

Substantive response of the Local Highway Authority to a planning consultation received under The Development Management Order.



Response provided under the delegated authority of the Director of Environment & Transport.

APPLICATION DETAILS

Planning Application Number: 25/00739/CLE

Highway Reference Number: 2025/0739/04/H

Application Address: Water Tower Roe House Lane Norton Juxta Twycross Leicestershire

Application Type: Full

Description of Application: Certificate of existing lawful development to seek approval for the use of the land and building as use Class B8 (Storage and Distribution)

GENERAL DETAILS

Planning Case Officer: Tim Hartley

Applicant: Mr Matthew Thompson

County Councillor: Market Bosworth ED - Joshua Melen CC

Parish: Appleby Magna

Road Classification: PRoW - BOTAT

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

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

Advice to Local Planning Authority

Background

The Local Highway Authority (LHA) has been consulted by the Local Planning Authority (LPA) on the certificate of existing lawful development to seek approval for the use of the land and building as use Class B8 (Storage and Distribution) located at the Water Tower, Roe House Lane, Norton Juxta, Twycross, Leicestershire.

The LHA acknowledge the relevant planning history at the site which is noted below:

23/01176/FUL - Conversion of existing water tower to residential dwelling with associated parking, landscaping, access improvement and other works. The LHA advised approval subject to conditions on 11 January 2024. The LPA refused planning permission on 30 January 2024 on the grounds that the development would have a significant detrimental effect on the intrinsic value beauty and character of the area and that the development location would fail to promote the use of sustainable modes of travel.

The Applicant appealed the decision but the appeal was dismissed on 23 August 2024 for the reasons that the proposed development would fail to enhance the character and appearance of the countryside and that the proposed development would not be sustainably located.

The LHA has reviewed the following documents as part of this application:

- Application Form
- Location Plan, drawing number 1301_04
- Supporting Documents Index – Site Photographic Evidence
- Supporting Statement

Note – The LHA have included hyperlinks to relevant sections of the [Leicestershire Highway Design Guide](#) (LHDG) within this report. These are identified in bold, underlined and in blue text.

Site Access

The proposed development is located on Roe House Lane which is accessed via either Austrey Road/ Appleby Hill or via the A444 Atherstone Road. Roe House Lane forms part of Public Right of Way (PRoW) Q4a which runs adjacent to the proposed development.

The site is at the edge of two LHAs and three LPAs. Most of the tower curtilage is in Twycross Parish in the Borough of Hinckley and Bosworth in Leicestershire as is Roe House Lane south-eastwards to the A444. Northwest of the site the centre line of Roe House Lane forms the border between NW Leicestershire District in Leicestershire and North Warwickshire Borough in Warwickshire. The LHA note that the Royal Mail record the post code of the water tower as CV9 3ER rather than DE12 7AP.

The Supporting Statement states:

‘The site comprises a disused water tower and associated compound accessed from Roe House Lane. It is currently used for the storage of intermediate bulk containers (IBCs) of molasses—both full and empty—as well as materials associated with ongoing site maintenance and distillery operations. This application seeks to formalise the planning status of the site by securing a lawful development certificate (CLEUD) for continued use under Class B8.’

The water tower was also used for telecommunications apparatus which have now been removed.

The site was attained by the Applicant in March 2025 and now accommodates *‘IBCs of molasses (full and empty) and materials for distillery operations and future site works.’* The Applicant also states that:

‘To maintain access, the unbound track from Roe House Lane has been patched using aggregate. No new hardstanding has been laid, and the alignment and functionality of the access remain unchanged.’

The Applicant has not submitted any detailed drawings of the site access or visibility splays.

