

# Western Area Planning Committee

9 June 2021

Agenda Item 7A

**Wildlife and Countryside Act 1981 s.53**

**The Wiltshire Council Parish  
of Melksham Path No. 107  
Rights of Way Modification  
Order 2020**

# S.53 Wildlife and Countryside Act 1981

Under s.53(2)(b) the Council has a statutory duty to keep the definitive map under continual review and to make legal orders to amend it as soon as reasonably practicable after the occurrence of an evidential event as detailed in s.53(3).

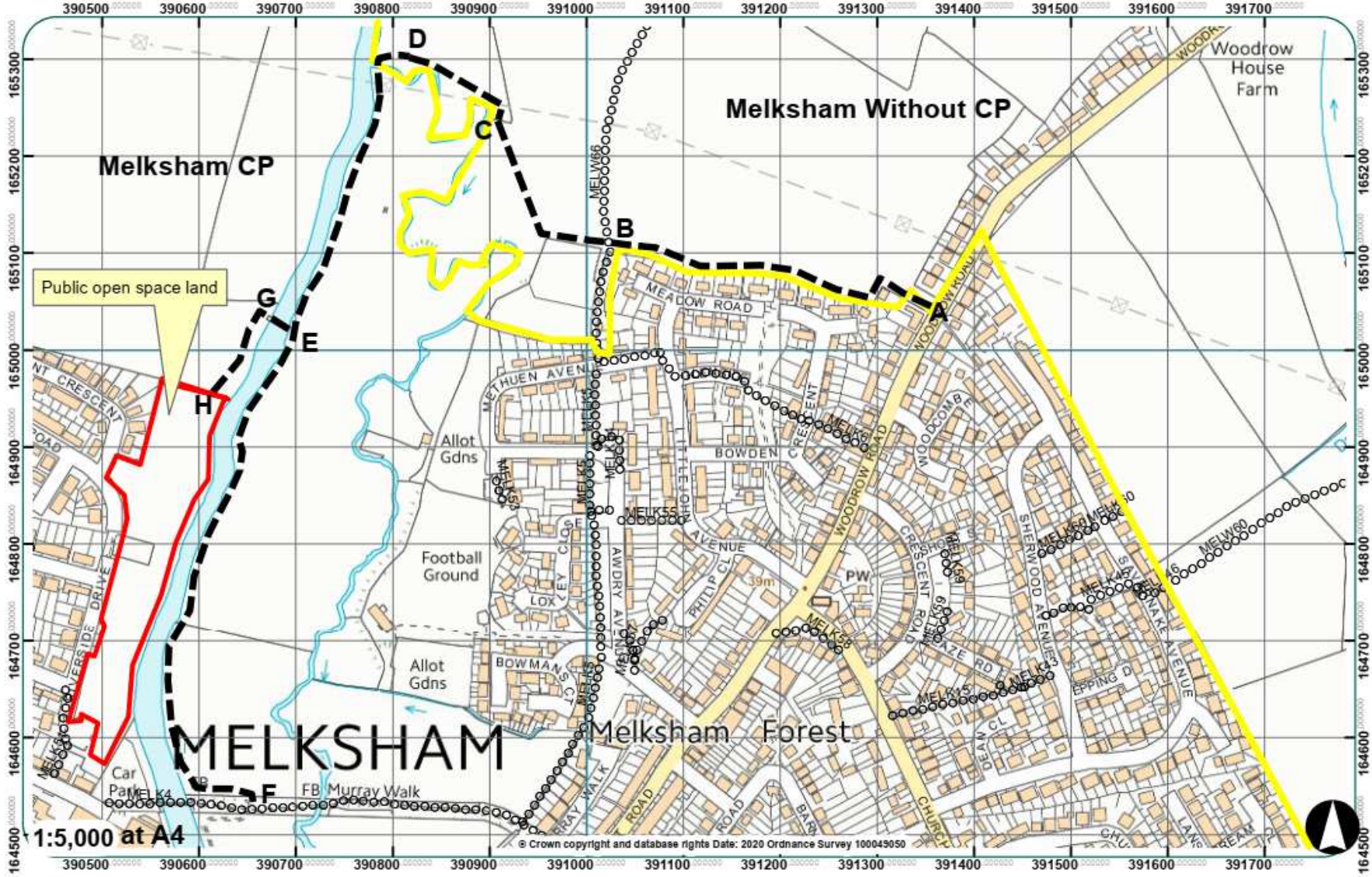
In this instance the evidential event was an application to add public footpaths to the definitive map and statement at Melksham and the order was made under s.53(3)(c)(i):

*(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—*

*(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;*

- The application adduced evidence of use by the public over a period of time extending back in time in excess of 20 years.
- In making the order, officers considered the provisions of s.31(1) of the Highways Act 1980 which states:
  - *(1)Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
- The term 'as of right' means that use must have been without force, permission or secrecy.
- The period of 20 years is calculated retrospectively from the date that the right of the public to use the way was first called into question (s.31(2) HA80).
- In considering satisfaction of s.31(1) the council must consider evidence relating to actions taken by the owners or tenants and occupiers of the land that demonstrated there was no intention to dedicate a public right of way. This can include challenges, signs, statutory deposits and physical barriers.

The claimed route:



- Users of the route report being able to walk the route ABCDEF prior to 2017 without challenge or difficulty. Some users report avoiding the route over the bridge EG when cows were grazing and some users recall there being a gate on the bridge to control cattle in the period around 1999/2000. One user recalls he was able to walk round it. Other users recall wire on the sides of the bridge, again, to control cattle. No users recall seeing signs or being challenged.
- The owners of some of the land and tenant of some of the land recall the fencing and a gate were across the bridge preventing use in the period around the late 1990s and that the gate was vandalised. They also recall that signs were in place sufficient to indicate no intention to dedicate a right of way.
- The legal test for making an order is that unless there is incontrovertible evidence that shows a right of way could not be acquired then there is a reasonable allegation that a right has been acquired and the order must be made.
- The order was made and attracted 2 objections and 30 representations, largely in support. Unless all of these are withdrawn Wiltshire Council has no choice but to send the order to the Secretary of State for Environment, Food and Rural Affairs for determination.

- This committee is asked to consider whether the council should support the order or object to the order when it is sent for determination.
- The committee must only consider the actual evidence and may not consider matters such as cost, desirability, need, health and safety, the environment or any other matters unrelated to the actual evidence of use and actions of the landowner or tenants.
- It is clear that there is significant conflict in the evidence and that this would be best tested at a public inquiry to allow an Inspector appointed by the Secretary of State to decide whether the stiffer test for confirmation of the order, that is, whether, on the balance of probability, a public right of way on foot has been acquired over these routes.
- Officers have seen nothing in the evidence adduced at the order making stage that would cause the council to object to the order and hence it is reasonable that the council should continue to support the order and facilitate the public inquiry and testing of the evidence.
- It is additionally noted that the SoS has the power to alter the order as appropriate (for example if rights hadn't been acquired over the bridge).

