

DATED 19TH January **2018**

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

NPS BARNSELY LIMITED

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 Cobcar Lane Elsecar Barnsley South Yorkshire

A.C. Frosdick, LL.B., DipLG,
Executive Director of Core
Services & Solicitor to the
Council
Town Hall
Barnsley
S70 2TA

THIS AGREEMENT is made the

19th

day of January

Two thousand and eighteen

BETWEEN

1. **BARNSELY METROPOLITAN BOROUGH COUNCIL** of the Town Hall
Barnsley South Yorkshire S70 2TA ("**the Council**")
2. **NPS BARNSELY LIMITED** (Company Registration Number 07378589)
whose registered office is situate at Lancaster House 16 Central Avenue,
St Andrews Business Park, Norwich, Norfolk, NR7 0HR ("**the Company**")

INTERPRETATION

In this Agreement:-

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

"**Blue Land**" means the land shown edged in blue on Drawing number NPS – DR – A – (00) – 011 revision C3 attached at Schedule 1 hereto which is intended to become highway maintainable at public expense as provided for 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

"**Company**" includes the successors in title 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

"**Development**" means the residential development at the site (hereinafter defined) for which planning permission has been granted under reference 2017/0436 dated 30th June 2017

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

“Final Certificate” means the certificate to be issued by the Highways Officer once the provisions of clause 4.4 hereof have been fully complied with to the entire satisfaction of the Highways Officer

“Highway” means the highways called Cobcar Street and Cobcar Lane at Elsecar Barnsley

“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

“Legal Fees” means the sum of £1,000.00 (one thousand pounds) being the costs of the Council in the preparation and completion of this agreement

“Maintenance Period” means a period of twelve calendar months from the date of the issue of the Certificate of Completion

“Site” means the residential development off Cobcar Street and Cobcar Lane Elsecar which is registered at the Land Registry under title number SYK652467

“Supervision Fee” means the sum of £3,000.00 (three thousand 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 which has already been paid to the Council by the Company and receipt of which is hereby acknowledged

“Security Deposit” means the sum of £12,507.00 (twelve thousand five hundred and seven pounds) being the sum required to be deposited with the Council by the Company as security for the satisfactory completion of the Works

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

“Works” means the works described generally in Schedule 2 hereto and indicated in outline on the Drawings and includes 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 obtained planning permission for the Development of 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
- (4) The Company has agreed to execute or procure the execution of the Works as agent for and on behalf of the Council
- (5) The Company is the freehold owner of the Site and more particularly the Blue Land and warrants that at the date hereof the Blue Land is free from any restrictions or incumbrances that might affect its dedication as highway maintainable at public expense and enters into this agreement with the intention that the Blue Land shall be dedicated and adopted as part of the public highway as provided for herein
- (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. EXECUTION OF THE WORKS

1.1 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**")

1.2 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
- (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 such parts of the Site as are 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

- 1.3 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

2. CONSENT TO WORK IN THE HIGHWAY

- 2.1 The Council shall during such hours of working as may be agreed in advance with the Highways Officer permit the Company or its approved contractor (hereinbefore referred to) to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the Works

3. FEES AND COSTS

- 3.1 The Company shall on completion of this Agreement pay the sum of the Legal Fees to the Council
- 3.2 In the event the fees properly incurred by the Council exceed the Supervision Fee the Highways Officer shall provide a certified estimate or estimates of such increased fees and the Company shall pay the sum or sums due 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 substantially completed notify the Highways Officer in writing whereupon

the Highways Officer shall make arrangements to inspect the Works and the Highways Officer shall if the Works have been completed to his satisfaction issue the Certificate of Completion to the Company or 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 during that period to the satisfaction of the Highways Officer
- 4.3 On the expiry of the Maintenance Period but before the issue of the Final Certificate the Company shall submit to the Highways Officer 'as-built' drawings and the Health and Safety file pursuant to the requirements of the CDM Regulations
- 4.4 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
- 4.5 For the avoidance of doubt the covenants on the part of the Company contained in clause 7 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. **IT IS HEREBY AGREED AND DECLARED** as follows:-

6.1 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

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

6.3 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

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

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

7. **COMPENSATION AND INDEMNITY**

7.1 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.