As part of any application, the Applicant will need to demonstrate a safe and suitable access to the site can be achieved. Whilst the access falls between two different LHA's it is advised this should be designed in accordance with the LHDG standards. In terms of the access design, at this stage the LHA consider the proposals would likely result in an intensification in use of the access. On this basis, it is advised the access should be hard bound and improved with an appropriate width and radii. It should be noted the LHA also required improvements to the access route as part of the previous application. The access design including width and radii should be informed by the number of vehicles likely to use the access, along with swept path analysis of the largest anticipated vehicle likely to use the access ingressing and egressing in all directions.

Swept path analysis of the largest anticipated vehicle should be undertaken at a 15KPH design speed and demonstrate the vehicle can pass a car waiting to exit the site. Potentially a minor industrial access in line with [Table 4](#) of the LHDG would be appropriate. As a starting point, it is suggested the access is wide enough to allow for two-way traffic for the first 10m behind the highway boundary.

An independent Stage 1 Road Safety Audit may also be necessary depending on the scale of the works proposed.

Visibility

Vehicular visibility at the site access will need to be in line with [Table 6](#) of the LHDG. The full extents of the visibility splays would need to be shown on a drawing and splays would need to fall fully within land under the Applicants control or the extents of the public highway.

Given Appleby Hill/ Austrey Road is subject to the national speed limit, a visibility splay of 2.4 x 215m would be required in each direction. The Applicant may therefore wish to undertake a speed survey to demonstrate whether appropriate visibility could be achieved in line with recorded vehicles speeds.

Leicestershire County Council's Network Data & Intelligence Team may already hold speed survey data on record which the Applicant can purchase, or alternatively can undertake a speed survey on the Applicants behalf. The Applicant should be advised that a permit is required to carry out any traffic count/speed survey on the public highway within Leicestershire. Requests for a permit, speed surveys and survey data should be submitted to ndi@leics.gov.uk.

Highway Safety

The LHA has reviewed its Personal Injury Collision (PIC) data for the previous five years and there have been no recorded collisions within 500m north of the proposed site access on Austrey Road. Whilst there are no PICs that fall within the Leicestershire County Council boundary, the LHA do not hold records to the south of the access due to this falling under Warwickshire County Council jurisdiction. As the Applicant is yet to demonstrate a safe and suitable access, the LHA will provide further comments once this is provided.

Trip Generation

The LHA require the Applicant to provide details of the anticipated daily trips to and from the site, including details of the type and frequency of delivery vehicles which would be used. The LHA could have concerns with the proposals in the event HGVs were required for example, given the rural/ narrow nature of Austrey Road.

Depending on the level of trips and types of vehicles generated by the proposals, the Applicant may need to consider if any improvements to the local road network are required to accommodate the additional vehicle trips.

Internal Layout

The Applicant needs to provide evidence in respect of the number of staff likely to be employed by the proposals, whether the site would be open to the public and the maximum number of people likely to be on-site at any one time.

The LHA require swept path analysis be provided for the largest anticipated vehicle turning within the site (as per the swept path analysis section of the LHDG which can be found here) manoeuvring within the internal site with all proposed parking spaces in situ.

[Figure 29\(a\)](#) of the LHDG states that for land use class B8 for up to 2,500sqm of land, the minimum number of parking spaces is 1 per 100sqm and 1 lorry space (articulated vehicle) per 400sqm. It is unclear if HGV trips are likely to be generated at this stage, however if necessary, lorry parking and loading bay parking should be designed in accordance with [Figure 45](#) of the LHDG. Design principles for car parking spaces should be in accordance with [Figure 44](#) of the LHDG.

Public Right of Way (PRoW)

The water tower site is accessed via Roe House Lane which is also the route of Public Right of Way Q4a. The site is at the edge of two LHAs and three LPAs. Most of the tower curtilage is in Twycross Parish in the Borough of Hinckley and Bosworth in Leicestershire as is Roe House Lane south-eastwards to the A444. Northwest of the site the centre line of Roe House Lane forms the border between NW Leicestershire District in the County of Leicestershire and North Warwickshire Borough in the County of Warwickshire. Note that the Royal Mail record the post code of the water tower as CV9 3ER rather than DE12 7AP.

