

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: 24/00461/REM

Highway Reference Number: 2024/0461/04/H/R2

Application Address: Land South of Markfield Road Ratby Leicestershire

Application Type: Reserved Matters

Description of Application: Re-consultation. Approval of Reserved Matters (appearance, landscaping, layout and scale) for outline application 22/00648/OUT for residential development of up to 75 dwellings alongside associated site infrastructure and open space and discharge of condition 2.

GENERAL DETAILS

Planning Case Officer: Hinckley and Bosworth Borough Council

Applicant: Mr Stuart Pearson

County Councillor: Cllr Ozzy O'Shea

Parish: Ratby

Road Classification: Class C

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

The Local Highway Authority advice is that, in its view, the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe. Based on the information provided, the development therefore does not conflict with paragraph 116 of the National Planning Policy Framework (2024), subject to the conditions and/or planning obligations outlined in this report.

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) have been re-consulted by Hinckley & Bosworth Borough Council as the Local Planning Authority (LPA) on a Reserved Matters application (appearance, landscaping, layout, scale) of outline application 22/00648/OUT for a residential development of up to 75 dwellings. The site is located at land south of Markfield Road, Ratby.

The LHA previously advised within the highway observations dated 13th June and 15th November 2024 that while it had no objection to the proposals subject to conditions, the internal road network was not considered suitable for adoption and would require amendments at the planning stage, should the Applicant wish for the development roads to be considered for adoption by Leicestershire County Council (LCC).

Since issuing the previous observations, the LHA have been consulted by the LPA on application reference 24/00914/OUT (Outline planning application (with all four matters reserved apart from access) for a phased mixed-use development comprising about 470 dwellings (Use Class C3) or, in the alternative, about 450 dwellings and care home/extra care facility (Use Class C2/C3), provision of a community hub (Use Class F2); 1FE primary school (Use Class F1); and associated operations and infrastructure including but not limited to site re-profiling works, sustainable urban drainage system, public open space, landscaping, habitat creation, internal roads/routes, and upgrades to the public highway).

As advised within the November 2024 observations the LHA are aware that the main spine road for this development would form one of the access roads and the spine road for application reference 24/00914/OUT. The LHA therefore acknowledge that the Applicant intends to future proof the spine road to serve that development in the event it is granted planning permission by the LPA. It should be noted that commuted sums may still be required for the roads designed more than the LHA's requirements for the current development proposed, in the event that the wider proposals are not granted planning permission by the LPA, or do not materialise onsite.

The LHA has reviewed the following documents submitted by the Applicant in support of the proposals:

- McBains drawing number LWRAT MCB ZZ ZZ DR A 0230 D5 Rev. P3 (Site Layout Plan);
- McBains drawing number LWRAT MCB ZZ ZZ DR A 0232 D5 Rev. P3 (Surface Materials Plan);
- McBains drawing number LWRAT MCB ZZ ZZ DR A 0234 D5 Rev. P3 (Refuse Management Plan);
- McBains drawing number LWRAT MCB ZZ ZZ DR A 0235 D5 Rev. P3 (Parking Strategy Plan); and
- McBains drawing number LWRAT MCB ZZ ZZ DR A 0237 D5 Rev. P3 (EV Charging Plan).

Internal Layout

The LHA has reviewed McBains drawing number LWRAT MCB ZZ ZZ DR A 0230 D5 Rev. P3 and advise that the internal road layout is now suitable to be considered for adoption by LCC. It should be noted that the following points will however need to be considered at the Section 38 stage:

- The inclusion of the segregated cycleway is welcome, and acceptable (at this stage). The arrangement where the cycleway crosses the junction serving the road to the west will be considered further at the S38 stage.
- Any isolated and/or interconnecting footpaths would not typically be considered for adoption. If they were to be offered for adoption, they may incur an additional commuted sum.
- The tree species will need to be agreed, to ensure a clear stem height, as to not impede on highway users' visibility. This will be checked further and approved at the S38 stage.
- Consideration of root barrier/deflection treatment will be required when proposing trees/shrubs adjacent to the footway. This will be checked further and approved at the S38 stage.

Parking Provision & Shared Private Drives

The LHA has reviewed the parking provision shown on McBains drawing number LWRAT MCB ZZ

ZZ DR A 0235 D5 Rev. P3 as well as the shared private drives and considers these to be acceptable.

