

**DATED** **2023**

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- (1) **WARRINGTON BOROUGH COUNCIL**
- (2) **JOHN MASSEY CROSS AND ROBERT KENNETH CROSS**
- (3) **STEPHEN HARRY SINKER & JANE SUSAN SINKER AND NIGEL PHILIP SINKER & CHRISTINE SINKER**
- (4) **NIGEL PHILIP SINKER & CHRISTINE SINKER**
- (5) **BARCLAYS SECURITY TRUSTEE LIMITED**
- (6) **EMERALD 22 LLP**
- (7) **MERSEY GATEWAY ENVIRONMENTAL TRUST**

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## **AGREEMENT**

Pursuant to section 106 Town and Country Planning Act 1990 relating to land to the west of Junction 20 of the M6 Motorway, and Junction 9 of the M56 Motorway and to the south of, Grappenhall Lane/Cliff Lane (known as Six:56 Warrington) Grappenhall, Warrington

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**THIS AGREEMENT** is made as a DEED the  
**PARTIES**

day of

2023

- (1) **WARRINGTON BOROUGH COUNCIL** of Town Hall, Sankey Street, Warrington WA1 1UH (the **Council**)
- (2) **JOHN MASSEY CROSS** of Cliff Lane Farm, Cartridge Lane, Grappenhall, Warrington WA4 4SH and **ROBERT KENNETH CROSS** of 7 Cartridge Lane, Grappenhall, Warrington WA4 4SH (the **First Owner**)
- (3) **STEPHEN HARRY SINKER & JANE SUSAN SINKER** of Bradley Hall Farm, Cliff Lane, Grappenhall, Warrington WA4 4SL and **NIGEL PHILIP SINKER & CHRISTINE SINKER** of Bungalow, Bradley Hall Farm, Cliff Lane, Grappenhall, Warrington WA4 4SL (the **Second Owner**)
- (4) **NIGEL PHILIP SINKER & CHRISTINE SINKER** of Bungalow, Bradley Hall Farm, Cliff Lane, Grappenhall, Warrington WA4 4SL (the **Third Owner**)
- (5) **BARCLAYS SECURITY TRUSTEE LIMITED** (Co. Regn. No. 10825314) whose registered office is at 1 Churchill Place, London E14 5HP (the **Mortgagee**)
- (6) **EMERALD 22 LLP** (Co. Regn. No. OC440096) whose registered office is Grand Buildings 1-3 Strand, Trafalgar Square, London, WC2N 5HR, (the **Developer**)
- (7) **MERSEY GATEWAY ENVIRONMENTAL TRUST** (Co. Regn. No. 07379879) of Forward Point, Tan House Lane, Widnes, Cheshire, WA8 0SL (**Mersey Gateway Environmental Trust**)
- (8)

#### **INTRODUCTION:**

- (A) The Council is the local planning authority for the purposes of the Act for that part of the Site as shown edged red on Plan 5. The remainder of the Site shown hatched green is situated within the area of which Cheshire East is the Local Planning Authority.
- (B) The First Owner is the freehold owner of part of the Site as set out in more detail in Schedule 4.
- (C) The Second Owner is the freehold owner of part of the Site as set out in more detail in Schedule 4.
- (D) The Third Owner is the freehold owner of part of the Site as set out in more detail in Schedule 4.
- (E) The Mortgagee has an interest in part of the Site by virtue of the Legal Charge and as set out in more detail in Schedule 4.
- (F) The Developer intends to facilitate the Development on the Site in accordance with the Planning Permission.
- (G) Mersey Gateway Environmental Trust provide innovative environmental management within the Upper Mersey Estuary and surrounding natural green spaces, protecting and improving this special area for the benefit of wildlife and people and are a party to this Deed to facilitate the provision of offsite mitigation for compensatory bird habitat.
- (H) The Planning Application is a cross-boundary application for Planning Permission. Langtree PP & Panattoni submitted the Planning Application to the Council which was

received by the Council on 5 April 2019 and validated on 15 May 2019. The Planning Application seeks Planning Permission for the Development on the Site.

- (I) An identical planning application was submitted to Cheshire East Council (reference number 19/1685M) ("Cheshire East Application"). The Cheshire East Application was not subject to call-in by the Secretary of State pursuant to powers contained in section 77 of the Act and on 19 May 2022 conditional planning permission was granted for the Cheshire East Application ("Cheshire East Planning Permission").
- (J) On 10 March 2022 the Council resolved to grant planning permission for the Development subject to conditions and the completion of a Section 106 Agreement and a direction by the Secretary of State not to call in the Planning Application pursuant to powers contained in section 77 of the Act.
- (K) Notification was given by way of letter on 22 November 2022 that the Secretary of State had directed that the Planning Application to be referred to him for his determination instead of being dealt with by the Council as local planning authority.
- (L) The Call-In Planning Application is awaiting determination by the Secretary of State and the Owner wishes to enter into the planning obligations herein specified with the intention that if the Secretary of State grants Planning Permission pursuant to the Planning Application the Council will be able to enforce the planning obligations pursuant to Section 106 of the Act.
- (M) The Council is satisfied that the obligations in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development, and fairly and reasonably related in scale and kind to the Development.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby prescribed to them:

**The Act**

the Town and Country Planning Act 1990 as amended;

**Biodiversity Net Gain Assessment**

The biodiversity calculation assessing the impact of the Development on the environment carried out in general accordance with the approved Plan 2 and the outline 4.0 biodiversity net gain assessment;

**Biodiversity Net Gain Strategy**

The strategy demonstrating how the Development mitigates and delivers a minimum of 10% biodiversity net gain on the Land being bio diversity net gain that includes the Ecological Mitigation Area but is in addition to but separate from the Upper Moss Side bird mitigation as informed by the Biodiversity Net Gain Assessment and is to be maintained in accordance with the Landscape and Ecological Management Plan;

**Bird Habitat Contribution**

the sum of £232,096.48 (two hundred and thirty two thousand and ninety six pounds and forty eight pence) to be paid to the Council and transferred by the Council to Mersey Gateway Environmental Trust and utilised for the Bird Mitigation Measures;

**Bird Mitigation Measures**

the provision of offsite mitigation for compensatory bird habitat for lapwing, starling and skylark at Upper Moss Side (or such other suitable land as is agreed with the

Council) comprising of habitat creation and/or restoration of approximately 18 ha of land and the maintenance and management of the same for a period of 20 years by Mersey Gateway Environmental Trust;

**Bespoke Public Transport Service Contribution**

the sum of £600,000 (six hundred thousand pounds) to be utilised towards the provision of a bespoke public transport service to meet the needs of the employees of the final occupiers of the Employment Element of the Development with the purposes of connecting the Development with the wider area;

**Bradley Hall Farmhouse**

the Bradley Hall farmhouse and other curtilage buildings currently used for residential purposes (Use Class C3) as shown for indicative purposes only shaded purple/lilac on Plan 4;

