

**HERTFORDSHIRE COUNTY COUNCIL
MINOR WORKS SECTION 278 AGREEMENT**

This Agreement is made the 21 day of November 2011

BETWEEN:

1. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Pegs Lane
Hertford Hertfordshire SG13 8DE
2. **HOXA LIMITED** (Company Registration No 05846101) whose registered
office is situated at 156a Burnt Oak Broadway Edgware Middlesex
HA8 0AX
3. **BRYMAN (LONDON) LIMITED** (Company Registration No 03248321)
whose registered office is situated at 208 Green Lanes Palmers Green
London N13 5UE

WHEREAS

- (1) The County Council is the Highway Authority for Hertfordshire
- (2) The Owner is the registered proprietor with title absolute of the Land for
the benefit of which the Works referred to in this Agreement are carried
out
- (3) The Developer now wishes to enter into this Agreement in order to
secure the carrying out of the Works and has agreed that it will pay the
full cost of construction and maintenance of the Works in accordance
with the terms and conditions of this Agreement
- (4) The County Council are satisfied pursuant to Section 278 of the Act that
it will be of benefit to the public for it to enter into this Agreement for the

execution of the Works by the Developer which Works it is authorised to execute pursuant to the Act

- (5) The County Council agrees to adopt the Works as highway maintainable at public expense on the terms and conditions contained in this Agreement
- (6) The Owner has appointed the Developer to develop the Land

NOW THIS AGREEMENT WITNESSETH as follows:

1. Definitions Interpretation and General

1.1 In this Agreement the following terms shall have the following meanings: -

| | |
|--|---|
| “the Act” | the Highways Act 1980 |
| “the Approved Drawing and Specification” | the drawing and specification attached at Schedule B |
| “the Blue Land” | the area of land shown edged blue on the Approved Drawing |
| “the Cash Deposit” | a cash deposit in the sum of £2,500.00 |
| “the CDM Regulations” | the Construction Design and Management Regulations 2007 |
| “the Certificate of Completion” | the certificate issued by the County Council upon completion of the Works to the satisfaction of the County Council |

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| "the Certificate of Maintenance" | the certificate issued by the County Council after the expiry of the Maintenance Period |
| "the County Council" | Hertfordshire County Council and any statutory successors in title |
| "the Developer" | BRYMAD (LONDON) LIMITED <i>ML</i> |
| "the Development" | the works to be carried out pursuant to the Planning Permission |
| "the Highway" | the area of land shown edged green on the Approved Drawing which is highway maintainable at public expense |
| "Insolvency Event" | <p>means any one of the following:</p> <p>(a) if the Owner is an individual or a firm: -</p> <p>the presentation of a petition for the Owner's bankruptcy; or the making of a criminal bankruptcy order against the Owner or any partner in the firm; or the Owner or any partner in the firm making a composition or arrangement for the benefit of creditors; or the making of a conveyance or assignment for the benefit of creditors; or the</p> |

appointment of an administrator to manage the Owner's or firm's affairs

- (b) if the Owner is a company: -
- the company passing a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction); or the making of an application for, or any meeting of its members resolving to make an application for an administration order in relation to it; or the giving or filing of notice by any party of intention to appoint an administrator of it; or the appointing of such an administrator or the making by the court of a winding up order, or the company making a composition or arrangement with its creditors, or the appointment of an administrative receiver, receiver or manager or supervisor by a creditor or by the court, or the taking of possession of its property under the terms of a fixed or floating charge

| | |
|--------------------------------|--|
| "the Land" | the land registered at HM Land Registry with title absolute under Title Number HD505111 shown edged red on the location plan shown on the Approved Drawing for the purposes of identification only |
| "List of Approved Contractors" | the current list of approved contractors available from the County Council which may be amended from time to time |
| "the Maintenance Period" | the period of twelve months commencing on the date of the Certificate of Completion |
| "the Orange Hatched Land" | that part of the Land shown hatched orange on the approved drawing and specification |
| "the Owner" | HOXA LIMITED and its successors in title |
| "the Permit to Work" | the permit issued by the County Council certifying that technical and construction approval have been granted in respect of the Works |
| "the Plan" | the plan attached to this Agreement |

| | |
|---------------------------|--|
| “the Planning Permission” | the planning permission granted by Welwyn Hatfield Borough Council under reference number S6/2008/618/OP and dated 21 May 2008 a copy of which is attached at Schedule A |
| “Practical Completion” | means construction of the Works has been completed |
| “the Works” | construction of a new kerbed bellmouth; and repair of any damage to any part of the highway caused during the execution of the Works or the construction of the Development or by any vehicle used for or in connection with the Works or the Development |

- 1.2 Where in this Agreement reference is made to a Clause Paragraph Schedule Plan or Recital such reference (unless the context requires otherwise) is a reference to a Clause Paragraph Schedule Plan or Recital in this Agreement or in the case of a Plan a plan annexed to this Agreement
- 1.3 Words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa
- 1.4 The reference to any statute or section of a statute or regulations includes any statutory re-enactment or modification of it

- 1.5 Where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons
- 1.6 Headings in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be an indication of the meaning of the parts of this Agreement to which they relate
2. (a) This Agreement is made pursuant to Section 278 of the Act and Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000