7.2 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 save where such loss is attributable to the Council's own action or instruction

7.3 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

8. DETERMINATION BY THE COUNCIL

8.1 In the event the Company fails to perform or observe any of the covenants or obligations herein contained or if a receiving order in bankruptcy is made against the Company or if 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 9 and 10 hereof

9. DEFAULT POWERS

- 9.1 Without prejudice to clause 8 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 the reasonable and proper 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 intention has been given in writing to the Company

10. SECURITY DEPOSIT

- 10.1 The Company shall prior to the commencement of the Works pay the Security Deposit to the Council
- 10.2 Upon the issue of the Certificate of Completion the sum of the Security Deposit shall be reduced to a sum equal to ten percent of its original sum and the Council shall as soon as practicable thereafter refund the sum of the excess to the Company
- 10.3 As soon as practicable after the issue of the Final Certificate the Council shall refund the remaining sum of the Security Deposit to the Company
- 10.4 If at any time the Company fails to observe or perform any of the covenants on the Company's part herein contained or to pay any sums due from the Company to the Council under this Agreement 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 Council shall be entitled to deduct the amount of any costs and expenditure which the Council may suffer or incur by reason thereof from the Security Deposit and the Council shall be entitled to retain any such sums so deducted and

apply the same to discharge any such amounts or sums due from the Company to the Council

- 10.5 If the Council gives notice pursuant to clause 9 hereof and the amount as certified by the Highways Officer to be the estimated cost of carrying out and completing the Works or any part thereof or otherwise remedying any breach by the Company of the provisions hereof shall exceed the sum of the Security Deposit being held at that time the Company shall forthwith on demand pay the difference between the estimated cost and the sum of the Security Deposit to the Council and the same shall be held by the Council as part of the Security Deposit
- 10.4 The amount of the costs and expenditure estimated to be incurred by the Council shall be that certified by the Highways Officer in writing and such certificate shall be final and binding on the parties hereto

11. COVENANTS BY THE COMPANY AND THE COUNCIL

- 11.1 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 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

12. NOTICES

- 12.1 Any notice or demand required by this Agreement to be given or made shall be in writing and sent to the addresses stated in this Agreement

13. BENEFITS

- 13.1 The land which is to be benefited by the Works is the land to which the planning application hereinbefore referred to relates
- 13.2 This Agreement will be of benefit to the public

14. ARBITRATION

- 14.1 The Company hereby further agrees with the Council 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

NPS - DR - A - (00) - 011 revision C3

CCOB - AWP - ZZ - XX - DR - C - 0200 revision P4

SCHEDULE 2

THE WORKS

- (a) Provision of new footway;
- (b) Carriageway resurfacing;
- (c) Provision of street lighting;
- (d) Any other works ancillary to the above.

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

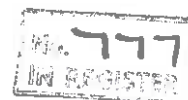
THE COMMON SEAL of Barnsley)

Metropolitan Borough Council was)

hereunto affixed in the presence of:-



Executive Director of Core Services & Solicitor to the Council/Authorised
Signatory

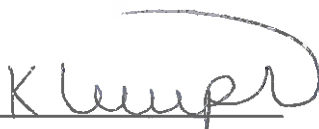


Executed as a Deed by)

NPS BARNSELEY LIMITED acting by)

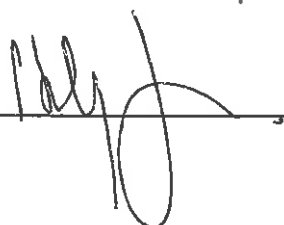
a Director and its Company Secretary)

Signature of Director: _____



(Karen Temple)