## Agenda Item 7B

**Wildlife and Countryside Act 1981 s.53**

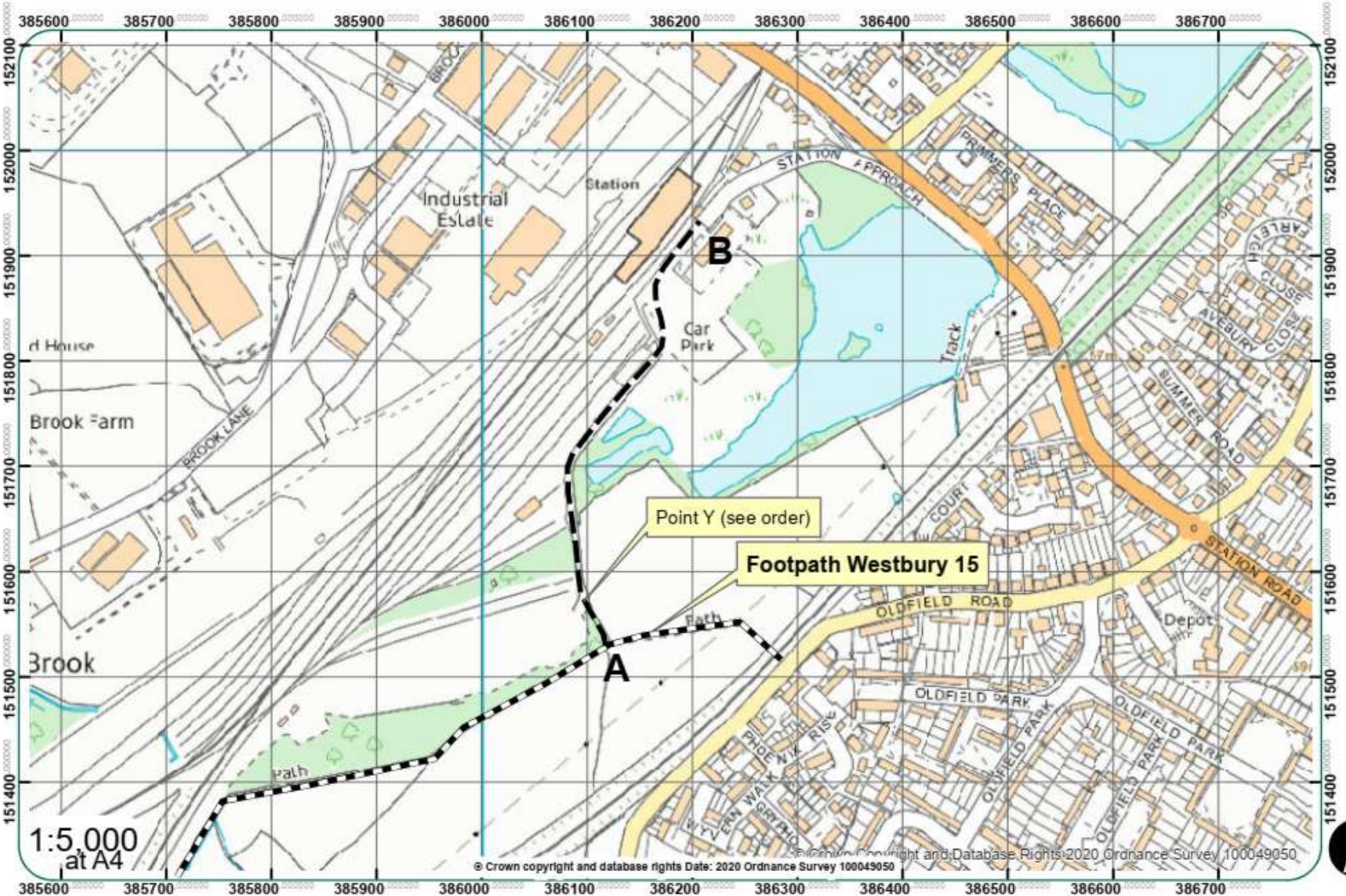
**The Wiltshire Council Parish of  
Westbury Path No. 68 Rights of  
Way Modification Order 2020**



- This order has been made under s.53(3)(c)(i) Wildlife and Countryside Act 1981 pursuant to a direction from an Inspector appointed by the Secretary of State from Environment, Food and Rural Affairs.
- Wiltshire Council had received an application for an order to add a public footpath the definitive map and statement in 2017. The application route followed a built path linking footpath Westbury 15 with Station Road, Westbury, via the railway station. The land is owned by Network Rail.
- The application adduced evidence of use by the public for a period exceeding 20 years before the route was obstructed by a large bund in 2016.
- Officers investigated the application and considered that although there was good evidence that part of the route had been constructed around 1848 and the remainder around 1915 it was incontrovertible that the provisions of s.57 of the British Transport Commission Act 1949 applied and that post 1949, it had not been possible for the public to acquire a right over any road or footpath forming an access to a station or depot.
- Accordingly the application was refused.

- The applicant appealed and the matter was considered by an inspector appointed by the Secretary of State.
- The Inspector agreed with the council that the provisions of s.57 of the British Transport Commission Act 1949 applied to the route known as Station Approach, but that there was doubt over whether it applied to that section linking Westbury 15 with the station and directed the council to make an order as there was a reasonable allegation that rights had been acquired over part of the route.
- The order was made and attracted 2 objections and 1 representation. The order must now be sent to the Secretary of State for determination.
- Network Rail object to the order and maintain that s.57 of the British Transport Commission Act 1949 does apply. They also adduced evidence that prior to 1949 Great Western Railway had locked a barrier on the route every Good Friday (presumably to prevent a public right being acquired).
- Officers agree with Network Rail that it is unlikely that the evidence in this case would meet the higher test for confirmation of the order but consider there is value in the evidence from both sides being tested.
- Owing to the unusual circumstances of this case, officers have looked to The Planning Inspectorates Advice Note No. 1 (paras 4 and 5) to recommend that the council takes a neutral stance.

The order route:



## 19/10805/FUL - Land to East of Trowbridge Rugby Club Trowbridge Hilperton BA14 6JB

Proposed new sports facility to include a new fenced and floodlit 3G Artificial Grass Pitch and a new pavilion providing inclusive ancillary facilities to support the pitch, together with new community coaching and education rooms and a training room/gym for use by football and rugby club users. A new access road and additional parking is also proposed.

