

DATED 13<sup>th</sup> November 2018

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**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT SHEFFIELD ROAD  
WARMSWORTH DONCASTER**

**between**

**DONCASTER BOROUGH COUNCIL**

**and**

**KEYLAND DEVELOPMENTS LIMITED**

**MS/NR6/952**

L/CP/KDW/63029

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THIS DEED is dated

13<sup>th</sup> November 2018

- (1) **DONCASTER BOROUGH COUNCIL** of Civic Office Waterdale Doncaster DN1 3BU (**Council**).
- (2) **KEYLAND DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 02180728 whose registered office is at Western House Halifax Road Bradford West Yorkshire BD6 2SZ (**Owner**).

#### **BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of that part of the Property registered at HM Land Registry with Title Numbers SYK 515706 and shown coloured red on Plan 1.
- (C) The Council is the freehold owner of that part of the Property registered at HM Land Registry with Title Numbers SYK 499718 and shown coloured blue on Plan 1.
- (D) The Owner has made the Planning Application and is proposing to carry out the Development and has entered into an agreement dated 20<sup>th</sup> August 2018 with the Council to purchase that part of the land shown coloured blue on Plan 1.
- (E) The Council as Local Planning Authority is desirous of encouraging the application as a whole but would be unwilling to approve or conditionally approve the Planning Application in the absence of this Deed.

#### **AGREED TERMS**

##### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

**Affordable Housing Element:** the provision of built dwellings of no less than six (6) (of which four (4) will be for rent and two (2) intermediate tenure) of the total dwellings to be constructed on the Property.

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

**Commence and Commences** shall be construed accordingly.

**Commencement Date:** the date Development Commences.

**Construction of the Roof:** the applying of roof coverings to the roof timbers or structure of a dwelling

**Development:** the development of the Property authorised by the Planning Permission.

**Education Commuted Sum:** the sum of £60,715.00 provided that this sum shall be increased or decreased in accordance with the Index between the date of this agreement and the time when the sum is paid and payable towards the provision of primary school places at Warmsworth Primary School

**Index:** the All Items Index of the Retail Price Index

**Plan 1:** the plan attached as Appendix One.

**Plan 2:** the plan attached as Appendix Two.

**Planning Application:** the application for outline planning permission registered by the Council on 3<sup>rd</sup> March 2017 under reference number 17/00537/OUTM

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application

**Property:** the land at the former Yorkshire Water covered Reservoir Sheffield Road Warmsworth shown edged red on Plan 1 and registered at HM Land Registry with absolute title under Title Numbers SYK 515706 and SYK 499718 .

**Replacement Trees Commuted Sum:** the sum of £3828.00 provided that this sum shall be increased or decreased in accordance with the Index

between the date of this agreement and the time when the sum is paid and payable towards the replacement of trees on land shown edged green on Plan 2

**Open Space Commuted Sum:** the sum of £55,000 provided that this sum shall be increased or decreased in accordance with the Index between the date of this agreement and the time when the sum is paid and payable towards the Warmsworth Quarry Park Improvement project

**TCPA 1990:** Town and Country Planning Act 1990.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994

**Working Day:** a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business).

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to this deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.

- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this deed under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses, plans, schedules and appendices are to the clauses, plans, schedules and appendices of this deed.
- 1.13 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
2. **STATUTORY PROVISIONS**
- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The Council agrees to the Council's interest in the Property being bound by the obligations in this deed and while such obligations are not enforceable

against the Council if and so long as the Council is both the local planning authority for the Property pursuant to Section 106 of the TCPA 1990 and retains an ownership interest in the Property the obligations in this deed expressed to be given on the part of the Owner shall (subject to Clauses 3, 6 and 7) also be taken to be obligations which are binding on the Council's freehold interest in the Property with the intent that such obligations should be binding upon any successors in title to or assigns of the Council and/or any person claiming through or under it an interest in the Property as if that person had been the original covenanting party in respect of such interests for the time being held by the Council.

- 2.4 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. **CONDITIONALITY**

With the exception of clauses 2, 3, 9, 11,13, 18, 19, and 20 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission.

4. **COVENANTS TO THE COUNCIL**

The Owner covenants with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- (b) give at least seven Working Days written notice to the Council of the intended Commencement Date.

5. **INDEXATION**

- 5.1 The amount of the Open Space Commuted Sum and the Replacement Trees Commuted Sum payable to the Council shall be Index Linked annually from the first anniversary of the date of this Agreement.
- 5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the

index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

**6. RELEASE**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

**7. DETERMINATION OF DEED**

The obligations in this deed (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

**8. LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by the Council.

**9. COUNCIL'S COSTS**

The Owner shall pay to the Council on or before the date of this deed the Council's reasonable and proper legal costs (subject to a maximum limit of £1500) together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.