**Call-In Planning Application**

the call in of the Planning Application for determination by Secretary of State under reference APP/M0655/V/22/3311877;

**Commencement of Development**

the carrying out on the Site or any part thereof by any party of any material operation begun in accordance with the provisions of section 56(4) of the Act pursuant to the Planning Permission other than any works of demolition of a building or site clearance or remediation works, preliminary drainage works, archaeological works, site or soil investigation, erection of temporary site huts, erection of temporary hoardings or fences, treatment and/or removal of any demolition material pursuant to the Planning Permission and the words “**Commence**” and “**Commenced**” shall be construed accordingly;

**Committed**

the amount which the Council has allocated for expenditure relevant to the purpose for which the sum was paid and such amount has been authorised by the relevant committee or Council member or Council officer or has contracted to expend where such contract provides for payment contingent on the provision of works and/or services and/or supplies;

**Contributions**

together the Bird Habitat Contribution, Bespoke Public Transport Service Contribution, the Footway/Cycleway Contribution and the Travel Plan Contribution and the word “**Contribution**” shall be construed accordingly;

**Development**

the Outline application (all matters reserved except for access) comprising the construction of up to 287,909m<sup>2</sup> (gross internal) of employment floorspace (Use Class B8 and ancillary B1(a) offices), demolition of existing agricultural outbuildings and associated servicing and infrastructure including car parking and vehicle and pedestrian circulation, alteration of existing access road into site including works to the M6 J20 dumbbell roundabouts and realignment of the existing A50 junction, noise mitigation, earthworks to create development platforms and bunds, landscaping including buffers, creation of drainage features, electrical substation, pumping station, and ecological works, accompanied by an Environmental Statement pursuant to the Planning Permission;

**Ecological Mitigation Area**

the ecological mitigation area shown cross hatched on Plan 2 [the detail and provision of which is to be agreed in accordance with Paragraph 8 of Schedule 1];

**Ecological Mitigation Measures**

the ecological mitigation measures in respect of the Ecological Mitigation Area to include but not be limited to details of any new hard and soft landscaping features including plant species and locations and new habitats including new ponds and timescales for the Implementation of any ecological mitigation measures;

**Employment Element**

the individual operators of up to 287,909m<sup>2</sup> (gross internal) of employment floorspace within Use Class B8 and including ancillary B1(a) arising out of the Development;

**Expert**

an independent person appointed in accordance with the provisions of clause 13 to determine a dispute;

**Footway/Cycleway Contribution**

the sum of £400,000 (four hundred thousand pounds) to be utilised for the extension of footway/cycleway infrastructure to be provided by the Council within the adopted highway boundary west to the Broad Lane roundabout and then south to the junction of Grappenhall Lane/Barleycastle Lane;

**Framework Travel Plan**

the updated travel plan prepared by Curtins and dated 5 June 2020 as submitted to the Council;

**Index**

All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation or any successor organisation or any successor to that index from time to time or if such index ceases to be published or is otherwise unavailable for use such alternative basis for indexation as may be determined by the Council most closely comparable to it;

**Interest**

Interest at 4% (four percent) above the base rate of Barclays Bank Plc from time to time;

**Land**

the land against which this Deed may be enforced shown edged red for indicative purposes only Plan 1;

**Landscape and Ecological Management Plan ("LEMP")**

the management plan detailing the management for the areas identified in the Biodiversity Net Gain Strategy to deliver the targeted net gain. The content of the LEMP to include the following:

- a) Description and evaluation of features to be managed
- b) Ecological trends and constraints on Site that might influence management
- c) Aims and objectives of management
- d) Appropriate management options for achieving aims and objectives

- e) Prescriptions for management actions
- f) Preparation of a work schedule
- g) Reviews in conjunction with each reserved matters approval and thereafter at no greater than five yearly intervals
- h) Details of the body or organisation responsible for implementation of the plan
- i) Ongoing monitoring and remedial measures
- j) Details of the legal and funding mechanism(s) by which the long term implementation of the plan, for a minimum of 30 years, will be secured by the developer with the management body(ies) responsible for its delivery
- k) Where the results from monitoring show that conservation aims and objectives of the LEMP are not being met, how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity and landscape objectives of the originally approved scheme;

#### **Local Employment Scheme**

the scheme to be provided by the Owner to the Council to include:

- a) Details of how the initial staff/employment opportunities at the Development will be advertised and how liaison with the Council and other bodies will take place in relation to maximising the access of the local workforce within the borough of Warrington to information about employment opportunities;
- b) Details of how sustainable training opportunities will be provided for those recruited to fulfil staff / employment requirements including the provision of apprenticeships or an agreed alternative;
- c) A procedure setting out criteria for employment, and for matching of candidates to the vacancies;
- d) Measures to be taken to offer and provide college and/or work placement opportunities at the Development to students within the locality;
- e) Details of the promotion of the Local Employment Scheme and liaison with contractors engaged in the construction of the Development to ensure that they also apply the Local Employment Scheme so far as practicable having due regard to the need and availability for specialist skills and trades and the programme for constructing the Development;
- f) A procedure for monitoring the Local Employment Scheme and reporting the results of such monitoring to the Local Planning Authority including details of the origins qualifications numbers and other details of candidates; and
- g) A timetable for implementation of the Local Employment Scheme;

#### **Monitoring Fee**

£2,160 (two thousand, one hundred and sixty pounds) towards the Council's reasonable costs of monitoring compliance with the obligations in this Deed;

**Occupation**

occupation of the Development for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to the provision of security and "Occupied" and "Occupy" shall be construed accordingly;

**Owner**

together the First Owner, Second Owner and Third Owner;

**Phase**

a phase of the Development;

**Plan 1**

the plan marked Plan 1 showing the Land attached hereto;

**Plan 2**

the plan with drawing reference 16-184 P111 Rev I showing the Ecological mitigation Area cross hatched marked Plan 2 attached hereto;

**Plan 3**

the plan marked Plan 3 indicatively showing Upper Moss Side edged red attached hereto;

**Plan 4**

the plan marked Plan 4 showing Bradley Hall Farnhouse for indicative purposes only shaded purple/lilac attached hereto;

**Plan 5**

The plan marked Plan 5 showing the Site edged red attached hereto;

**Plan 6**

The plan marked Plan 6 showing the three arable fields in accordance with paragraph 7 in Schedule 1;

**Planning Application**

the application for Planning Permission under reference number 2019/34799;

**Planning Permission**

the planning permission granted by the Secretary of State pursuant to the Call-In Planning Application;

**Secretary of State**

Secretary of State for Levelling Up, Housing and Communities;

**Site**

The land shown edged red on Plan 5 comprising the entire development site and described in Schedule 4;

**Travel Plan**

the final travel plan to be based upon the Framework Travel Plan in accordance with Section 7 of the Framework Travel Plan to be provided by the Owner to the Council in accordance with Schedule 1 to this Deed and to include the first completed Travel Plan Survey. The Travel Plan is to be monitored by annual monitoring reports to be produced by the Owner and provided to the Council, following the receipt of the Travel Plan for a period of [five years];

