

Interested Party Reference Number: 20033067

A12 Chelmsford to A120 widening scheme

Deadline 7 Submission post CAH3 hearing, 27th June 2023

Further to previous representations made on their behalf, our clients are a consortium of landowners who between them own the remaining development land known as Gershwin Park, Witham. Gershwin Park has been developed by the consortium in collaboration with their longstanding development partner Churchmanor.

Gershwin Park is a strategic westwards extension to Witham. It is located to the north of the existing A12 and to the east of the existing Witham South junction 21. Several outline planning permissions for a combination of residential, commercial, and community uses have been granted in the past, with the latest outline permission (12/01071/OUT) granted by Braintree District Council in July 2013. The approved masterplan is attached at Appendix 1. This consent has been partially implemented via several reserved matters applications; in addition, other permissions have also been granted for related development not strictly in accordance with the outline permission.

The undeveloped parts of Gershwin Park are also allocated in Section 2 of the Braintree District Local Plan (2013-2033), which was adopted in July 2022. These are broadly in accordance with the outline permission, with the areas of the site remaining to be developed variously allocated for retail and town centre uses, retail warehousing, business park, residential, and informal recreation. The relevant part of the adopted Local Plan map covering Witham South is at Appendix 2.

The area affected by the DCO is clearly allocated for “Business Parks” (blue dots), and part of the “Employment Policy Area” (blue tinting). In the south west corner of Gershwin Park, this allocation abuts the current extent of the A12. The site is referred in policy LPP2 of the Local Plan as site reference “h”, and is known therein as the “Maltings Lane Business Park (Gershwin Park)”. By way of explanation, the reference to “Maltings Lane” is a historic one, on the basis the northeastern extent of Gershwin Park when originally proposed abutted Maltings Lane, and therefore (at the time) was the point at which the strategic extension to Witham commenced. Policy LPP2 sets out the new strategic employment sites within the District, and it is clear Gershwin Park forms an important contribution to the total land supply. It is also specifically referred to in policy LPP6, again as “Maltings Lane”.

From our and Churchmanor’s engagement with National Highways’ agents to date, we do not believe the planning status of the land as outlined above is in dispute.

Specifically, the red line around the draft compulsory purchase order and DCO application affects the following developable parts of Gershwin Park within the area allocated in the Local Plan for Business Parks:

- An area known as “plot 1”, and extending to approximately 1.27 hectares, immediately to the north of the existing A12, west of Gershwin Boulevard, and south of Griggs Way. On National Highway’s land acquisition plans, plots 7/14a, 7/16h, and 7/16f (part) are to be permanently acquired from plot 1, together with 7/16e (required for the acquisition of service rights only). The plots to be acquired amount to approximately 0.39 hectares, or 30% of plot 1.
- An area of land known as “plot 28” extending to approximately 0.8 hectares, immediately to the south of Chipping Hill Primary School, the north of Gershwin Boulevard, and west of Owers Road. On National Highway’s land acquisition plans, plots 7/16b, 7/16c, and 7/17c are to be acquired for temporary occupation as a recovery yard. For the avoidance of doubt, this area is not included within Churchmanor’s development agreement.

The above are shown on the extract from National Highway's latest Land Plan, submitted to the Examination as REP6-015, at Appendix 5.

In addition to the above, the landowners also own further plots of land affected by the DCO application (7/16a, 7/16d, 7/16f (remainder), 7/16g, 7/17a, and 7/17d). These comprise verge/public access land alongside Gershwin Boulevard. For the avoidance of doubt, they are not regarded as developable land, and are also not included within Churchmanor's development agreement.

The red line also borders a developable part of Gershwin Park (known as "plot 18") to the south Hatfield Road, west of Gershwin Boulevard, north of Griggs Way, and east of the Motus Mercedes premises. It appears to us that the red line stops at the back of the existing footway, and therefore plot 18 is not affected by the DCO proposals. However, this is being raised at the Examination now due to a holding objection now made by National Highways until 29th September 2023 in relation to a planning application Churchmanor has made to Braintree District Council (23/00827/FUL) on plot 18. National Highways have not yet commented on whether they have any actual objection to the proposed development on plot 18, and therefore the landowners and Churchmanor need to reserve their position in this regard.

It is important to reiterate the consortium understands the importance of the A12 widening scheme, and do not object to the principle of the development. As a result, we as the consortiums representatives (along with the Churchmanor) have engaged with National Highways' agents in a positive and constructive manner as soon as the original s48 notices were originally issued in June 2021, in order to identify and attempt to mitigate potential conflicts with the allocated and consented development land as early on as possible. Churchmanor's detailed plans for the development of plot 1, including drainage arrangements, were shared in full electronic form with National Highways well before the DCO process commenced in December 2021/January 2022, to allow them to be overlaid onto the A12 proposals and conflicts identified.

