

[REDACTED]

TO

THE METROPOLITAN BOROUGH OF KIRKLEES COUNCIL

**Planning obligation by Unilateral Undertaking pursuant section 106
of the Town and Country Planning Act 1990 relating to the land being
existing highway verges on**

Wolfstones Road, Upperthong, Holmfirth, West Yorkshire HD9 3UU

DRAFT

THIS DEED BY WAY OF UNILATERAL UNDERTAKING is made the _____ **day**
of _____ **2021**

BY

_____ : of Wolfstone Heights Farm, Wolfstones
Road, Upperthong, Holmfirth HD9 3UU
(“the Owner”)

TO

THE METROPOLITAN : of Civic Centre 3, Market Street,
BOROUGH OF KIRKLEES Huddersfield, West Yorkshire HD1 1WG
COUNCIL
(“the Council”)

BACKGROUND

- (1) The Owner is the freehold owner with title absolute of that part of the Land which is registered at the Land Registry under title number WYK448872 and shown for the purposes of identification coloured blue on the Plan appended to this Undertaking and is the authority by whom the planning obligations in this Undertaking are enforceable.
- (2) The Council is the local planning authority and for the purposes of Section 106 of the Act and is also the highway authority for the purposes of the Highways Act 1980 for the area within which the Verge and the Land
- (3) The Owner has submitted an application to the Secretary of State for Transport pursuant to section 247 of the Act for a stopping up and diversion of part of the Holmfirth Footpath 60 in order to be able to fully implement the Planning Permissions and is providing the Verge Works Contribution to the Council in order that the Council may subject to this planning obligation implement the Verge Works.
- (4) The Owner has agreed to enter into this Undertaking in favour of the Council in order to secure the planning obligations contained in this Undertaking.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Undertaking:

- 1.1 the following words and expressions shall have the following meanings unless otherwise stated or the context otherwise provides:

- “Act”** : means the Town and Country Planning Act 1990 (as amended).
- “Application” or “247 Application”** : means the application by the Owner to the SoS pursuant to Section 247 of the Act for the Stopping-Up of the Footpath and establishment of the Diversion Route as a public footpath as identified and administered under SoS reference: NATTRAN/Y&H/S247 /4337 which is subject to the Final Order.
- “Challenge”** : means any judicial review or associated proceedings, appeal, statutory or any other legal challenge by any person or persons against the Confirmation of the Application as is more particularly described and set out in Clause 10 of this Undertaking.
- “Commenced” or “Commencement”** : means the commencement of the Verge Works by the Council or its appointees which for the purposes of this Undertaking shall be taken to mean the carrying out of the full removal of the current surface of the Verge as at the date of this Undertaking or any other activity falling within the definition of the relevant parts of section 56 of the Act so far as they relate to the Verge and the relevant works to the Highway.
- “Completed”** : means the completion of the Verge Works by the Council such that its physical state is capable of the reasonable interpretation of being complete and capable of being signed-off and maintained by the Council such that it is complete and capable of being used by pedestrians.
- “Confirm” “Confirming” or “Confirmation”** : means approval of the Application by the making of the Final Order by the SoS as notified in the Decision Letter
- “Decision Letter”** : a letter issued by the SoS or on their behalf either Confirming or Refusing the Final Order.
- “Definitive Map and Statement”** : means the Kirklees Council Definitive Map and Statement as defined in section 53(1) of the Wildlife and Countryside Act 1981 as presently exists and which is administered and managed and maintained by the Council and which provides a legal record of public rights of way in the Council’s area.
- “Diversion Route”** : means the route marked “C” on the Order Plan