**Travel Plan Contribution**

the sum of £50,000 (fifty thousand pounds) to monitor the delivery and operation of a Council-led strategic Travel Plan for the Development to promote and support sustainable travel initiatives for future occupiers;

**Travel Plan Representative**

the person appointed by the Owner to have the day to day responsibility of managing and maintaining the Travel Plan in accordance with Section 7 of the Framework Travel Plan. A Travel Plan Representative to be appointed for each Phase of the Development;

**Travel Plan Surveys**

the surveys to be carried out by the Owner in accordance with Section 7 of the Framework Travel Plan and Schedule 1 to this Deed with the intention of enabling analysis to be undertaken to establish final targets associated with each Phase of the Development and to provide information on the reasons for that modal split and identify any measures that may encourage a modal shift. The results of the first Travel Plan Survey to be incorporated into the Travel Plan. The first full Travel Plan Survey will be carried out once the site has been operational for 6 months. The results shall be compared to the results discussed within Framework Travel Plan to show whether the targets are being met, the targets should be assessed and altered accordingly (if necessary) every two years from the date the first Travel Plan Survey [for a period of five years] and “**Travel Plan Survey**” shall be construed accordingly.

**Upper Moss Side**

the area shown edged red for indicative purposes only on Plan 3;

**Working Day**

any day (apart from Saturday, Sunday, Christmas Day, Good Friday and any statutory bank holiday or other day during the Christmas period on which the Council’s offices are closed to the public) on which clearing banks in the City of London are open for the transaction of ordinary business and “Working Days” shall be construed accordingly.

**2. INTERPRETATION**

Unless the context otherwise requires:

- 2.1 Words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- 2.2 References to natural persons are to include corporations and vice versa;
- 2.3 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality) and reference to a company shall include any corporation or other body corporate wherever and however incorporated or established;



- 2.4 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction;
- 2.5 Any references in this Deed to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;
- 2.6 If any provisions of this Deed shall be held to be invalid illegal or unenforceable (for whatever reason), the validity legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected impaired or called into question;
- 2.7 References to “the parties” shall mean the parties to the Deed and reference to “party” shall mean any one of the parties;
- 2.8 The Interpretation Act 1978 shall apply to this Deed;
- 2.9 The clause and paragraph headings and the recitals are purely to aid interpretation, are for reference purposes only, and have no binding legal effect;
- 2.10 Wherever there is more than one person named as a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 2.11 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

### 3. **STATUTORY AUTHORITY AND LEGAL EFFECT**

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to this Deed.
- 3.2 The covenants, restrictions and requirements under this Deed create planning obligations pursuant to Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land.
- 3.3 The obligations of the Owner in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council as local planning authority.
- 3.4 To the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Act, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 1 of the Localism Act 2011 and all other enabling powers.
- 3.5 Subject to clause 3.6, the Owner covenants with the Council to the intent that this Deed shall be enforceable without limits of time (other than as expressly provided in this Deed) against the Owner in respect of the Land and any person deriving title through or under the Owner to the Land or any part or parts of the Land as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 3.6 No person shall be bound by any obligations rights and duties contained in this Deed and/or be liable for any breach of a covenant and /or obligation contained in this Deed

after they shall have parted with all interest in the Land PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.

- 3.7 If the Planning Permission expires (within the meanings of sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of Development, this Deed shall forthwith determine and cease to have effect (insofar as it has not already been complied with).
- 3.8 Subject to Clause 3.11 nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 3.9 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act or any statutory instrument, order or bye-law in the exercise of its functions as a local authority.
- 3.10 The obligations shall not be enforceable against statutory undertakers in relation to any part or parts of the Land acquired by them for their statutory purposes or against anyone whose only interest in the Land is the benefit of an easement or covenant.
- 3.11 No obligation shall be construed as binding any individual purchaser (or his mortgagee) or lessee or tenant of any Employment Element to be constructed on the Land pursuant to the Planning Permission or against statutory undertakers in relation to any part or parts of the Land acquired by them for their purposes or for electricity sub-stations, gas governor stations or pumping stations or against anyone whose only interest in the Land or any part of it is in the nature of an easement or covenant.
- 3.12 If the Council agrees pursuant to an application under Section 73 of the Act to any variation or release or any condition contained in the Planning Permission or if any condition is varied or released following an appeal under Section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the Council or the Secretary of State or Inspector in their determination of such appeal indicate that consequential amendments are required to this Deed to reflect the impact of Section 73 and in such circumstances a separate deed pursuant to Section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

#### **4. CONDITION PRECEDENT**

- 4.1 The obligations contained in this Deed shall not be enforceable by the Council until the grant of the Planning Permission by Secretary of State other than the provisions of clause 5.1 and 5.2.

#### **5. COSTS**

- 5.1 The Developer agrees to pay to the Council on the signing of this Deed its reasonable costs of and incidental to the preparation and execution of this Deed amounting to £3,500.
- 5.2 The Owner agrees to pay to the Monitoring Fee to the Council prior to Commencement of Development.

**6. OBLIGATIONS**

- 6.1 The Owner covenants so as to bind the Land to comply with the obligations set out in Schedule 1.

**7. MORTGAGEE'S AND DEVELOPER'S CONSENT**

- 7.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of its mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.
- 7.2 The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed PROVIDED THAT the Developer shall otherwise have no liability under this Deed (save for Clause 5) unless and until it acquires a freehold or leasehold interest in the Land (or part thereof) in which case it too will be bound by the obligations.

**8. THE COUNCIL'S COVENANTS AND THE MERSEY GATEWAY ENVIRONMENTAL TRUST'S COVENANTS**

- 8.1 The Council covenants with the Owner as set out in Schedule 2.
- 8.2 The Mersey Gateway Environmental Trust covenants with the Council and the Owner as set out in Schedule 3.

**9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 9.1 For the purposes of the Contract (Rights of Third Parties) Act 1999 nothing in this Deed shall confer on any third party any right to enforce any benefit or any terms of this Deed.

**10. LOCAL LAND CHARGES**

- 10.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and may be registered as such against the Land
- 10.2 If the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 6 of the Local Land Charges Rules 2018 or any statutory re-enactment thereof and the Council shall cancel the registration.

**11. NOTICES**

- 11.1 Any notice consent or approval given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or special delivery to the recipient at the address stated in this Deed or such other address for service as a party to be served may have previously notified in writing.
- 11.2 In the case of the Council, the address for service shall be upon the Council's Development Management Services Manager at the address aforesaid or such other

person or such other address for service as shall have been previously notified by the Council to the Owner.

11.3 Each notice served in accordance with this clause shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter 48 hours after posting.