However, despite that engagement, and repeated undertakings from National Highways that they would investigate mitigation options, no meaningful response was received from National Highways until a brief confirmation on 24th April 2023 that no changes to the design of the DCO scheme would be made. As a result of the extended period of uncertainty, Churchmanor has had no option (due to its contractual obligations to the landowners under the development agreement, which National Highways were warned about on numerous occasions) to draw up and submit a detailed planning application to Braintree District Council for the development of plot 1 as it currently stands, within the current extent of the Business Park allocation for this part of Gershwin Park as shown on the Local Plan map, and before confirmation of the DCO. This has been registered by Braintree District Council with reference 23/00836/FUL, for the development of 18 no. business and light industrial units, totalling 33,900 sqft gross internal area on the ground floor.

A plan showing the location of plot 1 and the layout of this application overlaid with the DCO red line boundary is attached at Appendix 3. From this it is clear that:

- 5 units totalling 13,000 sqft (38% of the floorspace of proposed scheme) are directly affected.
- When the site is redesigned to take account of the DCO boundary, it is likely that once boundary landscaping and surface water drainage is taken into account, the loss will be closer to 45-50% of floorspace, resulting in a significant injurious affection claim for the retained land, on top of compensation for land acquired compulsorily. Churchmanor will in addition have a separate claim for loss of development profit.

Accordingly, the consortium must continue to object to the scheme insofar as it affects Plot 1, for the reasons stated below:

- The proposals would substantially impact on consented and allocated development land, firstly by compulsorily acquiring land, and secondly by way of injurious affection, as a result of the remaining land being very irregularly shaped, and some being rendered undevelopable. In particular, the eastern end of plot 1 would taper into a triangular point, and the southern boundary would feature several “steps”. This is we are told by National Highways as a result of the need to a) provide an emergency refuge on the northbound carriageway, resulting in the land required “stepping in”, and b) the need to provide drainage to prevent run off onto the A12 from the surrounding land. These features are shown at Appendix 6 on the extract from National Highway’s latest General Arrangement Plans, presented to the Examination as REP6-019.
- The above matter was highlighted to National Highways over 18 months ago, well before the DCO application was made. Despite extensive engagement with National Highways, regular undertakings from them to investigate the matter, and chasing for updates, no change to the design of the scheme has been made. This was only confirmed to us and Churchmanor on 24th April 2023, almost two months after the CAH1 hearing, and 3 days before the CAH2 hearing. Whilst it is appreciated space needs to be made for drainage to capture run off from the adjacent land, together with the proposed emergency refuge, no proper explanation has been provided as to why:
 - the current design requires such a large buffer between the road alignment and edge of the land take
 - the retaining wall proposed immediately to the west cannot be extended eastwards to reduce the extent of embankment around the emergency refuge (and therefore land take) needed, as per our suggestion to mitigate the impacts of the scheme
 - the emergency refuge cannot be moved a very short distance to the east where it would run alongside, and make use of, otherwise undevelopable land, as per our suggestion to mitigate the impacts of the scheme
 - as appears to be the case with adjoining parcels of land, the drainage cannot be run much “tighter” to the boundary, as per our suggestion to mitigate the impacts of the scheme

Essentially, the only response we have received was simply that National Highways had decided it would not make those changes.

- No assessment appears to have been made of the costs of making such an adjustment, versus the compensation that would need to be paid for land purchase, injurious affection, and loss of development profit. Without this, it is impossible to say whether best value is being obtained for public money.
- No account appears to have been taken of the economic effects of the loss of consented development land, nor the need to replace it to maintain a suitable supply within Braintree District.
- We have asked for National Highways to confirm it will make an on account payment of reasonable professional fees to allow a re-design of the plot 1 layout and resubmission of the planning application to be made if the proposed land take boundary is confirmed, but to date no such confirmation has been received. These costs will include fees for the architect, civil engineer, landscape architect, mechanical and electrical engineer, BREEAM assessor, air quality assessor, ecologist, acoustician, and highway engineer. We understand from

Churchmanor that they anticipate these costs to be in region of £50,000, plus the cost of the new planning application fee.

- Despite requests for confirmation, no detail has been provided to date of the extent of services acquisition needed in parcel 7/16e, so we are unable to understand whether this parcel is in fact capable of beneficial use once the services are installed, or is effectively sterilised and therefore should be included within the land required for permanent acquisition.
- We note and do not disagree with the comments made in the CAH3 hearing by the Valuation Office that the parties are in broad agreement informally as to the rate per unit area proposed for any development land that is to be compulsorily acquired. However, compulsory purchase should always be a final fall back following all attempts to mitigate the quantum of land needed, and we object on the basis that the land take proposed still appears to be excessive and unnecessary.

