



**PLANNING REF: 2727/22/CLE**

**DESCRIPTION:** Certificate of lawfulness to establish whether there has been a lawful commencement of the development for 32 dwellings as approved by outline consent 28/1560/15/O (appeal ref APP/K1128/W/16/3156062 and reserved matters approval 0826/20/ARM)

**ADDRESS:** Garden Mill, Derby Road, Kingsbridge.

16<sup>th</sup> September 2022

## **LETTER OF OBJECTION FROM THE SOUTH HAMS SOCIETY**

### **The South Hams Society interest**

For the last 60 years, the South Hams Society has been stimulating public interest and care for the beauty, history and character of the South Hams. We encourage high standards of planning and architecture that respect the character of the area. We aim to secure the protection and improvement of the landscape, features of historic interest and public amenity and to promote the conservation of the South Hams as a living, working environment. We take the South Devon Area of Outstanding Natural Beauty very seriously and work hard to increase people's knowledge and appreciation of our precious environment. We support the right development - in the right places - and oppose inappropriate development.

### **Introduction**

The Society has reviewed this request for a Certificate of Lawfulness. We are concerned the applicant has submitted information that we believe to be incorrect.

We would argue that the stated commencement date of the development is wrong and, because of this error, the applicant is able to claim they have correctly implemented the planning permission. The Society does not agree with this opinion.

The Society notes that a legal opinion has been submitted, based on the information provided by the applicant. The Society wishes to comment on that opinion

Taking the three main issues of contention in turn:

1. The commencement of development date.
2. The compliance Table for Planning Conditions contained in Planning Application 28/1560/15/O - Land at Garden Mill Derby Road Kingsbridge Devon.
3. The legal opinion.

**Charity No 263985**

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## **1. The Commencement of development date.**

The applicant has submitted a letter written by Roach Planning & Environment Limited.

Identified as Appendix RP5, it is a Formal Notice of Commencement of Development letter.

This letter records that the ***'commencement date, as defined in the section 106 unilateral undertaking for planning application 28/1560/15/O dated 25<sup>th</sup> April 2017, is intended to occur on the 27<sup>th</sup> May 2022'***.

The section 106 agreement attached to the outline planning permission defines the commencement of development in legal terms as follows (extract from 1.0 Definitions 1.1):

<p>"Commencement of Development"</p>	<p>means the earliest date on which any material operation as defined in Section 56(4) of the Act is carried out on the Site in connection with the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" and "Commence Development" shall be construed accordingly</p>
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Section 56(4) of the Town and Country Planning Act 1990 says that **"development is taken to be begun on the earliest date on which a material operation is carried out"**. A material operation is defined in the Act and can include any works of construction, demolition, digging foundations, laying out or constructing a road, or a material change in the use of the land.

The commencement letter follows for ease of reference.



Kingsbridge, Derby Road – H2Land Design



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**Appendix RP5.**

Formal Notice of Commencement submitted to South Hams District Council on 12<sup>th</sup> May 2022.



Development Management  
South Hams District Council  
Follaton House  
Plymouth Road  
Totnes  
Devon  
TQ9 5NE

Your Ref: 28/1560/15/O

Our Ref: 0179/04/220512

12 May 2022

Dear Sir/Madam,

**Proposed Development by Blakesley Estates (Kingsbridge) Ltd of 32 New Homes at Garden Mill, Derby Road, Kingsbridge**

**Planning Permission 28/1560/15/O (Appeal APP/K1128/W/16/3156062)**

**Commencement of Development Notice**

On behalf of our client, Blakesley Estates (Kingsbridge) Ltd, we hereby notify South Hams District Council that Commencement of the Development, as defined in the Section 106 Unilateral Undertaking for planning application 28/1560/15/O dated 25 April 2017, is intended to occur on 27 May 2022. The enclosed Commencement of Development Notice is issued to South Hams District Council ten working days prior to Commencement of Development in compliance with Schedule 2, Part 1, paragraph S1.1 of the Section 106 Agreement.

Yours sincerely,



**Ian Roach** MRTPI MIEMA CEnv  
Director

CC Terry Spencer, Blakesley Estates (Kingsbridge) Ltd

Roach Planning and Environment Limited  
12a The Triangle | Teignmouth | Devon | TQ14 8AT  
[www.roachplanning.co.uk](http://www.roachplanning.co.uk) 07779 008560

Registered in England and Wales, Registration Number 10804443

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Development Management  
South Hams District Council  
Follaton House  
Plymouth Road  
Totnes  
Devon  
TQ9 5NE

12 May 2022

### **COMMENCEMENT OF DEVELOPMENT NOTICE**

**PLANNING PERMISSION 28/1560/15/O (Appeal Ref. APP/K1128/W/16/3156062)**

**Garden Mill, Derby Road, Kingsbridge**

**Blakesley Estates (Kingsbridge) Ltd**

**Development of 32 New Homes**

Blakesley Estates (Kingsbridge) Ltd hereby notifies South Hams District Council that Commencement of the Development, as defined in the Section 106 Unilateral Undertaking for planning application 28/1560/15/O dated 25 April 2017, is intended to occur on 27 May 2022. This Commencement of Development Notice is issued to South Hams District Council ten working days prior to Commencement of Development in compliance with Schedule 2, Part 1, paragraph S1.1 of the Section 106 Agreement.





It is the Society's opinion that the stated date of commencement is wrong.

### Commencement Date Evidence.

Equipment started to arrive on the 10<sup>th</sup> May 2021. Within two days, the Public Right of Way was unusable because the surface was unsafe.

10 May 2021 · 🌐  
And so it begins 😊



👍👎🗨️ 57

34 comments 6 shares

12 May 2021 · 🌐

We want our footpath back !!! Very muddy, slippery and dangerous due to heavy vehicles driven through the steep entrance..



13 May 2021 · 🌐

Quagmire Hill. A load of vegetation has already been cleared. Nesting season?  
Not sure how this has been allowed to happen without the construction management plan in place.



Denise O'Callaghan  
14 May 2021 · 🌐

Just to repeat in case it got lost in a thread somewhere the fantastic news that SHDC has issued a Stop Notice preventing work being carried out on the Lock's Hill site for 28 days. In the meantime perhaps the developers can do what they were meant to do in the first place and submit a construction management plan which is acceptable to the local planning authority. Excellent work by the SHDC team - tree officer, planning officer and enforcement officer, and special thanks to Cllr Brazil for his support in pushing for a Stop Notice. And of course thanks to all of you for your passion and persistence!