11.4 Notices shall not be sent by email or DX.

## 12. RESOLUTION OF DISPUTE

12.1 One party may by serving notice on all the other parties ("**the Notice**") require a dispute to be referred to an expert for determination.

12.2 The Notice must specify:

12.2.1 the nature, basis and brief description of the dispute;

12.2.2 the clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and

12.2.3 the proposed Expert.

12.3 The Expert may be agreed upon by the parties and in the absence of such agreement within 10 Working Days of the date that the Notice is issued pursuant to Clause 12.1 either party may request that the following nominate the Expert at their joint expense:

12.3.1 if such dispute relates to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;

12.3.2 if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;

12.3.3 if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the Expert;

12.3.4 if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert; and

12.3.5 in all other cases, the President of the Law Society to nominate the expert as he thinks appropriate including joint experts.

12.4 If an Expert nominated or appointed pursuant to this Clause 12 shall die or decline to act another Expert may be appointed in their place in accordance with the provisions of Clause 12.8. The Expert will be appointed subject to an express requirement that they reach their decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 (thirty) Working Days from the date of the notice of their appointment which is served on the parties pursuant to Clause 12.

12.5 Notice in writing of the appointment of the Expert pursuant to this Clause 12 shall be given by the Expert to the parties and he shall invite each of the parties to submit to him within 10 (ten) Working Days written submissions and supporting material and

will afford to each of the said parties an opportunity to make counter submissions within a further 5 (five) Working Days in respect of any such submission and material.

- 12.6 The Expert shall act as an expert and not as an arbitrator. They shall consider any written representation submitted to them within the period specified in Clause 12 and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with their own judgement.
- 12.7 The Expert shall give notice of their decision in writing and their decision will (in the absence of manifest error, error of law and/or fraud) be final and binding on the Parties hereto.
- 12.8 If for any reason the Expert fails to make a decision and give notice thereof in accordance with this Clause 12 the party or parties may apply to the respective person at 12.3.1 to 12.3.5 for a substitute to be appointed in place of the existing Expert (which procedure may be repeated as many times as necessary).
- 12.9 The Expert's costs shall be in the Expert's award or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.
- 12.10 Nothing in this clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

### 13. **CHANGE IN OWNERSHIP**

- 13.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership or creation of a new interest of the Owner in the Land such change in ownership occurring before all the obligations under this Deed have been discharged, such notice to give details of the transferee's/lessee's full name and registered office (if a company or usual address if not) together with the area of the land transferred by reference to a plan.

### 14. **COMMUNITY INFRASTRUCTURE LEVY**

- 14.1 If after the date of this Deed the Council implements the provisions relating to Community Infrastructure Levy pursuant to the Planning Act 2008 as amended and has a charging schedule that has been approved and taken effect and as a consequence thereof any obligations under this Deed or under any condition attached to the Planning Permission change so that the Owner must pay a sum of money to any person (whether HM Government or to the Council or otherwise) which would duplicate, add to or overlap with any obligation of a party under this Deed then the parties agree that the terms of this Deed may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Deed as at the date that they are entered into.
- 14.2 If having regard to the Community Infrastructure Levy Regulations 2010 No. 948 as amended it is declared that any one of the Contributions is unlawful or invalid or should not have been taken into account in the determination of the Planning Application by a court of competent jurisdiction then the clauses of this Deed relating to the relevant Contribution (s) shall be severed in accordance with clause 2.6 of this Deed.

### 15. **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable. If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the

party making the payment shall pay the other an amount equal to that VAT as additional consideration in return for a valid VAT invoice.

**16. INDEXATION**

- 16.1 Unless otherwise provided for, any sum referred to as due in Schedule 1 shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid.

**17. INTEREST**

- 17.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

**18. WAIVER**

- 18.1 No waiver (whether expressed or implied) by the Council of any breach or default in observing or performing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**19. JURISDICTION**

- 19.1 This Deed is governed by and interpreted in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England.

**20. DELIVERY**

- 20.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**21. REASONABLENESS**

- 21.1 Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

## **SCHEDULE 1**

### **Obligations of the Owner**

The Owner covenants with the Council as follows:

**1. FOOTWAY/CYCLEWAY CONTRIBUTION**

- 1.1 To pay the Footway/Cycleway Contribution to the Council in full prior to Occupation and not to Occupy the Development until the Footway/Cycleway Contribution has been paid in full to the Council.

**2. BESPOKE PUBLIC TRANSPORT SERVICE CONTRIBUTION**

- 2.1 To pay the Bespoke Public Transport Service Contribution to the Council in the following tranches:
- 2.1.1 50% prior to Commencement of Development and not to Commence Development until this has been done; and
- 2.1.2 The final 50% prior to Occupation and not to Occupy the Development until the Bespoke Public Transport Service Contribution has been paid in full to the Council.

**3. TRAVEL PLAN CONTRIBUTION**

- 3.1 To pay the Travel Plan Contribution in full prior to Occupation and not to Occupy the Development until the Travel Plan Contribution has been paid in full to the Council.

**4. TRAVEL PLAN SURVEYS**

- 4.1 To carry out the first Travel Plan Survey within six months from the date of Occupation.
- 4.2 To carry out a further Travel Plan Survey (if necessary) on the second anniversary of the first Travel Plan Survey being carried out and to provide the Council with the findings.
- 4.3 To carry out a further Travel Plan Survey (if necessary) on the fifth anniversary of the first Travel Plan Survey being carried out and to provide the Council with the findings.

**5. TRAVEL PLAN**

- 5.1 To submit the Travel Plan to the Council within 90 Working Days of the first Travel Plan Survey being carried out.
- 5.2 To provide the Council with annual monitoring reports on the first, second, third and fourth anniversaries of the submission of the Travel Plan (unless otherwise agreed with the Council).

**6. CESSATION OF USE OF BRADLEY HALL FARMHOUSE**

- 6.1 Not to Commence Development other than development in connection with highway work the detail of which is shown on drawing numbers 64076-CUR-00-XX-DR-TP-75002-P02 (Western Access Roundabout); 64076-CUR-00-XX-DR-TP-75001-P03 (Eastern Access Roundabout); 64076-CUR-00-XX-DR-TP-0502-P02 (Cliff Lane Roundabout Proposed Improvements); 64076-CUR-00-XX-DR-TP-75014-P02 (Pedestrian and Cycle Improvements) until the use of Bradley Hall Farmhouse and curtilage buildings for residential purposes (Use Class C3) has permanently ceased.

**7. BIRD HABITAT CONTRIBUTION**

- 7.1 Not to Commence Development (except works on access) in the three arable fields bordering Grappenhall Lane as shown on Plan 6 until the Bird Habitat Contribution has been paid in full to the Council.

- 7.2 Not to Occupy any Employment Element on the Land until the Bird Mitigation Measures have been implemented.

