02084/15

**DATED** 4TH DECEMBER **2015**

**BARNSLEY METROPOLITAN BOROUGH COUNCIL**

and

**GLEESON DEVELOPMENTS LIMITED**

and

**NATIONAL HOUSE BUILDING COUNCIL**

# AGREEMENT

under Sections 72 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to highway improvements at Lowfield Road Bolton on Dearne Barnsley South Yorkshire

A.C. Frosdick, LL.B., DipLG,
Director of Legal and Governance
Town Hall
Barnsley
S70 2TA

**THIS AGREEMENT** is made the 4th day of December

Two thousand and fifteen

**BETWEEN**

1. **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of the Town Hall Barnsley South Yorkshire S70 2TA **("the Council")**
2. **GLEESON DEVELOPMENTS LIMITED** (Company number: 848808) whose registered office is situate at 6 Europa Court, Sheffield Business Park, Sheffield S9 1XE **("the Company")**
3. **NATIONAL HOUSE BUILDING COUNCIL** (Company No. 320784) whose registered office is at NHBC House Davy Avenue, Milton Keynes, BUCKS MK5 8FP **("the Surety")**

**INTERPRETATION**

In this Agreement:-

**"the Act"** means the Highways Act 1980 as amended by the New Roads and Street Works Act 1991

**"the Blue Land"** means the land shown coloured blue on Drawing number 12/126/DE/100/001 Revision B attached at Schedule 1 hereto which is intended to become highway maintainable at public expense as provided herein

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2007

**"Certificate of Completion"** means the certificate to be issued by the Highways Officer upon the satisfactory completion of the Works

**"the Company"** includes the successors in title and assigns of the Company

**"Conditions of Contract"** means the Institution of Civil Engineers- Conditions of Contract with such additions or amendments thereto as may be approved by the Highways Officer

**"the Development"** means the residential development at the Site for which planning permission has been granted under Reference 2012/1088 dated 21st December 2012

**"the Drawings"** means the drawings listed and attached at Schedule 1 hereof

**"the Final Certificate"** means the certificate to be issued by the Highways Officer upon the satisfactory expiration of the Maintenance Period

**"the Highway"** means the highway called Lowfield Road at Bolton on Dearne Barnsley

**"the Highways Officer"** means the Head of Highways Engineering and Transportation for the time being of the Council and includes any professional officer appointed by him for the purpose of the supervision or inspection of the Works

**"the Maintenance Period"** means a period of twelve calendar months from the date of the issue of the Certificate of Completion

**"the Section 115 Agreement"** means an agreement entered into between the Council and a relevant sewerage undertaker pursuant to section 115 of the Water Industry Act 1991 to allow connections of highway drainage to the public sewerage system made pursuant to or ancillary to the Works

**"the Site"** means the land off Lowfield Road at Bolton on Dearne Barnsley

**"the Supervision Fee"** means the sum of £3,975.00 (three thousand nine hundred and seventy five pounds) being the fees which are estimated will be incurred by the Council in checking and approving the drawings site inspections and administration of the Works of which a sum of £3,000.00 (three thousand pounds) has already

been paid to the Council receipt of which is hereby acknowledged

**"the Specification"** means the Specification for Highway Works published by HMSO with all amendments up to the date hereof

**"the Works"** means the works described generally in Schedule 2 hereof and indicated in outline on the Drawings and any amended or additional works as provided for herein

Clause headings are for ease of reference only and shall not form part of this Agreement for the purposes of its construction or interpretation

**WHEREAS**

(1) The Council is the Highway Authority for the purposes of the Act

(2) The Company has the benefit of planning permission for the Development at the Site and the Council and the Company are desirous that the Works shall be carried out to facilitate the Development

(3) The Works are wholly required to improve access to the Site to a standard required for traffic safety and thus facilitate the Development and the Company will derive a special benefit if the Works are executed and the Surety has agreed to join in this Agreement to guarantee the obligations of the Company hereinafter contained and to be bound in the manner hereinafter appearing

(4) The Company is at the date hereof the freehold owner in possession of the Site which includes the Blue Land and the Company enters into this Agreement with the intention that the Blue Land shall be dedicated as a highway for use by the public and shall become a highway maintainable at the public expense as provided for herein

(5) The Company shall execute or procure the execution of the Works as agent for and on behalf of the Council