👍👎🗨️ 189

65 comments 18 shares

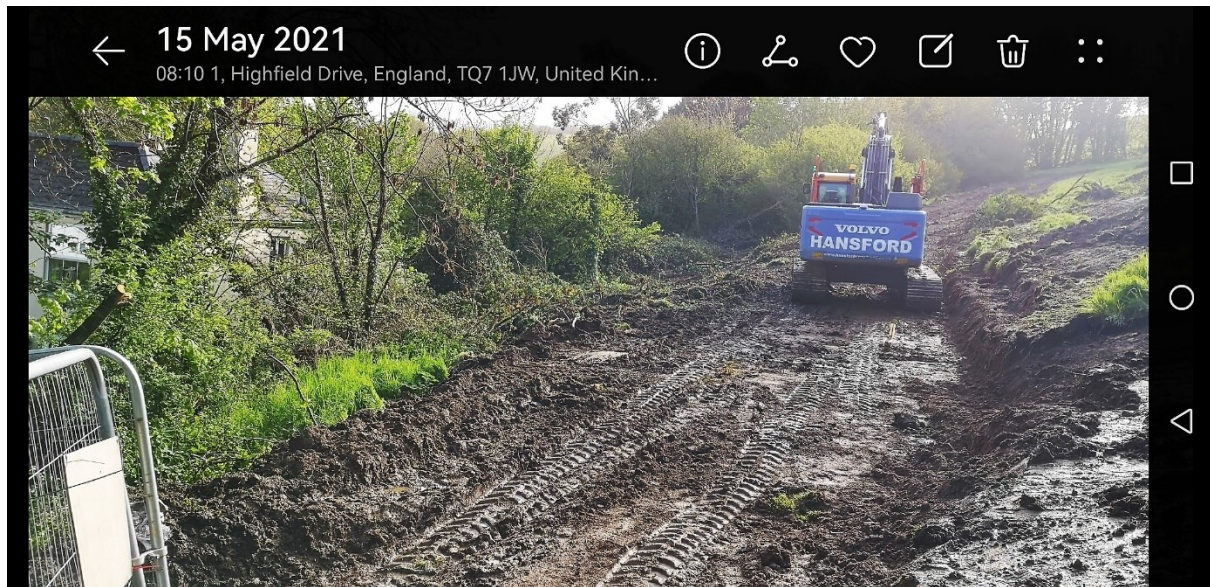
The District Council issued a Stop Notice on the 14<sup>th</sup> May 2021.

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A Society member recorded this image on the 15<sup>th</sup> May 2021.



Social Media comment regarding the 'Test Pits'.



Despite the Stop Notice signs fixed to the site, work continued on.





Public anger rises and the Leader of South Hams District Council makes a public statement.

# District warns of court action for notice breach

There is trouble on the hill after South Hams District Council doubled down on court proceedings following a breach of a temporary stop notice.

Last week's confrontation between developer Blakesley Estate, South Hams District Council and community interest group Save Locks Hill reached boiling point as the Brighton-based developer continued to work despite a temporary stop notice halting all work.

South Hams District Council Leader Cllr Judy Pearce said: "The temporary stop notice was issued because the developer had started work before it was allowed to do so under the planning permission.

"It was also the case that the works that it had carried out were causing significant environmental damage.

"Having done so, the council is very disappointed that the developer has carried on with the unauthorised works.

"As the temporary stop notice is not being complied with, the council is in the process of gathering the necessary evidence to prosecute the developer and all those not complying with the notice.

"The maximum penalty on conviction is an unlimited fine. The council will be seeking an early court hearing."

Blakesley Estates responded to the backlash by releasing a public statement that said: "Due to advice given to us by a Devon County Council (DCC) Rights of Way representative that the public footpath was maintained and made safe, temporary fencing was recently erected to maintain the public right of way.

"Furthermore, some weeks ago, Blakesley advised SHDC that trial pits would be undertaken and the required temporary fencing erected.

"In addition to trial pits for the new foundations, the bearing pressure for the road construction required testing, to enable the road design to be finalised.

"Soil samples have also been taken for contamination testing and due to the steep nature of the site, the excavator undertaking the trial pits had to level a track to reach the location of the trial pit areas.

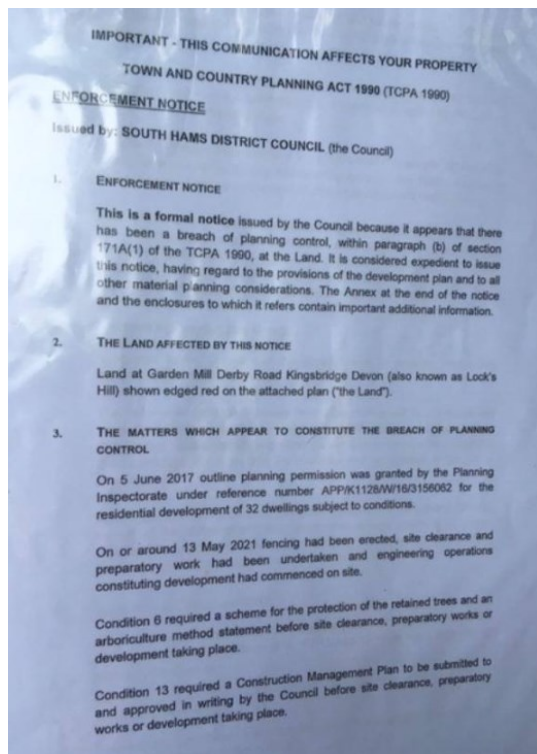
"Over the last week, the temporary fence that had been erected has since been vandalised and SHDC Planning Department have proceeded to report Blakesley to their Planning Enforcement Team, citing that work had commenced on site and issued a Temporary Stop Notice."

In response to the public opposition to the development, Blakesley added: "A number of individuals are attempting to inhibit any development on the site, which gained planning permission back in 2016, when a public consultation took place, giving locals the opportunity to voice their concerns. We oppose vandalism and will not engage with people using threatening behaviour to intimidate staff, including the recording of individuals present on site."

**South Hams District Council Leader Cllr Judy Pearce said:** "The temporary stop notice was issued because the developer had started work before it was allowed to do so under the planning permission. It was also the case that the works that it had carried out were causing significant environmental damage. Having done so, the Council is very disappointed that the Developer has carried on with the unauthorised works.

"As the temporary stop notice is not being complied with, the Council is in the process of gathering the necessary evidence to prosecute the Developer and all those not complying with the notice. The maximum penalty on conviction is an unlimited fine. The Council will be seeking an early court hearing."

An enforcement notice was posted on the 14<sup>th</sup> June 2021 which came into force 4 days later.



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Again, work carried on until the 24<sup>th</sup> of June 2021, when the original grounds works company suddenly leaves the site.

24 June 2021 · 🌐

24 June 2021 · 🌐

Just to reassure everyone that the Hansford crew are here to remove plant from the site. Looks like they've had enough and who can blame them. Please remain respectful with your comments, we've always appreciated that they're been caught up in the middle of this Mistake.



Five days later, on the 29<sup>th</sup> June 2021, new equipment arrives. The operators are soon witnessed flattening the scrub in the western field with no ecologist in sight.

