

Dated \_\_\_\_\_ 2023

(1) **SHOTWICK PARK ESTATE LIMITED**

- and -

(2) **CESHIRE WEST AND CHESTER BOROUGH  
COUNCIL**

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**DEED OF COVENANT**  
restricting development on part of the Shotwick Park Estate

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**denney king**

**BETWEEN:**

**Owner:** **SHOTWICK PARK ESTATE LIMITED** (CRN 14009366) whose registered office is at The Vicarage Church Road Saughall CH1 6EN

**Council:** **CHESHIRE WEST AND CHESTER BOROUGH COUNCIL** of 4 Civic Way, Ellesmere Port, Chester CH65 0BE

**BACKGROUND:**

- (A) The Council has transferred the Protected Area together with other property to the Owner pursuant to a transfer of the same date as this Deed.
- (B) The Owner has agreed to enter into a covenant not to build houses or other residential units on the Protected Area for a period of 80 years from the date of this Deed.
- (C) It is acknowledged by the Council that the benefit of this covenant is intended to be personal, the benefit of which is to remain vested in the Council or the Council's statutory successors and is not to run with, attach to, or otherwise be assigned to the Council's successors in title to the Council's Retained Drive.

**AGREED TERMS:**

**1. DEFINITIONS AND INTERPRETATION**

In this Deed:

1.1 The following definitions apply:

<b>Business Day</b>	any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday;
<b>Council's Retained Drive</b>	that part of the land forming part of title number CH350044 being the drive leading from the highway known as Church Road and shown shaded light green on the Plan;
<b>Covenant Period</b>	Eighty (80) years from and including the date of this Deed and ending at 23:59 hours on {        };
<b>Development Covenant</b>	the covenant set out in clause 2 of this Deed;
<b>Disponee</b>	a person to whom a Disposal is made;
<b>Disposal</b>	any of the following relating to the Council's Retained Drive (or any part thereof): <ul style="list-style-type: none"> <li>(a) a disposal of any kind (by whatever means, whether directly or indirectly and whether by one or more transactions) of any interest in or of the capital value of its interest being:</li> </ul>

- (i) a conveyance or transfer (whether by sale or otherwise and including an exchange of for other property with or without equality money and a Disposal by a chargee or mortgagee in exercise of a power of sale);
- (ii) a lease or tenancy;
- (iii) a grant of a right to occupy;
- (iv) an assignment of a lease, tenancy or right to occupy; or
- (v) a grant, release or surrender of any interest

together with an agreement to enter into, or an option to create, any of the above;

and for the purposes of this Deed a Disposal occurs on the earlier of the following:

- (a) the date of the instrument effecting the Disposal;
- (b) the payment or delivery of valuable consideration for the Disposal (other than the payment of a deposit of less than ten (10%) per cent) to the person making the Disposal or at the direction of such person.

<b>Party</b>	a party to this Deed (and Parties shall be construed accordingly);
<b>Plan</b>	the plan annexed to this Deed;
<b>President</b>	the President or next most senior available officer of the RICS;
<b>Protected Area</b>	that part of the Shotwick Park Farms Estate shown edged and hatched pink on the Plan;
<b>Residential Development</b>	construction of any house, flat, maisonette or other unit (and its curtilage) intended for residential occupation;
<b>RICS</b>	the Royal Institution of Chartered Surveyors or any successor body;
<b>Statutory Successors</b>	any successor authority, public body or other authority which takes over responsibility for the Council's statutory functions, whether through merger, takeover, separation, abolition, reorganisation, local government reform or

otherwise;

**Surveyor**

a surveyor appointed pursuant to clause 7;

**Transfer**

the transfer of today's date of the Protected Area together with other property to the Owner.

- 1.2 If a Party comprises more than one person their obligations and liabilities are joint and several.
- 1.3 An obligation by a Party not to do something includes an obligation not to permit it to be done.
- 1.4 Headings are for ease of reference only.
- 1.5 References to a schedule are to a schedule to (and form part of) this Deed (unless expressly provided otherwise).
- 1.6 A provision of this Deed which is void or unenforceable shall be severed from all other provisions of this Deed and the remaining provisions shall continue to have effect.
- 1.7 Reference to a statute or statutory instrument includes all subordinate legislation made under it and any re-enactment, amendment or consolidation of it which is for the time being in force (unless expressly provided otherwise).
- 1.8 Reference to the "Owner" shall include reference to any successors in title to the Protected Area and any assignee of the burden of the Development Covenant.
- 1.9 Reference to the "Council" shall include reference to its Statutory Successors.
- 1.10 Any references to **includes, include** or **including** are deemed to be followed by the words "without limitation".