**Recommendation: Approved subject to conditions**

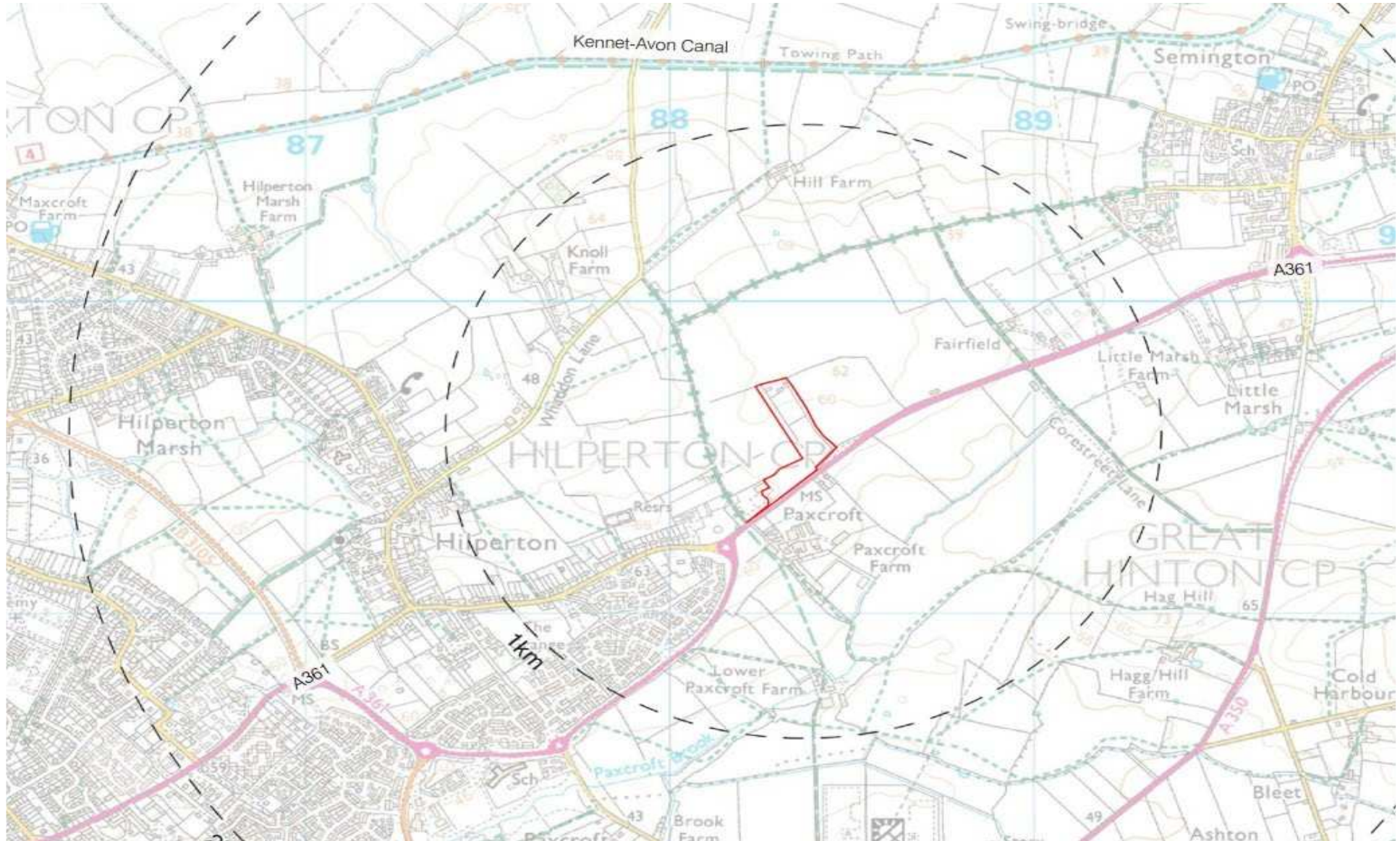


Site Location Plan



Aerial Photography

## The site's proximity to the Hilperton Village settlement limits




# Proposed Site Layout Plan and Photo of Site Looking North





# Application Site Context

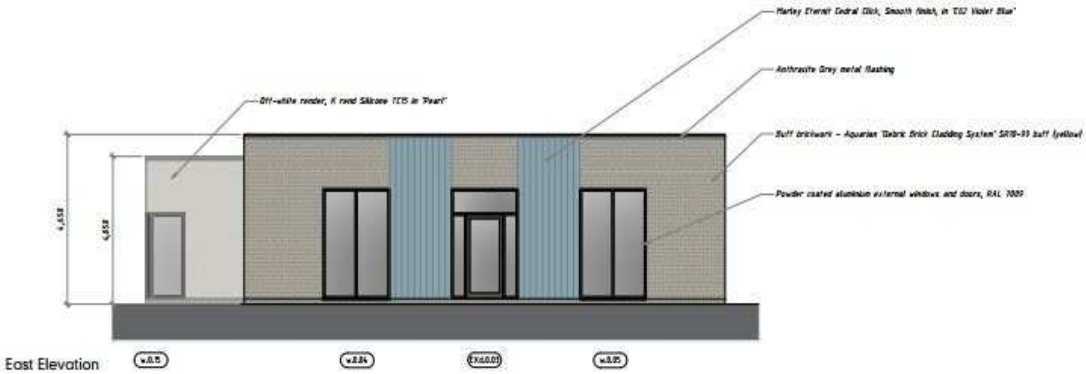
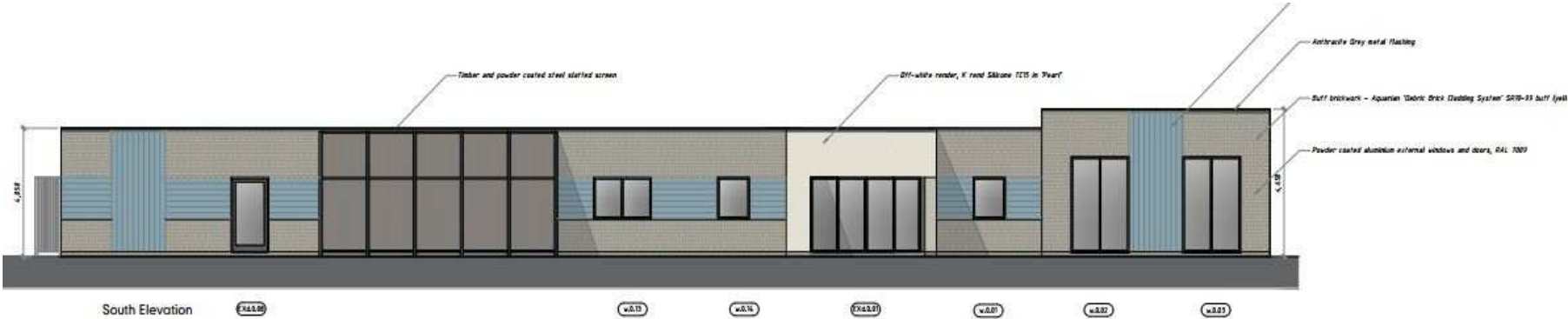
## KEY