(b) This Agreement is also made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) in that Clause 6.15 is a planning obligation enforceable by the County Council in its capacity as a local planning authority
3. Unless otherwise specified where any agreement certificate or approval is to be given by the County Council under the terms of this Agreement then the same shall not be unreasonably withheld or delayed
4. Any notice or approval to be given in writing by the parties under the terms of this Agreement shall be deemed to be duly given if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses specified: -

In respect of the County Council:

Stephen Murphy Assistant Network Manager
Mid Herts Hertfordshire Highways Area Office
Highways House 41-45 Broadwater Road
Welwyn Garden City
Herts AL7 3AX

In respect of the Owner:

Mr Alan Bullock (Director)
134 Brookside Crescent
Cuffley
Herts EN6 4QL

In respect of the Developer:

Mr John Ibbotson (Director)
208 Green Lanes
Palmers Green
London N13 4UE

5. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto

Developer's Covenants

6. The Developer hereby covenants with the County Council as follows:
 - 6.1 To carry out and complete the Works at no cost to the County Council strictly in accordance with the Approved Drawing and Specification and any conditions attached to the Permit to Work and in any event to complete the Works within 12 calendar months from the date of this Agreement
 - 6.2 To use only a contractor on the County Council's List of Approved Contractors or such other contractor approved by the County Council in writing prior to construction of the Works
 - 6.3 To give the County Council at least ten (10) days notice in writing of the proposed start date of the Works

- 6.4 Not to commence the Works unless and until the Permit to Work has been issued
- 6.5 To complete the Works within 12 calendar weeks of their commencement and in any event the Works must be completed prior to any occupation of the Development
- 6.6 To indemnify and keep indemnified the County Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and any works required by any statutory undertaker other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of Clause 6.7 below shall apply
- 6.7 To indemnify and keep indemnified the County Council against all claims under Part I and Part II of the Land Compensation Act 1973 arising out of the use of the Works and for the purposes of this indemnity the Owner is deemed to carry out the Works as agent for the County Council
- 6.8 Without prejudice to its liability under Clauses 6.6 and 6.7 above to indemnify the County Council the Owner shall take out and maintain public liability insurance for a sum of at least ten million pounds (£10,000,000) in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured and the Owner or any person authorised by it to carry out the Works shall on request by the County Council produce for inspection the relevant policies of insurance together with receipts for the premiums paid
- 6.9 To provide to the County Council on the date of this Agreement the Cash Deposit which the County Council will hold in its

general account and without undertaking any fiduciary obligations as trustee for the Owner PROVIDED THAT IF:

- (a) the Owner fails to carry out and/or complete the Works within the period specified in Clause 6.5 above; or
- (b) the Owner having received written notice from the County Council fails to remedy any defects and/or carry out any remedial works specified in such notice to the satisfaction of the County Council within the period of time specified in such notice (or such longer period as the County Council may agree in writing in its absolute sole discretion); or
- (c) an Insolvency Event occurs in respect of the Owner the County Council may itself carry out and/or complete the Works and may deduct from the Cash Deposit all costs fees and expenses incurred by the County Council in so doing (including without prejudice to the generality of the foregoing the cost fees and expenses of preparing an alternative contract for the Works and of supervising the execution of such alternative contract) and all other sums due from the Owner under the terms of this Agreement

6.10 In relation to statutory undertakers for the time being of any service(s) the Owner shall:

- (a) prior to commencement of the Works make checks to establish whether there are any service(s) which will be affected by the Works; and
- (b) give notice to each and every statutory undertaker for the time being of any service(s) which may be affected by the Works of the proposal to carry out the Works; and

- (c) place orders and pay any costs to public utility undertakers for all works to their mains or services necessitated by the Works and shall relocate all street furniture affected to the satisfaction of the County Council

6.11 That if the Works are subject to the CDM Regulations:-

6.11.1 the Owner hereby elects itself to be treated as the only client for the purposes of the CDM Regulations; and

6.11.2 the County Council consents to such election and shall not be subject to any duty owed by a client under the CDM Regulations save for the duties in Regulations 5(1)(b) 10(1) 15 and 17(1) in so far as those duties relate to information in its possession

6.12 To notify the County Council in writing of Practical Completion of the Works within 7 days of such completion

6.13 To maintain the Works following Practical Completion for the Maintenance Period to such standards as specified by the County Council

6.14 To provide to the County Council within 60 calendar days from the expiry of the Maintenance Period:

- (a) two (2) coloured copies of "as built" drawings in paper and electronic format; and
- (b) the original Health and Safety Plan file

Owner's Covenants

6.15 The Owner hereby covenants with the County Council in relation to visibility splays as follows:

- 6.15.1 That it will maintain the Orange Hatched Land as a visibility splay and keep such visibility splays free of obstruction to the reasonable satisfaction of the Director
- 6.15.2 that it will not plant or permit any planting within the visibility splays other than those plantings agreed to in writing by the Director to ensure that such planting does not exceed 600 millimetres in height and that all such planting shall be properly cut pruned and trimmed at all times and shall not be allowed to obstruct or interfere in any way with or become a source of danger to passage along the carriageway of footway and in the event that the Owner fails to comply with this obligation the County Council shall be entitled to carry out such pruning and/or trimming and recover the cost thereof from the Owner
- 6.15.3 in the event that it fails to maintain the visibility splays as mentioned above to indemnify and keep indemnified the County Council against all claims whatsoever arising out of the obstruction of visibility attributable to the planting or presence within the visibility splays of trees plants shrubs or structures on adjoining land which overhang or extend into the visibility splays PROVIDED THAT
- (i) the County Council shall notify the Owner forthwith upon receipt of any claim
 - (ii) the County Council shall not accept any such claim without first having given the Owner details of such claim and having given the Owner the opportunity to make representations to the County Council as to the validity and quantum of such claim

