

Date: 1 March 2021

Application by Aquind Limited for a Development Consent Order for the 'Aquind Interconnector' electricity line between Great Britain and France (PINS reference: EN020022)

Development Consent Planning Obligation in relation to Little Denmead Farm

On behalf of

Mr. Geoffrey Carpenter & Mr. Peter Carpenter

Registration Identification Number: 20025030

Submitted in relation to Deadline 8 of the Examination Timetable

BLAKE 
MORGAN

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Ref: 584927-6

1. INTRODUCTION

- 1.1. Mr Geoffrey Carpenter and Mr Peter Carpenter (the "**Owners**") own the freehold interest to Little Denmead Farm, which covers plots 1-32, 1-32a, 1-38, 1-51, 1-57, 1-69, 1-70, 1-71, and 1-72, and they also benefit from a right of way granted by deed of easement over plots 1-60, 1-63, and 1-65, such plot numbers as shown on the latest revised Land Plans (document reference [REP7-003]) (the "**Owners' Property**").
- 1.2. The Applicant is seeking compulsory acquisition powers over the Owners' Property.
- 1.3. The Applicant is in particular seeking to permanently compulsorily acquire the freehold interest to plot 1-32 because it proposes to construct a permanent access road (amongst other things) on and through plot 1-32.
- 1.4. The Owners have submitted throughout the Examination, its detailed reasons as to why there is no need for the Applicant to seek permanent compulsory acquisition powers due to this proposed permanent access road, because there is in fact no need for such permanent access after construction of the proposed application works.
- 1.5. There are alternative reasonable means of ensuring justified types of access that can be used by the Applicant during the operation of the proposed application development but that have not been explored by the Applicant with the Owners and that failure is a breach of the Secretary of State's guidance on the use of compulsory purchase powers.
- 1.6. The orthodox position is that the law requires the party seeking powers of compulsory acquisition to demonstrate, in essence, a lawful, evidentially justified and decisive case for acquisition and that is compelling for all parts of land envisaged to be taken. An owner need do nothing at all to defend the taking of their land against their will. The Owners do not accept the permanent maintenance of what would be in fact a 'temporary construction' road on their land ("temporary" because the Applicant has confirmed that the unmanned Converter Station would only need to be accessed 3 to 4 times a year for inspection and maintenance – there is no need for a permanent access road for such temporary purposes)
- 1.7. The Owners also do not accept that the Applicant can in law or fact, or has shown that, compulsory acquisition powers over Stoneacre Copse are justified.

- 1.8. The Applicant and local planning authority having had the opportunity to comment on the Owners' draft unilateral development consent obligation throughout the Examination and each having raised no substantive or drafting concerns, save that the obligation be in some way "delivered" to the local planning authority. In that respect the Owners have revised their unilateral Development Consent Obligation so that its terms are enforceable by the relevant local planning authority.
- 1.9. In respect of the contention by the Applicant during Compulsory Acquisition Hearing 3 ("CAH3") that a unilateral planning obligation must be in some way "delivered" to the local planning authority, the Affected Party notes that "delivery" is not a term used in section 106 of the Town and Country Planning Act 1990 as a precondition to the lawfulness of an obligation. As the Owners set out during CAH3, there is no statutory bar in section 106 of the Town and Country Planning Act 1990 to a party "interested in land" (as the Owner is) from relying on a planning obligation in the form of either a bilateral agreement or a unilateral undertaking. Both are, ultimately, "planning obligations". Also, the Applicant's attention is drawn to the clear terms of section 106 that include no such limitation on a section 106 obligation. All that is required is for the deed to state who the local planning authority is and this is because section 106 results to deem the obligation to be a "local land charge" and so the local planning authority falls to be identified... There is no statutory requirement to "deliver" an obligation to a local planning authority. If the Applicant were correct to assert that, in some way, section 106 precluded use by a party of a unilateral undertaking under section 106, then it would result to ensure that any promoter of an NSIP could choose to refuse to enter into a planning obligation as a means to avoid the establishment of an alternative to compulsory acquisition – and that would be self-serving. It is also in law untenable. The Affected Party has offered the undertaking below in order to show that there is a demonstrable alternative to the justified need for periodic access by light vehicles over the Owner's Property to the Converter Station in circumstances where the Applicant has (inexplicably) simply refused to countenance, to engage or to explore such alternatives.

