Dated DO NOT DATE **2025**

(1) ASAM SHARIF, AAMAR SHARIF, SALEEM AKHTAR and ZAHID TABRAIZ

and

(2) THE COUNCIL OF THE BOROUGH OF KIRKLEES

PLANNING AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land at Newsome Bowling Green, St John's Avenue, Newsome, Huddersfield, HD4 6LP

Planning application reference: 2022/90397

THIS AGREEMENT by way of deed is made the DO NOT DATE day of

Two Thousand and Twenty Five

BETWEEN:

1. **ASAM SHARIF and AAMAR SHARIF** of 90 Birchencliffe Hill Road, Huddersfield, HD3 3NH, **SALEEM AKHTAR** of 2 Oakfield Road, Huddersfield, HD6 2XF, and **ZAHID TABRAIZ**, of 4 Dingley Road, Huddersfield, HD3 3AY ("The Owner")

2. **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Civic Centre 3 Market Street, Huddersfield, HD1 1WG ("the Council")

together the **"Parties"** and reference to **"Party"** shall be construed accordingly.

WHEREAS

1. The Council is the local planning authority for the Kirklees District within which the Site is situated and by whom the planning obligations within this Agreement are enforceable

2. The Council is the freehold owner of the Site, which is registered with HM Land Registry under title number WYK807832.

3. The Owner is the leasehold owner of the Site, which is registered with HM Land Registry under title registration number WYK335316 and YY60966.

4. The Owner has submitted the Application to the Council in relation to the Development.

5. By the provisions of Section 106 of the 1990 Act any person interested in land in the area of a local planning authority may by agreement or otherwise enter into a planning obligation in respect of the land.

NOW IT IS HEREBY AGREED as follows: -

1 **INTERPRETATION**

1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this clause: -

"**1990 Act**"	means the Town and Country Planning Act 1990 (as amended);
"Application"	means planning application received by the Council on 04 February 2022 and validated by the Council on 14 April 2022 and given planning reference number 2022/90397 for the erection of 10 dwellings and associated works;

"Bus Stop Contribution"	means the sum of £10,000.00 (Ten Thousand Pounds) Index Linked to be paid to the Council by the Owner in accordance with paragraph 1 of the First Schedule and to be applied by the Council towards a Real Time Information display at the closest bus stop 22060;
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 and all amendments thereto;
"Commencement of Development"	means the actual date upon which the Development is begun by the carrying out on the Site of any material operation as defined by Section 56(4) of the 1990 Act save that the term "*material operation*" shall not for the purpose of this Agreement include operations in connection with any work of or associated with demolition, remediation works, environmental investigation, site and soil surveys, erection of contractors' work compound, erection of site office, erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly;
"Contributions"	means the Bus Stop Contribution and the Sustainable Travel Contribution;
"Default Interest Rate"	means 4% per annum above the base rate from time to time of the Bank of England;
"Development"	means the development of the Site in pursuance of the Planning Permission;
"Dwelling"	means a residential unit may be built on the Site as part of the Development and reference to shall be construed accordingly;
"Expert"	means an independent person of at least 10 years standing in the area of expertise

relevant to the dispute to be agreed between the parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society;

"Independent Surveyor" means an independent chartered surveyor qualified to act as an expert in relation to a dispute relating to or arising out of the terms of this Agreement having no less than 10 (ten) years post qualification experience unconnected to either of the Parties hereto and experienced in residential development matters who shall be appointed at the Owner's cost but first approved by the Council;

"Index Linked" means an increase or decrease in accordance with the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if the All In Tender Price Index ceases to exist such index as the Council reasonably nominates and reference to "**Index Linked**" shall be construed accordingly;

"Management Company" means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes carrying out future maintenance of the On-Site Drainage Works, in accordance with paragraph 3 of the First Schedule and:
carrying out future maintenance of the On-Site Drainage Works, in accordance with paragraph 3 of the First Schedule and:

(a) which is incorporated in England and Wales or Scotland;

(b) which has its registered office in England or Scotland; and

whose primary objects permit it to maintain and renew the On-Site Drainage Works;