(iii) the County Council shall in settling any such claim give though and regard to any representations and due regard to any representations made by the Owner thereof

(iv) the foregoing indemnity shall not extend to any damage wholly caused by or arising out of the neglect or default of the County Council as its officers servants agents or contractors

County Council Provisions

7. The County Council hereby :-

7.1 authorises the Owner and/or its approved contractor to carry out and complete the Works within the Highway subject to and strictly in accordance with the terms and conditions set out in Clause 6 above

7.2 agrees that upon completion of the Works to the satisfaction of the County Council:

7.2.1 it shall issue the Certificate of Completion PROVIDED THAT the County Council shall be at liberty to delay the issue of the Certificate of Completion if in its opinion the Works are likely to be used by heavy vehicles driven by or on behalf of the Owner or its servants and agents or contractors in connection with road or building works carried out on the Land or on adjoining land; and

7.2.2 upon the issue of the Certificate of Completion it shall reduce the Cash Deposit by a maximum of seventy per cent (70%) and shall pay to the Owner a sum equivalent to such reduction (plus interest accrued on the sum to be paid to the Owner at the London

Interbank Bid 7 day Rate (LIBID) from time to time upon such sum from the date of receipt to the date of release) provided that the amount of any reduction of the Cash Deposit shall be at the sole discretion of the County Council

7.2.3 PROVIDED ALWAYS that the Director shall be at liberty to delay the issue of the Certificate of Completion and/or the Certificate of Maintenance in the event of a breach of any of the terms and conditions of this Agreement

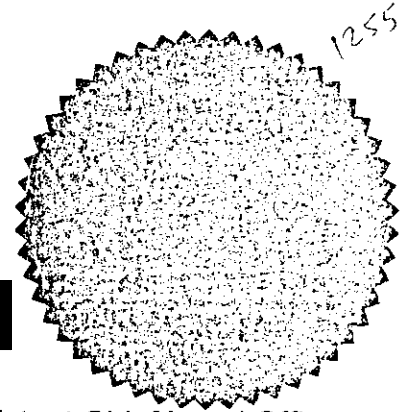
7.3 agrees that after the expiry of the Maintenance Period and provided always that the Works have been fully maintained to the satisfaction of the County Council during the Maintenance Period and that any defects appearing during the Maintenance Period have been made good to the satisfaction of the County Council it shall issue a Certificate of Maintenance for the Works and as of the date of the Certificate of Maintenance the Works shall become maintainable at public expense

7.4 Agrees that upon the issue of the Certificate of Maintenance the County Council shall repay to the Owner either a sum equivalent to the balance of the Cash Deposit remaining after the reduction as referred to in Clause 7.2.2 (plus interest accrued at the London Inter Bank Deposit 7 day rate from time to time upon such sum from the date of receipt to the date of release) or in the event of the Cash Deposit being used in accordance with Clause 6.9 above a sum equivalent to the balance of such part of the Cash Deposit as remains (plus interest on such balance calculated as aforesaid)

8. The parties to this Agreement hereby agree that this Agreement shall be registered as a local land charge on account of the planning obligation contained in Clause 6.15

IN WITNESS whereof the parties hereto have executed this Deed but not delivered this Deed until the day first above written

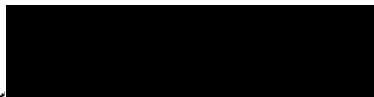
The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of: -)




Kathryn Pettit
Chief Legal Officer/Assistant Chief Legal Officer

EXECUTED AS A DEED by)
HOXA LIMITED)
acting by a Director and its)
Secretary/two Directors)

 Director

 Director/Company Secretary

EXECUTED AS A DEED by)
BRYMAC (LONDON) LIMITED)
acting by a Director and its)
Secretary/two Directors)

 Director

 Director/Company Secretary

SCHEDULE A

Planning Permission

S6/2008/618/OP and dated 21 May 2008



TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER
1995

PLANNING DECISION NOTICE – PERMISSION

S6/2008/618/OP

OUTLINE PLANNING APPLICATION FOR ERECTION OF NINE RESIDENTIAL
UNITS AND ACCESS

at: LAND TO THE REAR OF 59 STATION ROAD CUFFLEY

Agent Name And Address

Applicant Name And Address

MR M ROE
CGMS LTD
MORLEY HOUSE
26 HOLBORN VIADUCT
LONDON
EC1A 2AT

TESCO STORES LTD
C/O AGENT

In pursuance of their powers under the above mentioned Act and the Orders and Regulations for the time being in force thereunder, the Council hereby **PERMIT**, in accordance with the provisions of Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995, the development proposed by you in your outline application received with sufficient particulars on 26/03/2008 and shown on the plans accompanying such application, subject to the following conditions:-

1. Approval of the details of the appearance, layout and scale of the building(s) and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.

REASON: The outline application as submitted does not give particulars sufficient for consideration of these reserved matters.

2. Plans and particulars of the reserved matters referred to in condition 1. above, relating to the appearance, layout and scale of any buildings to be erected and the landscaping of the site, shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

REASON: The outline application as submitted does not give particulars sufficient for consideration of these reserved matters.

Continuation ...