- |   |                                |   |                         |
|---|--------------------------------|---|-------------------------|
|    | Application Boundary           |    | Existing Trees Retained |
|    | Proposed Architecture          |    | Existing Hedgerows      |
|    | Retained Architecture          |    | Proposed Trees          |
|  | Access Road                    |  | Scrub Mix               |
|  | Porous Paving Grid for Parking |  | Amenity Grass           |
|  | Footpaths                      |  | Wildflower Meadow       |
|  | Granite Aggregate Block Paving |  | Ornamental Planting     |
|  | 3G Artificial Pitch            |  | Proposed Earth Bund     |

## NOTES

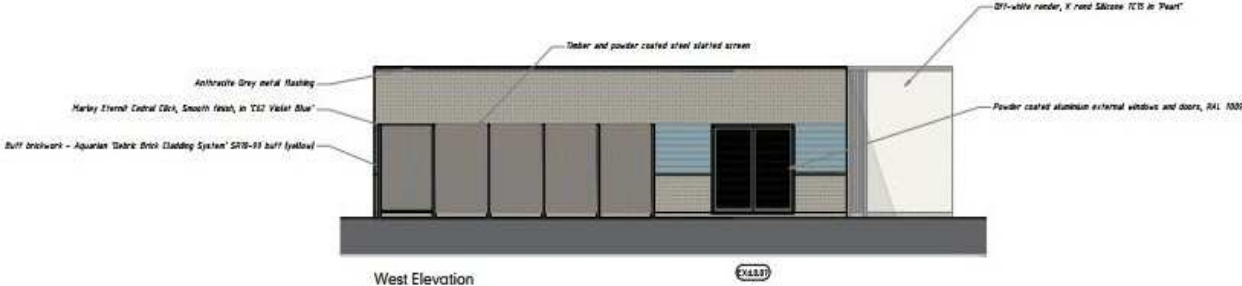
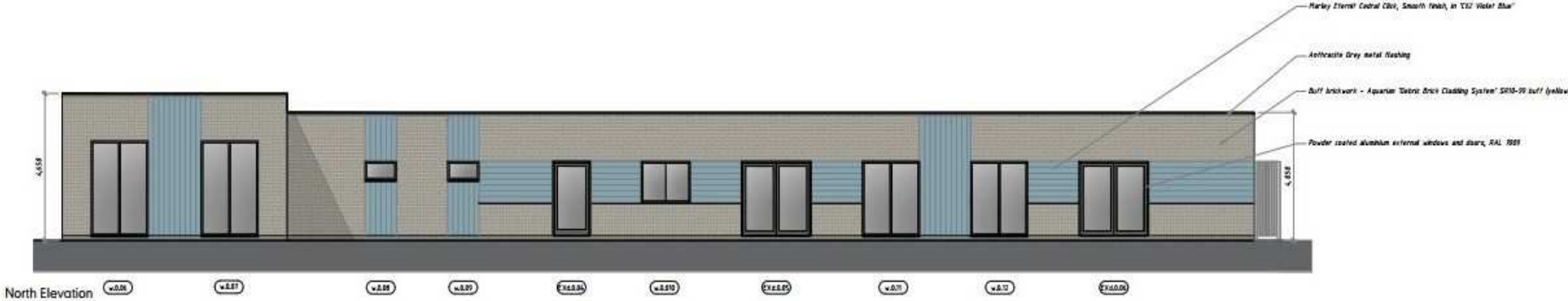
- To be read in conjunction with the following Urban Vision documents: Rural Vision Plan 2007-2012, 2007-2012 and 2012-2017, 2007-2012, 2012-2017 and 2017-2022.
- For all other details refer to the relevant Urban Vision documents.

# Proposed Pavilion Elevations

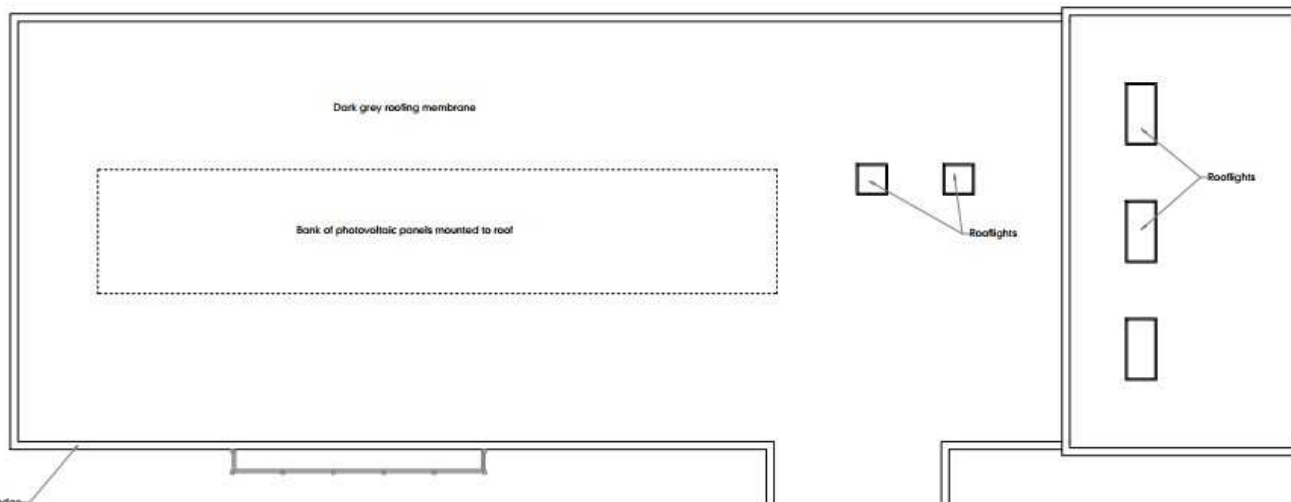
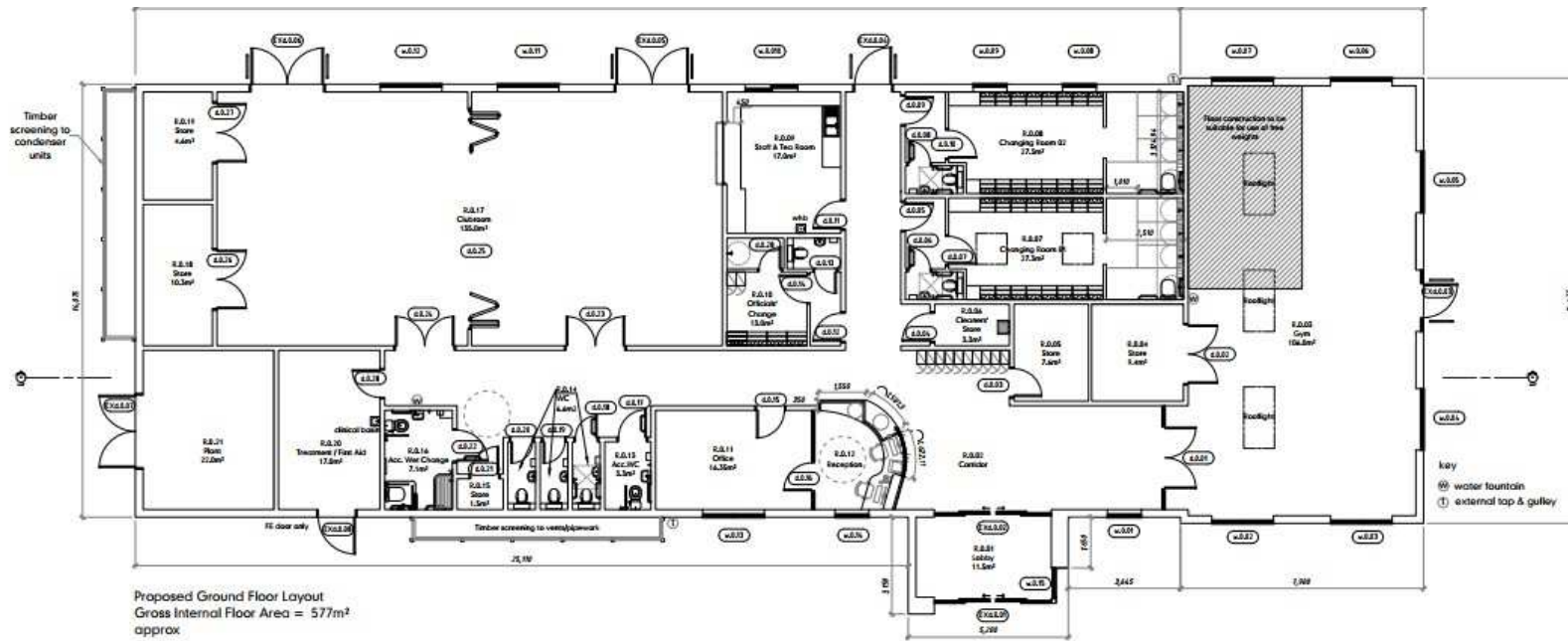