Within Hinckley and Bosworth Borough Roe House Lane is recorded on the official legal record, the Definitive Map of public rights of way (PRoW) as Byway Open to All Traffic (BOTAT) Q4a. In NW Leicestershire District PRoW Q4a is recorded as a Restricted Byway. The LHA understand that the lane is not included on the Warwickshire Definitive Map, though under common law the 'hedge to hedge' presumption means public rights extend across the whole physical route.

A Byway Open to All traffic (BOTAT) is defined in law as *'a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used'*. When that category was introduced the same law stated *'Nothing in this section or section 53 shall ... oblige a highway authority to provide, on a way shown in a definitive map and statement as a byway open to all traffic, a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for the passage of vehicles.'* A Restricted Byway is in law a way over which there is a public right to

pass on foot, on horse-back, leading a horse and for vehicles other than mechanically-propelled vehicles (i.e. motor vehicles and motorbikes).

The whole of Roe House Lane / PRoW Q4a is an earth surfaced track. Numerous years ago the BOTAT section received a crushed stone surface but erosion and usage has caused that surface to degrade. In more recent years available resources have meant there has been no further work on the surface. So potholes and areas of bare earth are apparent on the BOTAT section and particularly on the section that is recorded as Restricted Byway. The earth surface of this route attracts use by off-roaders with 4x4 vehicles, quad bikes, or trail bikes.

Traffic on Restricted Byways is the remit of the police, working with Borough/District Councils as part of their anti-social behaviour remit, however in this case the LHA believe there has been little enforcement because of the lawful public vehicle use of the BOTAT section. However, if any development seeks to use the Restricted Byway section for site access, to do so lawfully the applicants must establish what are the private rights of way relating to this property, which may be recorded within deeds and conveyances for the areas of land involved.

Maintenance of hedges along the lane is the responsibility of whoever owns the land for which the hedges are the physical boundaries. Under common law the owners of adjoining fields own any ditches beside a lane and are responsible for maintaining such watercourses. The LHA is not the landowner of most highways (including a track such as Q4a) but it does have legal oversight of the surface and usability of the route as a public way.

The submitted Supporting Statement records that *“To maintain access, the unbound track from Roe House Lane has been patched using aggregate.”* It is a requirement of planning law that any laying any bound, sealed surface would require planning permission and the LHA's agreement in terms of the construction specification. Each of the three affected LPAs may need to be consulted to clarify the situation. Also, outside of the land owned by the developer, written agreement should be secured from the owner or presumed owner of the sub-soil beneath the relevant section of highway. Owner details need to be checked with the Land Registry. Adjacent to the water tower curtilage where it is a BOTAT, the sub-soil of the lane is included in the extent of the title deed that comprises the fields east of the site. On the Restricted Byway section the Land Registry index map shows no recorded owner(s). So that may be that is covered by the 'ad medium filum' presumption where the owner(s) of the adjoining land own the sub-soil up to the centre line of the track.

In addition, during construction work any restricting of public use of the lane requires authorising by a Temporary Traffic Regulation Order for which an application should be made at least 12 weeks before the restriction is required. LHA guidance is at: <https://www.leicestershire.gov.uk/roads-and-travel/road-maintenance/roadworks-closures-and-diversions>.

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

Transport Sustainability

The development is not served by footway links to the nearest bus stops/ local amenities. This limits the opportunities for sustainable transport methods to be used to and from the site. The LHA notes that one of the LPA's reasons for refusal of the previous application was the sustainability of the site. The Planning Inspector agreed the site was not in a sustainable location. Given the nature of the proposals, which, in the view of the LHA are likely to generate more trips than a single dwelling, this should be given consideration by the Applicant.

Date Received
15 August 2025

Case Officer
Emma Peacock

Reviewer
BD

Date issued
5 September 2025