McBains drawing number LWRAT MCB ZZ ZZ DR A 0232 D5 Rev. P3 also indicates that the private driveways and shared private drives would be surfaced in a hard bound material. As advised previously, 1.0 x 1.0m pedestrian visibility splays should be shown where private drives or shared private drives meet the adopted highway. The LHA welcomes the provision of electric vehicle charging points for all plots.

Public Rights of Way

As advised previously, the site is crossed by Public Footpath R50. The LHA response issued on 25th November 2024 raised various questions about the treatment of this public right of way (PRoW). Of the various amended plans added to the LPA website on 18/12/2024 none of them makes any material change to the treatment of the PRoW. The issues previously raised, and further issues identified are:

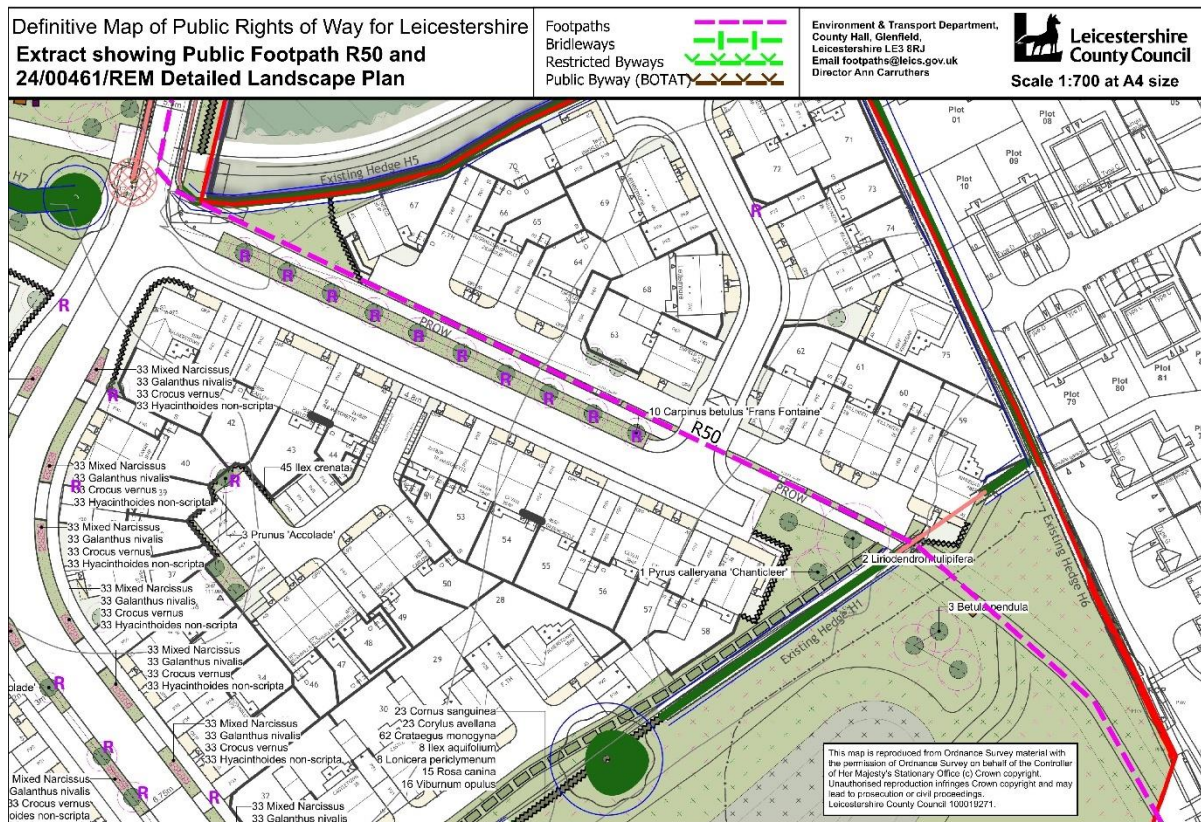
1. Current plans have a physical path approximately 1.5 metres south of the official alignment of Footpath R50 legally fixed by the Definitive Map of public rights of way.
2. The physical footpath will be hemmed-in on the north side by fencing immediately next to the tarmac surface in front of plots 59-62 and plots 64-67.
3. Proposed tree planting is very close to the tarmac surface of the physical footpath that approximately corresponds to Footpath R50.
4. The physical footpath will be further hemmed-in by two Shared Bin Collection Points (BCPs) backing onto the physical footpath parallel to the line of tree planting, creating two narrow corridors each approximately 6.5 metres long.