3 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission

REASON: In order to comply with Section 92 of the Town and Country Planning Act (As amended)

4. The development hereby permitted is limited to 5 no. 2 bed and 4 no. 1 bed units or any combination that provided for not more than a total of 9 units and car parking requirements, (in accordance with Welwyn Hatfield District Plan Review Supplementary Planning Guidance Parking Standards. Adopted January 2004) of not more than a total of 13 car parking spaces and associated cycle storage.

REASON: In the interests of the character of the area, to ensure that amenity of future and existing occupiers is maintained and sufficient off-street parking provision can be provided in accordance with policies D1, D2 and M14 of the Welwyn Hatfield District Plan 2005 and policy T14 of the East of England Plan 2008.

5 A 2 metre x 2 metre pedestrian visibility sight splay, free of obstruction above a height of 600mm, and relative to the back of the footway/ overhang margin, shall be provided on both sides of all vehicular accesses prior to their operational use and thereafter retained

REASON: To ensure a satisfactory standard of development in the interests of highway safety in accordance with Planning Policy Guidance Note 13: Transport

6. No unbound material shall be used on the proposed access within 20 metres of the highway boundary. Details of the proposed surface dressing shall be submitted to and agreed in writing by the Local Planning Authority, prior to the commencement of the development and implemented in accordance with those details

REASON: To prevent the tracking out of materials onto the highway in the interests of highway safety in accordance with Planning Policy Guidance Note 13: Transport

7 The area set aside for car parking shall be laid out and surfaced, in accordance with a scheme which has been submitted to and agreed in writing by the Local Planning Authority before the buildings hereby permitted are first occupied and shall be retained permanently thereafter for the accommodation of residents/occupiers and shall not be used for any other purpose.

REASON: To ensure that the spaces are provided prior to the occupation of the units in the interests of highway safety in accordance with Planning Policy Guidance Note 13 Transport

Continuation ...

8 Before first occupation of an approved development, the proposed new access onto Tolmers Road shall be completed and constructed to the specification of the Highway Authority and Local Planning Authority's satisfaction.

REASON: To ensure that the access is constructed to the current Highway Authority's specification as required by the Local Planning Authority and to comply with those policies of the development plan.

9 Concurrent with the construction of the access, visibility splays of 2.4m x 43m shall be provided and permanently maintained in each direction within which there shall be no obstruction to visibility between 600mm and 2 m above the carriageway level.

REASON: To provide adequate visibility for drivers entering or leaving the site in accordance with PPG13: Transport.

10 The proposed new access shall be a minimum of 4.8m wide for at least the first 6m into the site.

REASON: To allow vehicles to enter and leave the site at the same time in accordance with PPG13: Transport.

11 The ridge height of the building facing Tolmers Road shall be no higher than 8.4 metres and any building behind this front elevation shall have a ridge height no higher than 6 metres. The latter ridge height is based upon site levels of 62.79 as shown on drawing number SD08132-01.

REASON: In the interests of the amenity of current and future occupiers of the site in accordance with policy D1 of the Welwyn Hatfield District Plan 2005.

12 Approval of the reserved matters scheme shall have regard to the siting of the residential accommodation so that the amenity of occupiers of the flats above Tesco Express store shall not be compromised.

REASON: In the interests of the amenity of existing occupiers in accordance with policy D1 of the Welwyn Hatfield District Plan 2005.

13 The internal accommodation of any future development shall be designed so that habitable windows do not face towards the Tesco Express Store.

REASON: To provide for an adequate level of amenity for future occupiers in accordance with policy R19 of the Welwyn Hatfield District Plan 2005.

Continuation ...

14 Approval of reserved matters shall be subject to the submission of a Design and Access Statement and Sustainability Checklist.

REASON: To demonstrate the design philosophy behind the development, how it fits within the character of the area and how the development contributes towards sustainable development in accordance with Planning Policy Statement 1: Delivering Sustainable Development, policies SS1 and SS2 of the East of England Plan 2008 and policy SD1 of the Welwyn Hatfield District Plan 2005.

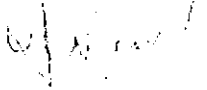
REASONS FOR APPROVAL

The proposal has been considered against Planning Policy Statement/Guidance PPS1, PPS3 and PPG13 and development plan policies SD1, GBSP2, R19, H6, M4, IM2, M14, D1, D2 and D7 of the Welwyn Hatfield District Plan 2005, in addition to the Human Rights Act 1998, which indicate that the proposal should be approved. Material planning considerations do not justify a decision contrary to the Development Plan (see Officer's report which can be inspected at these offices).

APPROVED PLAN NUMBERS

Site Location Plan 1:1250 received and date stamped 7th April 2008.
650-PL-01 & 650-PL-02 & 650-PL-03 & SD08132-01 received and dated 26 March 2008.

