

DATED 21st December

2023

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) SANSOVINO DEVELOPMENTS LIMITED

(4) THE RIGHT HONOURABLE EDWARD RICHARD WILLIAM EARL OF DERBY DL

and

(5) PRESCOT BUSINESS PARK LIMITED

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**DEED OF VARIATION TO AN AGREEMENT MADE  
UNDER SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990**

relating to Land at Hatchfield Farm, Newmarket, Suffolk

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**SHOOSMITHS**

The XYZ Building  
2 Hardman Boulevard  
Spinningfields  
Manchester  
M33AZ

Ref. M-01036513

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December

THIS DEED OF AGREEMENT and DEED OF VARIATION is made on 21st ↑ 2023

## BETWEEN

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House, Western Way, Bury St Edmunds, Suffolk, IP33 3YU (the "**Council**");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX (the "**County Council**"); and
- (3) **SANSOVINO DEVELOPMENTS LIMITED** (company registration number 11886795) whose registered office is at Carlyle House, 78 Chorley New Road, Bolton, England, BL1 4BY (the "**Owner**");
- (4) **THE RIGHT HONOURABLE EDWARD RICHARD WILLIAM EARL OF DERBY DL** of The Estate Office, Knowsley, Prescot, Merseyside L34 4AG ("**First Mortgagee**"); and
- (5) **PRESCOT BUSINESS PARK LIMITED** (company registration number 0734556) whose registered office is at Mazars LLP, First Floor, Two Chamberlain Square, Birmingham, England, B3 3AX ("**Second Mortgagee**")

## BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Land is located and the local planning authority entitled to enforce the obligations contained in this Deed and is the successor council to Forest Heath District Council.
- (B) The County Council is the local education authority for the area within which the Land is situated and is also the highway authority for the area.
- (C) The Owner is the freehold owner of the parcel of the Land registered under title number SK394724 free from encumbrances that would prevent the Owner from entering into this Deed.
- (D) The Original Agreement was entered into in order to facilitate the grant of the Planning Permission.
- (E) The Original Agreement has been varied on four previous occasions.
- (F) The May 2019 Agreement contained an option agreement in addition to the variation to the Original Agreement.
- (G) It has become clear to the Parties that some of the obligations in the Original Agreement and May 2019 Agreement must now be varied in order for the Development to proceed.
- (H) The Parties hereto have further agreed to enter into this Deed to create planning obligations pursuant to section 106 of the 1990 Act and to amend further the Original Agreement and May 2019 Agreement on the terms set out herein.

Operative provisions:

## 1 INTERPRETATION

- 1.1 In this Deed, the following words and expressions have the following meanings:

<b>"Original Agreement"</b>	the planning obligation entered into pursuant to section 106 of the 1990 Act dated 30 April 2015 between (1) Forest
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Heath District Council, (2) Suffolk County Council, (3) The Right Honourable Edward Richard William Earl of Derby DL and (4) C. Hoare and Co as modified and varied by the May 2019 Agreement, the June 2019 Agreement, the August 2019 Agreement and the March 2023 Agreement ;

**“March 2023 Agreement”**

means the deed of variation made under the 1990 Act relating to development at Hatchfield Farm, Newmarket, Suffolk dated 9 March 2023 and entered into between (1) the Council, (2), the County Council, (3) the Owner, (4) the First Mortgagee and (5) the Second Mortgagee;

**“May 2019 Agreement”**

means the option agreement and deed of variation made under the 1990 Act relating to development at Hatchfield Farm, Newmarket, Suffolk dated 13 May 2019 and entered into between (1) the Council, (2) the County Council, (3) The Right Honourable Edward Richard William Earl of Derby and (4) C. Hoare and Co;

**“June 2019 Agreement”**

means the deed of variation made under the 1990 Act relating to development at Hatchfield Farm, Newmarket, Suffolk dated 3 June 2019 and entered into between (1) the Council, (2) the County Council, (3) The Right Honourable Edward Richard William Earl of Derby DL and (4) C. Hoare and Co;