29 June 2021 · 🌐

Bit of a Mexican standoff at the bottom of Lock's Hill at the moment. Plant arriving on hire and an SHDC enforcement officer on site yesterday to remind subcontractors about the STOP notice while quietly in the background solicitors are "dealing with things"?

Come on Blakesley, surely it's time to dispel the myth that this is all the conjurings of the "Kingsbridge Facebook Army". We didn't set the conditions, we were just very much aware of them.

Sine qua non: Without which, not



8 July 2021 · 🌐

video and pictures 29/06/2021



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The appalling conduct of flattening scrub during wildlife's mid nesting season before any inspection by a qualified ecologist has taken place.

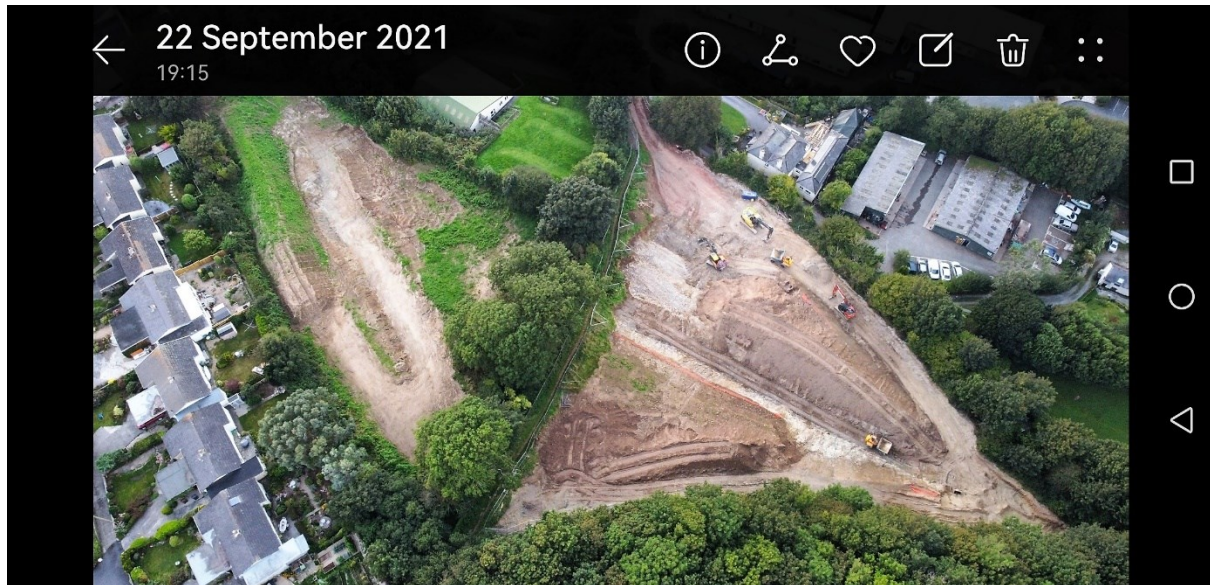


In spite of the enforcement notice work never subsequently stopped, with more equipment arriving.





On the date of the first pre-commencement planning condition discharged by the LPA (condition 6), the condition of the development site was recorded by the image below:



**Condition 6 states (28/1560/15/O):**

*'No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority.'*

**Examining the image on page 1, with ground clearance starting on the 13<sup>th</sup> May 2021, an immediate breach of planning condition 6 occurred. The following day on the 14<sup>th</sup> May, a Stop Notice was issued. Referring to the Section 56(4) of the Town and Country Planning Act 1990 definition for commencement of development, evidence dictates that the commencement of development start date must be recorded as the 13<sup>th</sup> May 2021.**

Both the 'Commencement Date' letter and the planning application form states that the commencement date will be / was the 27<sup>th</sup> May 2022.

**The date stated is not the correct date as this is not the 'earliest date on which a material operation was carried out'.**

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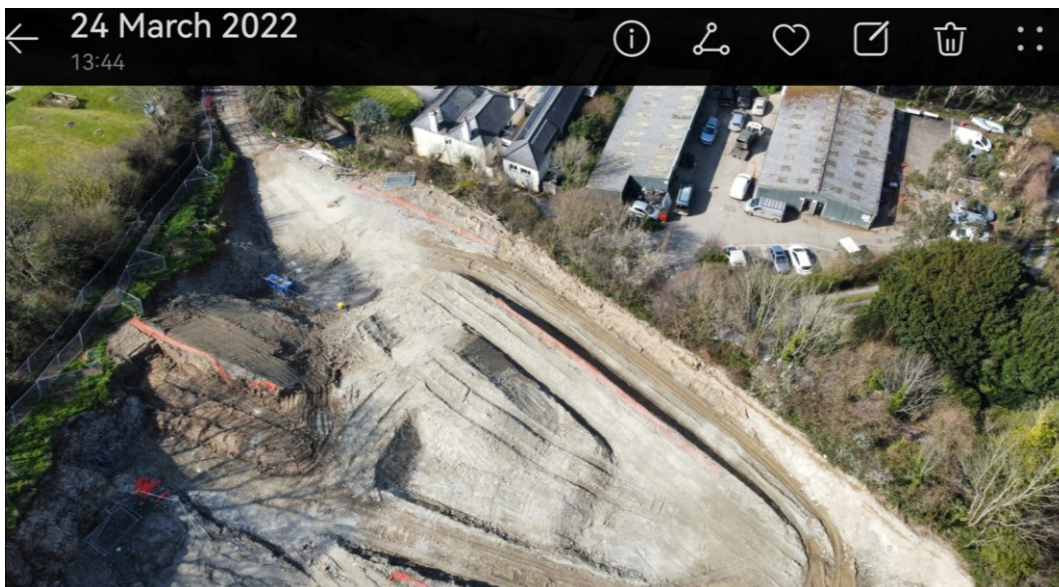
### The 2022 Development Interruption:

Fast forward to the 23<sup>rd</sup> March 2022. On this date work stops and machinery is removed from the site. This appears to have been done to satisfy the suggestion that no groundworks had occurred in the previous 10 months.

A member of the public records equipment leaving the site on the 23<sup>rd</sup> March 2022.



These images are aerial views of the eastern field the day after they left.