(6) This Agreement is made pursuant to Sections 72 and 278 of the Act and Section 111 of the Local Government Act 1972 and the Council is satisfied that it will be of benefit to the public

(7) Nothing herein contained shall operate to restrict or prejudice the powers duties and rights of the Council under the Highways Act 1980 and the New Roads and Street Works Act 1991

**NOW IT IS HEREBY AGREED** by and between the parties as follows:-

1. **CONSENT TO WORK IN THE HIGHWAY**

1.1 The Council shall during such hours of working as may be agreed in advance with the Highways Officer permit the Company to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the carrying out of the Works

2. **EXECUTION OF THE WORKS**

2.1 The Company shall at its own expense for the purpose of carrying out the Works:-

(a) carry out surveys as required by the Highways Officer of the Highway and the Site

(b) carry out site investigation works

(c) appoint a designer approved by the Highways Officer to design a scheme for the Works (including all necessary drawings and documents to be approved by the Council) **("the Approved Documents")**

(d) appoint a contractor approved by the Highways Officer for the construction of the Works in accordance with a form of contract which shall be approved by the Highways Officer **("the Contract")**

2.2 The Company shall:

(a) procure the provision in writing of a programme and timetable for the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof **("the Approved Programme")**

(b) upon the request of the Highways Officer procure the provision of a written programme and timetable for any temporary traffic arrangements or any other measures which may be necessary or required in connection with the carrying out of the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof and shall comply with any further requests of the Highways Officer at any time during the carrying out of the Works

(c) procure that the Works are carried out at its own expense in a good and workmanlike manner with proper and suitable materials to the reasonable satisfaction of the Highways Officer in accordance with the Specification and the Approved Documents and once commenced to proceed diligently with the Works and to use reasonable endeavours to complete the Works in accordance with the Approved Programme and in any case within two years from the date of this Agreement

(d) before the commencement of the Works take whatever steps are necessary to locate and identify any services apparatus and equipment

of any utility company Local Authority or other body which is situated in on under or over the Highway or which may otherwise be affected by the Works and shall supply to the Highways Officer copies of all consultations which have been carried out copies of all consents and approvals obtained and details of any diversion or other works required to any services equipment or apparatus affected by the Works **("Apparatus Works")**

(e) carry out and complete the Apparatus Works at its own expense and in the same manner as the Works

(f) procure compliance with all conditions and requirements imposed by any utility company local authority or other body in respect of any services equipment or apparatus affected by the Works

(g) give the Highways Officer free access to the Site as is reasonably necessary for the proper inspection of the Works

(h) procure that the Works are undertaken pursuant to the CDM Regulations

(i) ensure the Works comply in every respect with the latest edition of Chapter 8 of the Traffic Signs Manual published by the Department of Transport

(j) at its own expense arrange for all materials and soils in connection with the Works to be tested by a UK Accreditation Service (NAMAS) accredited laboratory and shall submit the test results to the Highways Officer and meet the costs of any further testing required by the Highways Officer

2.3 In the event the Highways Officer determines that any variations to the Works are required the Highways Officer shall notify the Company as soon as reasonably practicable of any revised or additional works which may be necessary and the Company shall carry out and complete the revised or additional works at its own expense and in the same manner as the Works

## 3. FEES AND COSTS

3.1 The Company shall on the completion of this Agreement pay to the Council:

(i) the remaining balance of the Supervision Fee; and

(ii) the sum of £1,000.00 being the Council's legal fees in the preparation and completion of this Agreement

3.2 In the event the fees incurred by the Council exceed the Supervision Fee the Highways Officer shall provide a certified estimate of the sum of the increased fees and the Company shall pay the said sum of the increased fees to the Council within 28 days of receiving a written request therefor

## 4. CERTIFICATES AND MAINTENANCE PERIOD

4.1 The Company may at any time when it believes the Works have been completed notify the Highways Officer in writing whereupon the Highways Officer shall make arrangements to inspect the Works and if the Works have been completed to his satisfaction the Highways Officer shall issue the Certificate of Completion to the Company or if not the Highways Officer shall notify the Company of any outstanding items and the Company shall provide the Highways Officer with a program for their completion

4.2 The Company shall at its own expense maintain the Works and the Blue Land throughout the Maintenance Period and shall make good any defects or

damage arising or occurring in the Works during that period to the satisfaction of the Highways Officer