- “DMMO”** : means a Definitive Map Modification Order pursuant to the Wildlife and Countryside Act 1981 to widen and confirm the alignment of the Holmfirth Footpath 60 (including in part the Footpath) so far as it exists on land owned by the Owner which was made by the Council on or around 12th July 2021 administered under the Council’s Reference: D105-171 and which has been opposed and is at the time of entry into this Undertaking presently being submitted by the Council to SoSEFRA for determination by them and any reference to ‘DMMO’ in this Undertaking shall if applicable also be construed to mean any modification agreed or otherwise imposed by the SoSEFRA at any time.
- “Final Order”** : means the final order pursuant to the Application made by the SoS and thereby finally Confirming.
- “Footpath”** : means that part of Holmfirth Footpath 60 as identified on the Council’s Definitive Map and Statement which is proposed for Stopping-Up as identified between the points “A” and “B” on the Order Plan and replaced with the Diversion Route.
- “Future DMMO”** : means any definitive map modification order or orders or other application or applications by any person following the date of this Undertaking relating alternation physical or legal in relation to the line position or description of the current Holmfirth Footpath 60 so far as it exists in its present line at the date of this Undertaking and unconnected to the Diversion Route.
- “Highway”** : means Wolfstones Road which is adopted highway and on which the Verge is situated
- “Holmfirth Footpath 60”** : means the footpath identified as such on the Council’s Definitive Map and Statement which includes the Footpath
- “Index”** : means the ‘All Items’ Index of Retail Prices issued by the Office of national Statistics or any successor (or equivalent index should the Index cease to be compiled) and if the basis of computation of the index shall change any official reconciliation between the two bases of computation shall be binding upon the parties hereto and shall be applied in adjusting the

application of the index hereto. In the absence of any such official reconciliation such adjustments shall be made to the figures of the index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published).

“Index-Linked” : means increased in accordance with the following formula:

Amount payable = the relevant contribution x (A/B) where:

A = the figure for the Index that applied immediately preceding the date the payment is due.

B = the figure for the Index that applied when the index was published in January 2016.

$\frac{A}{B}$ is equal to or greater than 1.

“Land” : means the land owned by the Owner under HM Land Registry number: WYK448872 as shown edged blue on the Plan on which the Diversion Route is situated.

“NMAs” : means non-material amendments to the Planning Permissions granted under Council (as Local Planning Authority) reference numbers: 2018/93302 and 2018/93277 pursuant to Section 96A of the Act.

“Order Plan” : means the plan made in draft by the SoS provided for ease of reference with this Undertaking at Appendix 2.

“Planning Permission” : planning permissions subject to conditions to granted by the Council as Local Planning Authority under Local Planning Authority reference numbers: 2014/92814 and 2017/92374 as amended by the NMAs and ‘Planning Permissions’ and ‘Permissions’ shall be construed accordingly.

“Plan” : means the plan attached to this Undertaking at Appendix 1 showing the Land edged blue and the Verge shaded red compiled by Messrs ADP and titled: ‘Plan Referred To’ allocated

with drawing number: 13072D-206-P01 and dated: 15.10.21.

- “Refusal” “Refused” or “Refusing”** : means a refusal to make the Final Order as notified in the Decision Letter.
- “SoS”** : means the Secretary of State for Transport (through the Department for Transport) or their delegates or such other Secretary of State or department allocated with related functions associated with this Undertaking from time to time.
- “SoSEFRA”** : means the Secretary of State for Environment Food and Rural Affairs through the Department for Environment Food and Rural Affairs or their delegates or such other Secretary of State or department allocated with related functions associated with this Undertaking from time to time.
- “Stopping Up”** : means the stopping up of the Footpath as part of the Application and a reference to “Stopping-Up” shall be construed in a like manner.
- “Undertaking”** : means this document, including the schedules and appendices, [as may be amended, modified or supplemented from time to time in accordance with its terms].
- “Verge”** : means the highway verge on the easternmost side of the Highway in two sections as identified and shown shaded red on the Plan and a reference in this Undertaking to “Verges” shall be construed accordingly.
- “Verge Works”** : means the proposed works to the Verge as identified in the Second Schedule to be carried out by the Council or its appointees following payment of the Verge Works Contribution by the Owner in accordance with and subject to the conditions and parameters of this Undertaking.
- “Verge Works Contribution”** : means the sum of [£TBC (AMOUNT IN WORDS)] to be paid by the Owner to the Council in accordance with and subject to the terms of this Undertaking and which shall be Index-Linked from the date of this Undertaking.