APPENDIX 1

SIGNED UNILATERAL DEVELOPMENT CONSENT OBLIGATION

DATED 1ST March 2021

BY

GEOFFREY CARPENTER AND PETER CARPENTER

UNILATERAL DEVELOPMENT CONSENT OBLIGATION

THIS UNILATERAL DEVELOPMENT CONSENT OBLIGATION is made by **DEED** on the 1ST day of March 2021

BY:-

(1) **GEOFFREY CARPENTER** of [REDACTED] and [REDACTED]

(2) **PETER CARPENTER** of [REDACTED]

(together the "Owner")

RECITALS:

- (A) The Land is located in the administrative area of both Winchester City Council and East Hampshire District Council who are the local planning authorities for part of the area within which the National Infrastructure Project is to be located;
- (B) The Owner is the registered proprietor of the Land which is registered at the Land Registry with freehold Title Number HP763097;
- (C) Within the Land within its Easternmost boundary is an actual trackway laid by, and that was used previously by, National Grid as an accessway for the purposes of ensuring by agreement with the Owner access for the purpose of maintenance of its Lovedean Substation and which connects to Broadway Lane along a right of way in favour of the Land, and which trackway and way are identified on the said Title Number. The route of this track is the Accessway (as defined below);
- (D) Pursuant to the Town and Country Planning Act 1990: section 106(1)(a) and section 106(1A), the Owner may restrict the use of its Land in any specified way; section 106(9)(a) and (aa), this unilateral planning obligation is a development consent planning obligation for the purposes of section 106; section 106(9)(b), the land is part of the land within HM Title Reference HP763097 and the Owner owns the freehold of that part; section 106(9)(d), Winchester City Council is the local planning authority;
- (E) The Developer has submitted the Application to the Secretary of State that encompasses part of the Land ("the Affected Land") and seeks its Development for a Converter Station and related electricity and fibre optic cables in the field of energy under the Planning Act 2008.
- (F) The Developer proposes to build one Converter Station on the northern part of the Affected Land and has expressed and evidenced in its design and access statement that forms part of the Application a need for periodic access by light vehicles from the highway named Broadway Lane to the Converter Station for the purposes of period inspection and maintenance of structures relating to and equipment within the built Converter Station and which has a related spares building near to it.
- (G) In the absence of any engagement or exploration by the Applicant of all reasonable alternatives and mindful of the obligations on the Applicant and the Owner under paragraph

8 of the Secretary of State's "*Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*" and of paragraph 25 of the same guidance that requires land compulsorily "only where attempts to acquire by agreement fail"; and the Owner recognising that it has successfully farmed the Land alongside the electricity-related infrastructure at Lovedean Substation for many decades (including by having previously agreed with National Grid the use of the access way for maintenance access of that electricity-related infrastructure), the Owner continues to recognise the need for ongoing good neighbourly relations with different infrastructure providers.

- (H) The Application Order Limits have been drawn to not include all of the Land and so a development consent planning obligation is the only means by which access along an existing access way within the Land between the highway and envisaged location of the Converter Station can be provided.
- (I) The Owner therefore wishes to bind certain parts of the Affected Land as shown on the Plan, so as to facilitate access for the Developer through the Land to the converter station along a prescribed route around the perimeter of the Land.
- (J) The Owner is satisfied that the requirements of section 106 of the Town and Country Planning Act and of section 104(3) of the Planning Act 2008 and National Planning Policy Statement EN-1 (Energy), paragraphs 4.1.8 and footnote 73 are met by this Deed of Obligation.
- (K) This Deed of Obligation is relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects.
- (L) This Deed of Obligation directly relates to both the land encompassed by the Application and the adjacent Land of the Owner, and is necessary to avoid the need for a permanent access across the central part of the Land whilst also enabling during the operation of the Converter Station access to and from the highway to that Converter Station for maintenance access for light vehicle use.
- (M) This Deed of Obligation, is fair and reasonable in scale and kind because otherwise the Land would cease to be a viable concern if the other permanent access envisaged by the Application in the central part of the Land were constructed and retained, and is otherwise reasonable because the use of the accessway by National Grid previously for a similar purpose of ensuring periodic access to its Lovedean Substation was acceptable to that national electricity provider.