"Occupation" means the beneficial occupation under a sale lease license or other arrangement for the purpose for means the beneficial occupation under a sale lease license or other arrangement for the purpose for which the Dwelling was granted planning permission but shall exclude occupation for the purposes of fit out or marketing or security and reference to **"Occupied"** and **"Occupy"** shall be construed accordingly

"On-Site Drainage Management and Maintenance Plan" means a detailed management plan setting out measures to be undertaken to ensure the On-Site Drainage Works are properly maintained and managed;

"On-Site Drainage Works" means a surface water attenuation tank, together with associated infrastructure, to be installed within the Site in accordance with a condition(s) to the Planning Permission;

"Planning Obligations" means the obligations, conditions and stipulations set out in the First Schedule and "Planning Obligation" shall be construed accordingly;

"Planning Permission" means a planning permission which may be granted by the Council pursuant to the Application;

"Plan 1" means the plan so marked and attached hereto at Annex 1;

"Site"	means the land at Newsome Bowling Green, St John's Avenue, Newsome, Huddersfield, HD4 6LP shown edged red on Plan 1, registered at HM Land Registry under title numbers WYK807832, WYK335316 and YY60966
"Sustainable Travel Contribution"	means the sum of £5,115.00 (Five Thousand One Hundred and Fifteen Pounds) Index Linked to be paid to the Council by the Owner in accordance with paragraph 2 of the First Schedule and applied by the Council towards a Residential MetroCard Scheme based on a Bus Countrywide ticket;
"Water Company"	means Yorkshire Water or such other licenced water company that is regulated by The Water Services Regulation Authority (OFWAT);
"Working Day"	means any day except Saturdays Sundays or bank holidays and reference to "**Working Days**" shall be construed accordingly.

1.1 Clause headings are for reference only and shall not affect the construction of this Agreement.

1.2 Where more than one person is included in the expressions "the Council" and "the Owner" agreements and obligations expressed to be made or assumed by such Party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.

1.3 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.

1.4 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.

1.5 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory

instrument made under it which is for the time being in force.

1.6 A reference to a clause or schedule or paragraph is a reference to a clause or schedule, or paragraph contained in this Agreement and does not affect the interpretation or construction of this Agreement.

2. GENERAL

2.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 Subject clause 2.5 the Owner covenants with the Council to observe the restrictions and perform the obligations contained in the First Schedule with the intent that those restrictions and obligations shall bind the Owner and each and every part of the Site.

2.3 The Council covenants with the Owner to observe the restrictions and perform the obligations contained in the Second Schedule and where applicable in the First Schedule.

2.4 The expressions "the Owner" shall include their successors in title and assigns and the expression "the Council" shall include its respective successor authority.

2.5 No person shall be bound by the terms of this Agreement or shall be liable for breach of any covenants, restrictions, duties, provisions or obligations contained in this Agreement after he or it shall have parted with his or its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

2.6 This Agreement shall not be binding upon:

2.6.1 a purchaser an occupier or a tenant of individual Dwellings or if it shall be a mortgagee and/or chargee and/or their respective successors in title and/or receiver appointed by the mortgagee and/or chargee of a Dwelling;

2.6.2 (save for the provisions of paragraph 3 of the First Schedule) a

Management Company or the mortgagee and/or chargee of a Management Company and/or in the event of default under a mortgage or charge or upon any receiver appointed by them its successors in title to such mortgagee, chargee or receiver; or

2.6.3 an occupier or tenant or a purchaser of a site or sites required for statutory infrastructure purposes in relation to the Development.

2.7 This Agreement shall not become effective until the following conditions are satisfied:

2.6.4 the Planning Permission has been granted; and

2.6.5 the Commencement of Development has occurred (except where otherwise specifically stated in this Agreement)

2.8 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner or its successors in title this Agreement shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any Party prior to such date.

2.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.

2.10 This Agreement is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such on completion.

2.11 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

2.12 Wherever this Agreement requires the approval agreement determination or consent of the Council such approval agreement determination or consent shall be provided in writing and is not to be unreasonably withheld or delayed.

2.13 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

2.14 Wherever this Agreement requires the approval agreement determination or consent of the Council such approval agreement determination or consent shall be provided in writing and is not to be unreasonably withheld or delayed.