“Working Day” : any day from Monday to Friday (inclusive) that is not Christmas Day, Good Friday or a statutory Bank Holiday.

2. CONSTRUCTION OF THIS UNDERTAKING

- 2.1 Where in this Undertaking reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Undertaking.
- 2.2 Clause headings shall not affect the interpretation of this Undertaking.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting or referencing persons or actual persons include companies, corporations and firms and organisations and all such words shall be construed interchangeable in that manner.
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.6 An obligation in this Undertaking on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.7 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.
- 2.8 References to any party to this Undertaking shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.9 The headings and contents list are for reference only and shall not affect construction.

3. THE PLANNING OBLIGATIONS

- 3.1 This Undertaking constitutes a planning obligation for the purposes of section 106 of the Act and should at its discretion and/or as applicable also be construed by the Council pursuant to section 1 of the Localism Act 2011 and any other relevant enabling powers.
- 3.2 The obligations set out in the First Schedule of this Undertaking constitute planning obligations for the purpose of section 106 of the Act and the planning obligations are to be discharged by the Owner and are enforceable against them and any person deriving title through them under them or otherwise from them (subject always to clause 5.1 and 5.2).

3.3 This Undertaking shall only come into effect upon the Confirmation of the Final Order with the exception of the obligations contained in clause [9 and 11] which shall come into effect on the date of this Undertaking.

4. COVENANTS TO THE COUNCIL

4.1 The Owners covenant with the Council to observe and perform the covenants and obligations on their part contained within the First Schedule subject always to the conditions elsewhere in this Undertaking and specifically for the purposes of this Clause 4 the following conditions:

- 4.1.1 Where the Final Order shall be the subject of any Challenge then this Undertaking shall be of no effect unless and until such time as the conditions set out in Clause 10 may allow.
- 4.1.2 Where the Application is Refused and therefore the Final Order is not finally made then this Undertaking shall be of no effect and for the avoidance of doubt this Undertaking shall remain of no effect in the event that the Refusal is subject to legal or other challenge by the Owner or any person regardless of the outcome of such legal or other challenge.
- 4.1.3 Where the DMMO shall subsist in its present made but unconfirmed state at the date of this Undertaking and in the reasonable opinion of the Owner or the Council or both prevents the Final Order from being lawfully implemented then this Undertaking shall be of no effect unless and until such time as sub-clause 4.1.8 below shall apply.
- 4.1.4 Where the DMMO shall not be confirmed by SoSEFRA or another and such non-confirmation is subject to any legal or other challenge by any person then this Undertaking shall be of no effect until such time as all legal and other proceedings are completely exhausted by such persons and the DMMO shall following such proceedings remain not confirmed following the conclusion of such proceedings unless and until such time as sub-clause 4.1.8 shall apply.
- 4.1.5 Where the DMMO shall be confirmed by the SoSEFRA then this Undertaking shall be of no effect unless and until such time as clause 4.1.8 below shall apply.
- 4.1.6 Where any Future DMMO shall be submitted by any persons following the date of this Undertaking then this Undertaking shall be of no effect unless and until such time as sub-clause 4.1.8 below shall apply.
- 4.1.7 Where the SoS or the Inspector shall expressly or otherwise confirm in the Decision Letter that the Verge Works Contribution is not necessary or is for any reason in their view not required or the Decision Letter is silent or ambiguous or otherwise uncommitted on the issue of the Verge or the Verge Works or the Verge Works Contribution then this

Undertaking shall be of no effect unless clause 4.1.8 below shall apply.