NOW THIS DEED WITNESSES as follows:-

1 Definitions

- 1.1 The following words and phrases shall unless the context otherwise admits or requires have the following meanings:-

"Accessway"	means the existing access between the points marked A and B on Plan 2 and C, D, E and F on Plan 1. Those parts of the Accessway shown coloured yellow comprise the part of the Affected Land subject to a site access licence entered into between (1) the Owner and (2) the Developer dated 13 th November 2020;
"Affected Land"	means the part of the Land within the Order Limits of the Application and that is bound by this Deed, the extent of which is shown outlined in blue on the Plan;
"Application"	means the application for a development consent order, reference EN020022, made by Aquind Limited in relation to the Aquind Interconnector, under the Planning Act 2008 to the Secretary of State on 14 November 2019 for the elements of development described in paragraph 3.5(A)-(D) in the Statement requesting a direction dated 19 June 2018;
"Begins"	means the earliest date on which a material operation as defined in Section 155 of the Planning Act 2008 and "Begin", and "Begun" shall be construed accordingly;
"Converter Station"	Means that part of the Development which comprises one Converter Station for the Planning Act 2008 Purposes;
"DCO"	means such grant of a development consent order pursuant to the Application as may be made by the Secretary of State;
"Decommissioning Period"	Means the date on which the Converter Station begins to be decommissioned pursuant to Requirement 24 of the DCO;
"Developer"	Aquind Limited (company reference number 06681477) and such third party as may be agreed in writing by the Owner to use the Operational Accessway for maintenance purposes
"Development"	means the development described in paragraph 3.5 (A)-(D) of the Statement in the field of energy requesting a direction under Section 35 of the Planning Act 2008 (dated 19 June 2018) proposed to be situated on part of the Land to which this unilateral development consent obligation relates and directed by the Secretary of State to be treated as development requiring development consent;
"Land"	means the freehold property owned by the Owner, known as Little Denmead Farm, Broadway Lane, Denmead, Waterlooville PO8 0SL located within the geographical area of both Winchester City Council and East Hampshire District Council, HM Land Registry Title HP763097 and shown for the purpose of identification edged red on the Plan attached at Appendix 1 to this Deed, and which is not wholly within the Order Limits of the Application;

"Operational Period"	Means the period of time between the date of certification of the Converter Station and the date on which the Decommissioning Period begins;
"Order Limits"	means that extent of land covered by the Application and as defined in Article 2(1) of the DCO that covers part of the Land;
"Owner's Protective Provisions"	means the protective provisions for the protection of Little Denmead Farm submitted by the Owner during the Examination (and as revised during the Examination);
"Parameter Zone 1 Access Road"	means the zone of access within which the Developer may construct a temporary haul road on the Land for the purpose of constructing the Converter Station, and which zone is identified shaded in grey on the plan entitled "Converter Station and Telecommunications Buildings Parameter Plans Option B(i)" with Plan Reference EN020022-2.6-PARA-Sheet2 REV 03, and the plan entitled "Converter Station and Telecommunications Buildings Parameter Plans Option B(ii)" with Plan Reference EN020022-2.6-PARA-Sheet3 REV 03, as certified by the DCO
"Plan 1"	means the plan attached to this Deed labelled Accessway Plan – Plan 1 of 2 attached at Appendix 2 to this Deed;
"Plan 2"	means the plan attached to this Deed labelled Accessway Plan – Plan 2 of 2 attached at Appendix 2 to this Deed;
"Planning Act 2008 Purpose"	Means the purpose of the field of energy specified in sections 14(6)(a) and 35(2)(a)(i) of the Planning Act 2008
"Purposes"	means the purposes of repair, inspection, maintenance and emergencies relating to the Converter Station;
"Savings"	means the savings set out in Schedule 2;
"Secretary of State"	means the Secretary of State for Business, Energy and Industrial Strategy who is determining the Application; and
"Town and Country Planning Act"	means the Town and Country Planning Act 1990, as amended.