4.3 After the expiration of the Maintenance Period and provided the Company has made good any defects or damage to the entire satisfaction of the Highways Officer and provided that all monies due to the Council hereunder have been paid the Highways Officer shall issue the Final Certificate to the Company and shall as soon as reasonably practicable thereafter release the Surety from its liability as provided in Clause 9.3 hereof

4.4 For the avoidance of doubt the covenants on the part of the Company contained in Clause 6 of this Agreement shall not be affected by the issue of the Final Certificate

## 5. DEDICATION AND ADOPTION OF THE BLUE LAND

5.1 Upon the issue of the Certificate of Completion the Company shall be deemed to have dedicated the Blue Land as highway for use by the public and the Company shall not grant any wayleave licence easement or right in respect of any part(s) of the Blue Land without the written consent of the Council

5.2 Upon the issue of the Final Certificate the Blue Land shall become highway maintainable at the public expense

## 6. COMPENSATION AND INDEMNITY

6.1 The Company will on demand reimburse the Council with all expenditure it may properly incur in relation to any valid and proper claims made pursuant to the Noise Insulation Regulations 1975 or Part I of the Land Compensation Act 1973 arising from the use of the Highway as altered by the Works and the Roads constructed by the Works together with the reasonable legal costs and

surveyor's fees incurred either by the Council or any third party whose costs the Council is legally obliged to pay in connection with the processing and settlement of any such claims

6.2 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising out of the non-observance non-performance or other breach of the Company's obligations under this Agreement and all claims demands damages and losses of whatever nature which may be suffered by the Council due to any reason connected with the carrying out of the Works

6.3 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising as a consequence of the discharge of water or any other substance or material whatsoever from the highway drainage system

6.4 The Company shall insure or shall procure that the Contractor carrying out the Works shall insure against any damage loss or injury which may occur to any property or person arising by or out of the execution of the Works otherwise than due to any act or omission of the Council and such insurance shall be effected prior to the commencement of the Works with an insurer on terms approved by the Council (such approval not to be unreasonably withheld or delayed) for at least the sum of £10,000,000 for each and every claim

6.5 The Company shall be responsible for

(a) all of the costs that the Council may incur in entering into a section 115 Agreement including any costs the sewerage undertaker may charge under

the Section 115 Agreement for technical administrative supervisory or legal costs from time to time

(b) notifying the relevant sewerage undertaker of their intention to commence drainage connection works

(c) carrying out any maintenance or remedial works required by the sewerage undertaker pursuant to the Section 115 Agreement; and

(d) shall indemnify the Council against all losses liabilities claims costs damages and expenses arising from any claim by a sewerage undertaker any person or competent authority arising from or ancillary to the connection of the highway drains to the public sewer

## 7. DETERMINATION BY THE COUNCIL

7.1 In the event the Company fails to perform or observe any of the obligations herein contained or if a receiving order in bankruptcy is made against the Company or of the Company is wound up or enters into a composition or arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Company for such non-performance or non-observance determine this Agreement by notice in writing to the Company sent to the address stated in this Agreement Subject always to the provisions of clauses 8 and 9 hereof

## 8. DEFAULT POWERS

8.1 Without prejudice to clauses 5 and 7 hereof if the Company fails to execute or complete the Works in accordance with the Company's obligations hereunder the Council shall be entitled to execute or complete the Works in default by its own employees contractors or otherwise and to recover from the Company all

of the costs incurred by the Council thereby as certified in writing by the Highways Officer Provided that this default power shall only be exercisable by the Council after at least twenty eight days notice of that intention has been given in writing to the Company and the Surety and none of those parties has commenced action to remedy any breach non-observance or non-performance during that time

9. **SURETY'S OBLIGATIONS**

9.1 The Surety hereby covenants with the Council that if at any time the Company fails to observe or perform any of the obligations or covenants herein contained or if circumstances shall arise which would entitle the Council to terminate this Agreement then without prejudice to any other rights and remedies of the Council against the Company under this Agreement or under statutory powers the Surety shall pay to the Council such sum or sums which become due under this Agreement and which the Company would have been liable to pay under the terms hereof Provided that the total liability of the Surety under this clause shall not exceed the sum of £15,000.00 (fifteen thousand pounds)