- 4.1.8 Notwithstanding sub-clauses 4.1.3 to 4.1.7 above the Owner may entirely at their discretion and for any or no reason still pay the Verge Works Contribution to the Council and where the Owner shall pay the Verge Works Contribution under this sub-clause 4.1.8 the remainder of this Undertaking shall apply and shall remain enforceable by the Council as if the Owner had been required to pay the Verge Works Contribution in accordance with any other provision of this Undertaking UNLESS any part of this Undertaking expressly or implicitly provides to the contrary or alternative.
- 4.1.9 Where the Verge Works Contribution shall have been paid by the Owner to the Council in accordance with this Undertaking at any time then in the case where the Verge Works shall not have been Commenced and it is subsequently discovered or otherwise transpires or is believed in the reasonable opinion the Owner that the DMMO (whether in the current made or SoSEFRA or other confirmed or unconfirmed form) or any Future DMMO may for any reason prevent the Final Order from being implemented or otherwise render the works incapable of lawful implementation (temporarily or permanently, explicitly or implicitly, directly or indirectly) then the Owner shall provide notice in writing to the Council and in such a case:
- 4.1.9.1 the Verge Works shall not be Commenced; and
- 4.1.9.2 the paid Verge Works Contribution shall be returned to the Owner in full together with any interest accrued.

5. ENFORCEABILITY

The obligations imposed on the Owner at clause 4 are also conditional upon the following:

- 5.1 The Council not seeking to enforce any breach of a covenant, restriction or obligation contained in this Undertaking against any person after such person has parted with its interest in the Land except in respect of any breach subsisting prior to parting with such interest and neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute the retention of an interest for the purposes of this clause.
- 5.2 The Council not seeking to enforce any provision of this Undertaking against -
- 5.2.1 any occupier, tenant, licensee or mortgagee of a dwelling or other unit on the Land which may or may not exist at the date of this Undertaking; or

5.2.2 a statutory undertaker (within the meaning of section 262 of the Act) who acquires any interest in the Land.

5.3 The obligations in this Undertaking ceasing to have effect if:

5.3.1. The Planning Permissions are revoked or otherwise modified in accordance with the Act or other legislation;

5.3.2. The Application is withdrawn.

6. FUTURE PERMISSIONS

Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permissions or modification, variation or amendment or derivative thereof) granted before or after the date of the Final Order.

7. NOTICES

7.1 Any notice required to be given under this Undertaking shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address or as otherwise specified by the relevant person by notice in writing to each other person.

7.2 Any notice shall be deemed to have been duly received:

7.2.1. if delivered personally, when left at the address set out in this Undertaking;

7.2.2. if sent by pre-paid first class post or recorded delivery, on the second Working Day after posting; or

7.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

8. MISCELLANEOUS

Nothing contained or implied in this Undertaking shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9. CHANGE OF OWNERSHIP

The Owner covenants to give the Council written notice within 10 (ten) Working Days of any change in freehold ownership in the Land or part of the Land occurring before all the obligations under this Undertaking have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area

of the Land or unit of occupation purchased by reference to a plan save for the transfer of any individual Dwelling.

10. CHALLENGE

10.1 Where the Application is Confirmed and therefore the Final Order is made and is for any reason the subject of any Challenge the following conditions shall apply:

10.1.1. this Undertaking shall be of no effect until such time as such proceedings or Challenge including any appeal or appeals have finally been resolved;

10.1.2. where or if following the conclusion of such proceedings or Challenge including any appeal or appeals have finally resolved the Final Order remains confirmed and unaltered then the timescale requirement to make the Verge Works Contribution in accordance with paragraph 1.1 of the First Schedule shall begin on the day following the conclusion of such proceedings;

10.1.3. if following the conclusion of such proceedings or Challenge the Final Order is quashed then this Undertaking will cease to have any further effect as from the date upon which the Final Order is quashed.