2 INTERPRETATION

2.1 In this Deed:-

- 2.1.1 the headings are for ease of reference and shall not affect interpretation;
- 2.1.2 words importing the singular include where the context so admits the plural and vice versa and the masculine includes the feminine and vice versa;
- 2.1.3 references to Clauses, paragraphs, plans, drawings and Schedules are references to clauses, paragraphs, plans, drawings and schedules to this Deed;
- 2.1.4 references to the Owner shall include its successors in title;
- 2.1.5 references to Developer shall include its successors in title within the Order Limits;
- 2.1.6 any covenant not to do any act or thing includes an obligation not to knowingly allow, permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by another person;
- 2.1.7 any references to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force; and
- 2.1.8 where two or more persons are bound by any of the covenants in this Deed their liability shall be joint and several.

3 STATUTORY AUTHORITY

3.1 This Deed of Planning Obligation is made pursuant to:-

- 3.1.1 Section 106, and 106(9)(aa) of the Town and Country Planning Act and is a development consent planning obligation for those purposes;
- 3.1.2 Section 111 of the Local Government Act 1972;
- 3.1.3 Section 2 of the Local Government Act 2000;
- 3.1.4 Section 1 of the Localism Act 2011; and
- 3.1.5 all other powers enabling in that behalf,

with the intent that the terms hereof will be planning obligations so as to bind the Land as hereinafter provided and shall be enforceable.

3.2 This Deed is made under section 106 of the Town and Country Planning Act and the planning obligations are entered into with the intent that, they shall be enforceable without limit of time by Winchester City Council and East Hampshire District Council against the Owner in accordance with the provisions of this Deed including its successors in title and assigns and any person corporate or otherwise that acquires an interest or estate created in the Land (or any part or parts thereof) as if that person had also been an original covenanting party in respect of the planning obligations which relate to the interest or estate for the time being held by that person.

3.3 If the DCO is not Begun or shall at any time be quashed, revoked or otherwise changed or withdrawn, then this Deed shall immediately cease to have effect from the earliest date of the said event.

4 CONDITIONAL ENTRY INTO FORCE AND CURRENCY

4.1 The obligations in this Deed shall not bind the Owner otherwise than for the duration of the Operational Period and unless first:

4.1.1 The Secretary of State finds in relation to the Application (whether himself or by agreement with a finding by the Examination Authority) that during the Operational Period:

(a) an access way enabling periodic access by the Developer for the Purposes between the highway and the Converter Station is necessary; and

(b) the permanent presence of an access way within the Parameter Zone 1 Access Road is not necessary because of this development consent obligation is an alternative; and

4.1.2 The Secretary of State grants the DCO under section 114 of the Planning Act 2008; and

4.1.3 In the event of any claim to the High Court against the grant of the DCO, expiry of any consequential right to appeal in relation to such claim; and

4.1.4 The DCO is not quashed; and

4.1.5 The Development Begins for the purposes of section 155(1) of the Planning Act 2008; and

4.1.6 Practical completion of the Converter Station is certified and the same is communicated in writing to the Owner.

OWNER'S OBLIGATIONS

4.2 The Owner undertakes:

4.2.1 Subject to the Savings in Schedule 2, to carry out the undertakings as set out in Schedule 1 of this Deed.

5 SUCCESSORS IN TITLE

This Deed is intended to be enforceable against any person deriving title from the Owner.

6 ENFORCEABILITY

6.1 This development consent obligation is enforceable to the extent that the obligation relates to land within the area of the following local planning authority:

6.1.1 Within the administrative area of Winchester City Council, that council in its capacity as the local planning authority; and

6.1.2 Within the administrative area of East Hampshire District Council, that council in its capacity as the local planning authority;

and no obligation will be enforceable by either of those local planning authority otherwise than during the period of the Operational Period.

7 LOCAL LAND CHARGE

The Owner shall register this Deed in the relevant registers of local land charges against the Land.