We have a further objection to make in respect of Plot 18. A plan showing the location and layout of the proposed development for which the planning application referred to above is attached at Appendix 4.

- This site is not within the red line of the DCO. Churchmanor have submitted a planning application to Braintree District Council (23/00827/FUL) for the development of 2 no. retail units, 2 no. drive thru units, and an ultra rapid electric vehicle charging station. National Highways made a holding objection on 15th May 2023 that the application should not be determined before 29th September 2023, noting that:

“We are currently reviewing the documentation supporting this planning application and have not yet reached a view if the development proposals will have a material impact on the operation of the Strategic Road Network. Consequently, it is requested that this application is not determined before 29 Sept 23. If we are in a position to provide a formal response earlier we will withdraw this recommendation accordingly. It is noted that the A12 construction red line boundary is close to this site.”

National Highways should be capable now of confirming the development proposals on this plot do not fall within the red line of the DCO, nor affect the DCO proposals. If that is the case, there is no justification for a response time of up to four and a half months – it is not uncommon for National Highways to require a little extra time to consider applications, but the time proposed is excessive. We would be very concerned if National Highways now regard any part of plot 18 as falling within the DCO boundary, as they have not raised this point at any point in the last 2 years since the issue of the original s48 notices.

With regards to National Highways aforementioned recovery yard proposals we have the following points and objections to make;

- The Scheme proposals have and will continue to impact and delay this consented and allocated development land from being developed for a number of years currently uncertain by holding it in effective limbo until such time that it is no longer required by National Highways.
- We were asked by National Highways and their agents in 2022 to provide them with proposals on behalf of the consortium to enable them to utilise the land for their required purposes. In good faith, these proposals were prepared and submitted, to which responses have been slow and no counter-offer has been supplied despite repeatedly being requested. This has led S&P and Ceres Property to feel that National Highways want to wait for receipt of their CPO powers

to enable them to acquire the temporary rights that they need to use it as they have proposed rather than seeking to work with the Landowners to agree matters in the hope of not having to revert to their CPO powers.

- The landowners remain willing to try and agree a sensible way forwards with regards to this issue, including lease of the land to National Highways for the duration of their requirement of it, and would welcome their counter-offer to enable discussions to take place with a view to making progress in this regard. We feel that this is the logical solution for all involved.

We trust these comments set out our current objections and comments clearly to the Inspectors, but we would be pleased to expand further or clarify any point which remains unclear.