10.2 Wherever in this Clause 10 or elsewhere in this Undertaking reference is made to a date on which legal proceedings or Challenge in relation to the Final Order are concluded (or cognate expressions are used or could reasonable be construed), the following provisions have application:

10.2.1 proceedings by way of judicial review are concluded:

- (a) when permission to apply for judicial review has been refused and no further application can be made; or
- (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (c) when any such appeal is finally determined with no further recourse to any other court of appeal or other court or alternative dispute resolution or the timescale for such continuation has lapsed and is incapable of being received by any court or alternative dispute resolution body or person;

10.1.2 proceedings under or in respect of any other Act of Parliament legal challenge are concluded:

- (a) when permission (if applicable) to bring any such proceedings has been refused and no further application may be made; or

- (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (c) when any appeal is finally determined with no further recourse to any other court of appeal or other court or legal challenge or alternative dispute resolution or the timescale for such continuation has lapsed and is incapable of being received by any court or alternative dispute resolution body or person.

11. THIRD PARTY RIGHTS

No provisions of this Undertaking shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

12. SEVERANCE

Insofar as any clause or clauses or schedule or schedules or any parts of the same of this Undertaking are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions or if applicable any part or parts of this Undertaking.

13. INDEXATION AND VAT

- 13.1 Any sum to be paid to the Council under Schedule 1 shall be increased by an amount equivalent to the increase in the Index from the date of this Undertaking until the date on which such sum is paid calculated in accordance with the formula specified in the definition of Index Linked.
- 13.2 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any value added tax properly payable.

14. JURISDICTION

This Undertaking is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

15. DELIVERY

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

IN WITNESS whereof the parties hereto have executed this as Undertaking a deed on the day and the year first before written.

FIRST SCHEDULE – COVENANTS BY THE OWNER

The Owner covenants with the Council as follows –

1. VERGE WORKS CONTRIBUTION

- 1.1 That in the case that the Application is Confirmed and the Final Order is made (SUBJECT ALWAYS to the conditions in Clause 4 and sub-clause 5.3 of this Undertaking and the conditions below in this paragraph 1.1 of this First Schedule) then during the period and at any time within 15 (fifteen) calendar weeks from the day following the date of the Confirmation of the Final Order, to pay the Verge Works Contribution to the Council PROVIDED THAT (and subject always to the provisions of this Undertaking):
- 1.1.1 there shall have been no Challenge filed or otherwise actioned (and Challenge for the purposes of this First Schedule shall include where applicable pre-action or preliminary or proposed alternative dispute resolution) in relation to the Confirmation and where such a Challenge shall have been filed then Clause 10 of this Undertaking shall apply;
 - 1.1.2 none of the conditions of Clause 4 of this Undertaking shall apply (save for sub-clause 4.1.8 where the Owner may still at their discretion pay the Verge Works Contribution to the Council notwithstanding the remainder of Clause 4.1);
 - 1.1.3 the Verge Works Contribution is provided on trust that it shall be applied by the Council specifically and only towards the Verge Works and for no other purpose whatsoever;
 - 1.1.4 the Council is able to and shall account for the expenditure of the Verge Works Contribution on the Verge Works within 14 (fourteen) days of any written request from the Owner to do so;
 - 1.1.5 where the Verge Works shall not have been Commenced within six (6) calendar months from the date of payment of the Verge Works Contribution under this Undertaking then the Verge Works Contribution shall be returned to the Owner (or if applicable in the event of a transfer of the Land shall be returned to the person that paid the Verge Works Contribution) immediately and in full together with any interest that shall have accrued.
 - 1.1.6 where the Verge Works shall not have been Completed by the Council or its appointees within one (1) calendar year from the day following the date of payment of the Verge Works Contribution under this Undertaking then the Verge Works Contribution or any part unspent shall be returned in full to the Owner within 14 (fourteen) days together with any interest that shall have accrued.
 - 1.1.7 Where sub-clause 5.3.1 shall apply for any reason (Planning Permissions are revoked or otherwise modified in accordance with the Act or other legislation) following the payment of the Verge Works Contribution then the Verge Works Contribution shall be returned in full

to the Owner together if applicable with any interest that shall have accrued whether or not the Verge Works shall have Commenced or shall have been Completed.