## **8. ECOLOGICAL MITIGATION AREA**

- 8.1 The Owner shall not Commence Development on the Land until it has submitted to Cheshire East Council the details required pursuant to Condition 7 of the Cheshire East Planning Permission relating specifically to the Ecological Mitigation Measures and the LEMP and provided a copy of the same to the Council.
- 8.2 The Owner shall not Commence Development until Cheshire East Council has approved in writing the details submitted pursuant to Condition 7 of the Cheshire East Planning Permission relating specifically to the Ecological Mitigation Measures and the LEMP and the Council have been provided with a copy of the decision.
- 8.3 Once the Ecological Mitigation Area has been agreed in accordance with this Paragraph 8, the Owner will provide the Ecological Mitigation Area in accordance with the approved details and agreed timescales.

## **9. LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN**

- 9.1 Prior to the Commencement of Development of any Phase the Landscape and Ecological Management Plan shall be submitted to the Council for written approval.
- 9.2 In the event that the Council refuse to approve the Landscape and Ecological Management Plan for each Phase in accordance with paragraph 3.1 of Schedule 2 to submit to the Council within ten Working Days of the refusal an amended Landscape and Ecological Management Plan for the respective Phase to address the reasons for refusal and to repeat this process until the Landscape and Ecological Management Plan is approved.
- 9.3 The Owner shall not Commence Development until the Council has approved in writing the Landscape and Ecological Mitigation Plan for first Phase.
- 9.4 The Development of each Phase shall be carried out and managed and maintained in accordance with the details contained within approved Landscape and Ecological Management Plan for each relevant phase.

## **10. LOCAL EMPLOYMENT SCHEME**

- 10.1 Prior to the Commencement of Development to submit the Local Employment Scheme to the Council for written approval.
- 10.2 In the event that the Council does not approve the Local Employment Scheme in accordance with paragraph 5.1 of Schedule 2 to submit to the Council within ten Working Days of the refusal an amended Local Employment Scheme to address the reasons for refusal and to repeat this process until the Employment Scheme is approved.
- 10.3 The Owner shall not Commence Development until the Local Employment Scheme has been approved in writing by the Council.
- 10.4 The Owner shall use reasonable endeavours to comply with the approved Local Employment Scheme.

## **11. TRIGGERS**



- The Owner covenants to notify the Council on the occurrence of each of the following
- 11.1 the submission of the details to Cheshire East Council pursuant to condition 7 of the Cheshire East Planning Permission;
  - 11.2 the implementation of the details approved by Cheshire East Council pursuant to condition 7 of the Cheshire East Planning Permission
  - 11.3 Commencement of Development
  - 11.4 Occupation of the Development

## **SCHEDULE 2**

### **Council's Covenants**

The Council covenants with the Owner as follows:

#### **1. CONTRIBUTIONS**

- 1.1 Not to use any part of the Bird Habitat Contribution other than for the purposes for which it was paid and furthermore the Council covenants to comply with paragraph 2 to this Schedule 2.
- 1.2 Not to use any part of the Bespoke Public Transport Service Contribution other than for the purposes for which it was paid and furthermore the Council covenants to provide the bespoke public transport service in accordance with the terms of this Deed.
- 1.3 Not to use any part of the Footway/Cycleway Contribution other than for the purposes for which it was paid and to provide the footway/cycleway infrastructure within prior to Occupation.
- 1.4 Not to use any part of the Travel Plan Contribution other than for the purposes for which it was paid.
- 1.5 In the event that any of the Bird Habitat Contribution, the Bespoke Public Transport Service Contribution, the Footway/Cycleway Contribution and the Travel Plan Contribution have not been spent or Committed for expenditure by the Council within twenty years following the date of receipt of the final payment of the relevant Contribution the Council shall refund to the Owner any part of the relevant Bird Habitat Contribution, Bespoke Public Transport Service Contribution, Footway/Cycleway Contribution and Travel Plan Contribution which has not been spent or Committed for expenditure, together with any accrued interest PROVIDED THAT this provision shall not apply to the Bird Habitat Contribution upon transfer of the contribution to the Merseyside Gateway Environmental Trust in accordance with paragraph 2.2 below.

#### **2. BIRD HABITAT CONTRIBUTION**

- 2.1 The Council covenants with the Owner and Mersey Gateway Environmental Trust to:
  - 2.1.1 transfer the Bird Habitat Contribution to the Mersey Gateway Environmental Trust within 30 Working Days of receipt of the payment in accordance with Paragraph 7 of Schedule 1.

#### **3. LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN**

- 3.1 Within 10 Working Days of receipt of any submitted Landscape and Ecological Management Plan from the Owner to confirm to the Owner in writing whether the submitted Landscape and Ecological Management Plan is approved. In the event that the submitted Landscape and Ecological Management Plan is not approved to specify the reasons why it has not been approved. To repeat this process in respect of any subsequent or amended Landscape and Ecological Management Plan submitted to the Council for approval until the Landscape and Ecological Management Plan is approved.

4. **LOCAL EMPLOYMENT SCHEME**

- 4.1 Within 10 Working Days of receipt of submitted Local Employment Scheme from the Owner to confirm to the Owner in writing whether the submitted Local Employment Scheme is approved. In the event that the submitted Local Employment Scheme is not approved to specify the reasons why it has not been approved. To repeat this process in respect of any subsequent or amended Local Employment Scheme submitted to the Council for approval until the Local Employment Scheme is approved.

### **SCHEDULE 3**

#### **Mersey Gateway Environmental Trust's Covenants**

The Mersey Gateway Environmental Trust covenant with the Council and the Owner as follows:

1. to use the Bird Habitat Contribution to establish the Bird Mitigation Measures and thereafter to maintain and manage for a period of 20 years.