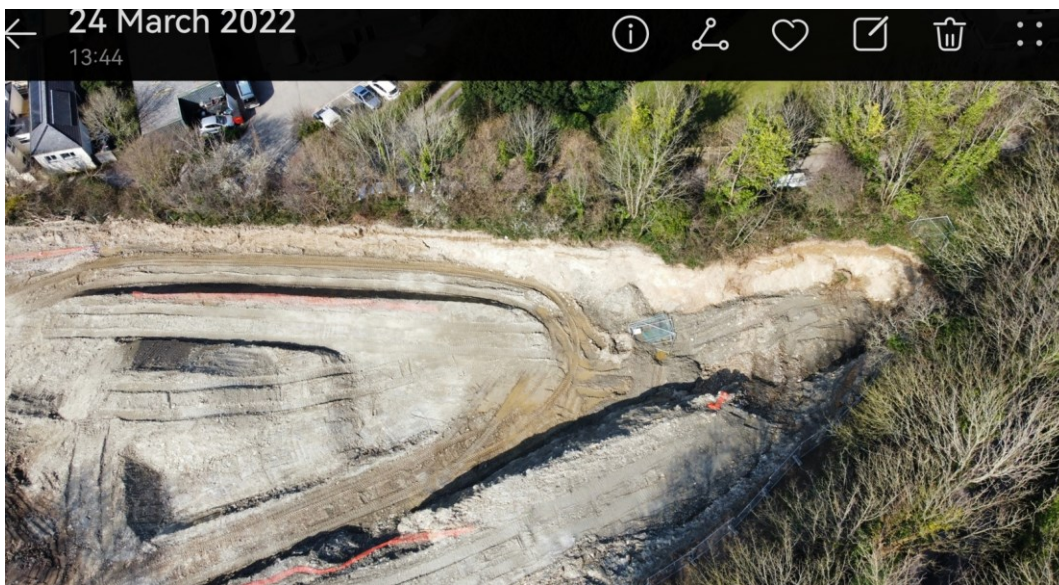


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The Society would like to point out that there is not one tree protection barrier visible in either of these two images and not one has been installed as required by the Tree Protection Plan submitted to satisfy condition 6.



And here is the earth-moving equipment recorded by a member of the public returning two months later on Friday 27<sup>th</sup> May 2022.

27 May · 🌐  
And they are back



Then, 12 full working days after machinery returned, images were taken on the 16<sup>th</sup> June, and submitted by the applicant (Appendix RP6).

It is not clear what the images submitted are intended to portray.

As our evidence shows, extensive work was completed on site prior to this bizarre two month break.



## **2. Compliance Table for Planning Conditions contained in the Planning Application**

The applicant has submitted a 'Condition Discharge Compliance Table' which has been incorrectly assessed against a development start date of 27th May 2022 (The applicant has quoted that the Commencement of Development is as defined in the UU 106 agreement. It isn't).

The Society have reviewed the submission of the document titled – '*Kingsbridge, Derby Road – H2Land Design, Appendix RP3. Condition Discharge Compliance Table*'.

The Society submits a condition discharge compliance assessment overleaf, based on the correct commencement of development start date of 13<sup>th</sup> May 2021.

Our compliance table highlights in red those pre-commencement planning conditions that did not have written approval from the LPA as required by the outline planning condition on the commencement of development date.



## 1. Introduction

This note summarises the status of the conditions on the outline and reserved matters permissions pertaining to the H2Land design, highlighted as follows:

Approved and/or no action required other than compliance

Remains to be complied with – Prior to specified works within the development

Compliance Condition.

Work started before submitting details to satisfy planning condition and failure to obtain written approval from local planning authority that details submitted are satisfactory.

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Planning Condition Compliance Table for Planning Conditions contained in Planning Application  
28/1560/15/O - Land at Garden Mill Derby Road Kingsbridge Devon

2. Conditions on Outline Planning Permission (28/1560/15/O; Appeal 3156062)

No.	Condition Wording	Roach Planning Comment
1.	Details of the landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.	Reserved matters application required to be submitted by 04.06.20.  Reserved matters application submitted 10.03.20.
2.	Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.	Reserved matters approved 21.12.20 (0826/20/ARM).
3.	The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.	Development to commence by 20.12.22.
4.	Details of landscaping required by condition 1) shall include walls, fences and other means of enclosure, indications of all existing trees and hedgerows on the land identifying those to be retained, the location of all open space and amenity areas, the landscape treatment of embankments and retaining walls, and a programme for the carrying out of the landscaping works.	Reserved matters approved 21.12.20.
5.	All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the agreed programme; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.	Works to be carried out in accordance with approved details.  Landscaping works to be maintained for a period of 5 years.
6.	No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved. [In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]	Condition 6 discharged <b>22.09.21</b> (3226/21/ARC). <b>Application Date: 19 August 2021</b>

Planning Condition Compliance Table for Planning Conditions contained in Planning Application  
28/1560/15/O - Land at Garden Mill Derby Road Kingsbridge Devon

7.	The development hereby permitted shall be carried out in accordance with the following approved plans: 215/06A, 215/11, 215/08, 215/09, 215/10, 215/29, 215/30, 215/31, 215/28, 215/13, 215/33, 215/12, 215/15, 215/14, 215/32, 215/34, 215/07A, 215/01A, 215/02A, 215/03A, 215/04B,	Works to be carried out in accordance with approved details.
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No.	Condition Wording	Roach Planning Comment
	215/05A, 215/102A, 215/201, 215/17, 215/16, 215/19, 215/18, 215/21, 215/20, 215/22, 215/23, 215/24, 215/25, 215/26A, 215/27, 215/35, 215/101A, 215/103A.	
8.	Notwithstanding condition 7) the construction of the external walls of the dwellings hereby approved shall not commence until details and samples of the materials to be used on the external elevations of the dwellings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained thereafter.	Details and samples of external wall materials to be submitted and approved prior to construction of external walls. Works to be carried out in accordance with approved details.
9.	Development shall not take place until details of the parking and turning areas within the site have been submitted to and approved in writing by the local planning authority; parking space shall be provided in accordance with the approved details for cars to be parked and for vehicles to turn prior to the occupation of the dwelling to which the parking and turning area relates.	Condition 9 discharged <b>20.12.21</b> (3181/21/ARC). <b>Application Date: 16 August 2021</b> Works to be carried out in accordance with approved details.
10.	Development shall not take place until details of the junction between the proposed access road and the highway shall have been submitted to and approved in writing by the local planning authority; and no dwelling shall be occupied until that junction has been constructed in accordance with the approved details. The junction shall thereafter be retained.	Condition 10 discharged <b>20.12.21</b> (3181/21/ARC). <b>Application Date: 16 August 2021</b> Works to be carried out in accordance with approved details.
11.	Development shall not take place until details of the access road through the site including roads, footpaths, streetlighting and retaining walls have been submitted to and approved in writing by the local planning authority. These details shall include plans and sections indicating the layout, levels and gradients, materials and methods of construction. The development shall be carried out in accordance with the approved details.	Condition 11 discharged <b>06.05.22</b> (1276/22/ARC). <b>Application Date: 12 April 2022</b> Works to be carried out in accordance with approved details.