**“August 2019 Agreement”**

means the deed of variation made under the 1990 Act relating to development at Hatchfield Farm, Newmarket, Suffolk dated 2 August 2019 and entered into between (1) the Council, (2), the County Council, (3) the Owner, (4) the First Mortgagee and (5) the Second Mortgagee;

**“Parties“**

means collectively the Council, the County Council, the Owner, the First Mortgagee and the Second Mortgagee;

**1.2 Where the context so requires:**

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;
- 1.2.2 references to any party or body in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.3 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.4 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;

- 1.2.5 any reference 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;
- 1.2.6 references to Clauses, paragraphs, and Schedules are references to clauses, paragraphs, and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement;
- 1.2.7 the headings and contents list are for reference only and shall not affect construction.

## **2 EFFECT OF THIS DEED**

- 2.1 This Deed is made pursuant to sections 106 and 106A of the 1990 Act, section 111 of LGA 1972, Section 1 of Localism Act 2011 and any other enabling powers and creates planning obligations for the purposes of section 106 of the 1990 Act enforceable by the Council and County Council as local planning authorities.
- 2.2 All words and phrases defined in the Original Agreement and May 2019 Agreement shall have the same meaning in this Deed save where varied by this Deed.
- 2.3 In all other respects the Original Agreement and May 2019 Agreement as varied by this Deed shall remain in full force and effect.

## **3 PLANNING OBLIGATIONS AND VARIATION OF ORIGINAL AGREEMENT**

- 3.1 The parties agree to vary the Original Agreement and May 2019 Agreement as set out in the Schedule hereto.
- 3.2 From and including the date of this Deed, the Original Agreement and May 2019 Agreement shall be read and constructed as modified and varied by the provisions set out in the Schedule.
- 3.3 The Original Agreement and May 2019 Agreement shall remain in full force and effect as though the provisions contained in this Deed had originally been contained in the Original Agreement and May 2019 Agreement.
- 3.4 The Original Agreement and May 2019 Agreement as varied by this Deed shall continue to apply to and bind the Land and the Development to be carried out pursuant to the Planning Permission.

## **4 REGISTRATION**

- 4.1 This Deed shall be registered as a Local Land Charge by the Council pursuant to Section 106(11) of the 1990 Act.
- 4.2 Upon receipt of a written request to the Council to confirm which obligations in the Original Agreement and this Deed have been discharged the Council will issue a letter of release and will place notes against the Local Land Charges Register entries relating to the Original Agreement and this Deed stating which obligations of the Original Agreement and this Deed no longer have effect.
- 4.3 A copy of this Deed shall also be placed on the Council's planning register.

## **5 COSTS OF THIS DEED**

- 5.1 Upon completion of this Deed the Owner shall pay:

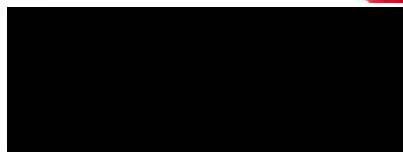


- 5.1.1 the Council's reasonable and proper legal costs of £1,000 in connection with the preparation, negotiation and completion of this Deed and the Council's s106 Monitoring and Reporting Fee of £500;
- 5.1.2 the County Council's reasonable and proper legal costs of £1,500 in connection with the preparation, negotiation and completion of this Deed and the County Council's s106 Monitoring and Reporting Fee of £476.

## **6 EXECUTION**

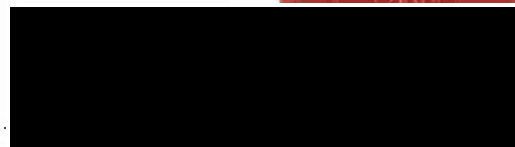
The parties have executed this agreement as a Deed and it is delivered on the date set out above.