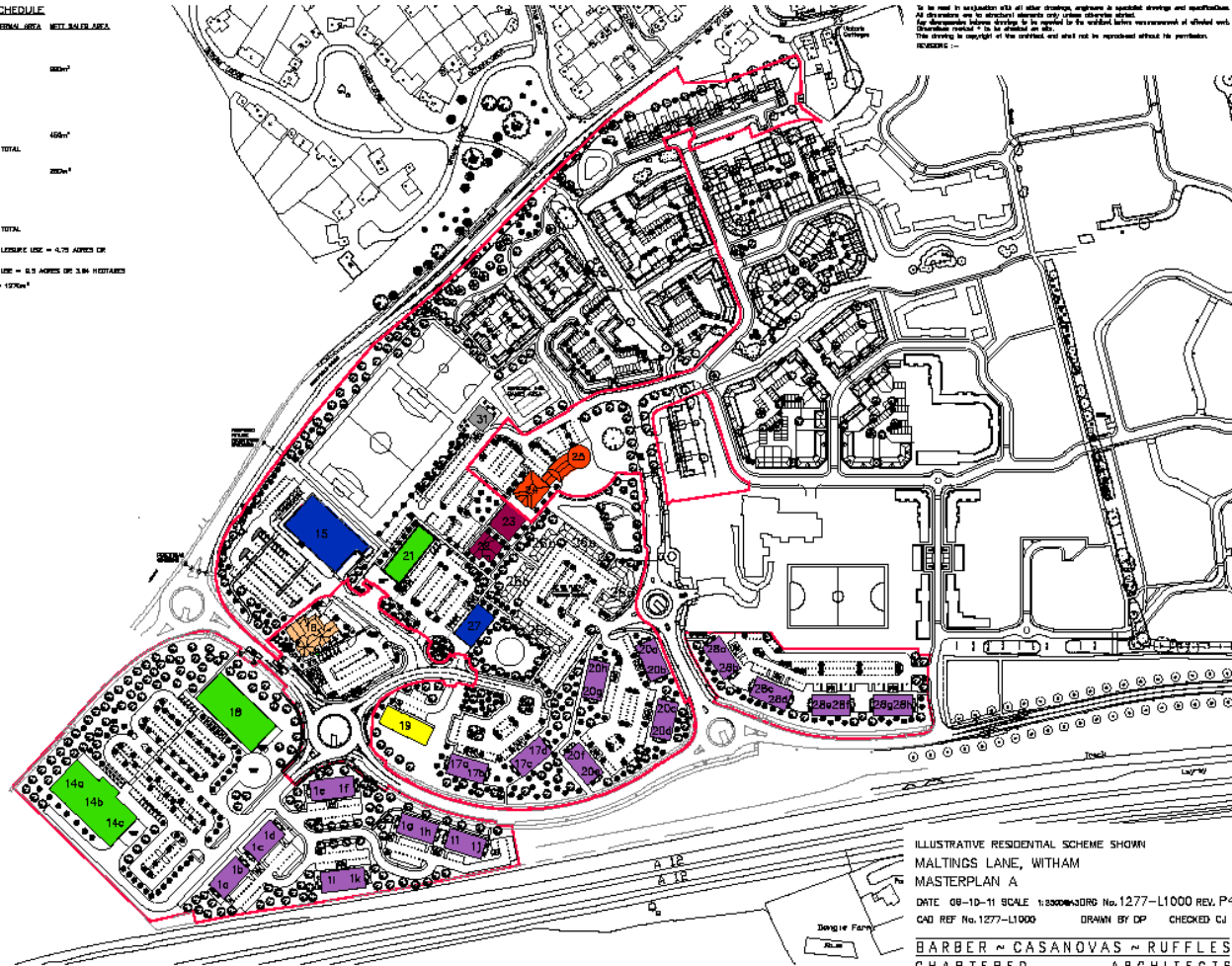
Yours Faithfully

Oliver Lukies of Strutt & Parker and Paul Fosh of Ceres Property

Appendix 1 – Approved Masterplan for Gershwin Park (Planning Consent 12/01071/OUT)

INDICATIVE FLOOR AREAS SCHEDULE

USE	BUILDING	INDICATIVE AREA	NETT. BALD. AREA
14a	NON FOOD RETAIL		
14b	NON FOOD RETAIL		
14c	NON FOOD RETAIL		
15	FOOD RETAIL		882m ²
16	PUBLIC HOUSE / FAMILY RESTAURANT		828m ²
18	NON FOOD RETAIL		
18	AUBREY	456,4m ²	
21	NON FOOD RETAIL		456m ²
26A-E	RESIDENTIAL	83 PLAYS TOTAL	
27	NEIGHBOURHOOD FOOD STORE		882m ²
31	PARKING	1,386m ²	
OFFICE BUILDING			
14-L	OFFICES		
17M-D	OFFICES		
20A-H	OFFICES		
23M-H	OFFICES		
			5963,0m ² TOTAL
TOTAL OF LAND ASSOCIATED WITH SPORTS & LEISURE USE = 4.73 ACRES OR 1.96 HECTARES			
TOTAL OF LAND ASSOCIATED WITH BI OFFICE USE = 8.3 ACRES OR 3.34 HECTARES			
TOTAL FORMERLY FOOD WAREHOUSE AREA = 1970m ²			
ALL AREAS ARE APPROX ONLY			