2.15 Unless otherwise stated this Agreement is governed by and interpreted with the law of England.

2.16 It is agreed that any mortgagee and/or chargee and/or their respective successors in title and/or receiver appointed by the mortgagee and/or chargee of the Owner or the Owner's successors in title shall have no liability under this Agreement unless and until it becomes a mortgagee in possession of the Site or the part of the Site in relation which its charge relates in which case it too will be bound by the obligations as if it were a person deriving title from the Owner or the Owner's successors in title as the case may be.

2.17 The Owner shall pay the Council's reasonable legal costs incurred in the preparation of this Agreement.

3 VAT

3.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable.

4 WAIVER

4.1 No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants, terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

5 NOTICES

5.1 All notices, requests and demands or other written communications to or upon the Parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the Party to which such notice, request, demand or other written communication is to be given or made

under this Agreement and addressed as follows (or to such other address as the Party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other Parties as its address for the purposes of this Clause 5.1):

5.1.1 To the Council: Service Director at Legal Governance and Commissioning Legal Services, 2nd Floor, High Street Buildings, High Street, Huddersfield HD1 2ND quoting the Application reference number 2022/90397.

5.1.2 To the Owner: 90 Birchencliffe Hill Road, Huddersfield, HD3 3NH quoting the Application reference number E2022/90397.

6 DISPUTES

6.1 Any dispute arising between the Parties as to their respective rights, duties or obligations as to the failure of the Council of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with Clause 6.2 below to the determination of an Independent Surveyor.

6.1.1 Any reference to an Independent Surveyor in accordance with Clause 6.1 above shall be to a reputable Independent Surveyor unconnected to any of the Parties hereto and experienced in developments of this nature who shall be agreed between the Parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Independent Surveyor shall be final and binding upon the Parties to the dispute and the Parties hereby agree to act in accordance with the decision (save for manifest error) and if the Parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an Expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Independent Surveyor shall act as an Expert pursuant to the terms of this Clause 6.2 then each of the Parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to

determine in what manner all the costs of the referral (whether incurred by the Parties to the dispute or the Independent Surveyor himself) shall be paid.

7 INTEREST ON LATE PAYMENTS

7.1 Any amount due from the Owner to the Council under the terms of this Agreement which is not paid on or prior to the date due shall accrue interest at the Default Interest Rate accruing from the date such payment was due to the date of actual payment.

8 SEVERABILITY

8.1 If any provision in this Agreement shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Agreement and shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

9 FUTURE PERMISSIONS

9.1 In the event that an application is made pursuant to Section 73 or Section 73B of the 1990 Act for an amendment to the Planning Permission and planning permission is granted by the Council in respect of that application then:

9.1.1 References to "Application", "Planning Permission" and "Development" in this Agreement shall thereafter be deemed to include and the application made pursuant to Sections 73 or 73B, the new planning permission granted pursuant to Section 73 or 73B of the 1990 Act and the development permitted by that permission respectively; and

9.1.2 This Agreement shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act unless required to do so by the Council.

In each case **PROVIDED THAT:**

9.1.3 Nothing in this Clause 9 shall fetter the discretion of the Council in determining any application(s) under Section 73 or 73B of the 1990

Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and

9.1.4 to the extent that any of the planning obligations have been discharged in respect of the original Planning Permission nothing shall require the Owner to comply with that obligation again in respect of a planning permission granted under Section 73 or 73B of the 1990 Act

10 JURISTICTION

10.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

11 DELIVERY

11.1 The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

FIRST SCHEDULE

(Owner's Planning Obligations)

The Owner covenants with the Council as follows: -

1. **BUS STOP CONTRIBUTION**

1.1. To pay the Bus Stop Contribution prior to Occupation of the first Dwelling.

1.2. Not allow or permit the Occupation of the first Dwellings until the Bus Stop Contribution has been paid to the Council.

2. **SUSTAINABLE TRAVEL CONTRIBUTION**

2.1. To pay the Sustainable Travel Contribution prior to Occupation of the first Dwelling.

2.2. Not to allow or permit the Occupation of the first Dwellings until the Sustainable Travel Contribution has been paid to the Council.