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SECOND SCHEDULE – VERGE WORKS

1. The schedule works for the Verge Works shall consist of the following:
 - 1.1 Turf-strip removal of existing turf to existing Verges across entire length and width (but no greater than this)
 - 1.2 The removal of the undersoil and stone to a 200mm depth whichever across the entire existing length and width of the Verges (but no greater than this) with no intervention on the existing Highway surface including the accessway to Wolfstone Heights on the Land which bisects the Verges
 - 1.3 Compacted stone sub-base material that is permeable and suitable for a the 'Cellpave 40' cellular lattice paving grid as identified or similar to that supplied at: <https://www.groundtrax.com/cellpave-40-porous-plastic-pavers/> backfilled to 150mm depth
 - 1.4 Application of membrane and topsoil bedding layer to across entire length of Verges on top of sub-base material to 50mm depth.
 - 1.5 Heavy grass-seeding application of topsoil bedding layer
 - 1.6 Application of the cellular lattice paving grid compacted into the seeded topsoil bedding layer to meet flush with the existing Highway surface not forming part of the Verges.
2. In the alternative to paragraph 1 of this Second Schedule the Council may use the Verge Works Contribution to carry out such works to the Verge as the Council's Highways Engineers shall in their reasonable professional opinion consider necessary or appropriate in the circumstances to provide a permeable system with firmer alternative surface to the Verge Works identified in paragraph 1 of this Second Schedule which shall be suitable for a rural road of this nature but the Owner shall not be liable for any further costs above the Verge Works Contribution should the Council elect alternative Verge Works.
3. For the avoidance of doubt where the Council shall elect to provide alternative Verge Works under paragraph 2 of this Second Schedule utilising the Verge Works Contribution then the conditions in this Undertaking and in the particular the First Schedule in relation to the Verge Works Contribution shall continue to apply.

APPENDIX 1

PLAN

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APPENDIX 2
ORDER PLAN

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EXECUTED as a deed by [REDACTED])
[REDACTED] [REDACTED] in the)
presence of)
)

.....