**10. INTEREST ON LATE PAYMENT**

Where any sum or amount has not been paid to the Council by the date on which it is due, the Owner shall pay the Council interest at the Default Interest Rate on that amount for the period from the due date to and including the date of payment.



11. **OWNERSHIP**

The Owner and the Council warrant to each other that no person other than the Owner or the Council has any legal or equitable interest in their respective parts of the Property..

12. **REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

13. **CANCELLATION OF ENTRIES**

13.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

13.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 7 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

14. **DISPUTES**

If any dispute arises out of this deed, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

15. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

16. **NO COMPENSATION PAYABLE**

No compensation shall be payable by the Council as a result of the obligations contained in this deed.

17. **WAIVER**

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligations of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions contained in this deed or acting on any subsequent breach or default of this deed.

18. **FUTURE PERMISSIONS**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

19. **AGREEMENTS AND DECLARATIONS**

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

20. **NOTICES**

20.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

- (a) Council: Head of Planning, Civic Office, Waterdale, Doncaster DN1 3BU;

- (b) Owner: Development Planning Manager, Western House, Halifax Road, Bradford BD6 2SZ;

or as otherwise specified by the relevant person by notice in writing to each other person.

20.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

## 21. **THIRD PARTY RIGHTS**

No person other than a party to this deed and their respective successors and permitted assigns, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## 22. **SEVERANCE**

22.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.

22.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable..

## 23. **VALUE ADDED TAX**

23.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

23.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

24. **GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of  
DONCASTER BOROUGH COUNCIL  
was affixed to this document in the  
presence of:



Authorised by the Assistant  
Director of Legal and Democratic  
Services

No in Seal Register 67494

Executed as a deed by  
KEYLAND DEVELOPMENTS  
LIMITED

Peter Lamb

acting by a Director in the presence  
of :

Witness Name: R. Browne

Witness signature: R Browne

Witness Address: Western House  
Halifax Road Bradford BD6 2SZ

## **Schedule 1 Covenants to the Council**

### **Public Open Space Contribution**

1. Not to allow or permit Construction of the Roof of the fifteenth (15<sup>th</sup>) dwelling within the Development until such time as the Owner has first paid to the Council the Open Space Commuted Sum

### **Education Contribution**

2. Not to allow or permit Construction of the Roof of the fifteenth (15<sup>th</sup>) dwelling within the Development until such time as the Owner has first paid to the Council the Education Commuted Sum

### **Replacement Trees Contribution**

3. Not to Commence Development until such time as the Owner has first paid to the Council the Replacement Trees Commuted Sum.

### **Affordable Housing**

4. In the event that the Owner obtains reserved matters approval which will result in the construction of 23 dwellings or more on the Property the Owner shall not commence the Development until a scheme for the provision of Affordable Housing Element has been submitted to and approved in writing by the Council. Such details to include the number types tenures and mix of the Affordable Housing Element together with details of the timing of the provision of the Affordable Housing Element their transfer to a Social Landlord and the price to be paid by the Social Landlord for the Affordable Housing Element together with details of a commuted sum to be paid to the Council in lieu of the Affordable Housing Element should a Social Landlord be unwilling to take a transfer of the Affordable Housing Element. For the avoidance of doubt the Council would require the Affordable Housing Element to be offered to a minimum of three Social Landlords each to be agreed by the Council and who specialises in the types of properties provided before being prepared to accept a commuted sum

4. The Owner shall if so require provide to the Council all necessary documentation and correspondence with each of the three Social Landlords in relation to the transfer of the Affordable Housing Element as evidence that the

Owner has approached the three Social Landlords as required in paragraph 1 above.