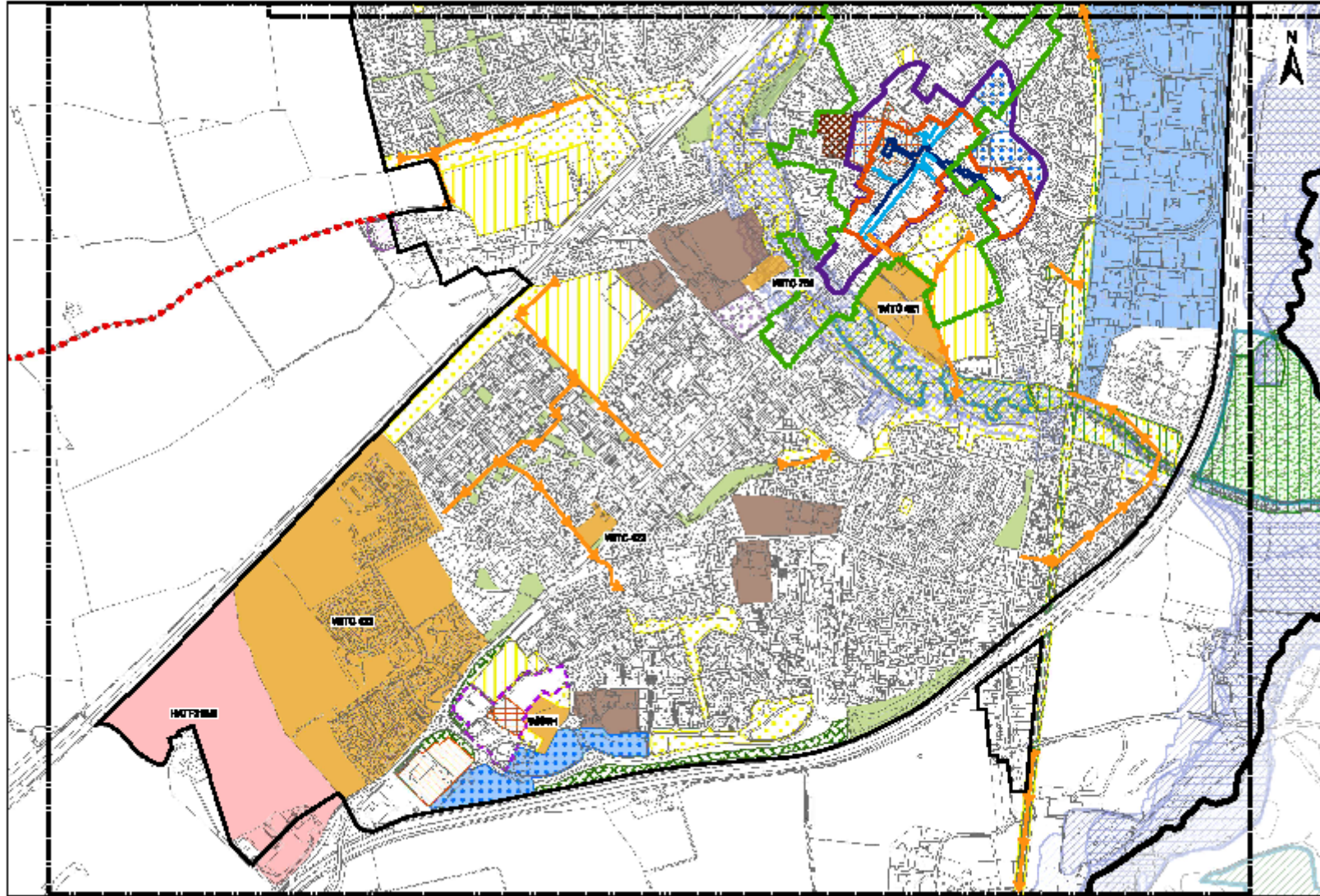
To be read in conjunction with all other drawings, programs, schedules drawings and specifications. All dimensions are to structural elements only unless otherwise stated. For dimensions before drawings to be applied to the ground before commencement of physical work, the drawing is copyright of the architect and shall not be reproduced without the permission of the architect.

ILLUSTRATIVE RESIDENTIAL SCHEME SHOWN
 MALTINGS LANE, WITHAM
 MASTERPLAN A
 DATE 08-10-11 SCALE 1:2000 © 2010 No.1277-L1000 REV. P40
 CAD REF No.1277-L1000 DRAWN BY DP CHECKED CJ
BARBER ~ CASANOVAS ~ RUFFLES
 CHARTERED ARCHITECTS
 BARBER CASANOVAS RUFFLES LIMITED EMAIL: info@barbercasanovasruffles.co.uk COMPANY NO. 8276788
 1 WYLLINGTON SQUARE, CHICHESTER PO14 3AH UK TEL: 01243 830770 FAX: 01243 830780