9.2 The Surety shall not be discharged or released from its liability under this Agreement by any arrangement made between the Company and the Council or by any alteration in their respective obligations or by any forbearance whether as to payment performance or otherwise made with or without the assent of the Surety

9.3 The Surety shall only be released from its liability hereunder once the Council's Final Certificate has been issued pursuant to this Agreement unless otherwise agreed in writing by the Council

10. **IT IS HEREBY AGREED AND DECLARED** as follows:-

10.1 If at any time prior to the commencement of the Works the Company wishes to terminate this Agreement it may do so by giving notice to the Council accompanied with the written consent of the Surety and the Council shall give the Company an account of all abortive costs reasonably and properly incurred by the Council in respect of this Agreement Within 28 days from the date of that account if that account shows that the payments made by the Company under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess and if that account shows that those costs exceed the payment made by the Company under the foregoing provisions of this Agreement the Company shall pay to the Council a sum equal to that excess

10.2 That for the purpose of carrying out its obligations under this Agreement but for no other purpose whatsoever the Company will act as agent for and on behalf of the Council

10.3 The Company is to act as the only client in respect of the Works pursuant to the CDM Regulations

10.4 None of the residential dwellings constructed on the Development pursuant to the planning permission shall be occupied and used for habitable purposes until the Completion Certificate has been issued by the Highways Officer

10.5 Any monies due to be paid under the provisions of this Agreement shall be paid within twenty one days of the due date or if not paid within that period shall bear interest at 3% above the Base Rate of Barclays Bank Plc for the time being such interest being payable from the due date to the date of payment

10.6 Once executed the Contract shall be deemed incorporated in this Agreement insofar as it is applicable and does not conflict with the provisions herein

10.7 The Company shall not assign any of its rights and obligations arising under this Agreement without the prior written consent of the Council

10.8 Any notice or demand required by this Agreement to be given or made shall be in writing

10.9 The land which is to be benefited by the Works is the land to which the planning application hereinbefore referred to relates

10.10 This Agreement will be of benefit to the public

10.11 In the event of any dispute or difference between the parties hereto arising as to the construction of this Agreement or any of the provisions hereof such dispute or difference shall be referred to the President for the time being of the Institution of Civil Engineers whose decision shall be final and binding on the parties hereto Provided that nothing in this clause shall authorise the reference to arbitration of any question as to whether the whole or any part of the Works has been carried out and completed to the satisfaction of the Highways Officer

## SCHEDULE 1

## THE DRAWINGS

12/126/DE/100/001 Revision B

## SCHEDULE 2

## THE WORKS

a) Construction of new junction at the site entrance with Lowfield Road;

b) Construction of new footway;

c) Kerbing to new junction and new footway;

d) Construction of gulley and associated drainage;

e) Lining works;

f) Any works ancillary to the above.