The common seal of **WEST SUFFOLK** )  
**COUNCIL** was affixed to this deed in the )  
presence of: )  
)



Authorised signatory

The common seal of **SUFFOLK** )  
**COUNTY COUNCIL** was affixed to this )  
deed in the presence of: )  
)



ry

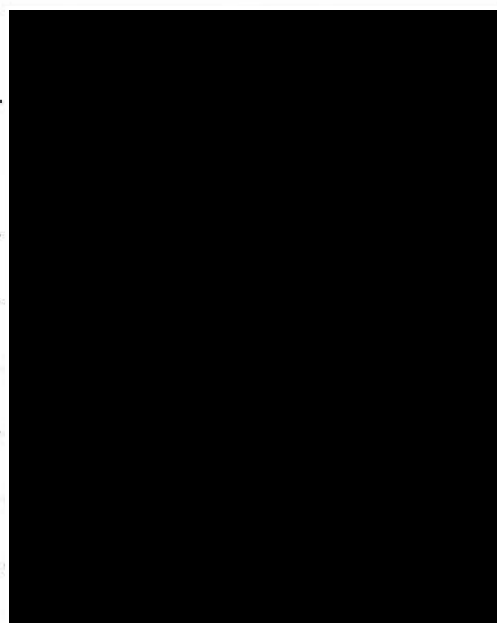
Executed as a deed by **SANSOVINO** )  
**DEVELOPMENTS LIMITED** acting by a )  
director in the presence of: )  
)

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation of witness



ctor

Executed as a deed by **THE RIGHT  
HONOURABLE EDWARD RICHARD  
WILLIAM EARL OF DERBY DL** the  
presence of:

)  
)  
)  
.....

Signature of witness

Name (in BLOCK CAPITALS)

Address

[Redacted]

Occupation of witness

Executed as a deed by **PRESCOT  
BUSINESS PARK LIMITED** acting by a  
director in the presence of:

[Redacted]

Signature of witness

Name (in BLOCK CAPITALS)

Address

[Redacted]

Occupation of witness



## SCHEDULE 1

### MODIFICATIONS AND VARIATIONS TO THE ORIGINAL AGREEMENT

- 1 In the section entitled "Definitions" in the Original Agreement, the following definitions shall be inserted:

**"Additional POS Land"** the land at Hatchfield Farm, Fordham Road, Newmarket, Suffolk shown edged red on the Additional POS Location Plan;

**"Additional POS Location Plan"** means the plan attached to this Deed at Annex 2 and numbered 210157-3DR-XX-00-DR-A-10089 Rev P01;

**"Additional POS Plan"** means the plan attached to this Deed at Annex 3 and numbered 210157-3DR-XX-00-DR-A-10088 Rev P01.

- 2 In the Third Schedule paragraph 1.1 of the Original Agreement shall be deleted in its entirety and the next paragraph shall be paragraph 1.2.

- 3 In the Sixth Schedule the following new paragraphs shall be inserted after paragraph 1.9 as follows:

"1.10 To complete and provide the Additional POS Land and make available for use by members of the public as recreational open space prior to Occupation of the first Dwelling

1.11 Not to allow or permit any Occupation of the Dwellings unless and until the Additional POS Land has been provided and made available for use by the public

1.12 To keep the Additional POS Land (once provided in accordance with paragraph 1.10 above), open, unbuilt on (save for any permitted play equipment) and available for public recreational use in perpetuity."

- 4 In the Sixth Schedule a new paragraph 3 shall be inserted as follows:

"3. The Owner hereby covenants with the County Council:

3.1 Prior to Occupation of the first Dwelling, to carry out works to provide a public right of way to adoptable standards (to the reasonable satisfaction of the County Council) across the Additional POS Land shown for indicative purposes by a broken green line on the Additional POS Plan ("the POS Path") which will connect into the existing highway.

3.2 To keep the POS Path referred to in paragraph 3.1 open to use by the public without obstruction or charge until such time as it can be formally dedicated and adopted as highway maintainable at public expense.

3.3 To when called upon by the County Council in writing and at no cost to the County Council dedicate the POS Path as a public right of way under an agreement to be entered into pursuant to Section 38 of the Highways Act 1980 along with any other highways necessary to connect the POS Path to the existing highway network."