3. **MAINTENANCE AND MANAGEMENT OF THE ON-SITE DRAINAGE WORKS**

3.1. Not to Commence Development unless and until the Owner has submitted in writing to the Council and obtained the written approval of the Council an On-Site Drainage Management and Maintenance Plan.

3.2. To fully comply with the approved On-Site Drainage Management and Maintenance Plan from the date that it is approved by the Council in accordance with paragraph of this Schedule and at all times thereafter to manage and maintain the On-Site Drainage Works in accordance with the details set out in the approved On-Site Drainage Management and Maintenance Plan until the earlier of the date that the On- Site Drainage Works are transferred to a Management Company and the date that the On-Site Drainage Works have been adopted by a Water Company.

3.3. Until such time as the On-Site Drainage Works are adopted by a Water Company the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the approved On-Site Drainage Management and Maintenance Plan.

3.4. In the event that the Council considers (acting reasonably) that the requirements of the approved On-Site Drainage Management and Maintenance Plan are not being

complied with and unless the On-Site Drainage Works have been adopted by a Water Company then the Council may serve a notice on the Owner or the Management Company (as the case may be) requiring the Owner or the Management Company (as appropriate) to undertake such remedial steps as are specified in the notice.

3.5. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 3.4 of this Schedule within 20 (twenty) Working Days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.

3.6. No part of the Site upon which the On-Site Drainage Works are located shall be transferred or leased to any Management Company (as apart from a Water Company in which case any transfer or lease may proceed without the approval of the Council) unless the identity of that Management Company has been approved by the Council (acting reasonably) in writing.

3.7. In seeking approval from the Council to any Management Company to whom the Owner intend to transfer or lease the On-Site Drainage Works they shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, structure, voting rights and such other information as the Council (acting reasonably) shall require.

3.8. The Owner shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and e-mail address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of the On-Site Drainage Works.

3.9. Upon receipt by the Council of satisfactory evidence that the On-Site Drainage Works have been transferred to a Water Company the obligations in paragraphs 3.1 to 3.8 (inclusive) of this Schedule shall thereafter cease and not be applicable.

SECOND SCHEDULE

(Council's Covenants)

The Council hereby covenants with the Owner: -

General

1. That on the reasonable written request of the Owner at any reasonable time or times after any of the Planning Obligations have been fulfilled issue written confirmation thereof and/or at any reasonable time after all of the Planning Obligations have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the register of local land charges.

Contributions

2. To issue a receipt on request in writing for the Contributions.

3. Upon receipt to place the sums referred to in paragraph 2 of this Schedule in an interest bearing account or in separate accounts as the Council shall in its discretion decide.

4. To apply the Contributions and any interest accrued towards the purposes specified in this Agreement in order to address impacts which directly arises from the Development and not to apply the Contributions for any other purposes and the Council shall (on the reasonable written request of the payee or the payee's nominee) provide evidence that the Contributions have been so applied.

Repayment

5. That in the event the Contributions or any part or parts thereof are not expended within 10 (ten) years of the date of final payment of the relevant sum then the sum or sums not expended plus interest accrued (if applicable) will be repaid to the person who paid the sum or sums or its nominee.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as a Deed

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF KIRKLEES was hereunto affixed)
but not delivered until the date hereof))
In the presence of: -)



Assistant Director: Legal and Governance /
Authorised Signatory JOHN CHAPMAN

SIGNED as a DEED by
ASAM SHARIF in the presence of:

.....

Witness' Signature:
Witness' Name: FARZANA PARVEEN
Witness' Address:

SIGNED as a DEED by
AAMAR SHARIF, in the presence of:

.....

Witness' Signature
Witness' Name: FARZANA PARVEEN
Witness' Address:

SIGNED as a DEED by
SALEEM AKHTAR in the presence of:

.....