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#### SCHEDULE 4

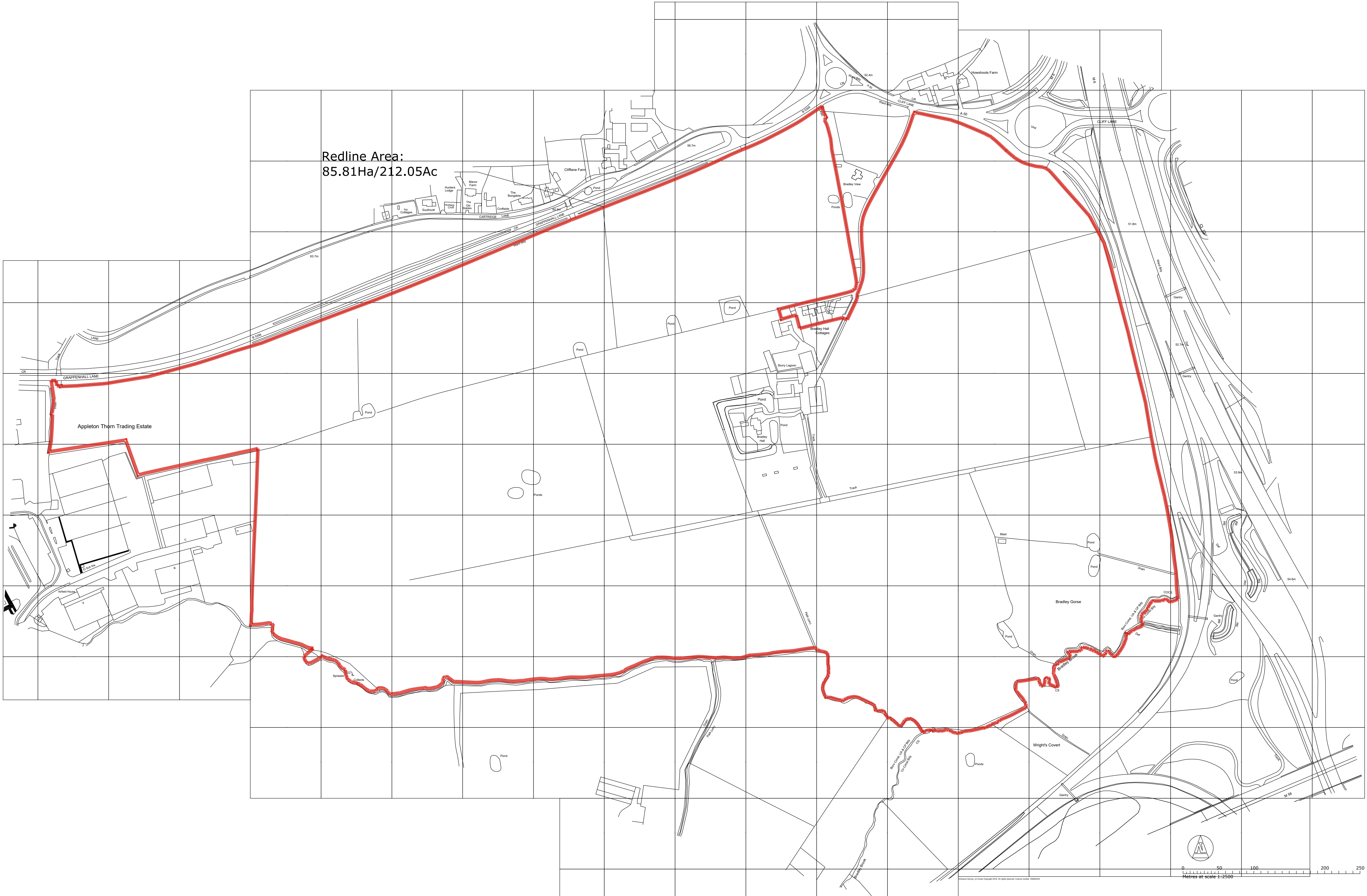
The Site - Land to the west of Junction 20 of the M6 Motorway, and Junction 9 of the M56 Motorway and to the south of, Grappenhall Lane/Cliff Lane (known as Six:56 Warrington) Grappenhall, Warrington

The Land Ownership Details for the Site are as follows:

	<u>Title Number</u>	<u>Freehold Interest</u>	<u>Charge</u>
1	CH590389	First Owner	
2	CH590390	First Owner	
3	CH648758	First Owner	
4	CH178040	Second Owner	Mortgagee by registered charge dated 29 May 1981
5	CH171196	Second Owner	Mortgagee by registered charge dated 29 May 1981
6	CH241028	Third Owner	

**PLAN 1**

DRAFT



Rev	Date	By	Description
A	24/05/22	MMS	Redline updated

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Six 56 Warrington  
S106 Plan  
CDE Reference

Drawn: MMS  
Team: MMS  
Scale: 1:2500 @ A1  
Project No:  
16-184

Drawing Status: Planning  
CAD Reference: 16-184-P005  
Date: 05/2022  
Dwg No:  
P005

Rev:  
A

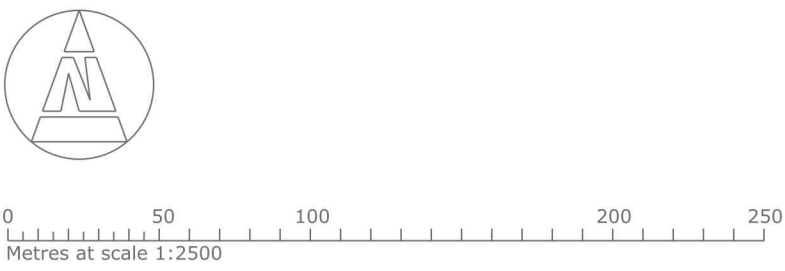
**PLAN 2**

DRAFT



Rev	Date	By	Description
H	02/03/2020	HR	Indicative Road Revised
I	05/03/2020	MMS	Annotation updated

Landscaping to proposed road improvements shown indicatively.



- Planning Boundary
- Strategic Landscaping. No new B8 buildings to be proposed in this area.
- Existing Trees To be Retained
- Watercourse
- South-North Open Green Corridor
- Watercourse 15m stand off zone
- Mitigation Area (Details to be agreed)
- Proposed Indicative Estate Road. (Any estate road traversing the green corridor east to west should be constructed & built into levels to minimise impact on views and setting of the SAM - Details to be agreed)
- Proposed Infrastructure Trees. (Refer to Layer Landscape Strategy)

Langtree

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Six 56, Warrington  
Green Infrastructure Parameters Plan  
CDE Reference  
Drawn: HR  
Team: MMS  
Scale: 1:2500 @ A1  
Project No: 16-184  
Dwg No: P111  
Rev: I  
Drawing Status: Planning  
CAD Reference: 16-184-P111  
Date: 03/20  
Dwg No: P111  
Rev: I



**PLAN 3**

DRAFT



River Mersey

River Mersey

Manchester Ship Canal

Moore Nature Reserve

Fresenius Kabi

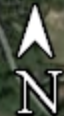
Lidl Runcorn Regional Distribution...