Planning Condition Compliance Table for Planning Conditions contained in Planning Application  
28/1560/15/O - Land at Garden Mill Derby Road Kingsbridge Devon

12.	<p>Details of any external lighting shall be submitted to and approved in writing by the local planning authority before any of the buildings are occupied. Any external lighting shall be designed to comply with lighting levels as set out in the Institute of Lighting Professionals' guidance: Guidance Notes for the reduction of obtrusive light; and shall be compliant with Environmental Zone 3. Development shall be carried out in accordance with the approved details.</p>	<p>Applicable to any external lighting to be affixed to dwellings (street lighting covered by condition 11).</p> <p>Details of any external lighting to be submitted and approved prior to first occupation.</p>
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No.	Condition Wording	Roach Planning Comment
13.	<p>No site clearance, preparatory work or development shall take place, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall provide for:</p> <ul style="list-style-type: none"> <li>i) the parking of vehicles of site operatives and visitors;</li> <li>ii) the management of delivery vehicle numbers and routes</li> <li>iii) loading and unloading of plant and materials;</li> <li>iv) storage of plant and materials used in constructing the development;</li> <li>v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;</li> <li>vi) wheel washing facilities;</li> <li>vii) photographic evidence of the condition of the adjacent public highway prior to commencement of any work;</li> <li>viii) measures to control surface water run-off from the site during construction;</li> <li>ix) delivery, demolition and construction working hours. The approved Construction Management Plan shall be adhered to throughout the construction period for the development.</li> </ul>	<p>Condition 13 discharged <b>06.05.22</b> (1413/22/ARC). <b>Application Date: 26 April 2022</b> Works to be carried out in accordance with approved details.</p>

Planning Condition Compliance Table for Planning Conditions contained in Planning Application  
28/1560/15/O - Land at Garden Mill Derby Road Kingsbridge Devon

14.	<p>No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The submitted details shall:</p> <p>i) include percolation test results and supporting calculations, prepared in accordance with BRE 365 and designed to a 1:100 year flood event + 40%, the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; ii) include a timetable for its implementation; and, iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.</p>	<p>Surface water drainage works details to be submitted, approved and implemented prior to first occupation.</p> <p>Works to be carried out in accordance with approved details.</p>
No.	Condition Wording	Roach Planning Comment
15.	<p>Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows shall be constructed on the north facing end gable wall of terrace A.</p>	<p>No action required other than compliance.</p>
16.	<p>Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the types described in Schedule 2, Part 1, Classes A – H of the Order, including extensions, porches, garages and car ports, the stationing of huts, fences or other structures and Part 2, Minor Operations, shall be carried out other than those expressly authorised by this permission.</p>	<p>No action required other than compliance.</p>

Planning Condition Compliance Table for Planning Conditions contained in Planning Application 28/1560/15/O - Land at Garden Mill Derby Road Kingsbridge Devon

17.	<p>Any contamination that is found during the course of construction of the approved development shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued, and a verification report demonstrating completion and effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority before the relevant part of the site is first occupied.</p>	<p>Potential pre-occupation condition. Only activated upon discovery of contaminated land.</p>
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3. Conditions on Reserved Matters Permission

No.	Condition Wording	Roach Planning Comment
1.	<p>The development hereby permitted shall be carried out in accordance with the application form and the following approved plans/documents received on:</p> <ul style="list-style-type: none"> <li>• Received 30th March 2020 <ul style="list-style-type: none"> <li>○ 215-35 ○ 215-37</li> <li>○ 215-38 ○ 215-39 ○ 215-40 ○ 215-41 ○ 215-42 ○ 215-1024</li> </ul> </li> <li>• Received 16th November <ul style="list-style-type: none"> <li>○ 215-1021 Rev C ○ 215-1022 Rev A</li> <li>○ 215-1023 Rev A</li> <li>○ 215-1025 Rev C</li> </ul> </li> </ul> <p>Reason: In order to ensure compliance with the approved drawings.</p>	<p>Works to be carried out in accordance with approved details.</p>



Not one pre-commencement planning condition had been submitted or approved when the development was commenced.

There is evidence of scrub and hedgerow clearance throughout the summer breeding season.

SHDC continues to proceed with legal action against a Company Director and the Company, Blakesley Estates (Kingsbridge) Ltd.

### **3. The legal opinion.**

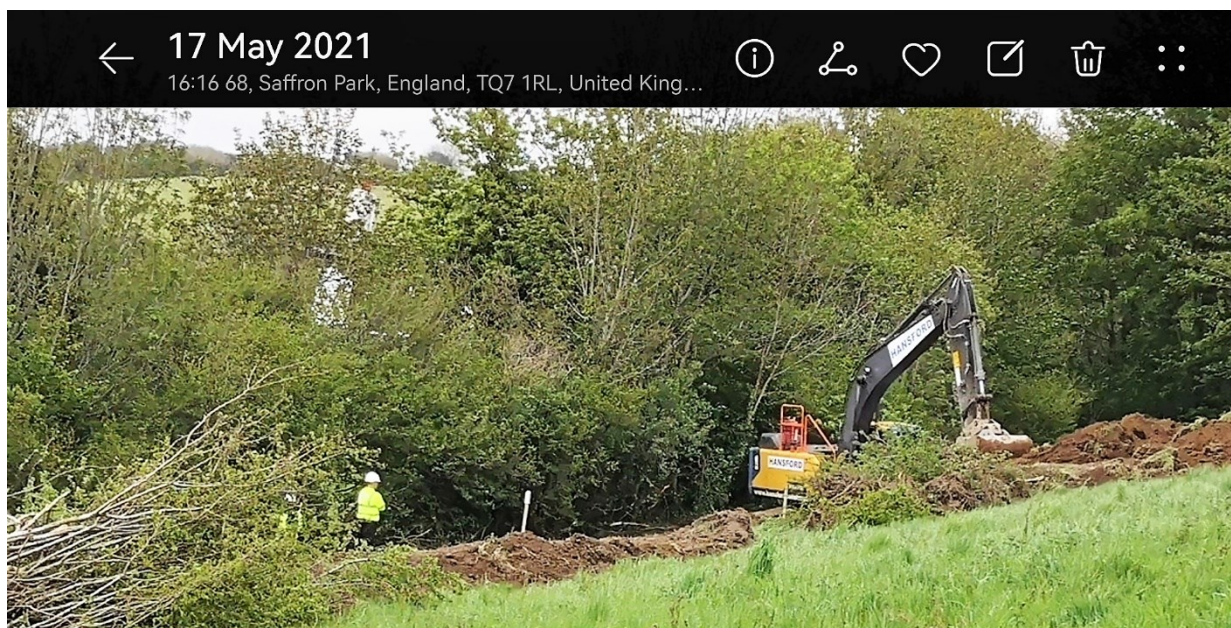
The Applicant has submitted a legal opinion by Ben Garbett, Keystone Law recorded as Appendix RP1.

The Society make the following comments by reference to the paragraph numbering of the opinion letter.

**Para 2.** The LDC application. This paragraph identifies that Ben Garbett has reviewed the content of the proposed LDC application. From reading of the whole opinion, it is to be read that this opinion is based on the applicants' LDC submission documents.

**Para 3.** The Society points out that a period of abeyance did not occur on receipt the Temporary Stop Notice (TSN) but that work continued for a number of days following the receipt of the TSN.