**EXECUTED** by the parties hereto as a Deed the day and year first before written

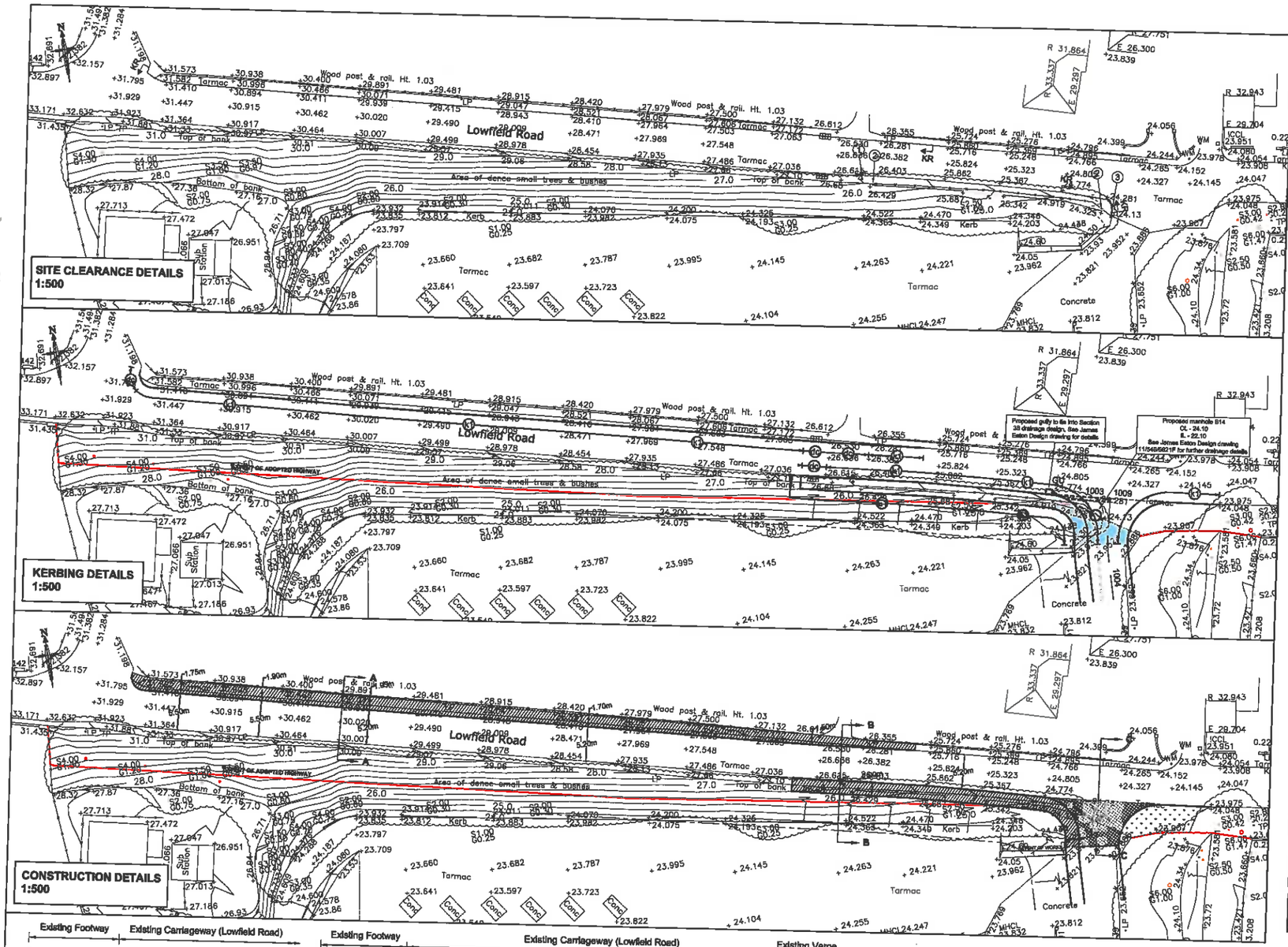
**THE COMMON SEAL** of Barnsley )

Metropolitan Borough Council was )

hereunto affixed in the presence of:- )

Director of Legal and Governance/Authorised Signatory

No. 1837
IN REGIST




## SITE CLEARANCE

1. Existing inspection chamber cover to be adjusted to match new footway levels.
2. Length of existing vegetation to be taken down and roots grubbed up in accordance with clause 202 of the Specification for Highway Works.
3. Existing gate post and foundation to be taken up and removed to tip off site.

KR → Length of existing Kerb, channel, or edging plus concrete bed and backing to be broken out and where possible recycled for fill.

## ROAD MARKING DETAILS

| Diagram. | Description. |
|---|---|
| 1004 | 4000mm line 2000mm gap 100mm wide |
| 1003 | 600mm line 300mm gap 200mm wide |
| 1009 | 600mm line 300mm gap 100mm wide |

## KERBING DETAILS

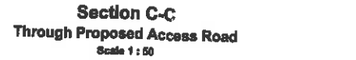
400 x 400 Buff tactile paving to BS 7263 - 3, BS. EN 1338: 2003 & South Yorkshire standard detail 13/14

Area of land to be dedicated as highway

Gu — 450mm diameter pcc gully and D400 cover and frame.

K1 = 125mm x 265mm pcc half battered - 100mm upstand
K2 = 125mm x 150mm pcc bull nose kerb - 6mm upstand
K3 = 125mm x 255mm pcc transition kerb
K4 = 125mm x 255mm pcc transition kerb
E1 = 150mm x 60mm pcc edging kerb
dc = Pedestrian drop crossing - 6mm upstand

Pedestrian Drop Crossing (width varies)




## CONSTRUCTION DETAILS

**New Carriageway Construction**

25mm Dense Bitumen Macadam 125 pen surface course (6mm n.s)
50mm Dense Bitumen Macadam 125 pen binder course (20mm n.s)
70mm Dense Bitumen Macadam 125 pen base course
390mm of Type 1 Sub-base