Witness' Signature:
Witness' Name: FARZANA PARVEEN
Witness' Address:

SIGNED as a DEED by
ZAHID TABRAIZ in the presence of:

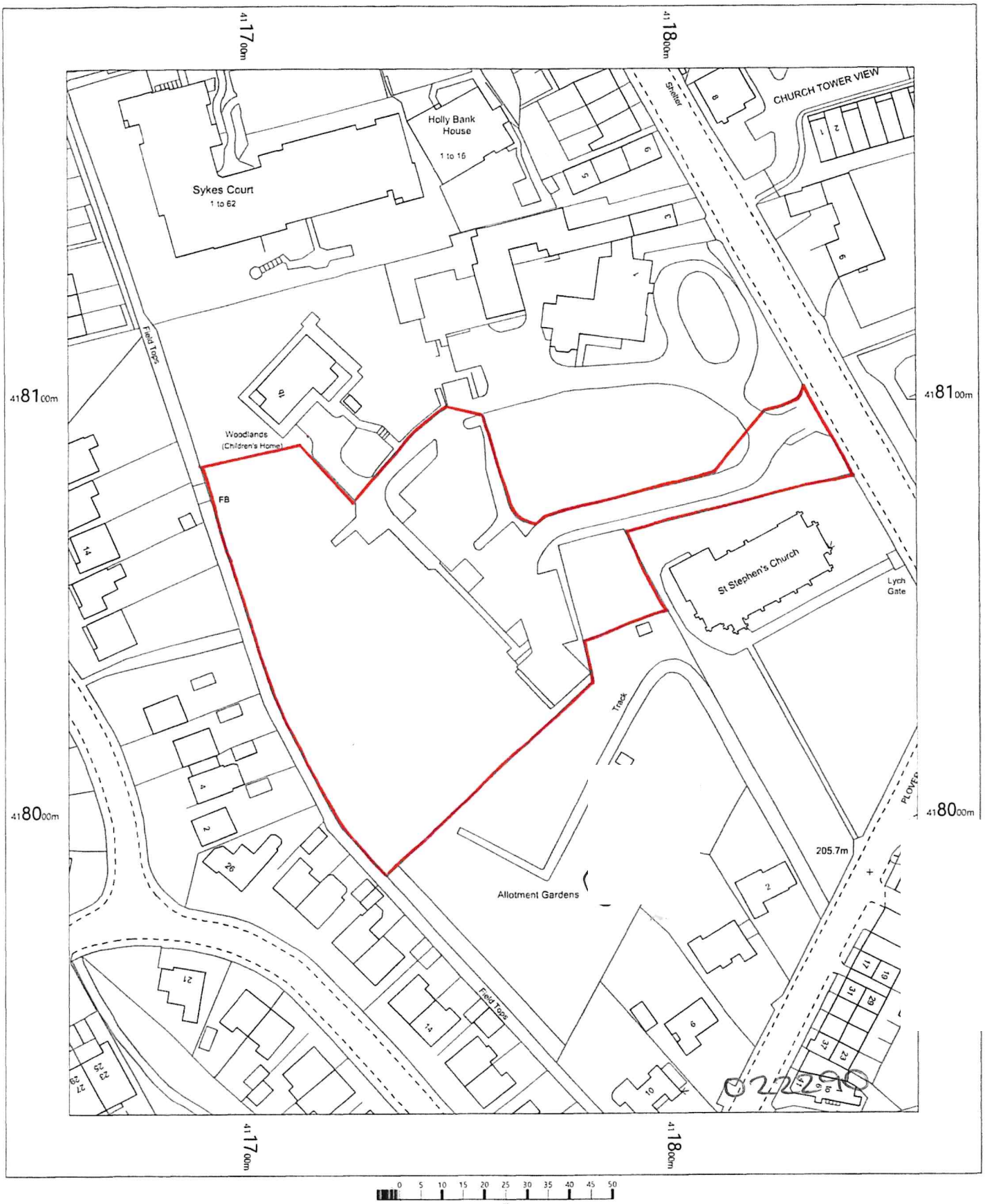
Witness' Signature:

Witness' Name: FARZANA PARVEEN

Witness' Address:

ANNEX 1

PLAN 1



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OS MasterMap 1250/2500/10000 scale
Thursday, June 28, 2018, ID: BW1-00723286
maps.blackwell.co.uk

1:1250 scale print at A4, Centre: 411759 E, 418054 N

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Data

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