**2. DEVELOPMENT COVENANT**

During the Covenant Period the Owner covenants with the Council (and its Statutory Successors) for the benefit of the Council's Retained Drive with the intention of binding the Protected Area and each and every part of it into whosoever hands the same may come not to carry out any Residential Development on any part of the Protected Area nor permit or suffer anyone under the Owner's control to do so.

**3. ASSIGNMENT TO STATUTORY SUCCESSOR ONLY**

- 3.1 The Council shall not assign its interest in this Deed nor the benefit of the Development Covenant to anyone without the Owner's consent.
- 3.2 Subject to compliance with clause 3.3 the Owner's consent is not required to an assignment to a Statutory Successor.
- 3.3 Upon an assignment of the benefit of the Development Covenant to a Statutory Successor the Council shall provide to the Owner a deed of covenant under which the assignee covenants with the Owner to observe and perform all of the obligations of the Council under this Deed (including but not limited to the obligations in this clause 3 (including this clause 3.3) and clause 4) such deed of covenant to be in such form as the Owner may reasonably require from time to time.
- 3.4 The Council covenants with the Owner that upon any Disposal of the Council's Retained Drive (or any part of it) other than a transfer of the legal estate to a Statutory Successor,

to insert the following provisions into any document giving effect to a Disposal of the Council's Retained Drive (or any part of it):-

- 3.4.1 an agreement and declaration that nothing contained in such Disposal document is to be deemed to operate as an assignment to the Disponee (or any third party) of the benefit of the Development Covenant (and any further covenant or covenants) imposed by the Council and given by the Owner within this Deed; and
- 3.4.2 a reservation of the right (in the Owner's absolute discretion) at any time to release, modify or waive the Development Covenant (and any covenants imposed at any time on any part or parts of the Protected Land or on any adjoining or neighbouring land of the Owner from time to time).
- 3.5 Within [2] months of the date of completion of a Disposal of the Council's Retained Drive (or any part of it) to produce to the Owner (in accordance with clause 9) a copy of the completed document effecting the Disposal and containing the provisions set out in clause 3.4 above.

#### **4. REGISTRATION**

- 4.1 The Owner covenants with the Council to apply to H.M. Land Registry within five (5) Business Days of the date of this Deed for registration of this Deed against the title to the Protected Area.
- 4.2 The Council covenants with the Owner:
  - 4.2.1 to apply to H.M. Land Registry within five (5) Business Days of the date of this Deed for registration of the obligations on the part of the Council contained in this Deed against the title to the Council's Retained Drive together with an application for a restriction to be entered against the title to the Council's Retained Drive in the form of the restriction set out below:

“No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a Director of Shotwick Park Estate Limited (company registered number 14009366) or a conveyancer that the provisions of clause 3.3 and 3.4 of a deed dated {                      } 2023 made between (1) Cheshire West and Chester Borough Council and (2) Shotwick Park Estate Limited have been complied with or that they do not apply to the disposition.”
  - 4.2.2 to ensure that any requisitions raised by H.M. Land Registry in connection with any application for such registration are dealt with promptly and properly; and
  - 4.2.3 to provide to the Owner an official copy of register entries in respect of the title to the Council's Retained Drive showing the restriction as soon as reasonably practicable following completion of the registration of this Deed.

#### **5. RELEASE OF COVENANT**

The Owner shall not be personally liable for any breach of the Development Covenant occurring after it has parted with possession of or ceased to own any interest in the Protected Area or that part of it in respect of which the breach occurs.

#### **6. DURATION OF OBLIGATIONS**

On the expiry of the Covenant Period:-

- 6.1 the Owner will be released from its obligations under this Deed and the Development Covenant and the Council will immediately apply to HM Land Registry to remove the Development Covenant and this Deed from the title to the Protected Area; and
- 6.2 the Council (on behalf of itself and its Statutory Successors) as security to secure its obligation under clause 6.1 above irrevocably appoints the Company (by an appointed official of the Company from time to time) as its attorney for the purposes of the Powers of Attorney Act 1971 with authority of the Council to apply to the HM Land Registry for removal of the Development Covenant and this Deed and any notice or entries relating to it to be cancelled and removed from the title to the Protected Area; and
- 6.3 on written request from the Owner, the Council shall do and execute such matters and documents as may reasonably be required by the Owner to discharge the Protected Area (or such part(s) of the Protected Area as may still be subject to it) from the Development Covenant; and
- 6.4 the Owner shall apply to HM Land Registry for removal of the restriction in clause 4.2.1 above to be removed from the title to the Council's Retained Drive.