**Appendix 1: Plan 1**



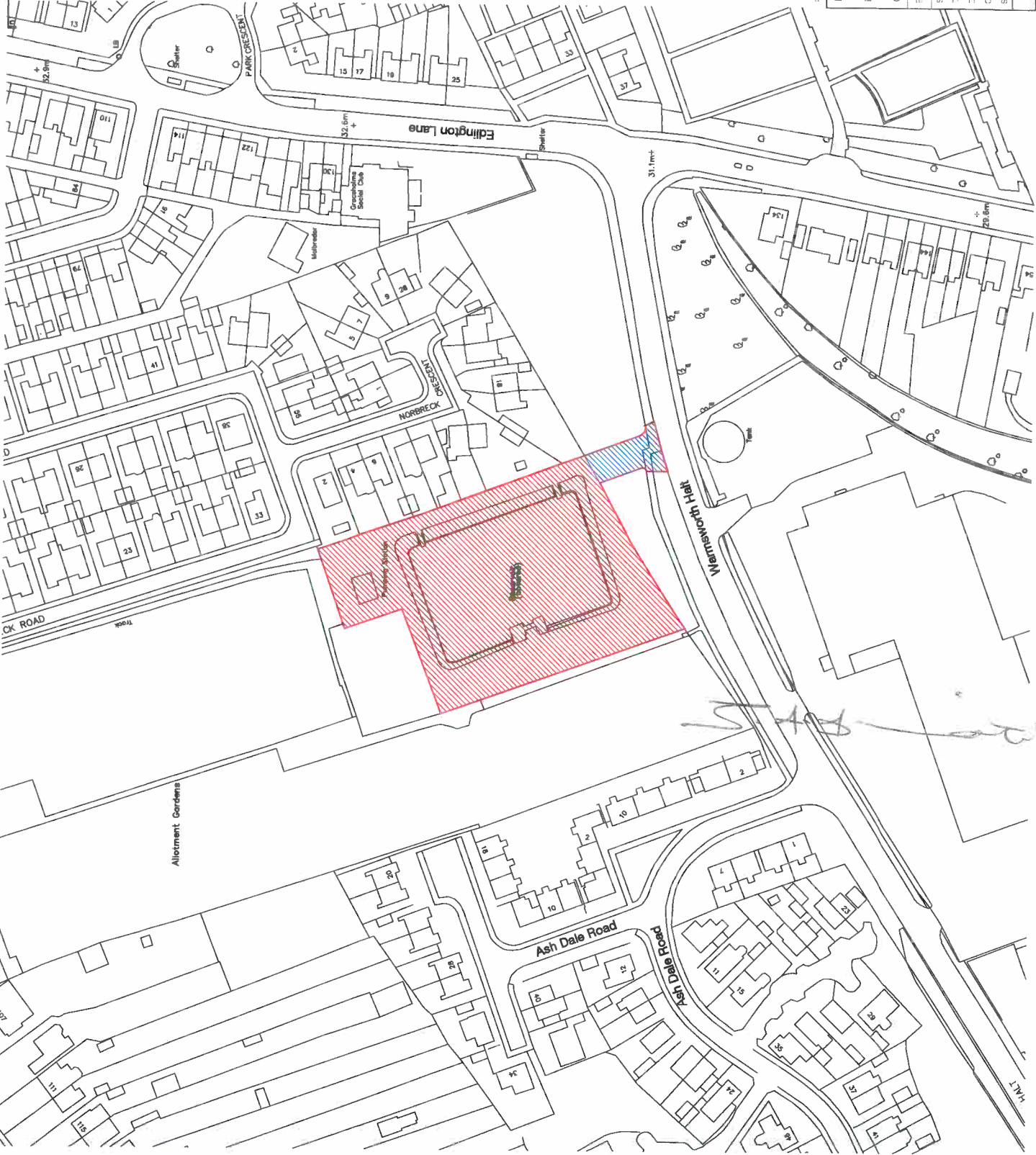
Notes | Sketch scheme may be based on plan information of unknown origin and is subject to verification and survey. Contractors must verify all dimensions on site before commencing any work or stop drawings. This drawing is for information only and is not to be used for any other purpose. Dimensions are picked at 'Actual Size'. Building areas are liable to adjustment over the course of the design process due to ongoing construction detailing developments. Subject to statutory approvals and survey. The bar below is to check that the drawing has been printed to scale.

10cm



- KEY**
- Red line denotes application site area
  - Blue hatching denotes area within application site Metropolitan Borough Council's ownership
  - Red hatching denotes area within application site under Keyland's ownership

*Retention*



B 06.03.2018 Red hatching added. Key updated WC CR  
 A 02.03.2018 Red line amended. Blue hatching added WC CR  
 Drawn Checked

**Project** Warrmouth Reservoir  
**Drawing** Land Ownership Plan  
**Client** Keyland Developments Ltd  
 E.M.S. 2020 by 2020-2021 SUITABLE FOR INFORMATION 3 M.S. 2021 by 2021 82