In areas of less than 1.0m carriageway construction ST4 concrete to be used in lieu of sub base

**New Flexible Footway Surfacing**

Where required break out existing material
25mm Dense Bitumen Macadam 190 pen surface course (6mm n.s)
55mm Dense Bitumen Macadam 190 pen binder course
150mm Type 1 sub-base

**Footway Resurfacing**

Break out existing bituminous footway surface
Proof Roll existing sub base material
Regulate with Binder Course material if required
25mm Dense Bitumen Macadam 190 pen surface course (6mm n.s)
55mm Dense Bitumen Macadam 190 pen binder course

**Proposed Verge**

Break out existing construction and replace with:
150mm Topsoil and Seed

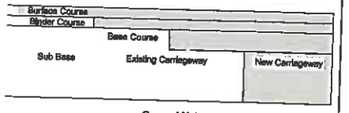



Drawing Number: 12/126/DE/100/001
Revision: B

**Notes**

1. All works to be carried out in accordance with Barnsley Borough Council Council Highway Specification, and standard details unless otherwise instructed by Local Highway Officer.
2. All dimensions in millimetres unless otherwise stated.
3. The depth of foundations, beds channels etc. shall be 150mm, unless otherwise shown.
4. Although the underside of foundations are shown horizontal on the detail, allowance must be made for cross falls of formations and pavement courses.
5. Concrete for foundations and backing shall be mix ST4,
6. All bedding concrete to be laid on a minimum of 150mm thick Type 1 sub-base.
7. Precast concrete kerbs to BS EN 1340.
8. All kerbs and edgings to be laid in accordance with BS 7533-6.
9. The mortar bed may be omitted if kerbs are being laid on wet laid concrete.
10. A pedestrian route through the works shall be maintained at all times and absolutely defined by suitable barriers and lights where necessary.
11. All paving details to tie into existing.
12. The contractor is obliged to obtain necessary road opening notices or licenses prior to commencement of the works.
13. All statutory undertakers covers and frames to be lifted/lowered to suit new footway levels prior to surfacing.
14. All services should be located on site prior to any works being carried out.
15. The contractor is to hand dig any trial pits to locate any services which may be affected by the proposed works.
16. All brick, masonry and PCC Kerbs shall be taken away and recycled where possible.
17. Any overbreak due to the removal of kerbs shall be filled with concrete to local highway authority specification prior to surfacing.

TYPICAL CARRIAGEWAY TIE IN DETAIL N.T.S




General Note:
Base material to be laid in two layers when thickness is greater than 100mm

Do not scale this drawing



| Rev | Date | Amendments | Drn | Chk | App |
|---|---|---|---|---|---|
| B | 16.04.13 | Amended to Barnsley MBC comments received via email on 08.04.13 | CT | RG | |
| A | 27.02.13 | Amended to Barnsley MBC comments received via email on 25.02.13 | CT | IE | |

BRYAN · G · HALL
consulting civil & transportation planning engineers

| | |
|---|---|
| Status | FOR APPROVAL |
| Client | GLEESON HOMES |
| Project | LOWFIELD ROAD, BOLTON UPON DEARNE |
| Title | PROPOSED ACCESS IMPROVEMENTS |
| Drawing No. | 12/126/DE/100/001 — Revision B |
| Scale | AS SHOWN — Job No. 12-126 — Date 31/01/13 |
| A2 – 420 x 594 | Drawn CT — Checked JP — Approved RBC |

Copyright reserved Bryan G Hall Ltd
Suite EB Joseph's Well
Hanover Walk
Leeds LS3 1AB
Tel No: 0113 245 1555
Fax No: 0113 234 2201

Signed as a Deed by

**GLEESON DEVELOPMENTS LIMITED**

acting by its attorney

ANTHONY LEE.
(Name of Attorney in block caps)

(Signature of Attorney)

In the presence of:

Witness Signature

Name ANDREW CARR

Address 5 EUROPA COURT

SHEFFIELD S9 1XE

**THE COMMON SEAL** of National )

House Building Council was )

hereunto affixed in the presence of:- )

Authorised Sealing Officer

BUSINESS SUPPORT MANAG
AUTHORISED SIGNATORY

CUSTOMER SUPPORT TEAM LEADER
AUTHORISED SIGNATORY