## 7. DISPUTES

- 7.1 For the purpose of this clause 7 "**Expert**" shall mean:
  - 7.1.1 (where a dispute or difference is on a point of law or relates to the construction of a document, including this Deed) a barrister of not less than ten (10) years' call, suitably experienced in the matters the subject of the proposed reference to such barrister, appointed by the Parties jointly within five (5) Business Days of the proposed reference or, failing such joint appointment, appointed by the President (or other acting senior officer) for the time being of The Bar Council at the request of either Party; or
  - 7.1.2 (where a dispute or difference is on a point of planning or value) a Chartered Surveyor with no less than ten (10) years' relevant experience and having experience in development land of the same type and in a similar location as the Protected Area and in dealing with disputes of a like kind to those which may be referred to him/her under this Deed, appointed by the Parties jointly within five (5) Business Days of the proposed reference or, failing such joint appointment, appointed the President (or other acting senior officer) for the time being of The Royal Institution of Chartered Surveyors at the request of either Party.
- 7.2 Unless this Deed provides to the contrary any disputes under this Deed are to be determined by an Expert.
- 7.3 The Expert shall act as an expert and not an arbitrator.
- 7.4 The Expert shall determine the dispute referred to him/her in accordance with the following timetable calculated from the date of his appointment (save where the provisions of this Deed provide for a different timetable) but if the timetable is not adhered to this will not affect the validity or enforceability of the Expert's determination:
  - 7.4.1 the Parties shall submit written representations and evidence to the Expert within ten (10) Business Days (such representations and evidence to be copied by the Party submitting it simultaneously to the other Party);
  - 7.4.2 within ten (10) Business Days afterwards, the Parties shall submit written counter-representations and evidence to the Expert (copied in the same manner);

- 7.4.3 at 12 noon on the tenth (10<sup>th</sup>) Business Day after the Expert's appointment (or at such other time and on such other date as may be convenient to the Expert, provided that such other date is no more than five (5) Business Days later) the Parties may each make oral representations to him/her in such order as he/she shall determine;
- 7.4.4 within five (5) Business Days of hearing such oral representations, the Expert shall make his/her decision in writing.
- 7.5 The fees and expenses of the Expert including the cost of his nomination shall be borne equally by the Parties or as he/she directs.
- 7.6 The Parties shall bear their own costs relating to the determination of the issue by the Expert.
- 7.7 The determination of the Expert will be conclusive and bind the Parties save in the case of manifest error.
- 7.8 The terms of the Expert's appointment shall require the Expert to keep the terms of this Deed confidential save to the extent that he is obliged by law to disclose any information or this Deed but where possible he shall first advise the Parties.
- 7.9 If the Expert relinquishes his/her appointment or dies or if it becomes apparent that for any reason he/she will be unable to complete his/her duties under this Deed then either Party may apply to the appropriate President (or other acting senior officer) of The Bar Council or The Royal Institution of Chartered Surveyors for a substitute to be appointed in his/her place.

## **8. ENTIRE AGREEMENT**

This Deed constitutes the entire agreement between the Parties.

## **9. SERVICE OF NOTICES**

- 9.1 Any notice given under this Deed shall be in writing (but not by e-mail) and shall be signed by or on behalf of the Party giving it.
- 9.2 To be effective, any notice shall be sent or delivered by any one or more of the following methods:
- 9.2.1 recorded delivery (first class post);
- 9.2.2 special delivery; or
- 9.2.3 hand
- to the relevant Party as follows:
- 9.2.4 sent or delivered to the Council at:
- 4 Civic Way, Ellesmere Port, Chester CH65 0BE
- marked for the attention of the County Land Agent for the Council
- or at such other address as has been specified in a notice to, and acknowledged by, the Owner before service;
- 9.2.5 sent or delivered to the Owner at:

*[ The Old Vicarage, Church Road, Saughall ]*

marked for the attention of Alexander David Greensill

or at such other address as has been specified in a notice to, and acknowledged by, the Council before service.

- 9.3 A notice is deemed to be received:
- 9.3.1 where sent by recorded delivery (first class post), on the first working day after posting;
  - 9.3.2 where sent by special delivery, on the guaranteed delivery date;
  - 9.3.3 where delivered by hand, at the time of delivery.

## **10. THIRD PARTY RIGHTS**

It is not intended that any person will be entitled to enforce any provisions of this Deed (including approvals and consents) who would not have been so entitled but for the enactment of the Contracts (Rights of Third Parties) Act 1999.

## **11. GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This Deed has been executed as a deed and is delivered and takes effect on the date set out at its beginning.



