

00908/24

DATED

10 July

20

24

SUFFOLK COUNTY COUNCIL

(1)

- and -

PERSIMMON HOMES LIMITED

(2)

AGREEMENT

made pursuant to Sections 278 and 38 of the Highways Act 1980
and any other enabling power relating to
the development of land on the west of Eriswell Road, Lakenheath, Brandon, Suffolk

Nigel Inniss
Head of Governance
Suffolk County Council
Endeavour House
8 Russell Road Ipswich
Suffolk IP1 2BX

Ref: **AS/S278/80506/LEGAL**

THIS AGREEMENT is made the 10th day of July 2024
BETWEEN the following parties :-

- (1) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich
Suffolk IP1 2BX ("the County Council")
- (2) **PERSIMMON HOMES LIMITED** (company number 04108747) of Persimmon
House, Fulford, York, YO19 4FE ("the Developer")

RECITALS AND DEFINITIONS

A. In this Agreement unless the context otherwise requires the following words shall have the following meanings :-

"1980 Act"	Means the Highways Act 1980 (as amended)
"Bond"	Means the bond with the Surety for the Highway Works, such bond to be in the form set out in Schedule 3 of this Agreement, so if the Developer should default in the execution of its obligations to carry out the Highway Works and to maintain the same in accordance with the provisions of this Agreement then the County Council will call upon the Surety to provide the full value of the Bond to carry out and maintain the Highway Works
"Bond Figure"	Means the sum of £ 54,589.41 (Fifty-Four Thousand, Five Hundred and Eighty Nine Pounds and Forty-One Pence) being to cost of the Highway Works plus 10 per cent
"Certificate of Final Completion"	Means any of the certificates referred to in paragraph 2.13 of this Agreement
"CDM Regulations"	Means the Construction (Design and Management) Regulations 2015 (SI 2015/51)
"Commuted Sums"	Means the sum of £5,518.56 (Five Thousand, Five Hundred and Eighteen Pounds and Fifty-Six Pence) which is calculated towards the cost of the County Council's future maintenance liability of the Highway Works.

"Director"	Means the County Council's Executive Director of Growth, Highways and Infrastructure or other officers of the County Council acting under his hand
"Highway Works"	Means the works detailed on the Works Drawings and as set out in Schedule 2 of this Agreement
"Site"	Means land situated on the west side of Eriswell Road, Lakenheath, Brandon Suffolk to the extent it is registered at HM Land Registry under title number SK428301
"Substantial Completion"	Means complete to the reasonable satisfaction of the Director and so that the Highway Works can be used for the purpose and operate in the manner for which they were designed, and the "Date of Substantial Completion" and "Certificate of Substantial Completion" shall be construed accordingly
"Surety"	Means NATIONAL HOUSING BUILDING COUNCIL
"Works Drawings"	Means the attached drawings bearing the numbers referred to in Schedule 1 or any subsequent revision of them which has been approved or requested by the Director and which relate to the Highway Works

- (A) The County Council is the Local Highway Authority (except for trunk roads) for the purposes of the 1980 Act for the area within which the Site is situated and the Highway Works will be carried out
- (B) The Developer is the registered proprietor with title absolute of the Site registered at the Land Registry under Title Number SK428301
- (C) The County Council considers that the Highways Works as shown on the Works Drawings and detailed in Schedule 2 need to be carried out and the County Council considers that entering into this Agreement will be of benefit to the public

NOW THIS DEED WITNESSES as follows :-

1. LEGAL EFFECT

1.1 In this Agreement unless the context otherwise requires :-

1.1.1 Words importing the singular meaning where the context so admits include the plural meaning and vice versa; and

1.1.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner; and

1.1.3 "party" or "parties" means a party or parties to this Agreement; and

1.1.4 references to any party shall include the successors in title and assigns of that party; and in the case of the County Council the successors to its statutory functions;

1.1.5 where a party includes more than one person any obligations of that party can be enforced against all of them jointly and severally unless there is an express provision otherwise; and

1.1.6 the headings and contents list in this Agreement shall not form part of or affect its construction; and

1.1.7 references to clauses schedules and paragraphs are references to clauses in and schedules to this Agreement and paragraphs in schedules to this Agreement; and

1.1.8 where a party or any officer or employee is required to give its consent approval or agreement to any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed; and

1.1.9 any mention herein of any act or of any section regulation or statutory instrument shall be deemed to refer to the same source as at any time amended and where such act section regulation or statutory instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting act or section or regulation or statutory instrument