8 RELEASE UPON PARTING WITH INTEREST AND DISCHARGE

The Owner shall upon parting with its interest in the Land or in any part thereof be released from all obligations, rights and duties in respect of the whole or part of the Land as the case may be except in respect of any prior or subsisting breach of obligation under the terms of this Deed.

9 NOTICES

9.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post.

9.2 The address for service of any such notice, consent or approval as aforesaid shall be in the case of service upon the Owner the registered office or such other address as shall have been previously notified.

9.3 A notice, consent or approval required or authorised to be given under this Deed shall be deemed to be served as follows:-

9.3.1 if personally delivered at the time of delivery and if posted at the time when it would be received in the ordinary course of business; and

9.3.2 to prove such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice, consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope.

9.4 Owner will take into account such representations made by the Developer as the Owner considers reasonable.

10 THIRD PARTIES

It is not intended that this Deed should give rights hereunder to a third party arising solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

11 JURISDICTION

11.1 This Deed shall be governed by, and construed and interpreted in accordance with the laws of England and Wales.

11.2 If any provision of this Deed is found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not affect the validity or enforceability of the remaining provisions of this Deed.

12 DELIVERY

The provisions of this Deed shall be of no effect until this Deed has been dated.

Schedule 1
The Undertaking

- 1 Save as otherwise agreed in writing by the Owner, and subject to the Savings in Schedule 2 of this Deed, the Owner will not impede the periodic use of the Accessway for the Purposes by the Developer.

Schedule 2

Savings

The Owner may:

1 Use to carry out landownership functions

- 1.1 The Owner may carry out its land ownership functions along the Accessway, but in so exercising such functions the Owner shall cause as little interference as is reasonably practicable to the exercise of its Undertaking in paragraph 1 of Schedule 1 to this Deed.

2 Repair of the Accessway

- 2.1 The Owner may repair from time to time the Accessway, but in so doing shall seek to minimise interference so far as is reasonably practicable with the exercise of its Undertaking in paragraph 1 of Schedule 1 to this Deed.

3 Works on the Affected Land by the Owner and Reasonable Interruption of the Accessway

- 3.1 The Owner may develop the Accessway, but in that eventuality must provide a route of access to the Developer that, in the reasonable opinion of the Owner serves an equivalent function to the Purposes and is of an equivalent physical nature, if the Owner cannot exercise its Undertaking in paragraph 1 of Schedule 1 to this Deed as a result of any such development.
- 3.2 The Owner may interfere with, temporarily interrupt, impede access by the Developer along the Accessway, and carry out any works that in the reasonable opinion of the Owner are necessary, along the Accessway if it becomes thus necessary including where the Owner considers that the Developer's use of the Accessway has resulted in or caused any damage to the Accessway, or the Developer obstructs the Accessway, or uses the Accessway in a manner that requires, in the reasonable opinion of the Owner, the Owner to carry out repairs or maintenance to the Accessway.
- 3.3 In the event that, in the reasonable opinion of the Owner, the matters referred to in paragraph 3.2 result in the Owner incurring costs, the Owner is entitled to preclude use of the Accessway for the Purposes until it has received cleared funds of a sum equivalent to the costs incurred by the Owner. Upon receipt of the said sum, the Owner shall give written notice of that receipt to the Developer.

IN WITNESS whereof the Owner hereto has executed this Deed the day and year first before written

EXECUTED and DELIVERED as a DEED

by GEOFFREY CARPENTER

in the presence of:



GEOFFREY CARPENTER.

Witness Signature Henry Brice

Witness Name: HENRY BRICE

Witness Address: IAN JUDD + PARTNER
4 HIGH STREET, BISHOPS WALTHAM
SOUTHAMPTON, SO32 1AB

Witness Occupation: CHARTERED SURVEYOR

EXECUTED and DELIVERED as a DEED

by PETER CARPENTER

in the presence of:



PETER CARPENTER.