Signature of Secretary: _____

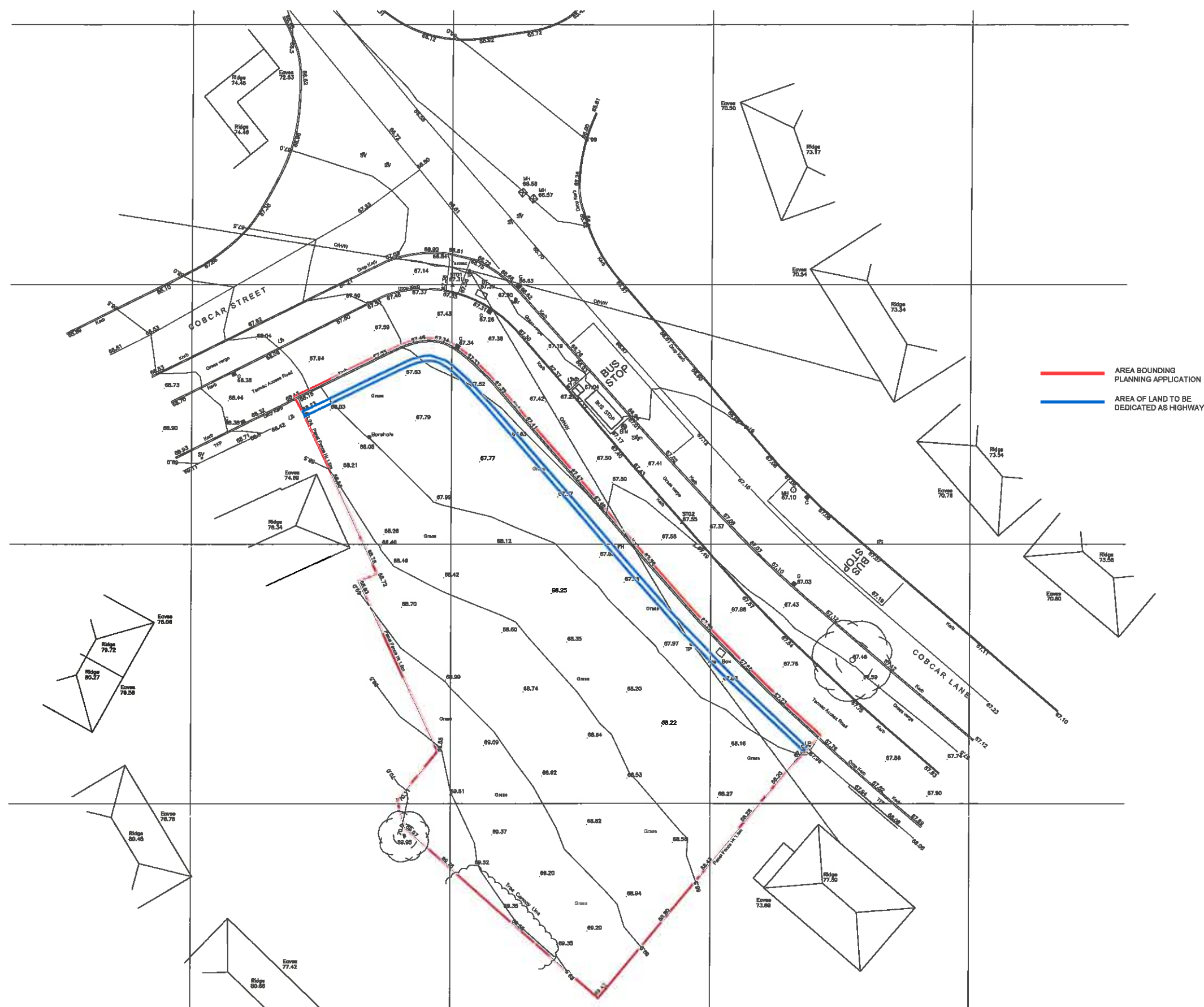


(Hilary Jones)





Notes:



H3C(2016) 000001, the data. X3000 ranges from path number 000-000 to 999-999							
C3	IN	0001 10					
Description: Data H3C(2016) 000001 up to 999-999 (000-000)							
CF	IN	0001 10					
Description:							
REV	Path	Ver	00000000	0000	00000000	0000	

[illegible]

CLIENT	NPS Group
TITLE	Site Plan with Extents

PROJECT
Cobcar Lane, Elsecar
New Housing Development



NPS Barnsley Ltd
Gateway Plaza, Beckhole St, Barnsley, South
Yorkshire, S70 2R
Tel: 01226 774005, Email: barnsley@nps.co.uk

SCALES	DISCIPLINE	PROJECT NUMBER
1:200	ARCHITECT	16-1-1232
DRAWINGS NUMBER		REV CODE
NPS-DR-A-(00)-011		C3
STATUS CODE	PURPOSE OF ISSUE	DRAWN BY
A	CONSTRUCTION	SBL



EXISTING HIGHWAYS
DRAINAGE POSITION
BASED ON ON-SITE CCTV
DRAINAGE SURVEY

MH-0002B, POSITION BASED
ON ON-SITE CCTV SURVEY

GULLY POSITION BASED ON
ON-SITE CCTV SURVEY.