1.2 This Agreement and the covenants that appear hereinafter are made pursuant to Sections 38 72 and 278 of the 1980 Act Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers to

the intent that the provisions of this Agreement shall bind the Site and the parties hereto and all persons deriving title through or under them

- 1.3 No waiver (whether express or implied) by the County Council of any breach or default by the Developer in performance or observance of any of the covenants or obligations in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the covenants or from acting upon any subsequent breach or default
- 1.4 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.5 This Agreement shall be governed and interpreted in accordance with the laws of England and shall be determined in the Courts of England and Wales
- 1.6 The Developer covenants and warrants to the County Council that they have full power to enter into this Agreement and there is no other person having a charge over or any other interest in the Site whose consent is necessary for the Developer to enter into this Agreement and to comply with the obligations set out at clauses 1.12 and 1.13
- 1.7 The Developer covenants and undertakes with the County Council that from the date of this Agreement it will (unless otherwise agreed by the County Council) carry out and comply with the obligations set out in this Agreement
- 1.8 The County Council, without prejudice to its statutory powers and duties, hereby appoints the Developer to act as its agent and gives to the Developer licence (in so far as is reasonably necessary) to enter into and upon and remain upon the public highway to carry out the construction of the Highway Works within the timescales referred to in Schedule 2 or such other period as may be agreed in writing by the Director, provided that this licence shall not extend to the Developer's successors in title or assigns unless otherwise agreed in writing by the Director prior to that successor or assignee commencing work in the public highway
- 1.9 The Developer covenants with the County Council as Highway Authority to comply with the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, and any amendments thereof
- 1.10 It is hereby agreed and declared that the provisions of the Contracts (Rights of

Third Parties) Act 1999 shall not apply to this Agreement

- 1.11 The Developer shall be the only client for the purpose of the CDM Regulations and the Developer agrees to undertake the obligations of a client under the CDM Regulations and to use all reasonable endeavours to ensure that the Highway Works are carried out in accordance with the CDM Regulations. The Developer shall indemnify and keep the County Council indemnified against any breach of the Developer's obligations under this clause
- 1.12 The Developer hereby agrees that on the date of Substantial Completion that part of the Site upon which the Highways Works are constructed which does not currently form part of the public highway shall be dedicated as highway under section 38 of the 1980 Act and the County Council agrees to accept such dedication and adopt that part of the Site and the Highway Works as highway maintainable at the public expense
- 1.13 If called upon by the County Council so to do by notice in writing served within twenty-one years of the date of this Agreement the Developer agrees to transfer to the County Council in consideration of one pound any land over which any part of the Highway Works have been constructed which does not at the date of this Agreement already form part of the highway together with any other land dedicated as public highway by the Developer free in each case from encumbrances and together with all rights necessary to permit the use, inspection, maintenance, repair and replacement of the Highway Works and all utility systems servicing the Highway Works and not vested in the relevant undertaker as are situated outside the limits of the Highway Works and the said other land
- 1.14 *Not used*
- 1.15 This Agreement is a Deed. Any financial default will be declared by the County Council and registered as a Local Land Charge under section 278(5)(c) of the 1980 Act
- 1.16 If the Highway Works have not been commenced within one (1) year from the date of this Agreement, save as this period is otherwise extended in writing by the Director at his discretion, then this Agreement shall lapse and be of no further effect (save to the extent already complied with) and the Developer agrees to pay to the County Council any costs properly incurred by the County Council prior to the lapse of this Agreement (which have not already been paid) including but not limited to those costs set out in clause 3.5 of this Agreement

- 1.17 Where, in accordance with clause 1.16 above the Director, at his discretion, agrees in writing to an extension to the period of one (1) year after which this Agreement shall lapse, this Agreement shall lapse at the end of such period as agreed in writing by the Director
- 1.18 Where the Agreement has lapsed in accordance with clauses 1.16 or 1.17, the County Council may release the Developer and the Surety and each of them from any subsisting obligations under the Bond in respect of the Highway Works on receipt of a written request. If for any period, the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this agreement. For the avoidance of doubt nothing in this clause requires the County Council to repay those sums payable under clause 3.5 of this Agreement save for any Commuted Sums not spent or committed.