DHL Parcel UK Runcorn

Moore

Google Earth

1 km



**PLAN 4**

DRAFT

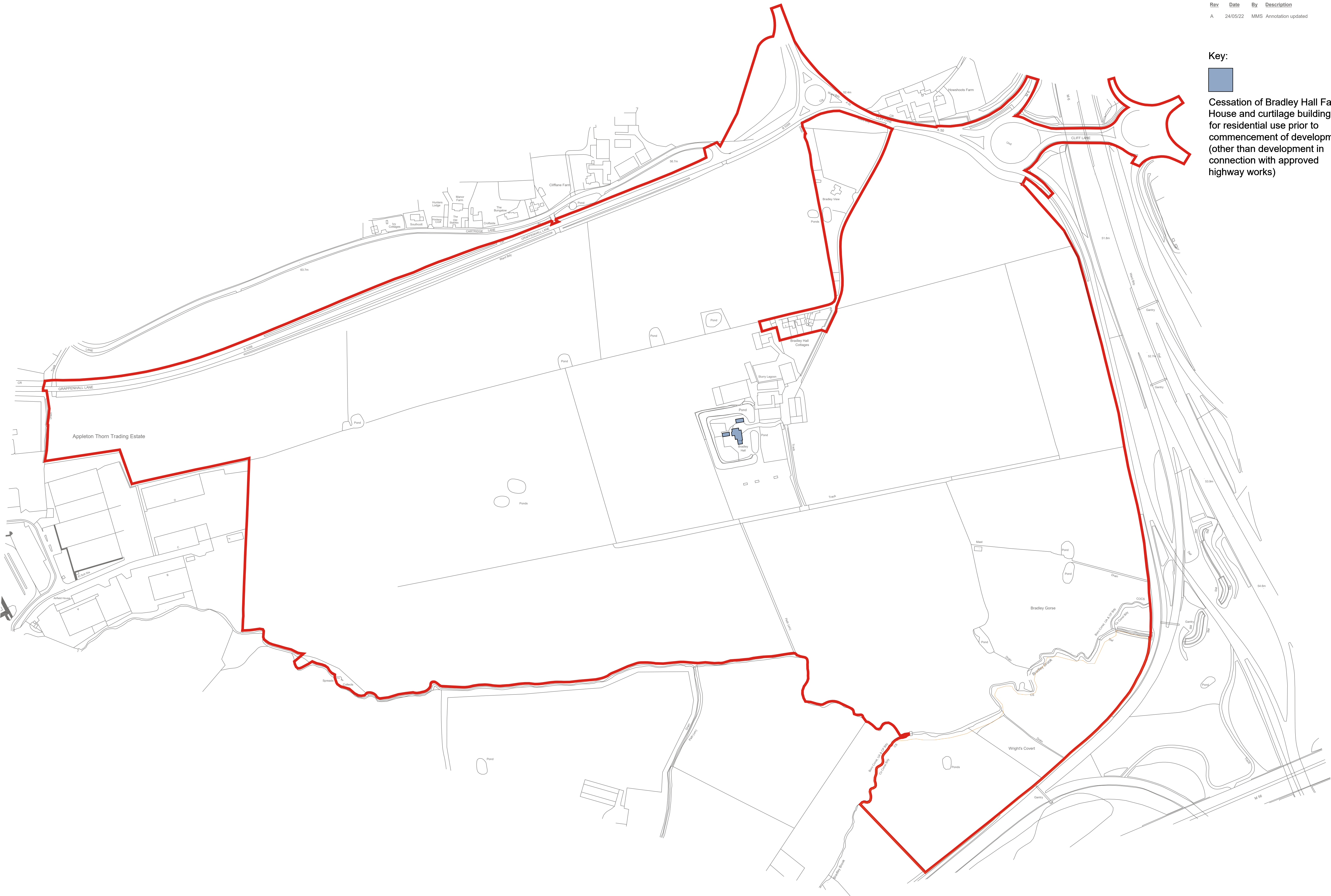


Rev	Date	By	Description
A	24/05/22	MMS	Annotation updated

Key:



Cessation of Bradley Hall Farm House and curtilage buildings for residential use prior to commencement of development (other than development in connection with approved highway works)



Langtree

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Six 56, Warrington  
Cessation of Residential Use Plan

CDE Reference

Drawn: MMS  
Team: MMS  
Scale: 1:2500 @ A1

Project No:  
16-184

Drawing Status: Planning  
CAD Reference: 16-184-P006  
Date: 05/22

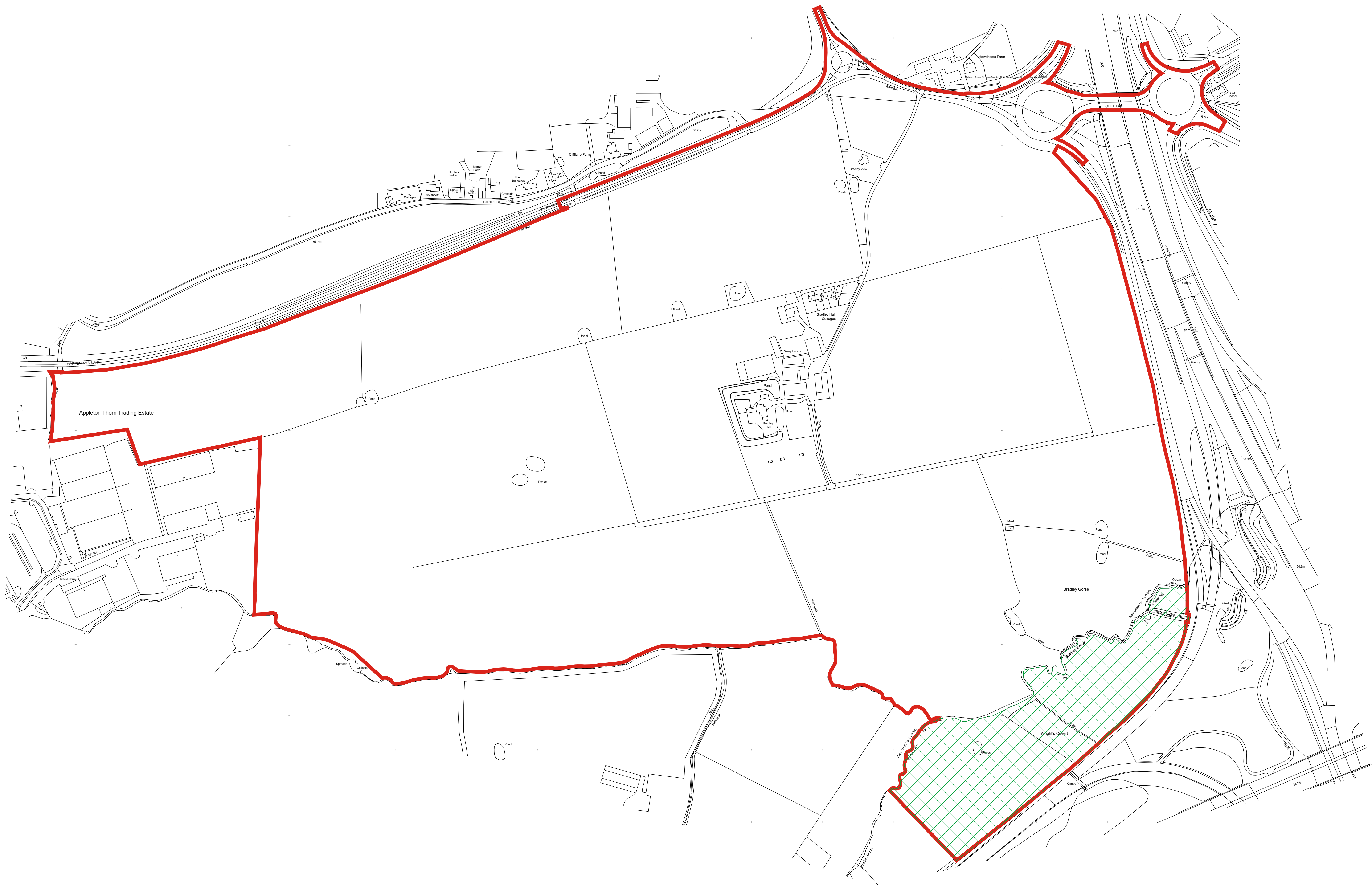
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P006