Appendix 2 – Braintree Local Plan Part 2, Key & Policies Map for Witham South

Key: Local Plan 2013-2033

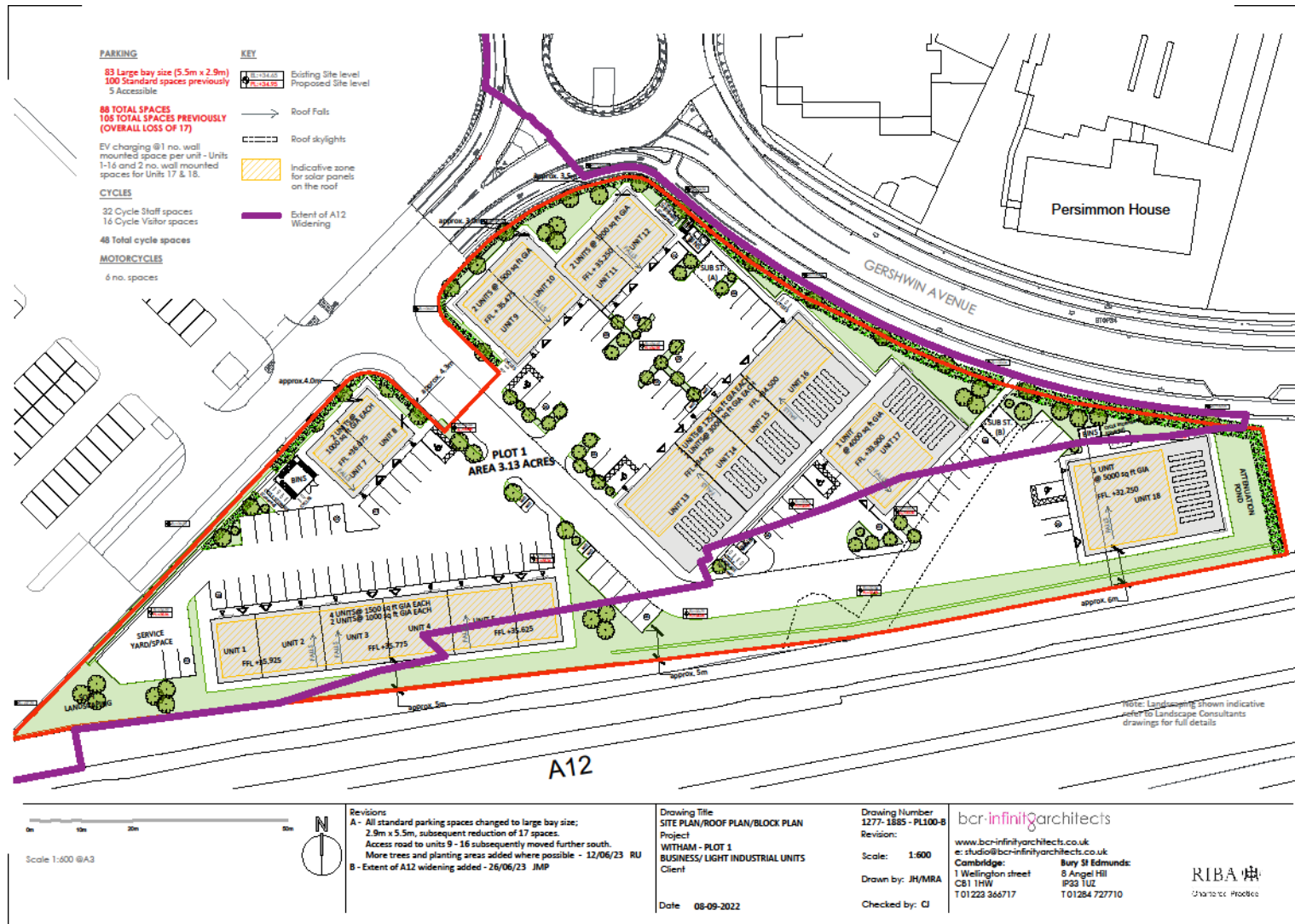
	District Boundary		Designer Outlet Centre		Formal Recreation
	Inset Map		Strategic Growth Location		Informal Recreation
	Development Boundary		Residential Site 10 or more Dwellings		Visually Important Space
	Conservation Area		Specialist Housing		Structural Landscaping
	Road Proposal		Proposed Gypsy/Travelers Site		Local Wildlife Site
	Halstead Bypass Corridor		Business Parks		Cemetery/Churchyard
	Protected Lane		Employment Policy Area		Local Nature Reserve
	Cycleway		Comprehensive Development Area		Green Buffer
	Local Centre		Special Employment Area		Suitable Accessible Natural Greenspace
	District Centre		Vehicle Storage		Site of Special Scientific Interest (SSSI)
	Town Centre		Transport Related Policy Area		Historic Parks and Gardens
	Primary Shopping Area		Education		Scheduled monument
	Primary Frontage		Car Park		Flood Zone 2
	Secondary Frontage		Community Uses		Flood Zone 3
	Retail & Town Centre Uses		Leisure and Entertainment		Flood Zone 3B
	Retail Warehousing		Allotments		



1:8,800

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Appendix 3 – Plot 1, Gershwin Park – Submitted Planning Application Layout with DCO Acquisition Boundary Overlaid



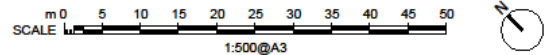
Appendix 4 – Plot 18, Gershwin Park - Submitted Planning Application Layout



- KEY**
- Existing Site level
 - Proposed Site level
- PARKING**
- 99 Standard
 - 7 Accessible
 - 6 EV charging spaces
- 112 TOTAL SPACES**
- Denotes large bay size 5.5m x 2.9m
 - 3 additional waiting bays
- CYCLES**
- 16 Cycle short term spaces
 - 12 Cycle long term spaces
- 28 Total cycle spaces**
- MOTORCYCLES**
- 2 no. spaces

1m BUILDING FROM PLOT 14 TO CONTINUE INTO PLOT 18 AND THEN REDUCE TO GRADE LEVEL TO REDUCE GLARE FROM HEADLIGHT GLARE INTO NEARBY RESIDENTIAL AREAS.