**Para 4.** This paragraph acknowledges that site clearance occurred, clear breaches of conditions 6 (Trees) and 13 (Construction Management Plan), the reason for the TSN being issued. At that point in time, the development had not been implemented lawfully and it is necessary to give consideration of the planning breaches. Below, an excavator is witnessed ripping out hedgerow growth. Tree protection fencing is not fitted as required by condition 6.



17 May 2021

16:16 68, Saffron Park, England, TQ7 1RL, United King...



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**Para 5.** 'The Works'. There is no dispute that '*works*' were commenced. Unfortunately extensive works were carried out prior to obtaining written approval for satisfying the requirements of the pre-commencement conditions. Therefore a decision has to be made as to whether the planning permission has been implemented lawfully. And importantly, whether the requirements of the pre-commencement conditions have been implemented and adhered to prior to the written approval from the planning authority.

**Paras 6 – 15.** The Society agree with these statements.

**Para 16.** It could be stated that the documents have been submitted and approved in writing by the LPA. It remains a material matter that the pre-commencement planning conditions were neither submitted nor approved prior to the commencement of development which occurred on the 13<sup>th</sup> May 2021. Therefore the starting point is that this development was not lawfully implemented.

**It remains the case that condition 6 has not been satisfied because the applicant has failed to install the tree protection fencing, the first requirement before bringing any machinery onsite.**

**Para 17.** The Society believe that the interpretation is incomplete.

**Was the permission implemented lawfully, and in time?**

If a development relies on a planning permission, it is important to establish that the **permission was extant at the time the development was carried out.**

Permission is extant if:

- all pre-commencement conditions have been adequately satisfied, and
- the time limits set by condition for starting the development and/or submitting reserved matters have not expired, or
- material operations comprising the development or a change of use authorised by the permission have been initiated before those deadlines expire

If the question is asked correctly, it becomes clear that at the time development was carried out (from 13<sup>th</sup> May 2021 until 6<sup>th</sup> May 2022) the development was carried out **without all the pre-commencement conditions having been adequately satisfied.** It must follow that the development was unlawfully implemented.

**Paras 18 – 27.** The Society agrees with these statements.

**Paras 28 – 32.** The Society agrees with these statements.



### Para 33.

Referring to the statement:

*'It makes no practical difference that some of the operations which are relied upon for commencing the Development were carried out prior to obtaining formal approval of the final pre-development conditions (on the 6 May 2022) because these requirements have now been satisfied'.*

This statement would only be true if the work previously carried out had been compliant in all respects to the planning conditions that have subsequently received written approval.

The Society understands that Ben Garbett, the legal opinion author may not be aware that the construction works were carried out in breach of condition 6 (if the condition details were available prior to the commencement of the development to quote).

The Society will highlight that the continual breach of condition 6 has occurred.

*'No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved'....*

Condition 6 was satisfied by the submission of a Tree Protection Plan DTS 21.4142.1.TPP Rev 1.

On the left hand side of the drawing, the following statement is made (which is common practice):

## tree protection measures: issue to contractor

The protection barriers must be in place before any materials, plant or other machinery is brought onto the site. The barriers must be sufficiently robust to prevent unauthorised alteration and be braced and facing the area of construction activity. The area separated by the fencing is to be designated as a construction exclusion zone (CEZ), within which the following are prohibited:

- excavations to existing ground
- changes in levels
- storage of materials
- transit of machinery
- or any other activity causing ground damage

**Charity No 263985**

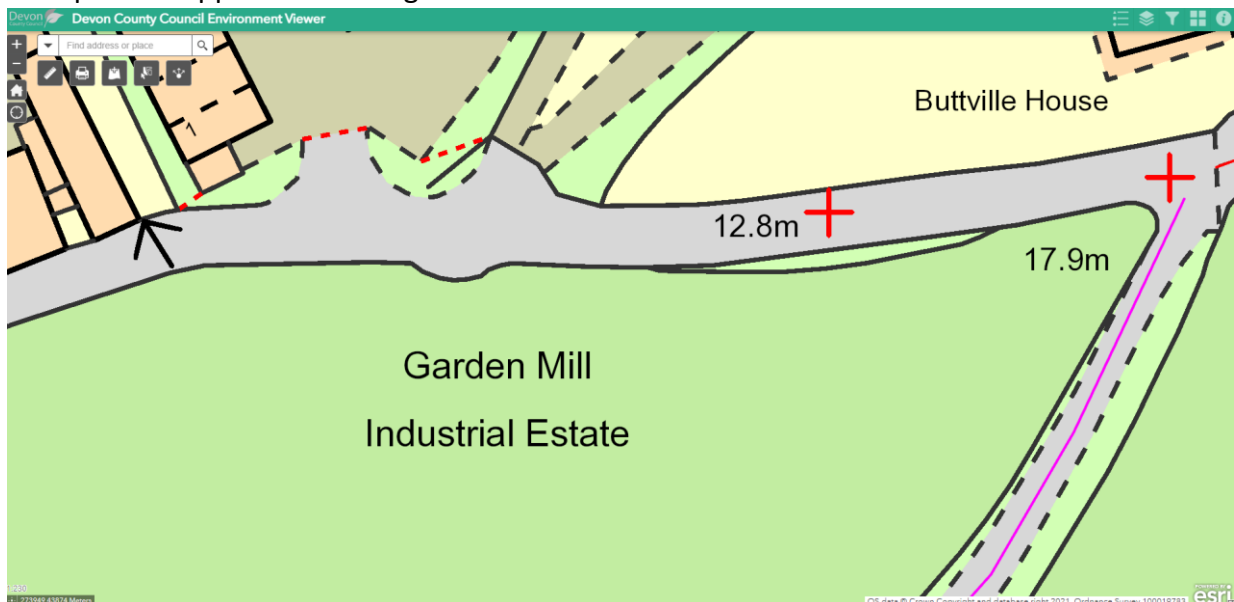
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No tree protection barriers have been installed on site. The image below is dated 24<sup>th</sup> March 2022. The Grade II listed building of Buttville House is just visible in the top right hand corner.