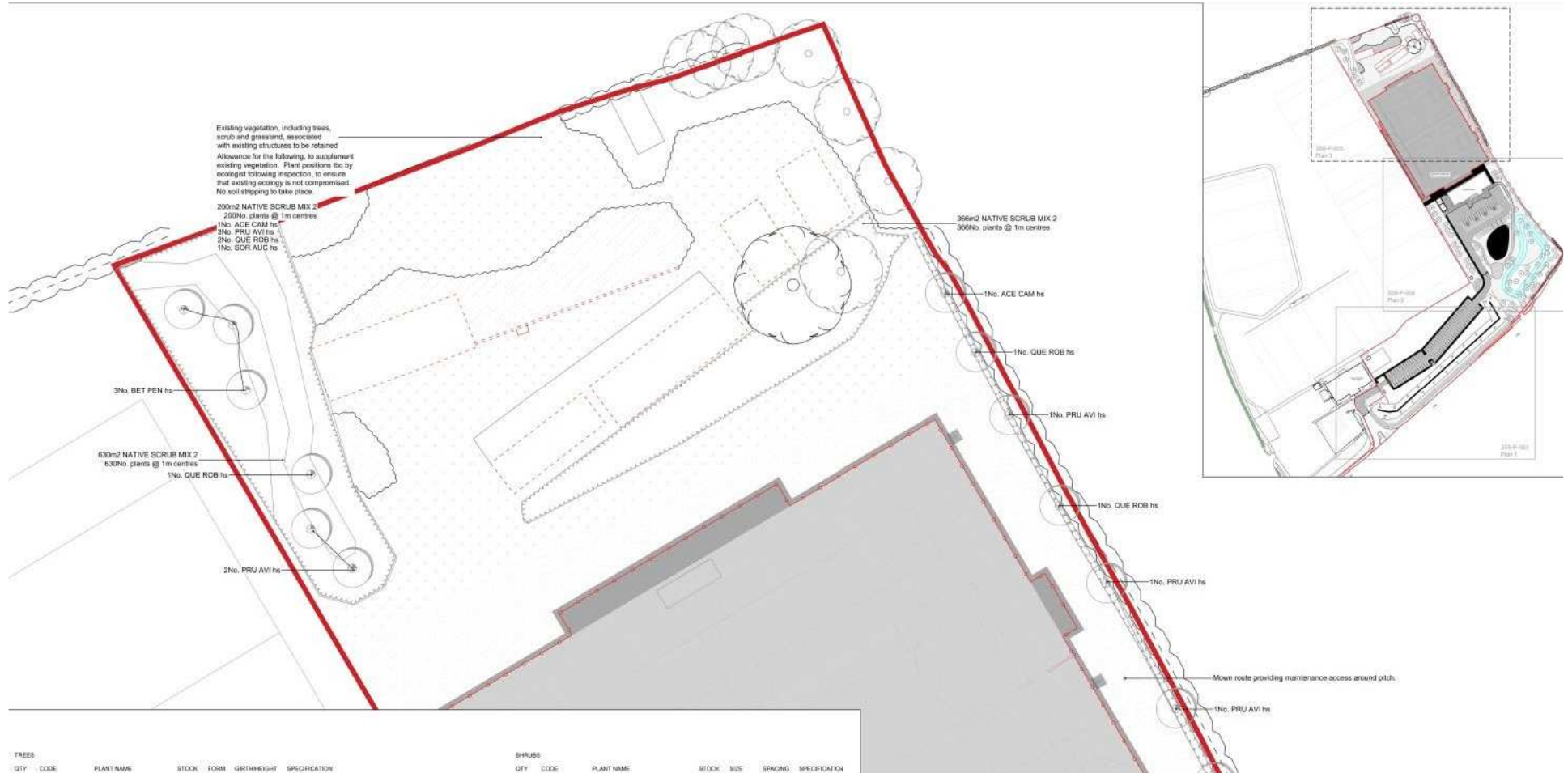
# Proposed Pavilion Elevations



# Proposed Pavilion Floor and Roof Plans



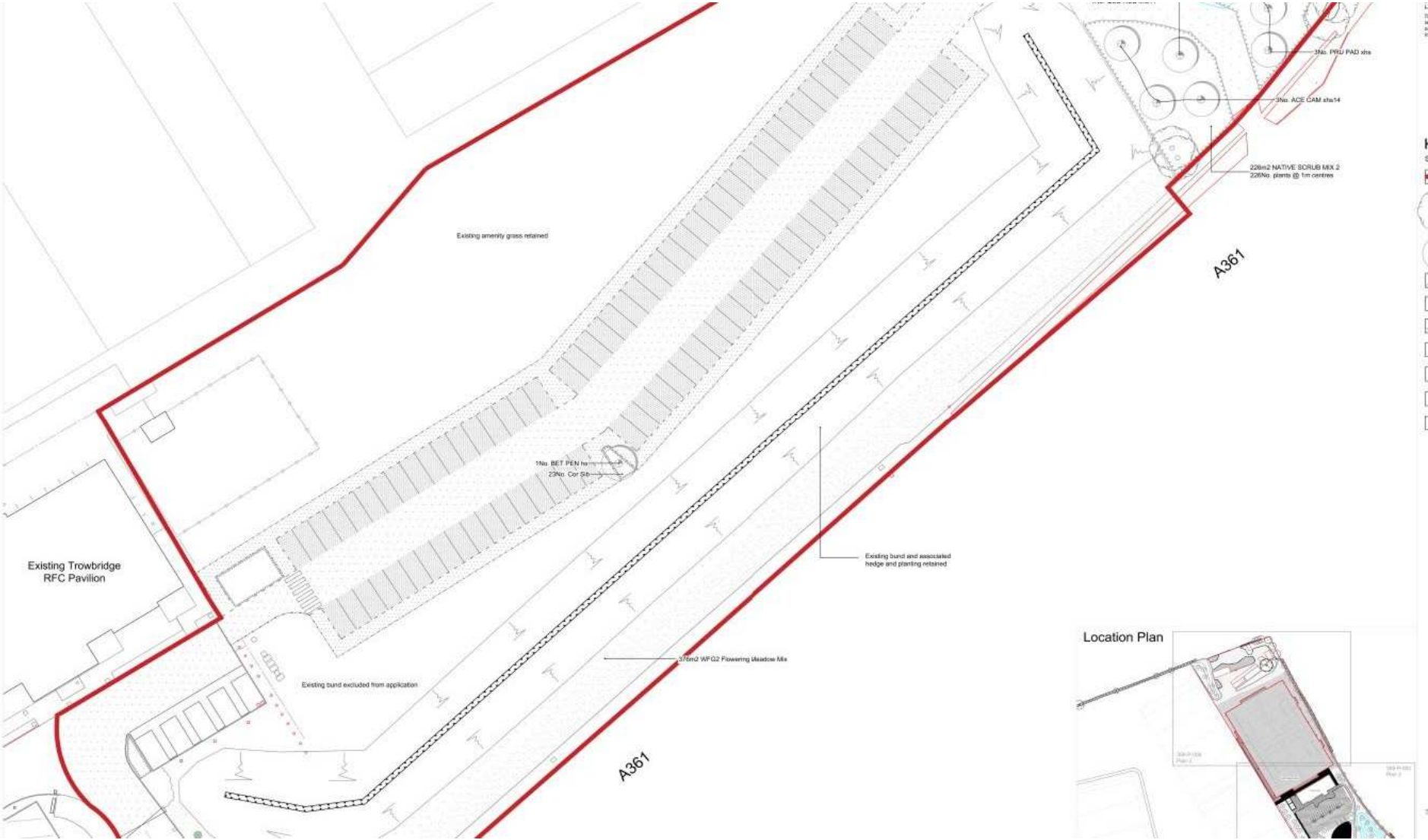