Sign

ALLOWANCE TO
MADE FOR
REPLACEMENT OF
ALL EXISTING KERBS

NEW LAMP POST, FOR
DETAILS REFER TO
ARCHITECT'S DRAWINGS

HEALTH & SAFETY RISKS

IN ADDITION TO THE STANDARD HAZARDS AND RISKS NORMALLY
ASSOCIATED WITH THE TYPE OF WORK DETAILLED ON THIS DRAWING,
PLEASE NOTE THE FOLLOWING RESIDUAL HEALTH AND SAFETY RISKS

CONSTRUCTION RISKS

CR 01 NO EXISTING SERVICES SURVEY HAS BEEN UNDERTAKEN.
LOCATION OF EXISTING SERVICES IS UNKNOWN

CR 02 WORKS ARE TO TAKE PLACE ALONGSIDE ACTIVE HIGHWAY

OPERATION & MAINTENANCE RISKS

MR 01 WORKS ARE TO BE COMPLETED TO BARNSLEY COUNCIL, S279
STANDARDS.

DEMOLITION RISKS

DR 01 NO ABNORMAL RISKS IDENTIFIED

IT IS ASSUMED THAT ALL WORKS WILL BE CARRIED OUT BY A COMPETENT
CONTRACTOR WORKING IN ACCORDANCE WITH THE REQUIREMENTS
DERIVED IN THE CON REGULATIONS.

NOTES:

- THESE NOTES ARE INTENDED TO AUGMENT DRAWINGS AND SPECIFICATIONS, WHERE
CONFLICT OF REQUIREMENTS EXIST THE ORDER OF PRECEDENCE SHALL BE AS SHOWN IN
THE SPECIFICATION. OTHERWISE THE STRICTEST PROVISION SHALL GOVERN.
- THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER RELEVANT ENGINEERS
AND ARCHITECTS DRAWINGS.
- DRAWINGS NOT TO BE SCALED. ALL DIMENSIONS TO BE CHECKED ON SITE BY THE
CONTRACTOR. ANY DISCREPANCIES TO BE NOTIFIED TO THE ENGINEER AND FURTHER
INSTRUCTIONS OBTAINED BEFORE WORK IS COMMENCED.
- THE STRUCTURE IS DESIGNED TO BE SELF-SUPPORTING AND STABLE AFTER THE
BUILDING IS FULLY COMPLETED. IT IS THE CONTRACTOR'S SOLE RESPONSIBILITY TO
DETERMINE THE ERECTION PROCEDURE AND SEQUENCE AND ENSURE THAT THE
BUILDING AND ITS COMPONENTS ARE SAFE DURING ERECTION. THIS INCLUDES THE
ADDITION OF WHATEVER TEMPORARY BRACING, GUYS OR TIE-DOWNS WHICH MAY BE
NECESSARY, SUCH MATERIAL REMAINING THE PROPERTY OF THE CONTRACTOR ON
COMPLETION, AND FOR ENSURING THAT THE WORKS AND ANY ADJACENT PROPERTIES
ARE SAFE IN THE TEMPORARY CONDITION.