Date : 21/05/2008


Chris Conway
Chief Planning Officer

SCHEDULE B

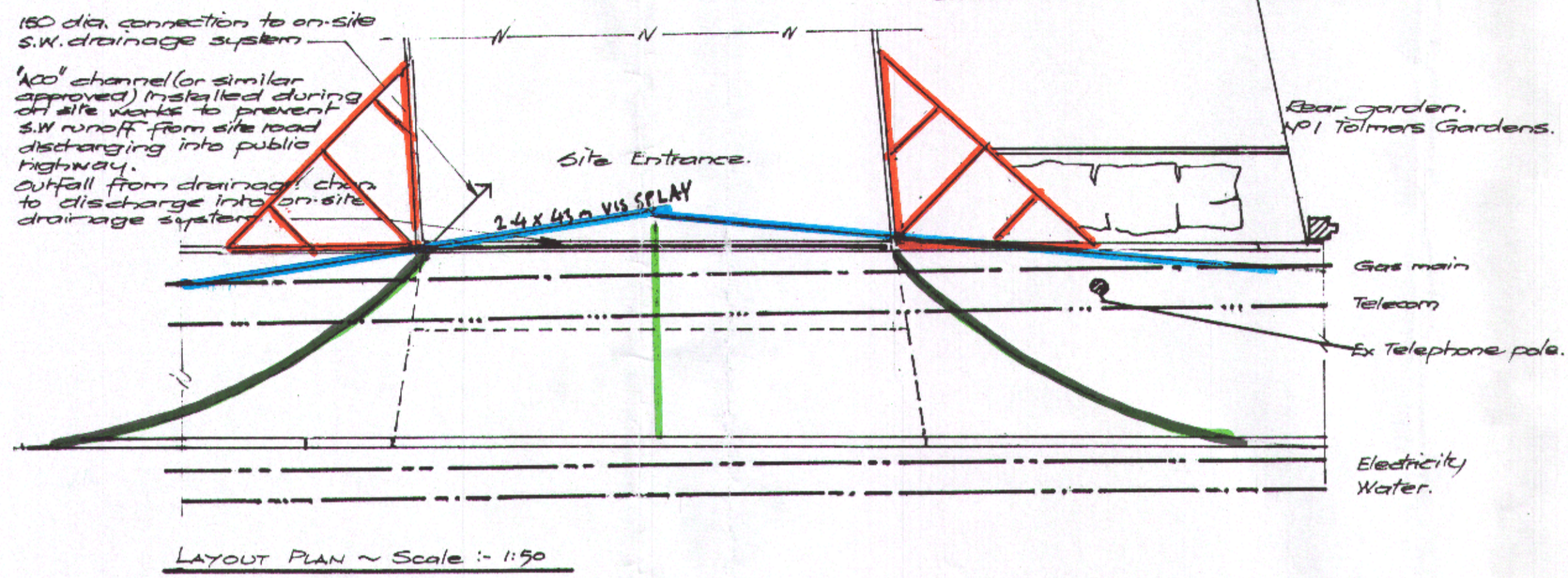
Approved Drawing & Specification

Reference No: CTS 224/01

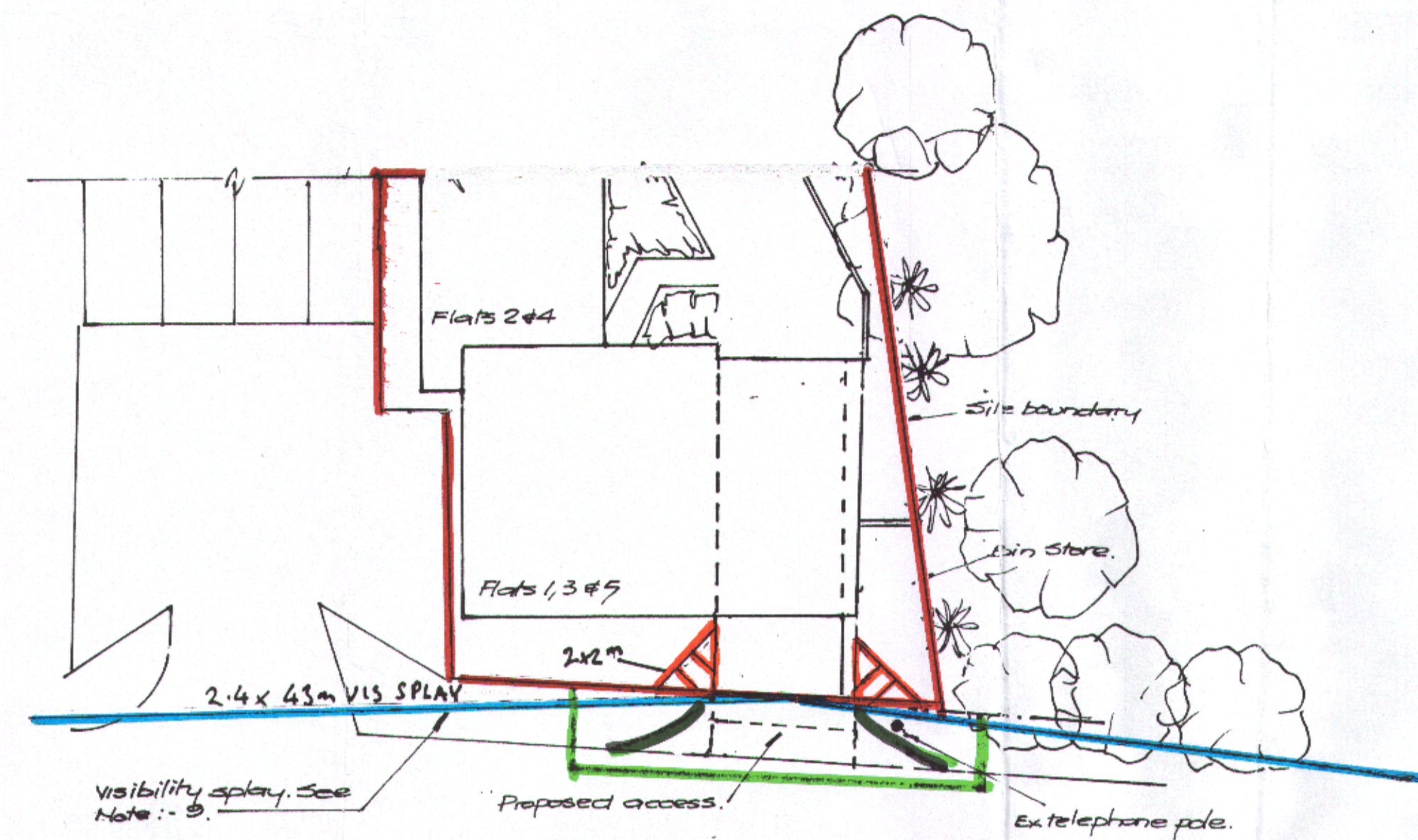
NOTES:-

1. This drawing should be read in conjunction with all other contract drawings and documents.
2. All works within the public highway to be carried out in accordance with Hertfordshire County Council's document "Roads in Hertfordshire - A Guide for New Developments".
3. No works within public highway to commence until Section 278 Agreement is in place with Herts. C.C. All such works are to be inspected by a Herts. Highways appointed Engineer / Clerk of Works and be completed to their satisfaction.
4. The appointed contractor is to prepare a traffic management plan for approval by Herts. Highways, in consultation with the Police, prior to commencement of the works. This is to be in accordance with Chapter 8 of the Traffic Signs manual.
5. In the event that any statutory apparatus is affected by the works and requires lowering / diversion, these works are to be undertaken prior to commencement of the formation of new dropped crossover.
6. Surface water runoff from development must not enter highway drainage system.
7. In the event that any existing drainage gully location requires relocation the location is to be agreed with the Highway Authority.
8. Access construction beyond the highway boundary will not be adopted.
9. Extent of visibility splays will vary depending on location, speed of main road site, and must be agreed with the Highway Authority.

