to be living on transit sites, in bricks and mortar housing which is incompatible with their culture, or on cramped pitches. The settled base that the site would provide would be a significant advantage to the families and I give this significant weight.
42. The families are all currently locally based and accessibility to educational or medical facilities, as well as the Light and Life Church which forms a major part of their lives, would be broadly the same from this site as it is from their current locations. There would therefore be no particular medical or educational benefits to them being at the appeal site.

Conclusion

43. The Council's failure to provide a 5 year supply of sites, the lack of any prospect in the short term of allocations being made, a substantial unmet need and the lack of any suitable alternative sites available to the appellant and his wider family all carry substantial weight.
44. I give significant weight to the harm to the Green Wedge, but I give greater and considerable weight to the harm to highway safety.
45. I have had regard to Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. It is a qualified right, and interference may be justified where that is lawful and in the public interest.
46. Dismissing this appeal would likely interfere with the appellant and his family's rights under Article 8 in that they have no other acceptable accommodation available to them. However, interference with those rights in this instance would be in accordance with the development plan policies which seek to protect the Green Wedge and highway safety.
47. That balance is subject to the best interests of children. There is no consideration more important than the best interests of children. I recognise that living on a transit pitch, on a cramped pitch, or in bricks and mortar housing is not the settled base that the appeal site would be. Despite this, it would not be in the children's best interests to move onto a site which has unsafe access.
48. Gypsies share the protected characteristic of race for the purposes of the Public Sector Equality Duty under s149 of the Equality Act 2010 which sets out the requirement to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant

protected characteristic and persons who do not. I consider the harms resulting from the development, as identified above, would outweigh the benefits in terms of advancing equality.

49. I have considered the possibility of granting planning permission temporarily, and the parties suggest that a four year consent would allow time for the Council to adopt a new Local Plan with allocated gypsy and traveller sites. However although a temporary permission would have a lesser impact on the Green Wedge, it would not reduce the unacceptable risk to highway safety for the occupants of the site and other highway users. For the same reason, though I have considered a personal permission, there are no personal circumstances that outweigh this harm.
50. Consequently, I conclude that the proposal would fail to accord with the development plan as a whole. There are no material considerations that indicate that a decision should be taken otherwise than in accordance with it. As such, the appeal is dismissed.

A Owen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Winter	Appellant
Mr Luke Mulvenna	Appellant's cousin
Mr Samson Sykes	Appellant's cousin
Mrs Alison Heine	Agent
Mr Matthew Lennon	Lennon Transport Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY

Mr Sullivan Archer	Planning Case Officer
Mr Tim Hartley	Planning Team leader
Mr Ben Dutton	Leicestershire County Council Transport Planner

INTERESTED PARTIES

Cllr Scott Gibbens	Borough Councillor
Cllr Michael Mullaney	Borough Councillor
Cllr Linda Hodgkins	Borough Councillor
Cllr Stuart Bray	Borough Councillor
Steve Beck	Local resident
John Spencer	Local resident
Cheryl Spencer	Local resident
Stuart Robinson	Local resident
Mr Mead	Local resident