# Planting plan – Plan 1 (northern part of the site)



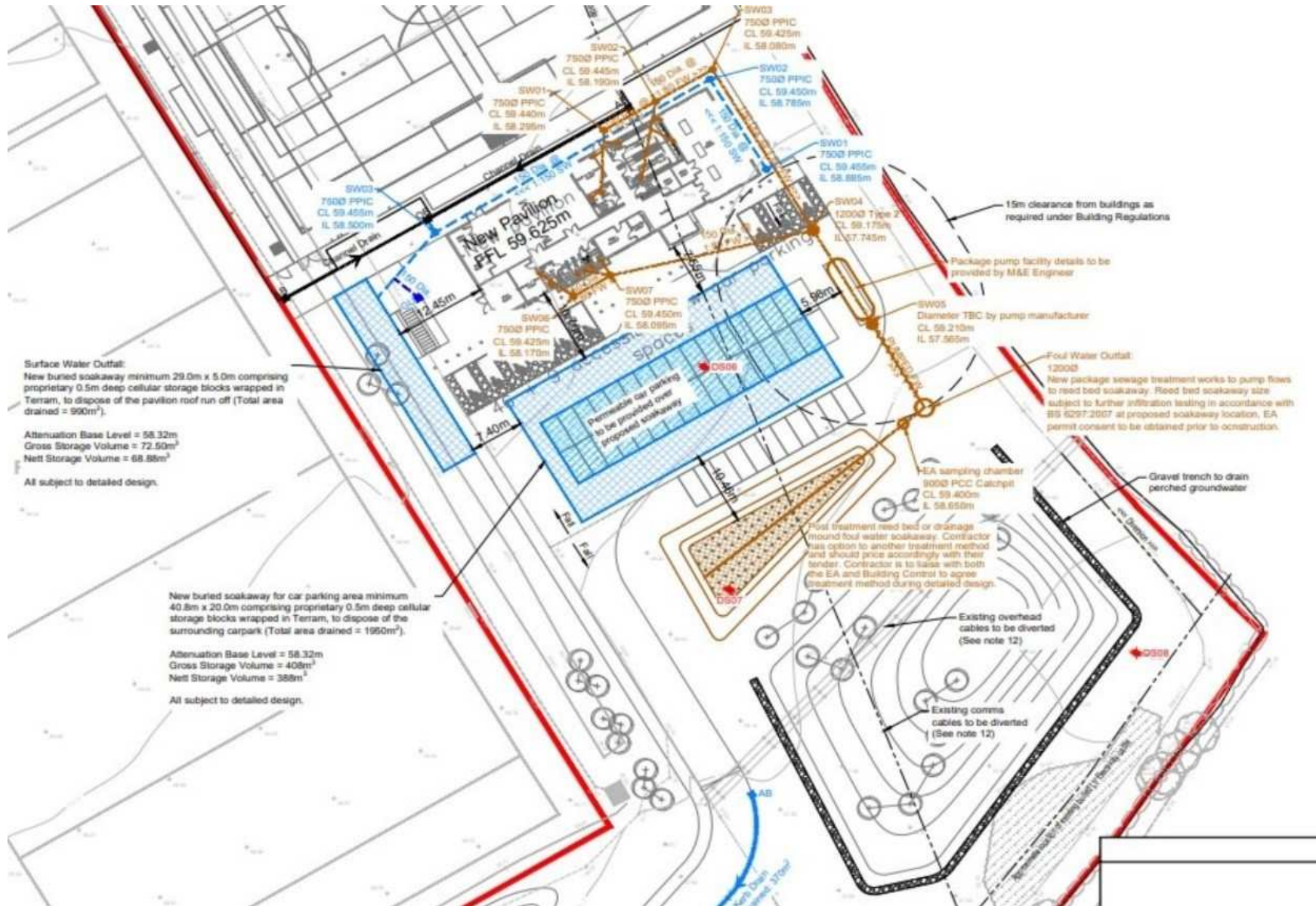
TREES				SHRUBS			
QTY	CODE	PLANT NAME	SPECIFICATION	QTY	CODE	PLANT NAME	SPECIFICATION