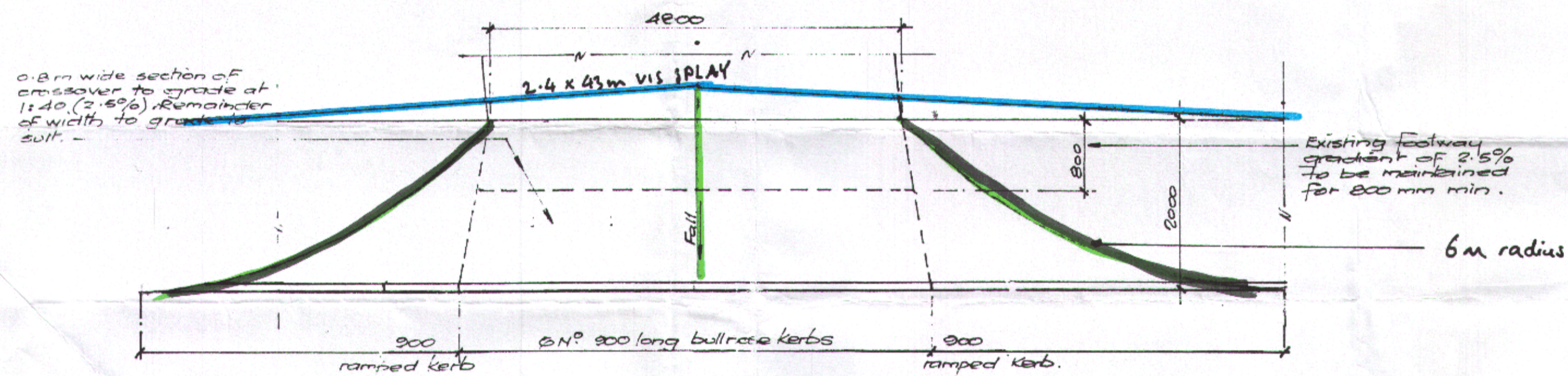
Refer to site layout for details



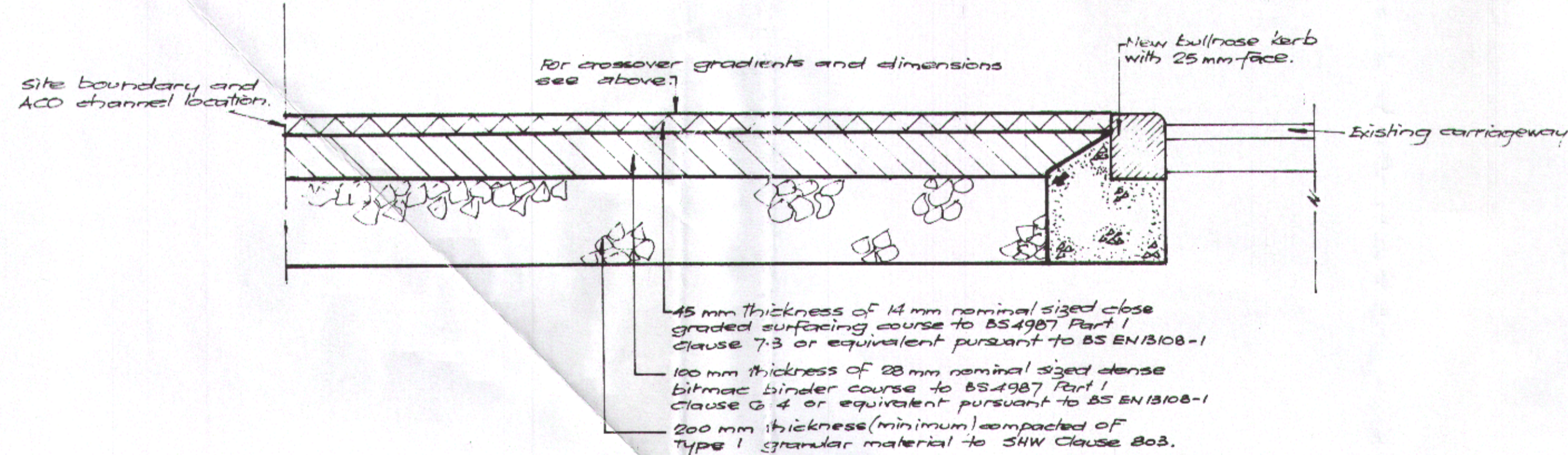
LAYOUT PLAN ~ Scale: 1:50



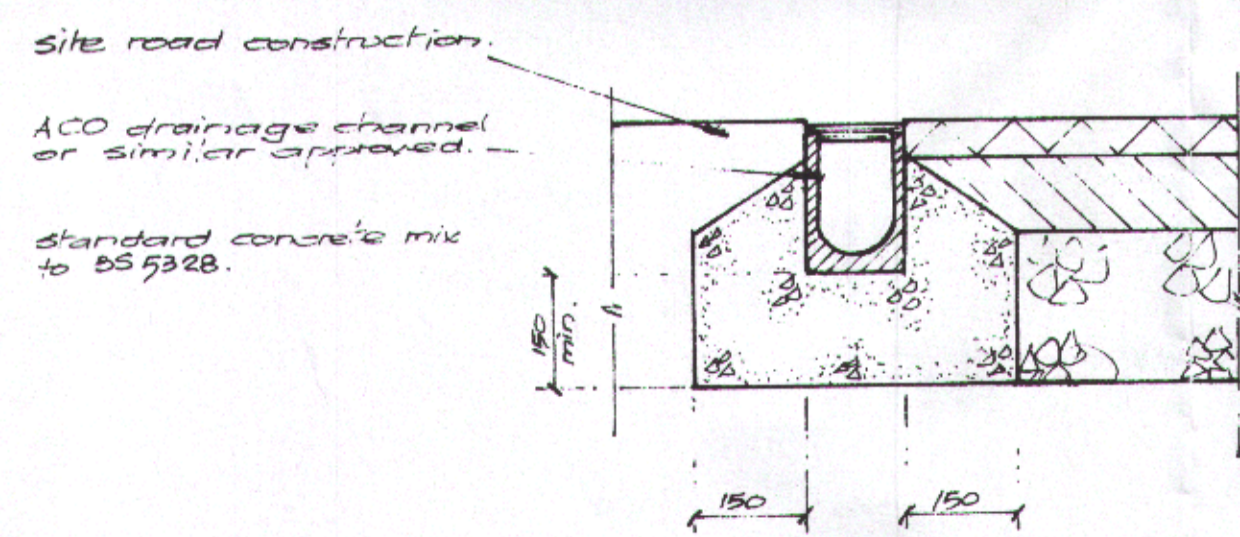
SITE LAYOUT (PART) ~ Scale: 1:20



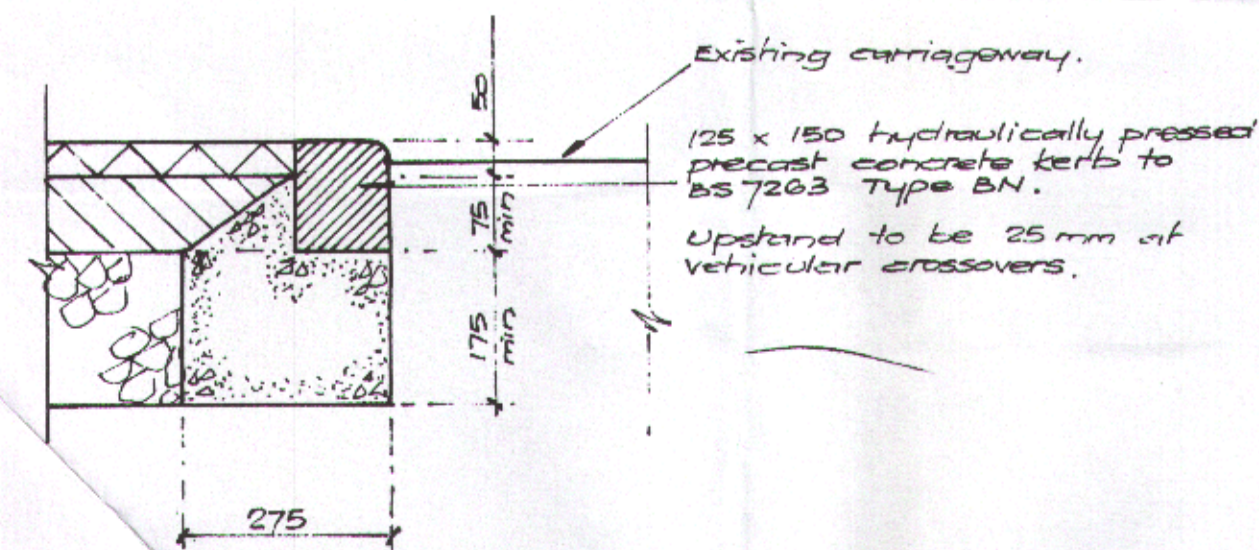
SETTING OUT PLAN ~ Scale: 1:50



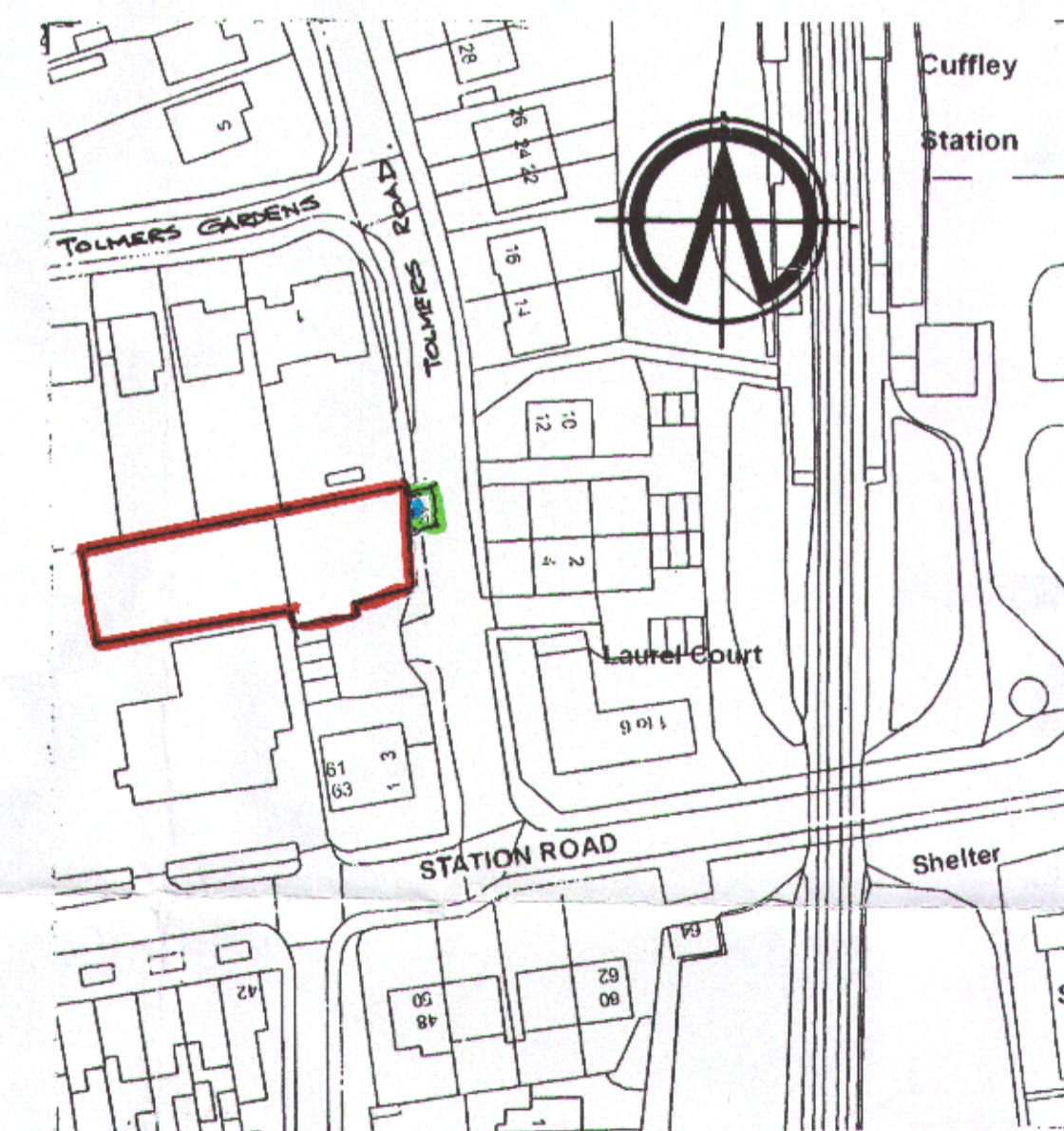
TYPICAL SECTION THROUGH CROSSOVER. ~ Scale: 1:10



DRAINAGE CHANNEL DETAIL ~ Scale: 1:10



B.N. KERB DETAIL ~ Scale: 1:10



LOCATION PLAN ~ Scale: 1:1250

| Revisions: | |
|--|-----------------|
| Scale: As shown. | Date: June 2010 |
| Drawn: R.R.C. | Checked: R.R.C. |
| Title: MINOR SECTION 278 WORKS LAYOUT AND CONSTRUCTION DETAILS TOLMERS ROAD, CUFFLEY, ENG AL4 | |
| Client: HEXA LTD. | |
| Drawing No.: CTS 224 / 01 | |
| Conquest Technical Services | |
| 69 Plash Drive, Stevenage, Herts. SG1 1LL | |
| Tel: 01438 354808 | |
| Email: enquiry@conquest-technical.com | |

Date 21 November 2011

HERTFORDSHIRE COUNTY COUNCIL

- and -

HOXA LIMITED

- and -

~~W.P.~~ BRYMAN (LONDON) LIMITED

Agreement for Highway Works at
Land at the rear of 59 Station Road Cuffley
pursuant to S.278 Highways Act 1980

KATHRYN PETTITT
Chief Legal Officer
County Hall
Hertford
SG13 8DE

REF: WE 358