

## The LHA's role in the Highway Development Management process

The planning system stipulates what the Local Highway Authority (LHA) can comment on within the Highway Development Management (HDM) process. This includes:

- If the site is within an adopted Local Plan area, the presumption will be in favour of the development
- The cumulative impact of other development in the vicinity can only be considered if the other development already has planning permission
- Developers cannot be required to address existing problems
- Developers cannot be required to make the highway network better than it was without the development
- If the development doesn't worsen highway issues (e.g. congestion, accidents) the LHA can't object
- If the development does make the highway issue worse, but the developer provides measures to put it back to the existing level, the LHA can't object
- If the development increases traffic, but it is within acceptable levels for the road capacity, the LHA can't object
- Any measures that the developer is required to implement to mitigate the impact of their development must be:
  - necessary to make the development acceptable in planning terms
  - directly related to the development
  - fairly and reasonably related in scale and kind to the development.

When considering whether technical highway comments are required for appropriate planning applications the LHA must ensure that comments:

- are based on evidence
- are impartial and professional
- are a technical assessment of the impact of the development on the highway network (for instance in terms of capacity, safety and sustainability)
- take account of current regulatory and policy frameworks, such as the NPPF
- take account of previous judgements (case law)
- consider each planning application on a case-by-case basis.

Three key issues are considered when formulating the Authority's technical highway response:

- is the access safe & appropriate ?
- can the traffic be safely and appropriately accommodated on the highway network ?
- is the impact on the highway 'severe' after mitigation measures have been put in place ?

The LHA has three possible options for its technical highway response to the LPA:

- *request further information*, asking that a full response be deferred until the information is provided (it can also advise that the application is refused if the information is not available).
- *no highways objection to the proposal* e.g. if it has no detrimental effect on the highway or the effect could be mitigated by improvement works. Where the LHA considers that there is no impact on the highway 'standing advice' has been provided to the LPA. This advice enables the LPA to consider the highway implications of some minor applications without the need for formal consultation with the LHA.
- *advise that the application should be refused, on the grounds of one or more 'severe impacts' on the highway or inadequate highway evidence*. The LHA uses evidence to come to this decision - it also considers the likelihood of this advice being upheld by a planning inspector in an appeal.

Potentially, the county council's comments (advice) could be tested at an appeal by an independent Planning Inspector. It must therefore be able to demonstrate to a Planning Inspector that its technical highway advice is supported by evidence, rather than perception or having been influenced by others. As such, the county council must remain impartial and professional - it cannot act as an advocate or objector to proposed development on behalf of others, it cannot comment on wider issues (not technical highway issues) and it cannot offer unsubstantiated opinions.

The reason for this is that if an applicant appealed against a decision that was based on the LHAs highways advice and the Planning Inspector found that the LHA acted 'unreasonably', the costs could be awarded against the LHA. These costs could be considerable, including legal fees and compensation for any losses. Any additional costs would, in practice, be borne by Leicestershire residents and could impact on the services that the council could provide. For this reason it is important that technical highway comments are provided in accordance with the criteria set out above.

If individuals want to object to, or support, a planning application they should contact the relevant LPA and not county council officers. The LPA will consider all comments that it receives (some of which may conflict with each other) and come to a balanced decision, having taken the various comments, evidence, regulations, guidance and other factors into account.