Rev:  
A

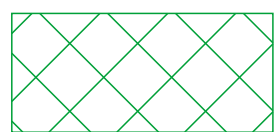
**PLAN 5**

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Rev Date By Description



Area within the Cheshire East  
Council Administrative boundary

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**Stephen George**  
**+Partners LLP**  
Architects + Masterplanners



Cliff Lane, Warrington  
Red Line Boundary Plan

CDE Reference

Drawn: JB  
Team: MHS  
Scale: 1:1000 @ A1

Project No:  
16-184

Drawing Status: Planning  
CAD Reference: 16-184-P002  
Date: 23/11/2017

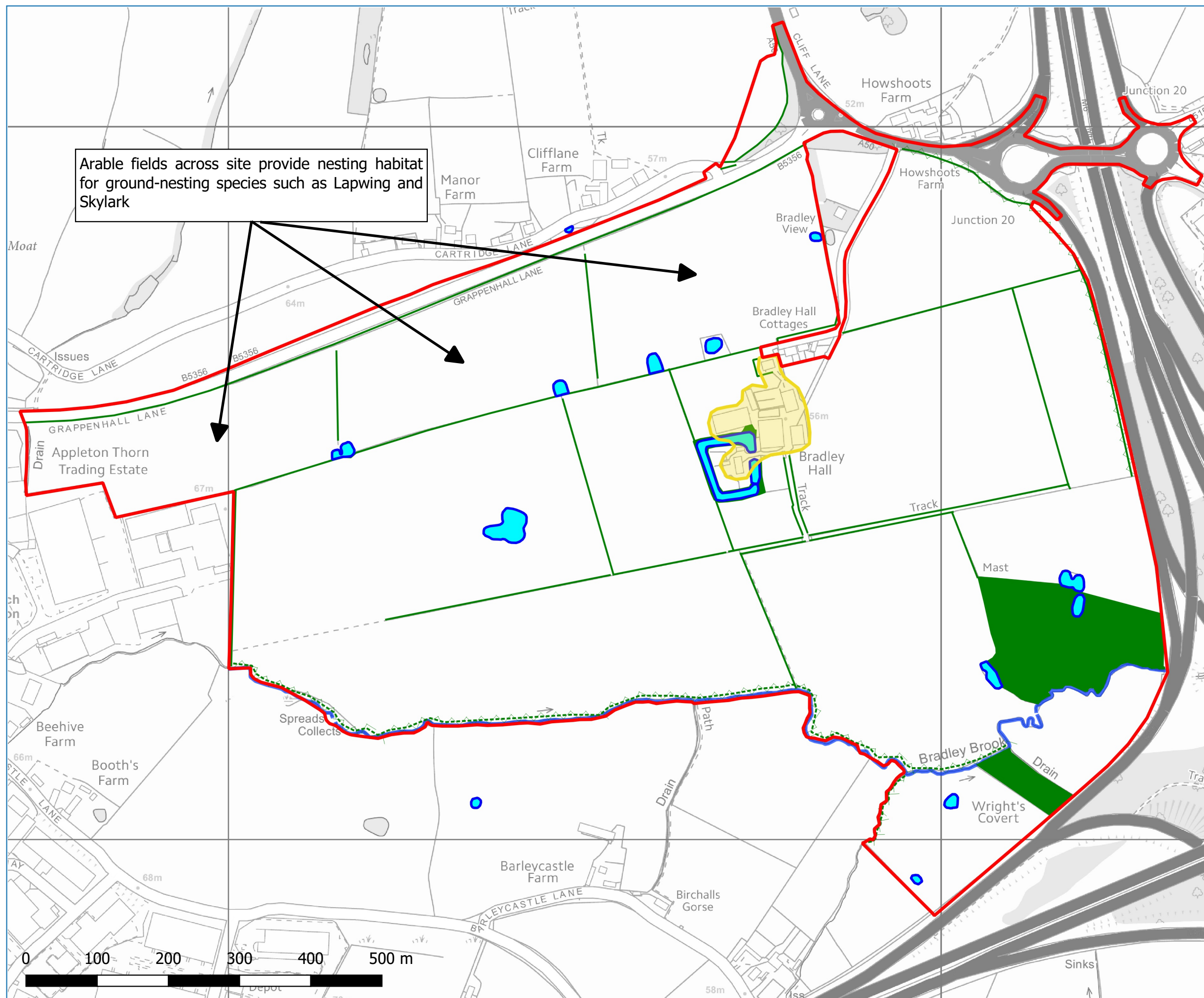
Dwg No:  
P002

Rev:  
-

**PLAN 6**

DRAFT





- Site Boundary
- Buildings with Bat and Barn Owl Potential
- Habitats of Local Importance
  - Ponds
  - Hedgerow species poor intact
  - Hedgerow species rich (intact)
  - Hedgerow species rich defunct
  - Semi-natural broad-leaved woodland
  - Flowing water



Project	Six56 Warrington
Drawing Title	Key Ecological Receptor Plan
Scale	As Shown (Approximate)
Drawing No.	10682/P12
Date	February 2019
Checked	JD/LJD



**IN WITNESS** whereof the Council, the Owner, the Mortgagee and the Developer have executed this Deed the day and year first before written

**THE COMMON SEAL** of )  
**WARRINGTON BOROUGH COUNCIL** )  
was hereunto affixed in the )  
presence of: )

.....  
Authorised signatory

Signed as a deed by )  
**JOHN MASSEY CROSS** )

.....  
John Massey Cross

In the presence of:

Signature of witness:-----

Name -----

Address:-----

-----

-----

-----

Occupation: -----

Signed as a deed by )

**ROBERT KENNETH CROSS** )

.....

Robert Kenneth Cross

In the presence of:

Signature of witness:-----

Name -----

Address:-----

-----

-----

-----

Occupation: -----

Signed as a deed by )

**STEPHEN HARRY SINKER** )

.....

Stephen Harry Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

-----

-----

-----

Occupation: -----

Signed as a deed by )

**JANE SUSAN SINKER** )

.....

Jane Susan Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

-----

-----

-----

Occupation: -----

Signed as a deed by )

**NIGEL PHILIP SINKER** )

.....

Nigel Philip Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

-----

-----

-----

Occupation: -----

Signed as a deed by )

**CHRISTINE SINKER** )

.....

Christine Sinker

In the presence of:

Signature of witness:-----

Name -----

Address:-----

-----

-----

-----

Occupation: -----

**Insert execution block for**

**BARCLAYS SECURITY TRUSTEE LIMITED**

**Insert execution block for  
EMERALD 22 LLP**

**Insert MGET execution block**