Note: Landscaping shown indicative refer to Landscape Consultants drawings for full details



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Revisions
 A- Updated to Mc Donalds latest model 10/02/23 MRA

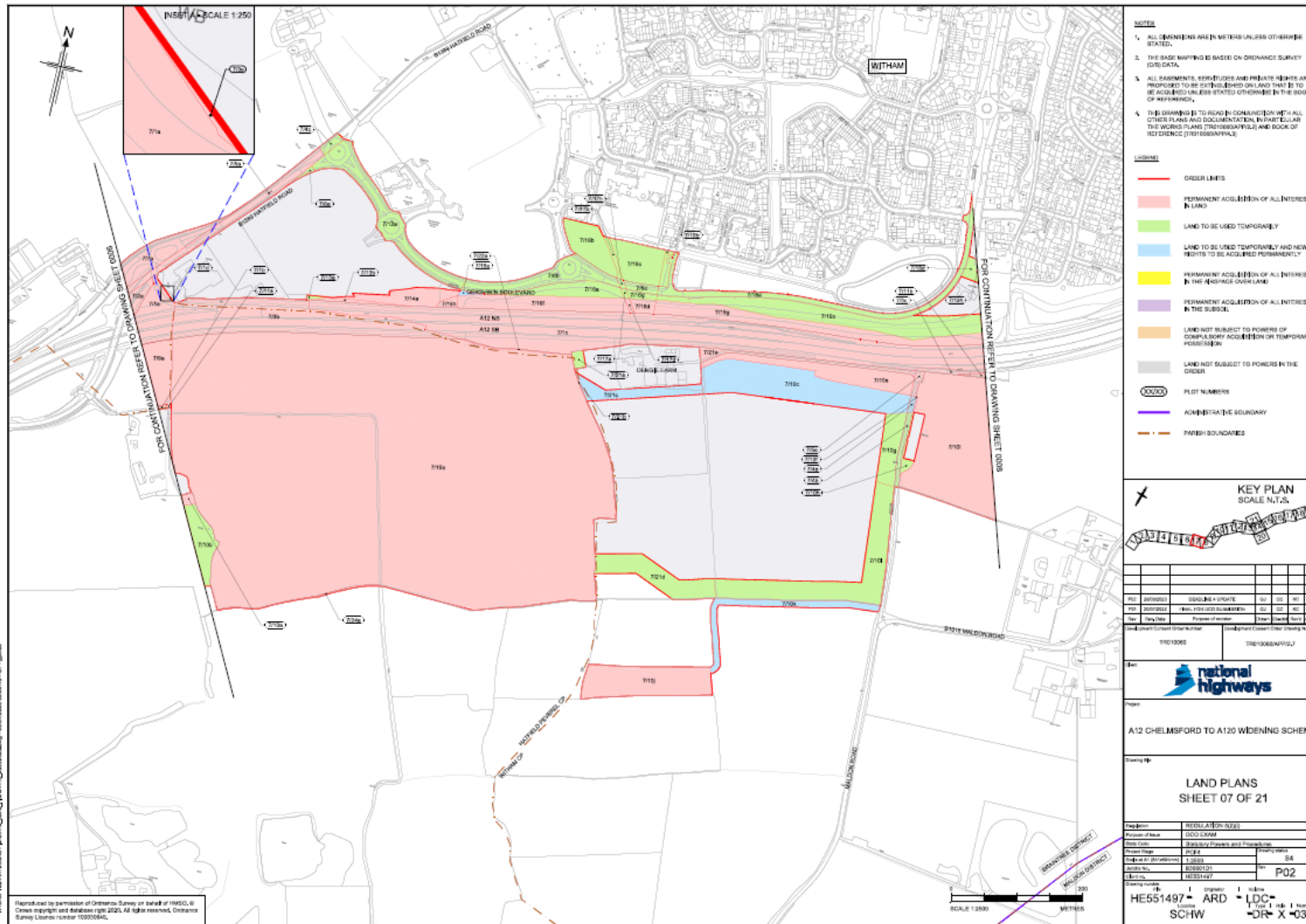
Drawing Title
 Proposed Site Plan
 Project
 Plot 18
 Gershwin Park, Witham
 Client
 CAD Reference: 1792-PL03

Drawing Number
 1792-PL03
 Scale
 1:500
 Date
 Sept 2021
 Drawn by: CP
 Checked by: MRA