- 5 A new Annex 2 shall be inserted into the Original Agreement for the purposes of appending the Additional POS Location Plan (appended to this Deed at Appendix 1).

A new Annex 3 shall be inserted into the Original Agreement for the purposes of appending the Additional POS Plan (appended to this Deed at Appendix 2).

## SCHEDULE 2

### MODIFICATIONS AND VARIATIONS TO THE MAY 2019 AGREEMENT

- 1 That the defined term, 'Disposal' at clause 1.1 of the May 2019 Agreement be deleted in its entirety and replaced with a definition of "**School Site Disposal**" as follows:

**"School Site Disposal:** means a transfer of the freehold title of the whole or any part or parts of the Principal School Site or the Additional School Site"

For the avoidance of doubt the defined term "Disposals" in the Original Agreement is not deleted or varied pursuant to this Deed and the provisions referring to "Disposals", "Dispose" and/or "Disposed of" in the Original Agreement continue to apply.

- 2 That clause 19.1 of the May 2019 Agreement be amended to read as follows:

"19.1 The Owner covenants with the County Council not to make a School Site Disposal without first procuring that the person to whom the transfer is being made has executed a Deed of Covenant".

- 3 That clause 19.2 of the May 2019 Agreement be amended to read as follows:

"19.2 The Owner consents to the entry of the following restriction against the Owner's title to the Principal School Site or the Additional School Site at HM Land Registry and will provide the County Council with all necessary assistance and/or documentation to permit entry of the restriction:

"No transfer of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of clause 19.1 of the option agreement and deed of variation of an agreement made under section 106 of the Town and Country Planning Act 1990 dated 13 May 2019 made between (1) West Suffolk Council (2) Suffolk County Council (3) The Right Honourable Edward Richard William Earl of Derby DL and (4) C. Hoare and Co. as varied by a Deed of Variation to an Agreement made under section 106 of the Town and Country Planning Act 1990 dated [ ] 2023 made between (1) West Suffolk Council (2) Suffolk County Council (3) Sansovino Developments Limited (4) The Right Honourable Edward Richard William Earl of Derby DL and (5) Prescott Business Park Limited have been complied with or that they do not apply to the disposition."

## APPENDIX 1





Notes

Do not scale from this drawing.

All dimensions are taken from the centre of the road or the centre of the building unless otherwise stated.