2 HIGHWAY WORKS

- 2.1 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer and at no cost to the County Council
- 2.2 No work on the Highway Works shall commence and no contract or contracts in respect of the construction of the Highway Works shall be let until full details of the Highway Works have been submitted to the Director and the Director has given his written approval to the Highway Works and for the avoidance of doubt this Agreement does not constitute the written approval required under this clause
- 2.3 The Developer shall provide all relevant notices to the County Council under the New Roads and Street Works Act 1991 and Traffic Management Act 2004, and any amendments thereof
- 2.4 Insofar as the County Council as Highway Authority is required by any legislation regulation direction or code of practice (including in particular but without prejudice to the generality of the foregoing the New Roads and Street Works Act 1991) to serve a notice or notices in respect of the Highway Works on undertakers or other persons the Developer shall comply with such requirement on behalf of the County Council before the Highway Works commence and shall thereafter assume on behalf of the County Council such responsibilities as follow on therefrom in particular during the construction of the Highway Works

- 2.5 The Developer shall give due consideration to adjoining owners and occupiers at all times and shall organise activities relating to the Highway Works in such a manner as to cause the least practicable disruption
- 2.6 The Developer shall display and maintain prominent notices around the perimeter of the Site to warn the public of the dangers of entering the Site. However the display of such notices shall not relieve the Developer of any of his obligations and liabilities under this Agreement, the Control of Pollution Act 1974 or the Environment Protection Act 1990, or any amendments thereof
- 2.7 The Developer shall take or procure the taking of all necessary steps to avoid creating a nuisance from noise and from dust and as far as practicable the Highway Works are to be carried out in such a way that noise and dust are kept to a minimum
- 2.8 When the Highway Works are being executed the Developer shall institute at his own expense measures previously approved in writing by the Director to maintain the safe flow of traffic on the highways in the vicinity of the Site
- 2.9 No Highway Works within or affecting existing public highways will be permitted within the morning and evening peak periods i.e. 7.30 - 9.30 a.m. and 4.30 - 6.30 p.m. Monday to Friday except as agreed in writing by the Director
- 2.10 When the Highway Works are being carried out the Developer shall provide all watching and lighting as required and shall maintain all lights, guards, fencing and warning signs when and where necessary and undertake such further measures as may be reasonably required by the Director
- 2.11 Representatives of the County Council may enter upon the land on which the Highway Works are being carried out at any reasonable time to ascertain whether the terms of the Agreement are being or have been complied with
- 2.12 On Substantial Completion of the Highway Works :-
- 2.12.1 the Developer shall clear away and remove from the Site all constructional plant and temporary works of every kind and leave the Site in a safe, neat and tidy condition to the satisfaction of the Director
- 2.12.2 the Developer shall provide the County Council with 6 paper copies of the 'as constructed' drawings and a pdf thereof
- 2.12.3 the Director may issue a Certificate of Substantial Completion to the Developer

- 2.13 The Developer shall maintain the Highway Works for a period of eighteen (18) months (unless the Director agrees in writing a lesser period) from the issue of the related Certificate of Substantial Completion and prior to the expiration of this period the Developer shall reinstate and make good any damage or defect which may have arisen from any cause whatsoever or be discovered during the said period of eighteen (18) months (including any defect in or damage to the surface water drainage system) so as to place the highway and the Highway Works in a condition satisfactory to the Director. After the expiration of the period of eighteen (18) months and after any defects have been made good to the satisfaction of the Director he may issue at the written request of the Developer the Certificate of Final Completion in respect of the Highways Works

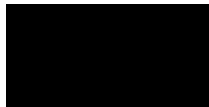
3 FINANCE

- 3.1 Where the Developer has provided a Bond, then after the issue of the Certificate of Substantial Completion the County Council may approve a reduction of up to 75% of the Bond Figure and upon the issue of the Certificate of Final Completion the County Council may release the Developer and the Surety and each of them from all subsisting obligations under the Bond in respect of the Highway Works on receipt of a written request. If for any period, the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this agreement.
- 3.2 The Developer shall be insured from the date of this Agreement and throughout the period of construction of the Highway Works within the timescales referred to in Schedule 2 (or any other period as agreed by the Director) for public liability risks in the sum of at least ten million pounds (£10,000,000.00) in respect of any single claim, and shall produce these insurance policies to the Director on demand
- 3.3 The Developer and the Surety shall on the date of this Agreement enter into the Bond for the Highway Works and the Developer shall be bound with the Surety and the County Council in the amount of the Bond Figure.
- 3.4 Should the Developer default in the execution of his obligations to carry out and maintain the Highway Works then the County Council may itself carry out and maintain the Highway Works having first called upon the Surety to provide the Bond amount for the full cost to be expended in so doing
- 3.5 The Developer shall pay to the County Council:-