The background to the above is as follows:

The 24/00461/REM Design and Access Statement paragraph 2.4 notes '*The existing public right of way will be kept and highlighted as connection from the site across towards the existing development area on the east of the site.*' This is not what is proposed.

1. Current plans appear to have the east-west section of Footpath R50 approximately 1.5 metres south of the official alignment legally fixed by the Definitive Map of public rights of way as shown by the plan below which is an extract of the Definitive Map overlaid onto the 24/00461/REM Detailed Landscape Plan 10783-FPCR-XX-XX-DR-L-0009-0012-P08.

The Wildlife and Countryside Act 1981 section 56(1)(e) means the Definitive Map alignments are legally conclusive as to the status and position of the public rights of way. Planning proposals should be based on the Definitive Map alignments which legally take precedence if the physical routes apparent on the ground are in any way different.



In the National Planning Policy Framework (NPPF) December 2024 now paragraph 105 requires that:

'Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users ...'. The NPPF is underpinned by Planning Practice Guidance, the section on Open space, sports and recreation facilities, public rights of way and local green space refers to Defra Rights of Way circular (1/09) paragraph 7.8 states '... preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.'

2. The physical footpath will be hemmed-in on the north side by fencing immediately next to the tarmac surface in front of plots 59-62 and plots 64-67. The External Materials Plan - LWRAT-MCB-ZZ-ZZ-DR-A-0231-D5-P3 shows this and that it is intended to be a 0.55m timber knee rail.

The NPPF, PPG and Circular 1/09 are applied locally by the Leicestershire Highway Design Guide (LHDG) annex on Development and PROWs at:

<https://www.leicestershirehighwaydesignguide.uk/highway-layouts-and-design/public-rights-way/public-rights-way-design-principles> where paragraph 8 states:

'Paths should ideally be routed through public open space which is well overlooked. If it is not possible to do this, then a grass strip of at least one metre width should be provided either side of the public right of way so that the path does not appear narrow and threatening.'

Though less of a barrier than a wall or a close boarded fence, a 0.55m timber knee rail is still not open space nor a one metre wide grass verge beside the path.

In addition to the LHDG annex, and to prevent paths being impeded at the sides by vegetation outgrowth, the LHA has often requested a condition that:

'No trees or shrubs should be planted within 1 metre of the edge of the Public Right(s) of Way. Any trees or shrubs planted alongside a Public Right of Way should be non-invasive species.'

3. Proposed tree planting is very close to the tarmac surface of the physical footpath that approximately corresponds to Footpath R50.

The Detailed Landscape Plan - 10783-FPCR-XX-XX-DR-L-0009-0012-P08 proposes planting beside the physical footpath a row of *Carpinus betulus* 'Frans Fontaine'. These are reputed to retain a columnar-shaped crown, and potentially be only 3.0 metres wide after 25 years. However, the locations shown on the plan have the tree trunks less than 1.0 from the edge of the tarmac. Also, two *Liriodendron tulipifera* are proposed. These are reputed to have branches are lower levels but on older examples the trunk can grow quite wide.

4. The physical footpath will be further hemmed-in by two Shared Bin Collection Points (BCPs) backing onto the physical footpath parallel to the line of tree planting, creating two narrow corridors each approximately 6.5 metres long in front of plots 59-62 and plots 64-67.

This is specified on the Refuse Management Plan - LWRAT-MCB-ZZ-ZZ-DR-A-0234-D5-P3. The BCPs are also shown on the Detailed Landscape Plan - 10783-FPCR-XX-XX-DR-L-0009-0012-P08 where their position exactly on the legal alignment of Footpath R50 means that, strictly speaking, the bin enclosures would be unlawful highway obstructions.

For the reasons above the LHA advises that the above comments are all addressed appropriately and that, to ensure these and other issues (such as signposts or dropped kerbs at road junctions) are all delivered correctly. Whilst it may be beneficial for the applicant to address the above at this stage, as routing the PROW along the definitive route may require the site design to be amended, a condition for a scheme for the treatment of the PROW is advised below.