KEY:

- STANDARD HS KERB
- STANDARD DROPPED KERB
- STANDARD TRANSITION
KERB
- STANDARD EDGING KERB
- PROPOSED FOOTPATH
LEVEL
- NEW FOOTPATH
- CARRIAGEWAY
RE-SURFACING
- PROPOSED LAMP POST
- EXISTING HIGHWAYS GULLY*
- *EXISTING DRAINAGE POSITIONING
BASED ON TOPOGRAPHICAL SURVEY
AND ON-SITE CCTV SURVEY

P4	AMENDED FOLLOWING COMMENTS FROM DBMC AND REVIEW OF EXISTING HIGHWAYS DRAINAGE.	15.01.17	TW	JC	JG
P5	AMENDED FOLLOWING COMMENTS FROM DBMC	09.01.17	TW	JC	-
P2	AMENDED TO SHOW PROPOSED HIGHWAYS DRAINAGE	11.08.17	TW	AD	-
P1	ISSUED FOR S279 APPROVAL	11.08.17	TW	AD	-
	ISSUED TO BARNSLEY COUNCIL HIGHWAYS FOR COMMENT	05.07.17	TW	JC	-
Row					



Alan Wood & Partners

Hull Office
341 Beverley Road
Hull
HU8 1LD

Consulting Civil
& Structural Engineers
Project Managers
Building Surveyors

T. 01482 442138
www.alanwood.co.uk

Lincs T. 01532 300210
London T. 02071 369791
Scarborough T. 01723 555494
Sharncliffe T. 01423 440077
York T. 01904 811954

Project: RESIDENTIAL DEVELOPMENT AT COBCAR
LANE, ELSECAR

Client: NPS GROUP

Drawing: S278 GENERAL ARRANGEMENT

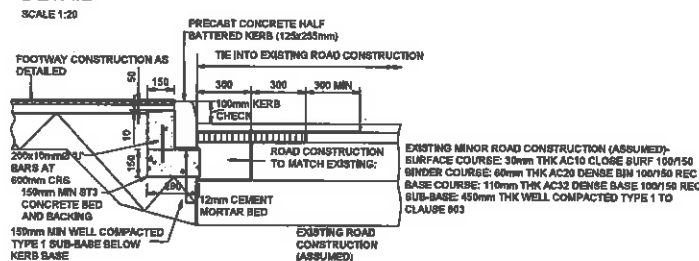
Scale: CIVILS

Approval: APPROVAL

Job no. 39490 Scale: 1:100 UNO Rev. P4
Project: COB - AWP - ZZ - XX - DR - C - 0200

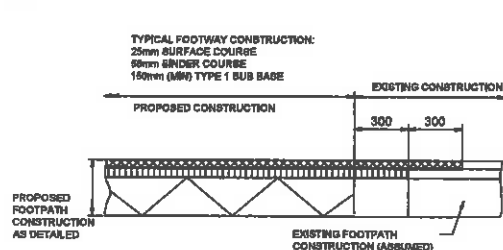
TYPICAL EDGING KERB DETAIL

SCALE 1:20



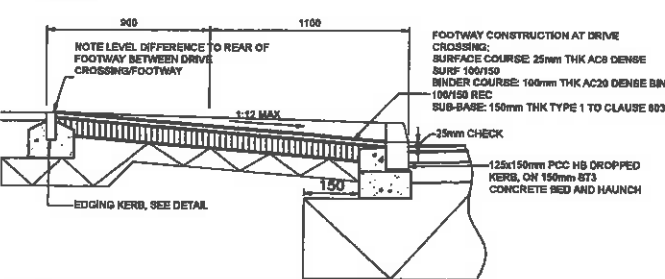
TYPICAL HALF BATTERED KERB REPLACEMENT DETAIL

SCALE 1:20



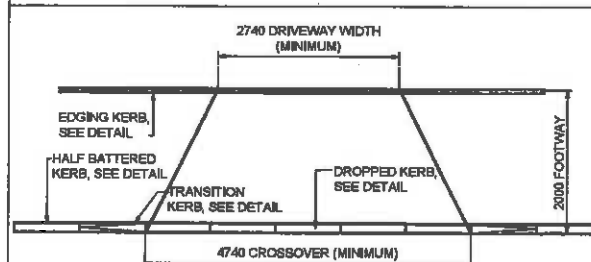
TYPICAL TIE IN DETAIL - EXISTING/PROPOSED FOOTPATH

SCALE 1:20



TYPICAL FOOTPATH CONSTRUCTION (AT DRIVEWAY CROSSING)

SCALE 1:20



TYPICAL PLAN ON DRIVE CROSSING

SCALE 1:50