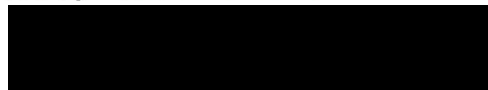
- 3.5.1 the legal costs of the County Council in connection with this Agreement prior to sealing of this Agreement; and
- 3.5.2 interest at four per cent above the Bank of England Base Rate on any sum due to the County Council under this Agreement from the date on which it is due until the date it is paid, and
- 3.5.3 the inspection/checking fees required by the County Council in connection with the Highways Works in the sum of £3,958.94 (Three Thousand, Nine Hundred and Fifty-Eight Pounds and Ninety-Four Pence) prior to sealing of this Agreement;
- 3.5.4 the Commuted Sums prior to the sealing of this Agreement

In WITNESS whereof this Agreement has been executed and delivered as a Deed on the date first written above

The COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed)
in the presence of)



A Duly Authorised Officer



Signed as a Deed by PERSIMMON HOMES LIMITED

acting by its Attorney: -

[[REDACTED]]

[REDACTED]

In the presence of:

Witness signature ... [REDACTED]

Witness name .. [REDACTED]

Address [REDACTED] .

[REDACTED]

And its Attorney

[[REDACTED]]

signed

[REDACTED]

In the presence of:

Witness signature [REDACTED]

Witness name [REDACTED]

Address . [REDACTED]

[REDACTED]

Schedule 1
Works Drawings

Title	Drawing No
Site location plan	230-017-SK001
S278 Layout Sh 1	230-017-221 P01
Off-Site Pedestrian Crossing Points	230-017-222 P01
S278 Construction Details	230-017-223 P01
S278 Clearance Plan-Sh 1	230-017-236- P01
S278 Clearance Plan-Sh 2	230-017-237- P01
S278 Pedestrian Crossing Works	230-017-250-E-810
Site Layout	250-P-200 Q

Schedule 2

Location	Description of Works
Eriswell Road, Lakenheath	Construction of 2 new accesses into residential development and new footway linking to existing footway network.

Timescales: The Highways Works are to be commenced within 12 (twelve) months of the date of this Agreement and completed within 3 (three) months of commencement of the Highway Works

Schedule 3

Bond Agreement

DATED 10 July 2024

PERSIMMON HOMES LIMITED (1)

- and -

NATIONAL HOUSE BUILDING COUNCIL (2)

PERFORMANCE BOND

relating to the development of land at land on the west of Eriswell Road, Lakenheath,
Brandon, Suffolk

BY THIS BOND PERSIMMON HOMES LIMITED of Persimmon House, Fulford, York, YO19 4FE ("the Developer") and

NATIONAL HOUSE BUILDING COUNCIL of NHBC House, Davy Avenue, Milton Keynes, Bucks, MK5 8FP ("the Surety") are held and firmly bound to **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX ("the County Council") in the sum of £ 54,589.41(Fifty-Four Thousand, Five Hundred and Eighty Nine Pounds and Forty One Pence) to be paid to the County Council for the payment of which sum the Developer and the Surety bind themselves their successors and assigns jointly and severally

IN WITNESS whereof the Developer and the Surety have hereunto affixed their respective Common Seals and delivered the same on but not before this 10th day of July Two thousand and Twenty-four

1. The Developer has entered into an Agreement under seal with the County Council of even date made under Section 278 of the 1980 Act whereby the Developer undertook at its own expense to carry out works as set out in Schedule 2 of the said Agreement and shown in the Works Drawings annexed to the said Agreement ("the Highway Works")
2. It is intended that this Bond shall be construed as one with the said Agreement

NOW THE CONDITION of the above-written Bond is such that if the Developer shall duly perform and observe all the terms provisions conditions and stipulations of the said Agreement (in so far as they relate to the Highway Works) on the Developer's part to be performed and observed according to the true intent and meaning thereof or if on default by the Developer the Surety shall duly satisfy and discharge the damages sustained by the County Council up to the amount of the above-written Bond then the

above-written Bond shall be null and void but otherwise shall remain in full force and effect **PROVIDED ALWAYS** that the giving by the County Council of any extension of time for performing the said Agreement or any stipulations therein contained and on the part of the Developer to be performed or any other forgiveness or forbearance on

the part of the County Council or its successors or assigns shall not in any way release
the Surety from any liability under the above-written Bond

Executed as a DEED by
PERSIMMON HOMES LIMITED

acting by its Attorney: -

[
.....(Attorney)

In the presence of:

Witness signature

Witness name

Address

And its Attorney

[
... (Attorney)

In the presence of:

Witness signature

Witness name

Address

Signed as a deed by as attorney for for
National House-Building Council under a Power of Attorney ~~Power of Attorney~~

dated 28th September 2023 23rd May 2024

.....
Underwriting Operations Manager
.....
as attorney for National House-Building Council

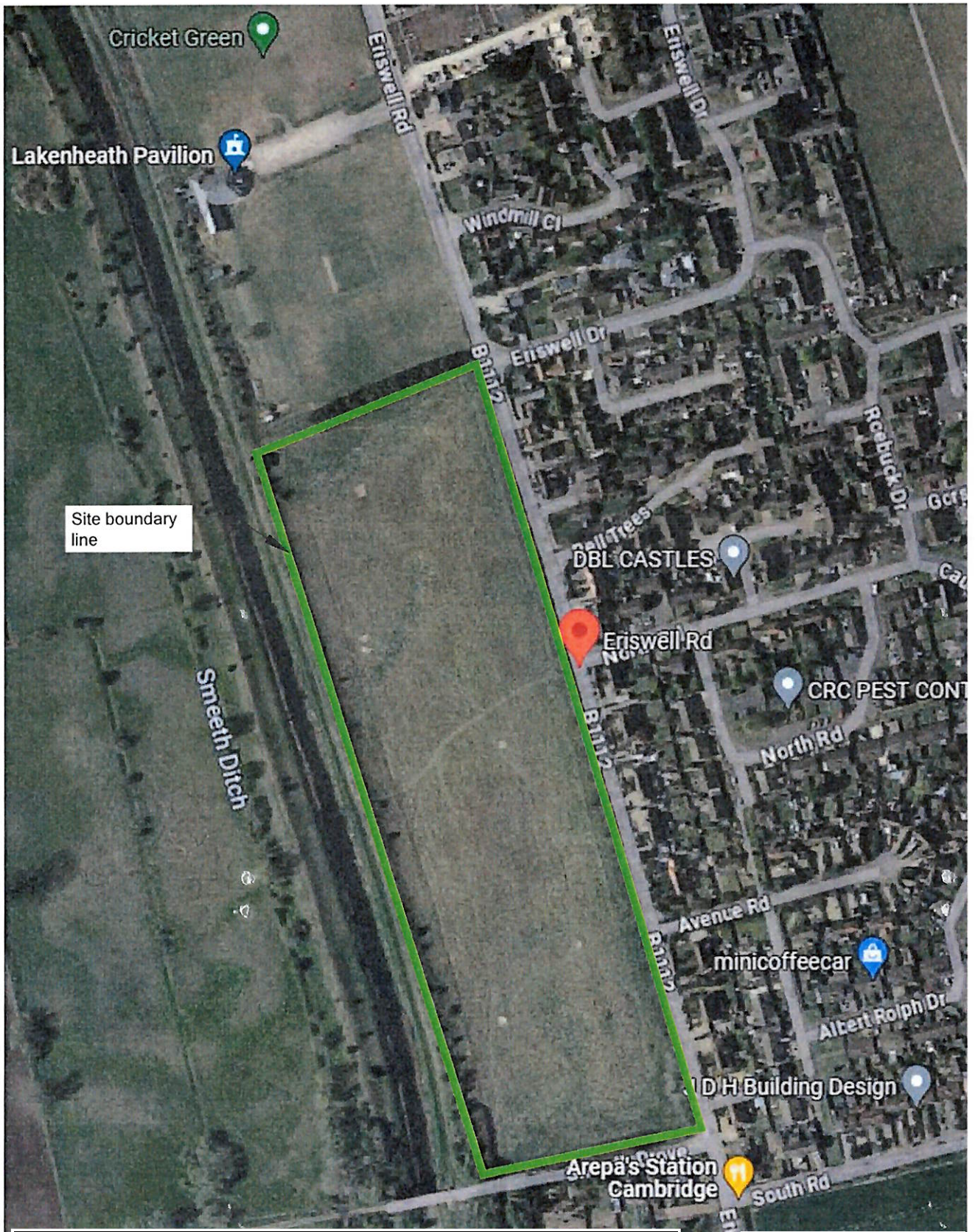
In the presence of:

Name of Witness

Witness Signature

Occupation Of Witness.

Address of Witness NHBC House, Davy Avenue, Knowlhill,
Milton Keynes, Bucks MK5 8FP



Project. Land off Eriswell Road, Lakenheath, Suffolk
 Title. Location Plan

Drawn. RT Date. Jan. 24
 Chk'd. JRC Scale. A4 @ NTS
 Drawing no. 230-017-SK001
 Revision. -