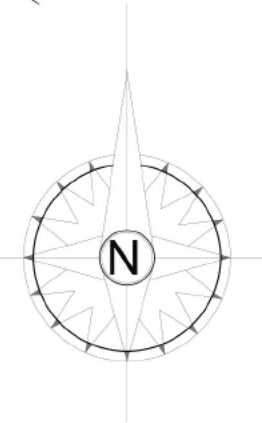
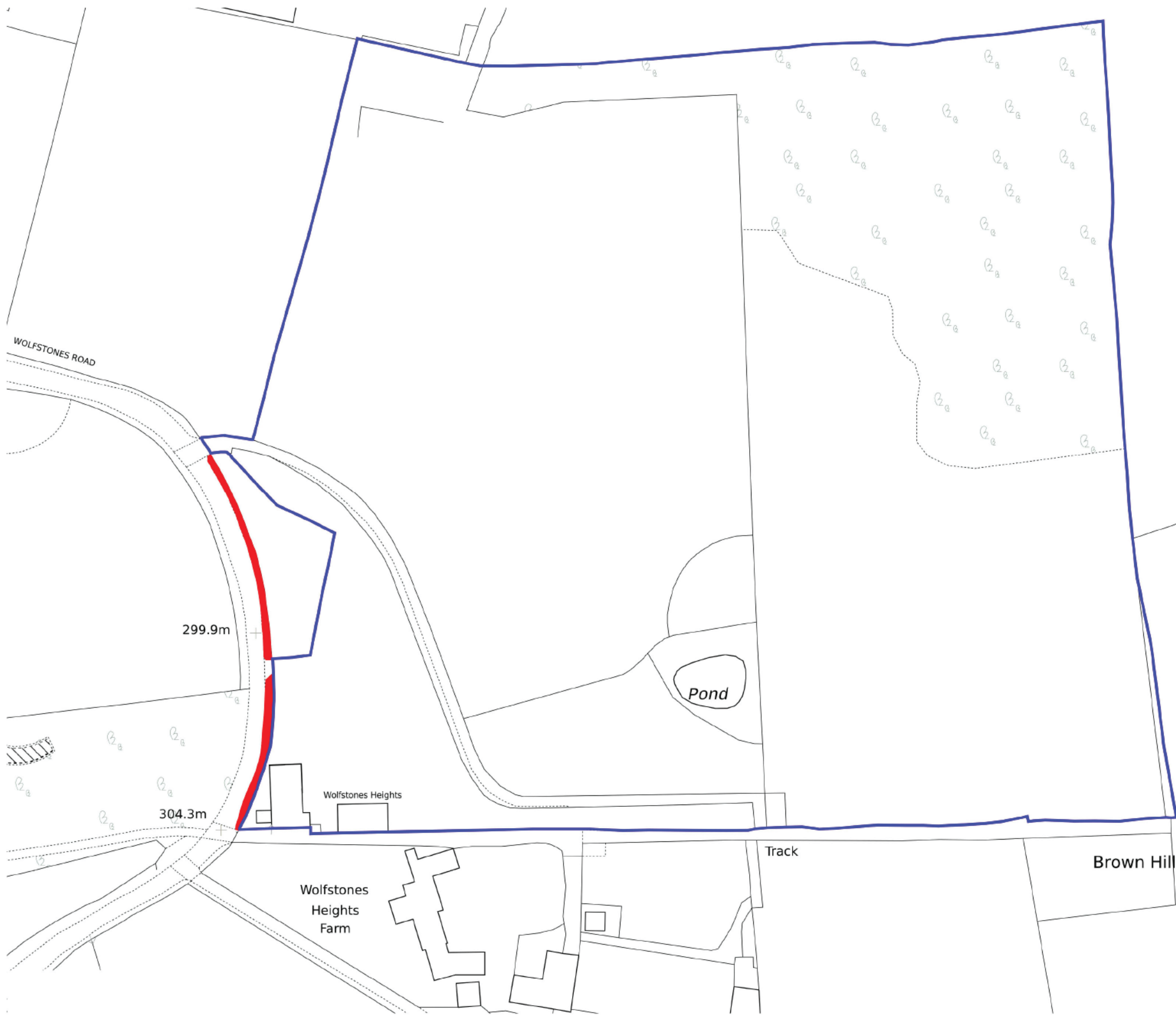
.....
Witness Signature

Witness Name:

Witness Address:

Witness Occupation:

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key: Verge to Wolfstones Road
 Wolfstones Heights Boundary

P01	Drawing originated based on Ordnance Survey Digital Mapping	15.10.21	RE	RE
rev.	description	date	drawn	apprd





project **Wolfstones Heights**
 at
Wolfstones Heights
Upperthong, Holmfirth, HD9 3UU



title **Plan Referred To**
 number **13072D-206-P01**
 scale **1:1250**
 size **A3**



HIGHWAY AT HOLMFIRTH IN THE METROPOLITAN BOROUGH OF KIRKLEES

Key	Scale 1:1250 at A3	National Transport Casework Team	Signed by Authority of the Secretary of State
Highway to be stopped up and diverted		Department for Transport	on.....
New (diverted) highway		Plan No: NATTRAN/Y&H/S247/4337	Signature.....
			DAVE CANDLISH An Official in the National Transport Casework Team Department for Transport

Unaffected path 