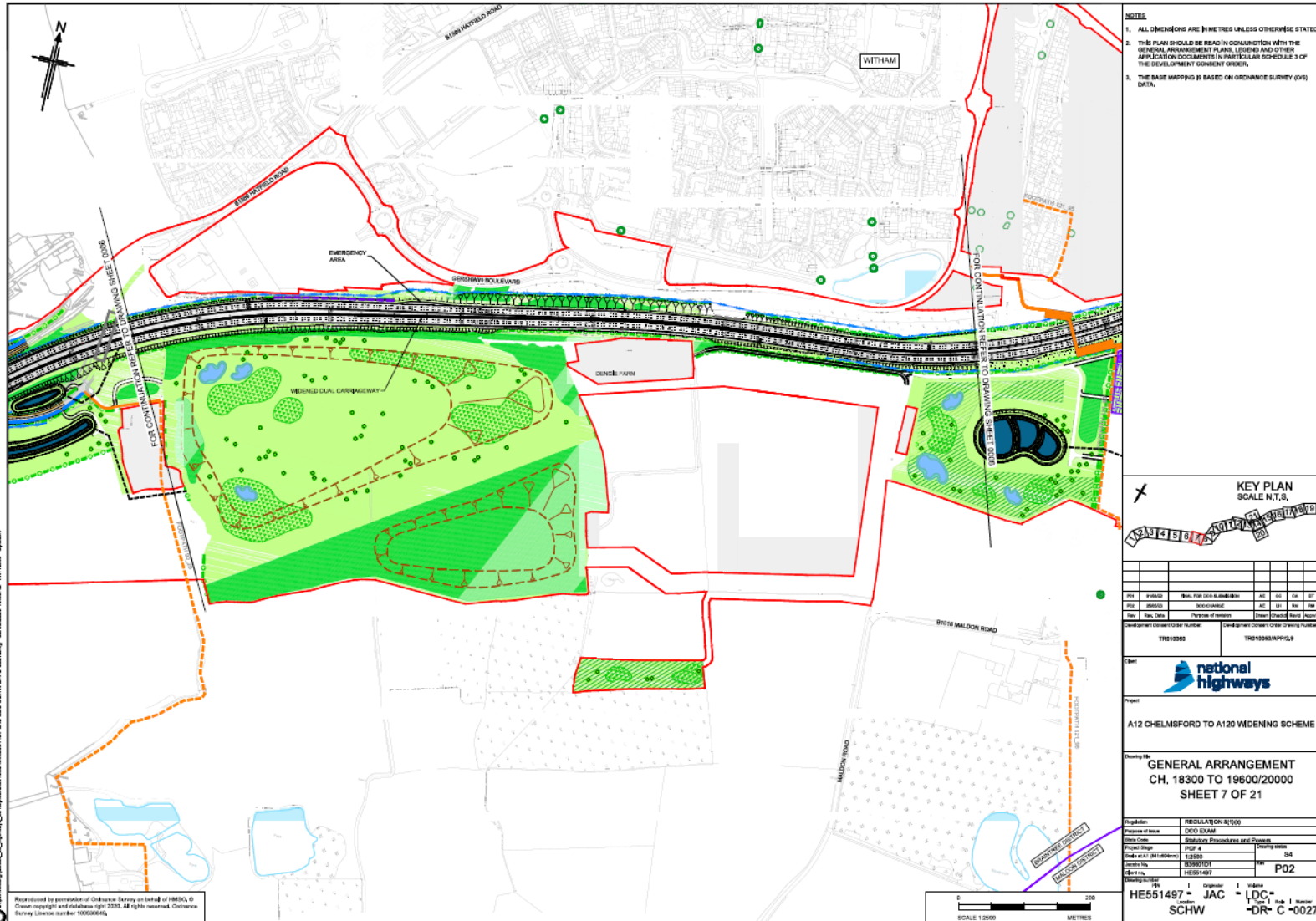
PLANNING
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Appendix 5 – Deadline Submission 6 Land Plans Sheet 07



Appendix 6 – Deadline Submission 6 General Arrangement Plans Sheet 07



NOTE
 1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
 2. THIS PLAN SHOULD BE READ IN CONJUNCTION WITH THE GENERAL ARRANGEMENT PLANS, LEGEND AND OTHER APPLICATION DOCUMENTS IN PARTICULAR SCHEDULE 3 OF THE DEVELOPMENT CONSENT ORDER.
 3. THE BASE MAPPING IS BASED ON ORDNANCE SURVEY (OS) DATA.

KEY PLAN
 SCALE N.T.S.

PK	18300	18300	18300	18300	18300	18300	18300	18300	18300
PK	18600	18600	18600	18600	18600	18600	18600	18600	18600
PK	18900	18900	18900	18900	18900	18900	18900	18900	18900

national highways

A12 CHELMSFORD TO A120 WIDENING SCHEME

GENERAL ARRANGEMENT
 CH. 18300 TO 19600/20000
 SHEET 7 OF 21

Regulation	REGULATION R1000
Project of Issue	DCO EXAM
Plan Code	Statutory Procedures and Powers
Project Stage	P02.4
Order No. (M10/000)	12380
Contract No.	B5999103
Contract No.	193501487
Contract No.	P02
Contract No.	HE551497
Contract No.	JAC
Contract No.	LDC
Contract No.	SCHW
Contract No.	-DR- C-0027

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