Conditions

1. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with McBains drawing numbers LWRAT MCB ZZ ZZ DR A 0235 D5 Rev. P3 (Parking Strategy Plan) and LWRAT MCB ZZ ZZ DR A 0232 D5 Rev. P3 (Surface Materials Plan). Thereafter the onsite parking provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally and to enable vehicles to enter and leave the site in a forward direction in the interests of highway safety and in accordance with the National Planning Policy Framework (2024).

2. The development hereby permitted shall not be occupied until such time as 1 metre by 1 metre pedestrian visibility splays have been provided on both sides of the private driveways or shared private drive serving each plot. Nothing within these splays shall be higher than 0.6 metres above the level of the back of the footway/verge/highway and, once provided, these splays shall be so maintained in perpetuity.

Reason: In the interests of pedestrian safety and in accordance with the National Planning Policy Framework (2024).

3. No part of the development hereby permitted shall be occupied until such time as site drainage details have been provided to and approved in writing by the Local Planning Authority. Thereafter surface water shall not drain into the Public Highway and thereafter shall be so maintained.

Reason: To reduce the possibility of surface water from the site being deposited in the highway causing dangers to road users in accordance with the National Planning Policy Framework (2024).

4. Notwithstanding the provisions of Part 2 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no gates, barriers, bollards, chains or other such obstructions shall be erected to the vehicular access.

Reason: To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic including pedestrians in the public highway in accordance with the National Planning Policy Framework (2024).

5. No development shall take place until a scheme for the treatment of the Public Right of Way (R50) has been submitted to and approved in writing by the Local Planning Authority. A scheme shall include management during construction (including proposed temporary route(s)); ensuring plans reflect the correct legally-recorded PRoW alignments; and any new construction works. Physical construction should address width, surfacing, drainage, structures, signposting, and impacts of any landscaping and boundary treatments in accordance with the principles set out in the Leicestershire County Council's adopted guidance on Development and Public Rights of Way. Thereafter the development shall be carried out in accordance with the agreed scheme and timetable.

Reason: to protect and enhance Public Rights of Way and access in accordance with Paragraph 105 of the National Planning Policy Framework (2024).

Informative

- 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>
- If the roads within the proposed development are to be offered for adoption by the Local Highway Authority, the Developer will be required to enter into an agreement under Section 38 of the Highways Act 1980. Detailed plans will need to be submitted and approved, the Agreement signed and all sureties and fees paid prior to the commencement of development.

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>.

If an Agreement is not in place when the development is commenced, the Local Highway Authority will serve Advanced Payment Codes in respect of all plots served by all the roads within the development in accordance with Section 219 of the Highways Act 1980. Payment of the charge must be made before building commences. Please email road.adoptions@leics.gov.uk in the first instance.

- To erect temporary directional signage you must seek prior approval from the Local Highway Authority in the first instance (telephone 0116 305 0001).
- Prior to construction, measures should be taken to ensure that users of the Public Right of Way are not exposed to any elements of danger associated with construction works.
- Public Rights of Way must not be re-routed, encroached upon or obstructed in any way without authorisation. To do so may constitute an offence under the Highways Act 1980.
- If there are any Public Rights of Way which the applicant considers impracticable to retain on their existing lines, a separate application for diversion is required. It should be submitted under the Town and Country Planning Act 1990 to the Local Planning Authority. The applicant is not entitled to carry out any works directly affecting the legal line of a Public Right of Way until a Diversion Order has been confirmed and become operative.
- If the developer requires a Right of Way to be temporarily diverted, for a period of up to six months, to enable construction works to take place, an application should be made to networkmanagement@leics.gov.uk at least 12 weeks before the temporary diversion is required.
- Public Rights of Way must not be further enclosed in any way without undertaking discussions with the Highway Authority (0116) 305 0001.
- Any damage caused to the surface of a Public Right of Way, which is directly attributable to the works associated with the development, will be the responsibility of the applicant to repair at their own expense to the satisfaction of the Highway Authority.
- No new gates, stiles, fences or other structures affecting a Public Right of Way, of either a temporary or permanent nature, should be installed without the written consent of the Highway Authority. Unless a structure is authorised, it constitutes an unlawful obstruction of a Public Right of Way and the County Council may be obliged to require its immediate removal.

Date Received
18 December 2024

Case Officer
Ben Dutton

Reviewer
DH

Date issued
03 January 2025