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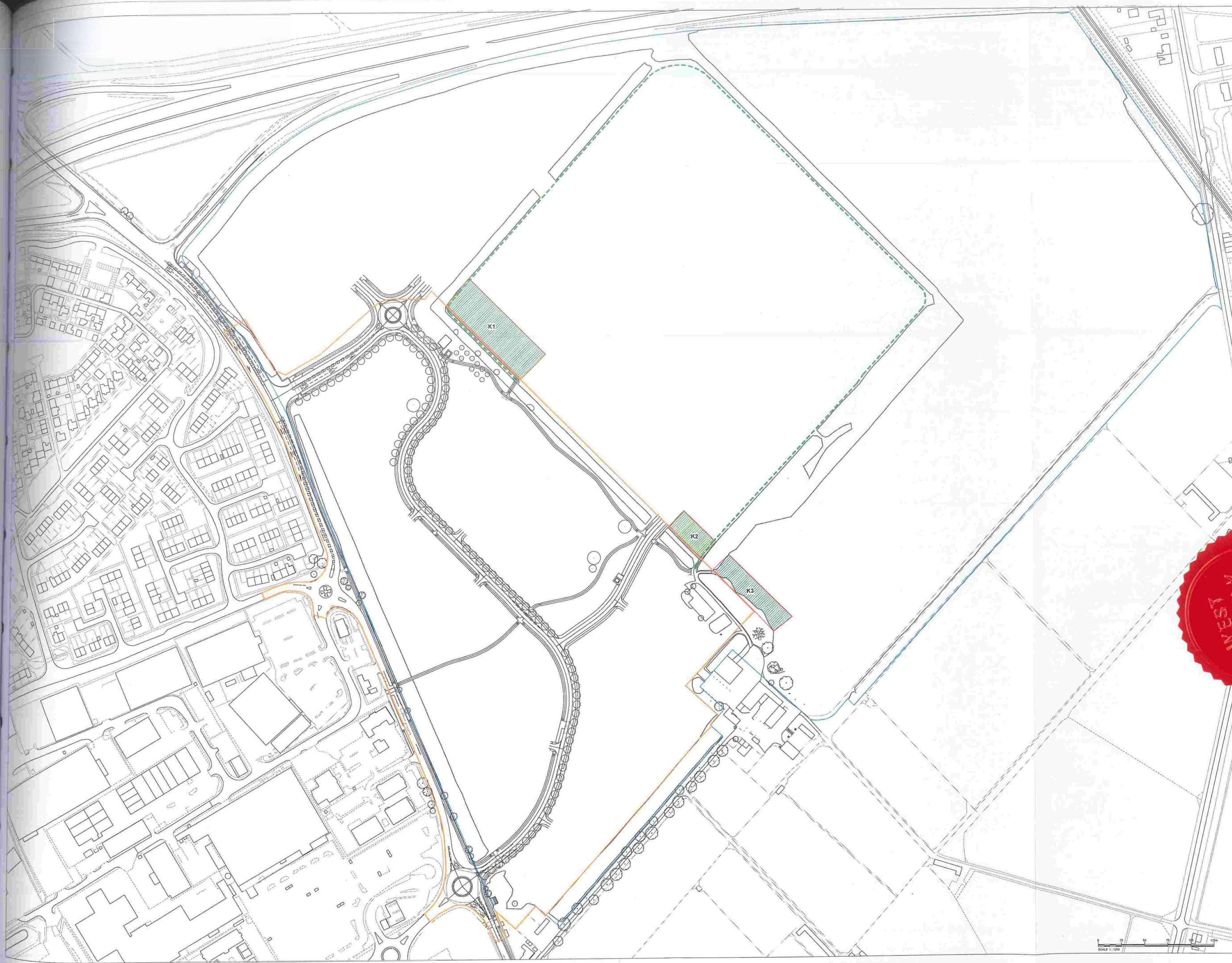
Site area: 1.17 hectares (28.77 acres)



P01	23/08/23	Planning	NP	
Revisions				
Status				
INFORMATION				
Client				
Sansovino Developments Limited				
Project				
Hatchfield Farm				
Title				
Site Location Plan - Recreation Open Space				
Scale	Size	Date	Drawn	Checked
1:1250 A0		23/08/23	NP	SB
3DR Ltd			<div>3D REID</div>	
www.3dr.co.uk				
Architectural Services & Planning			Rev.	
Drawing No.				
210157-3DR-XX-00-DRA-10089			P01	

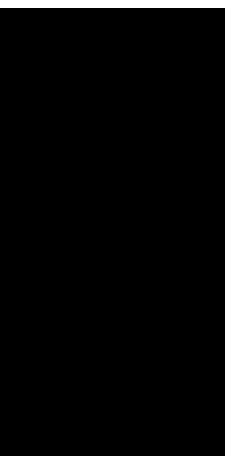
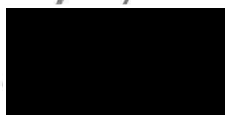
## APPENDIX 2





Notes  
Do not scale from this drawing.  
All dimensions are to be checked prior to construction and any discrepancies are to be identified by the Architect.  
Copyright reserved.

- Demolition boundary
- Planning Permission DOT/2008/0017 boundary
- Site boundary
- Site area - 1770sqm (0.71ha)
- Foot and road lines
- Public pathway approved under S20 agreement
- Recreation Open Space



P01 230623 Planning NP  
Revisions  
Site vs  
**INFORMATION**  
Client  
Sansovino Developments Limited  
Project  
Hatchfield Farm

Title  
Site Plan- Recreation  
Open Space

Scale	Size	Date	Drawn	Checked
1:1250	A0	23/08/23	NP	SB

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Architectural Services and Planning  
Drawing No.  
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Rev.  
P01