# Planting Plan – Plan 3 - Site Access and SW part of the site



# Proposed Drainage Plan



# Proposed Site Levels Remodelling Plan - 1



## Proposed Site levels Remodelling Plan - 2

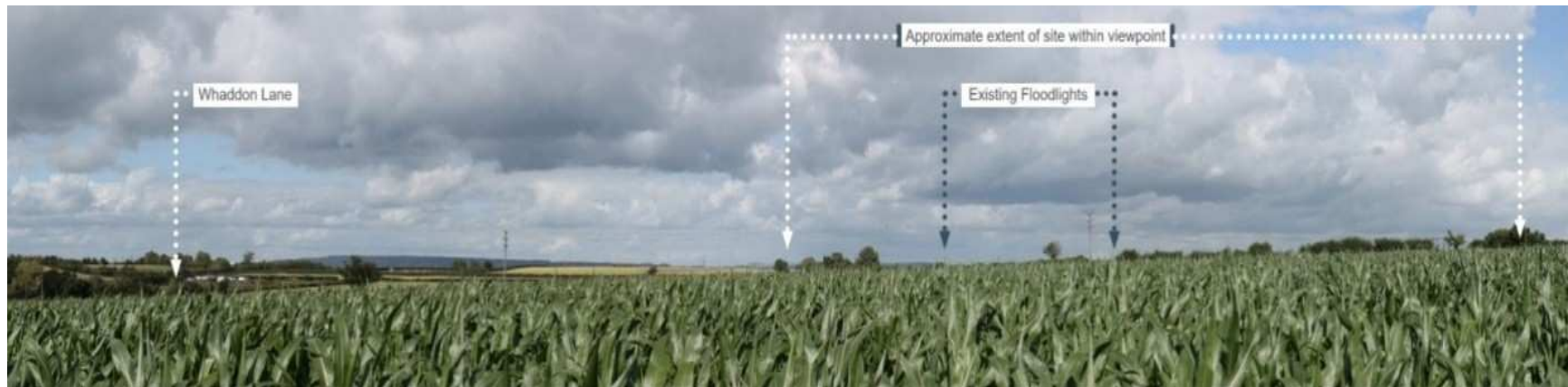




# Viewpoints from A361



# Viewpoints from west and east of the site



Looking southwest towards existing clubhouse showing location of proposed new car park



# Looking north towards location of proposed 3G pitch



# Looking south across the site towards the A361



## Northern extent of application site – showing stables



## 20/08785/FUL – 66A Westbury Leigh, Westbury BA13 3SQ

Demolition of the existing building. Construction of 4 new dwellings (revised scheme).