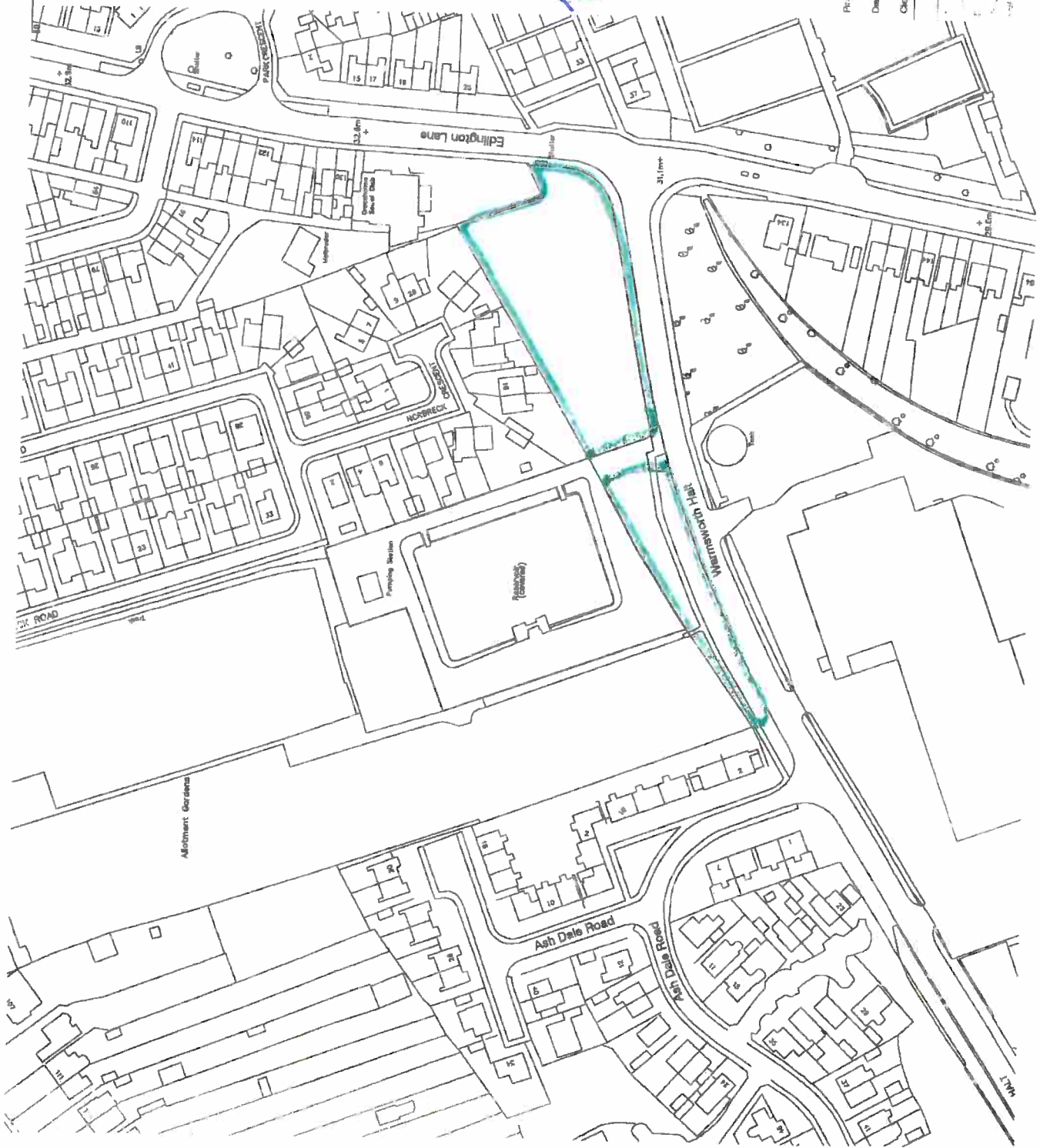
**STATUS** Planning 175 188 George St Rd  
 175 188 George St Rd  
 Warrmouth Reservoir  
**LONDON**   
**LEEDS**   
 137 148 Warrmouth  
 137 148 Warrmouth  
**WC**   
**CR**   
 Scale (A3) 1:1250  
 Drawing No. 0600 - EA - A - 1002 - B  
 Edward  
 architecture

Appendix Two: Plan 2

Notes: 1. This technical report is based on plan information of proposed design and is subject to verification and survey. Contractors must verify all drawings in situ to be correct. Use of the drawings for any other purpose is at the user's risk. The drawings are printed at 'Actual Size'. Building works are to be carried out over the concrete or other change process due to existing construction. The drawings are subject to statutory approval and survey. The user must be aware that the drawings may have been printed to scale.



*Handwritten signature: Peter Smith*



Project: **Warmworth Reservoir**  
 Drawing: **Location Plan**  
 Client: **Keyland Developments Ltd**

SUITABLE FOR INFORMATION

Planning: 09-11-16  
 Location: LEEDS  
 Project: YA  
 Client: CR  
 Date: 11/2010  
 Scale: 0600 - EA - A - 1000