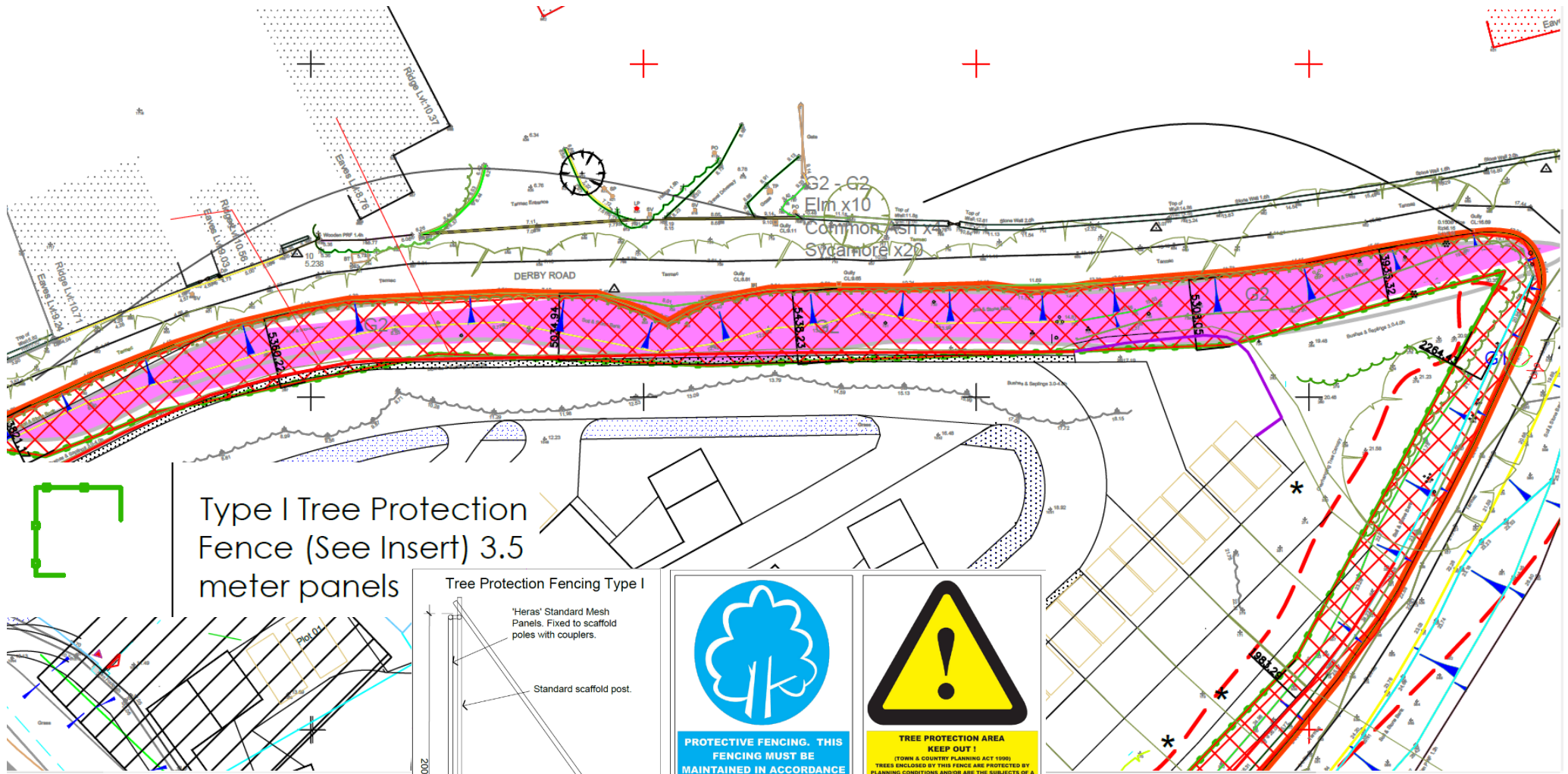


A map of the approximate image area.

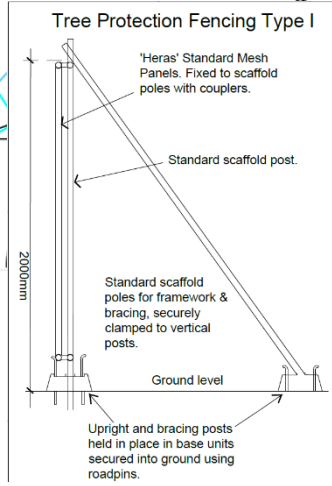
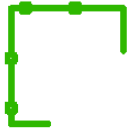


On the next page is an exploded area of the TPP, with the positions of the protective fencing, the type of protective fencing and the required signage. And then the full plan extract.





Type I Tree Protection Fence (See Insert) 3.5 meter panels

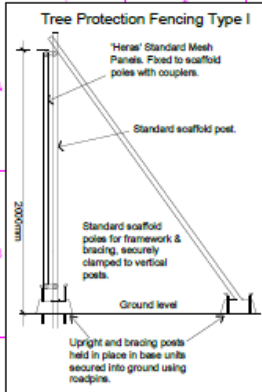


**PROTECTIVE FENCING. THIS FENCING MUST BE MAINTAINED IN ACCORDANCE WITH THE APPROVED PLANS AND DRAWINGS FOR THIS DEVELOPMENT.**



**TREE PROTECTION AREA KEEP OUT!**  
 (TOWN & COUNTRY PLANNING ACT 1990)  
 TREES ENCLOSED BY THIS FENCE ARE PROTECTED BY PLANNING CONDITIONS AND/OR ARE THE SUBJECTS OF A TREE PRESERVATION ORDER.  
 CONTRAVENTION OF A TREE PRESERVATION ORDER MAY LEAD TO CRIMINAL PROSECUTION  
 ANY INCURSION INTO THE PROTECTED AREA MUST BE WITH THE WRITTEN PERMISSION OF THE LOCAL PLANNING AUTHORITY

A3 TREE PROTECTION SIGNS TO BE SECURED ONTO FENCING FACING INTO SITE EVERY 5 METRES



**A3 TREE PROTECTION SIGNS TO BE SECURED ONTO FENCING FACING INTO SITE EVERY 5 METRES**

**TREE WORKS SCHEDULE-** warning- any deviation from this list could potentially result in unauthorised pruning/ felling of protected trees.

G1- COPPIE/ HEDGE LAID- retain stumps within the bank at a height of 50-100mm above ground level. Any tree stems under 100mm will be retained and laid to improve short term screening. Treat any ash stumps with Eco-plugs.

T23- Dismantle and fell

G24 & G25- Copploe

T30- Fell



**Tree Survey Key**

- 'A' category Tree
- 'B' category Tree
- 'C' category Tree
- 'U' category Tree
- Dashed Tree Removal Required
- Construction Exclusion Zone (CEZ) No access permitted
- Type I Tree Protection Fence (See Insert) 3.5 meter panels
- Root Protection Area
- Proposed car parking, site hut and early storage of materials.

See report for definitions

All drawings are subject to Copyright. All dimensions and sizes to be verified by the Contractor on site.

No dimensions are to be scaled from this drawing. Contractors must work to figured dimensions only.

All dimensions are in metres unless otherwise stated.