Witness Signature Henry Brice

Witness Name: HENRY BRICE

Witness Address: IAN JUDD + PARTNER
4 HIGH STREET, BISHOPS WALTHAM
SOUTHAMPTON, SO32 1AB

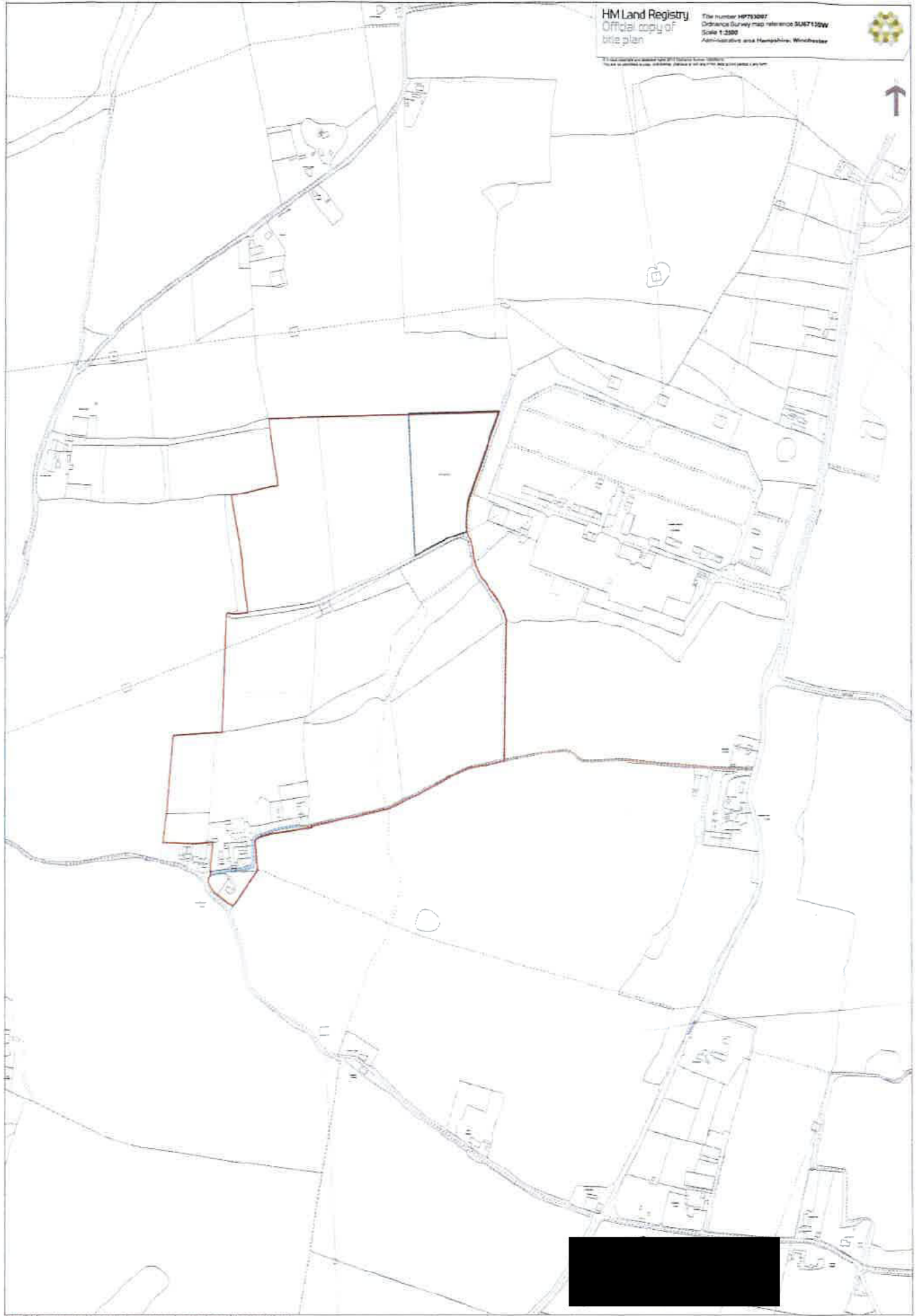
Witness Occupation: Chartered surveyor

APPENDIX 1

THE LAND

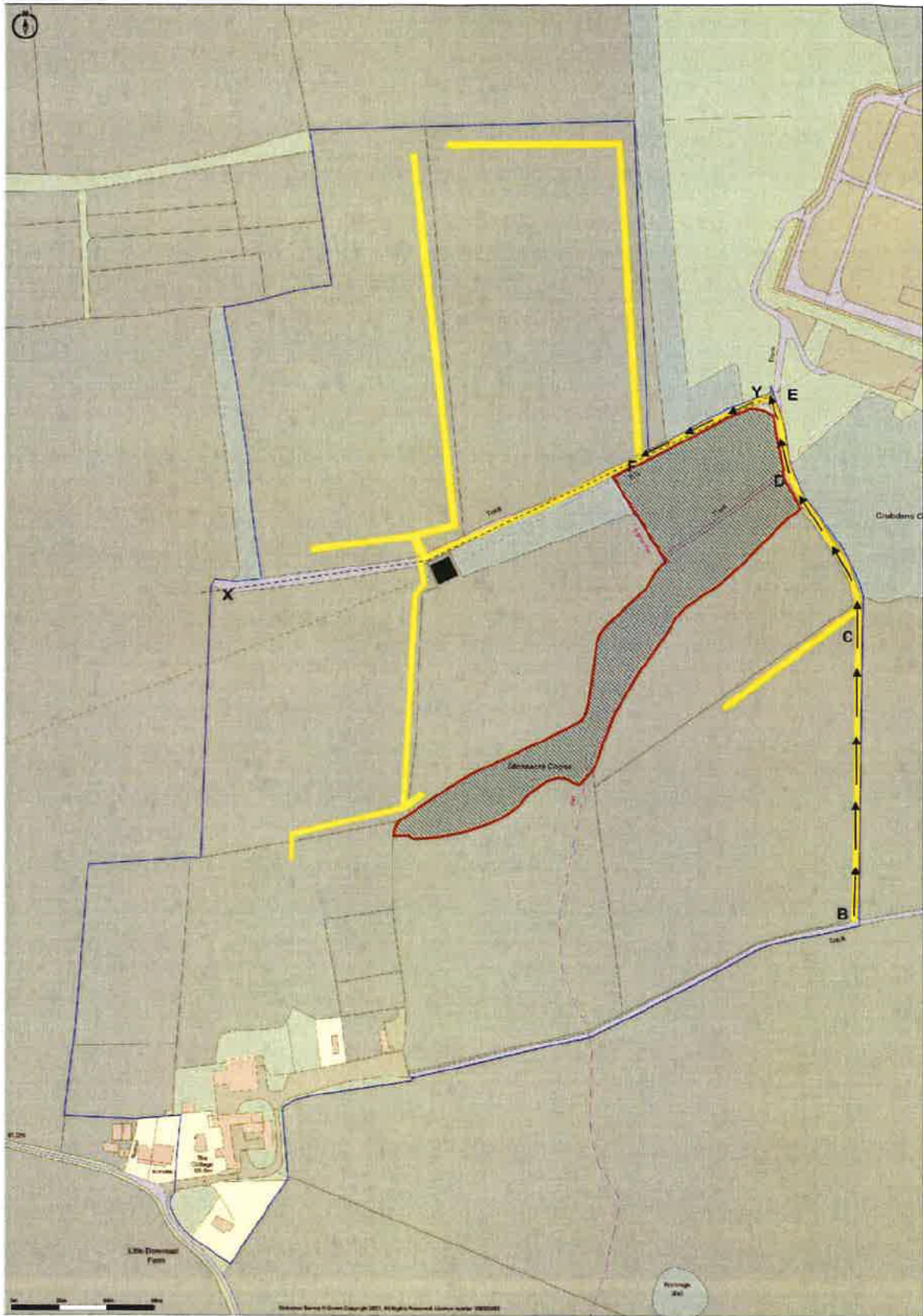


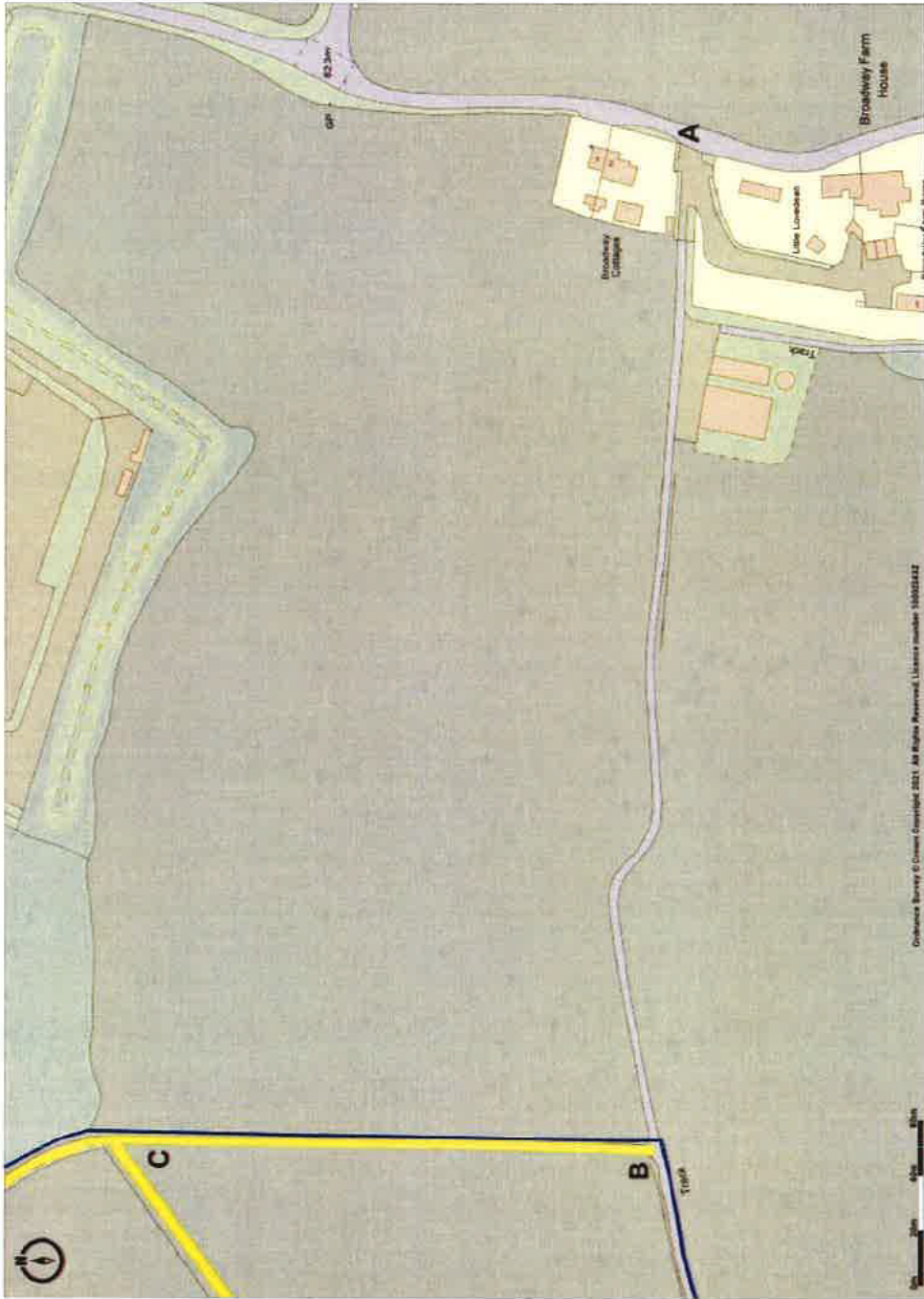
This information was published on 22 July 2020 at 10:10:51.
This is an official copy. Additional details are available on the HM Land Registry website.



This official copy issued on 22 July 2020 shows the state of this title plan on 22 July 2020 at 10:10:51.
It is admissible in evidence to the same extent as the original (s.77 Land Registration Act 2002).
This title plan shows the general location, not the exact line, of the boundaries. It may be subject to alterations in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Durham Office.

APPENDIX 2
PLAN 1 & PLAN 2





Accessway Plan - Plan 2 of 2

Promap v2 LANDMARK INFORMATION
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 Plotted Scale - 1:2500. Paper Size - A4