EXECUTED AS A DEED by affixing  
THE COMMON SEAL of **CHESHIRE  
WEST AND CHESTER BOROUGH  
COUNCIL**

in the presence of:

Authorised Signatory

.....

EXECUTED AS A DEED by **ALEXANDER DAVID  
GREENSILL**, a Director of **SHOTWICK PARK  
ESTATE LIMITED** in the presence of:

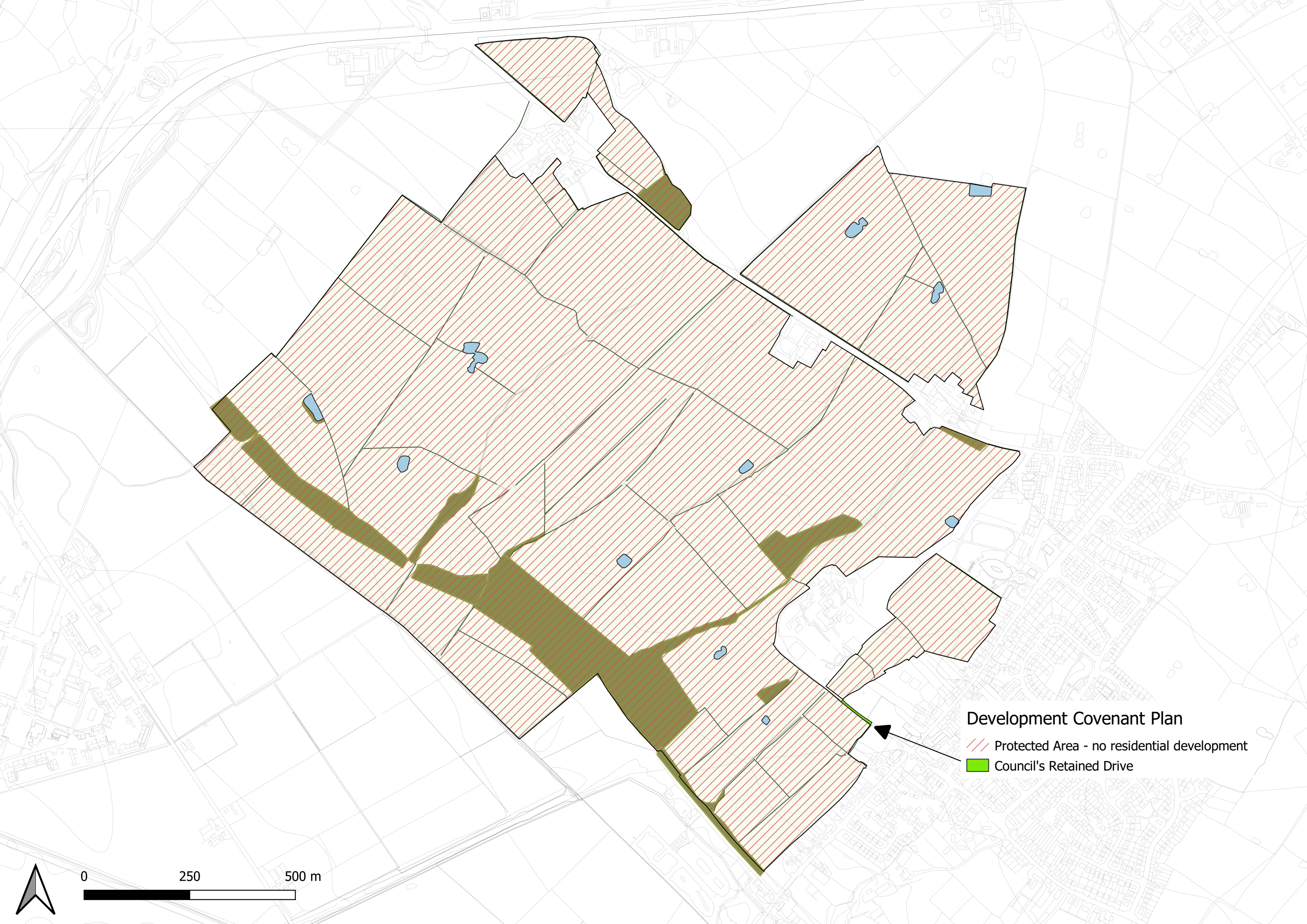
Signature of witness

Name (in BLOCK CAPITALS)

Address

**ANNEXURE 1**

**Protected Area and Council's Retained Drive Plan**



**Development Covenant Plan**  
Protected Area - no residential development  
Council's Retained Drive