Drawing No. <b>DTS21.4142.1.TPP</b>	Rev. <b>1</b>
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Drawn by: <b>SP</b>	Checked by: <b>MB</b>
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Date: <b>7.7.21</b>	Date: <b>7.7.21</b>
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Client: <b>Devon Trees</b>	Issue No: <b>01</b>
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Scale: <b>1:500</b>	Applied layout
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Devon Tree Services Ltd  
Little Acre  
Ipplepen  
Newton Abbot  
TQ12 5TR  
Tel: 01803 814041

**Site/Project**  
Garden Mill, Kingsbridge

**Client**  
Blakesley Estate (Kingsbridge)

**Drawing Title**  
Tree Protection Plan

Date 13th August 2021	Scale 1 / 500 at A1
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Drawing No. <b>DTS 21.4142.1.TPP</b>	Rev. <b>1</b>
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REFER TO DOCUMENT  
DTS21.4142.1.AMS

## tree protection measures: issue to contractor

The protection barriers must be in place before any materials, plant or other machinery is brought onto the site. The barriers must be sufficiently robust to prevent unauthorised alteration and be braced and facing the area of construction activity. The area separated by the fencing is to be designated as a construction exclusion zone (CEZ), within which the following are prohibited:

- excavations to existing ground
- changes in levels
- storage of materials
- transit of machinery
- or any other activity causing ground damage

In addition:

- Ensure wide or tall loads or plant with booms, jibs and counterweights can operate without coming into contact with the tree canopies. Any transit or traverse of plant in close proximity to trees should be conducted under the supervision of a banksman to ensure that adequate clearance from trees is maintained at all times.
- Material which will contaminate the soil, e.g. concrete mixings, diesel oil and vehicle washings, should not be discharged within 10m of a tree stem.
- It is essential that allowance be made for the slope of the ground so that damaging materials such as concrete washings, mortar or diesel oil cannot run towards trees.
- Fires should not be lit in a position where their flames can extend to within 5m of foliage, branches or trunk. This will depend on the size of the fire and the wind direction.
- Notice boards, telephone cables or other services should not be attached to any part of the trees.





After reviewing this evidence, it becomes apparent that the applicant is in breach of his own planning condition 6 approved documents. No protective fencing has been installed complete with signs, and trees to the south of Buttville House have been left with tree roots hanging from the cuttings.

The Society therefore concludes that the commencement of development has not been lawfully implemented as not one pre-commencement planning condition was submitted for approval prior to the commencement of development. When the pre-commencement conditions were submitted and satisfied with written approval, parts of the approved documents were not and are not being complied with.

**Para 34.** The Society disagrees with the statement *'but the matters specified as constituting a breach of planning control in relation to those notices have been fully complied with'*. The Society is of the opinion that condition 6 remains in breach of the requirements of the submitted documents.

A Society member visited the site on the 16<sup>th</sup> September 2022 and was unable to find any Tree Protection Fencing installed of the type required by the documents approved by the local planning authority to satisfy planning condition 6.

High House lane boundary trees fitted with Heras fencing, some of the fencing still held in place with rope tied to the trees in High House lane (16/09/2022).

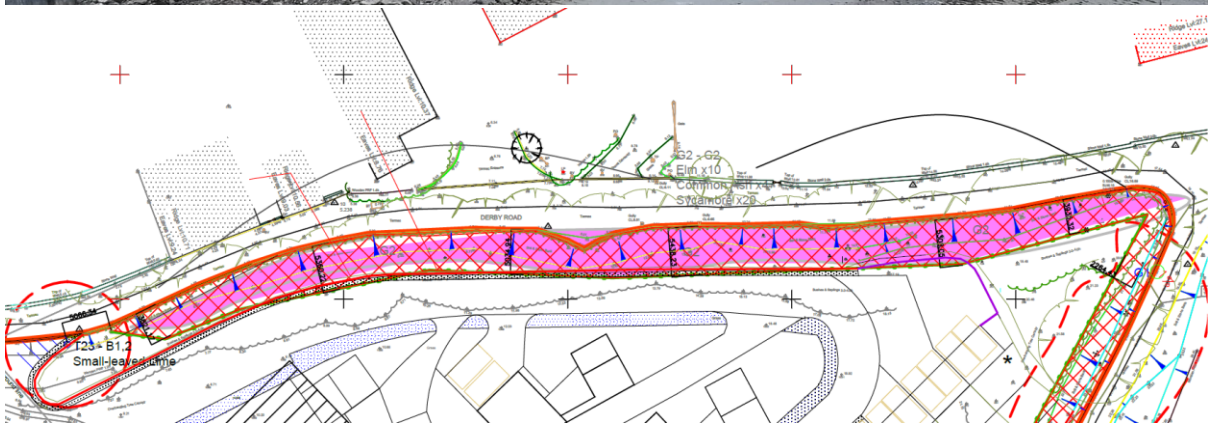
High House lane boundary.







Derby Road boundary (16/09/2022, Grade II listed Buttville House behind the trees).





**Para 35.** The Society states that the applicant has been and continues to be in breach of condition 6

**Para 36 -37.** The Society are of the opinion that the applicant is still in breach of condition 6 and we invite the LPA to view the site's Tree Protection Fencing or rather the lack of fencing.

**Footnote Paras 38 -40.** The Society notes these comments but regarding this LDC application, do not believe it is necessary to comment.

**Para 41.** As the Society has illustrated for our comments for para 34, the material operations are being conducted with disregard to the tree protection measures required by the submitted documents approved by the local planning authority.

It follows that the statement by Ben Garbett, ***'None of this site activity contravenes the requirements of a pre-commencement planning condition'***, the Society has to state that all the onsite activity to date does occur in contravention of planning condition 6.

The Society accepts that the author of the legal opinion has had to rely on the information provided to him by the site owners, the applicants and their advisers.

But, the Society currently believe that it would be wrong to remove an Enforcement Notice as requested, when the applicant is operating in breach of condition 6 and has done so since the 13<sup>th</sup> May 2021.

Based on the considerable evidence available, it is still our opinion that this development has been unlawfully implemented because of the failure to submit the necessary documentation for the five pre-commencement planning conditions and obtain the required written approval to confirm that they have been satisfactorily discharged.

And when the conditions were discharged by the LPA, Tree Protection fencing should have been installed prior to bringing machinery and equipment on site.

The site owners have ignored the requirements of condition 6 from day one.

When considering the construction exclusion zones of the Tree Protection Plan, the Society doubts that it is now possible to install the TP fences because some land within the exclusion zones appears to have been removed.



For reasons set out in this letter, the South Hams Society requests that planning condition 6 is enforced and is not removed whilst the applicant remains in breach of condition 6.

It is our opinion that the general public have demonstrated that they expect the environment to be protected.

Considerable disregard has been shown to the environment (condition 6 Trees and Hedgerows protection), and towards local residents (condition 13, the Construction Management Plan).

The Society believes that the public would be angry if they witnessed the District Council issue a Certificate of Lawfulness for Lawful Commencement of Development when they have seen such contempt for their environment, the planning laws and the continual breach of a planning condition and enforcement notice.

The Society respectfully requests the planning authority refuse this request and enforce the tree protection measures required by condition 6 of permission 28/1560/15/O satisfied by permission 3226/21/ARC.

For and on behalf of the South Hams Society.  
Richard Howell,  
Chairman.