**Recommendation: Approve with Conditions**



Site Location Plan



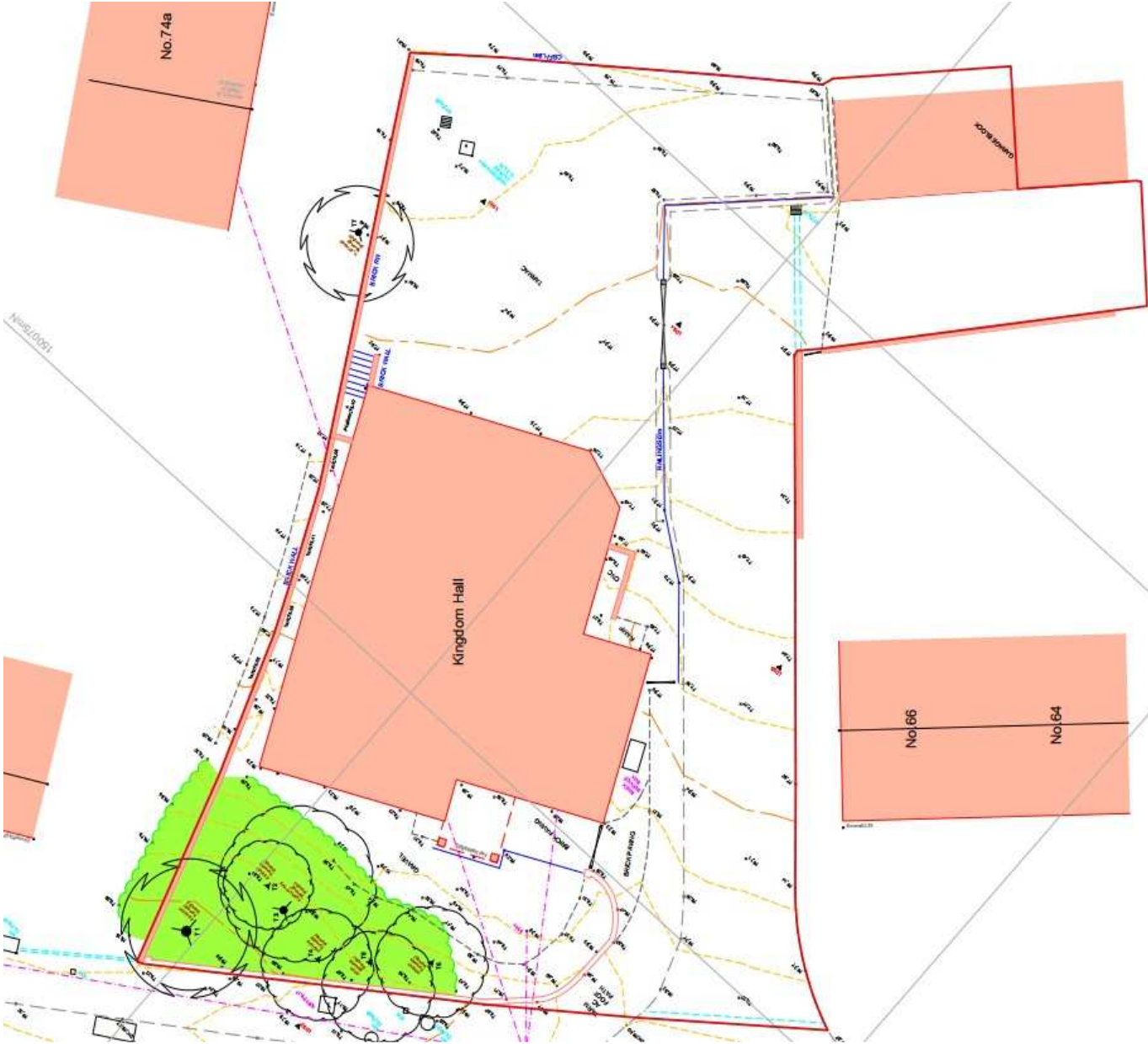
Aerial Photography

# Site Location





# Existing Site Layout



Aerial View of the site



# Proposed Site Redevelopment



# Proposed Street Scene

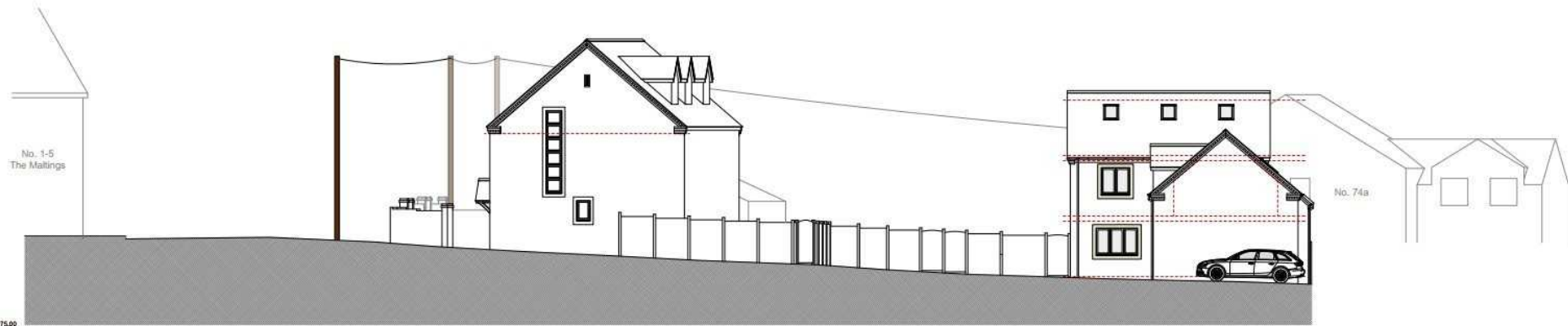


# Proposed Side Access View



U1

1:100



SCN Street Scene - Access Road

# Proposed 3-Unit Terrace and Ground Floor Plan



ELV Proposed SE Elevation  
01 1:100

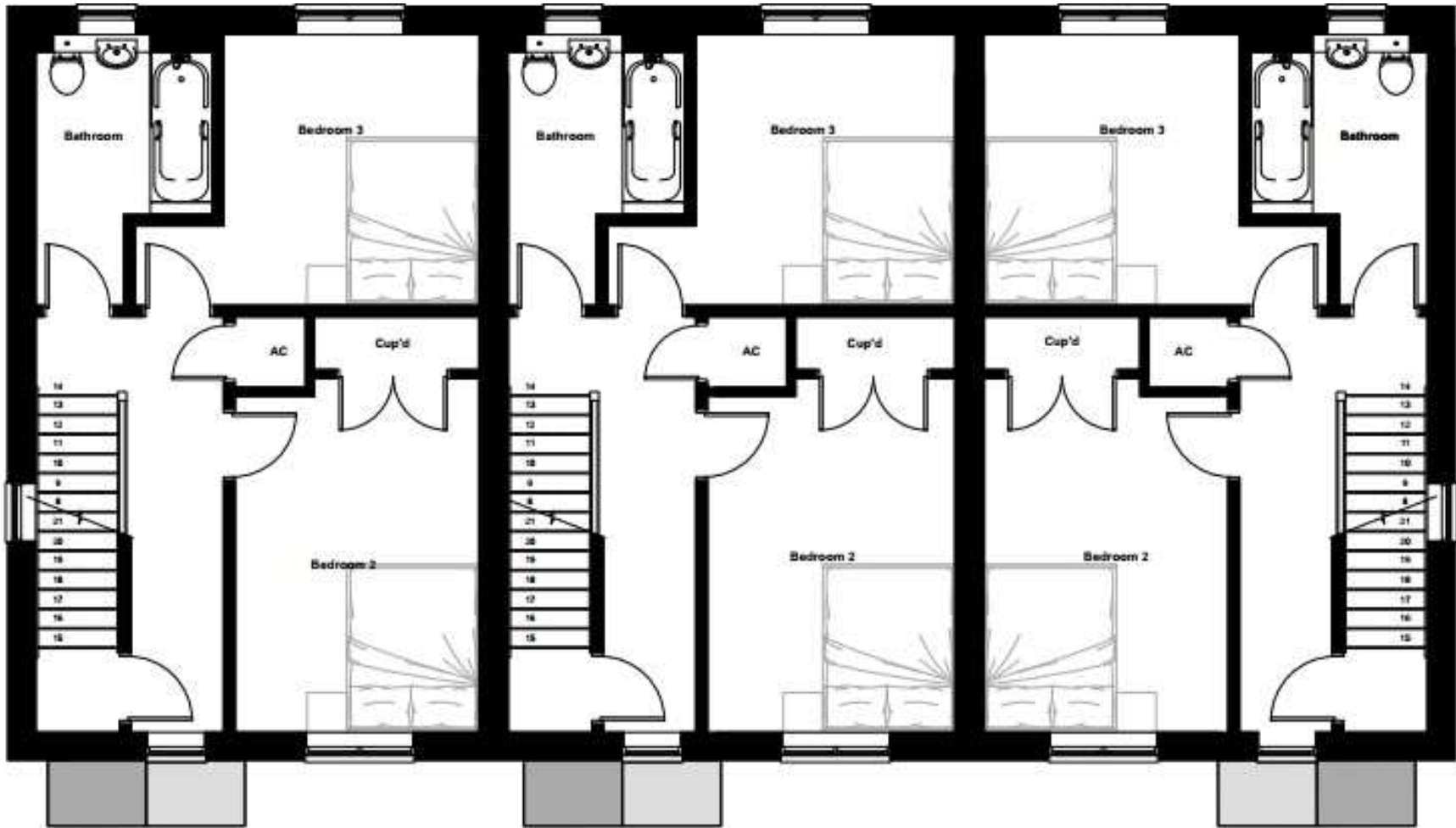
ELV Proposed NE Elevation  
02 1:100

ELV Proposed NW Elevation  
03 1:100

ELV Proposed SW Elevation  
04 1:100

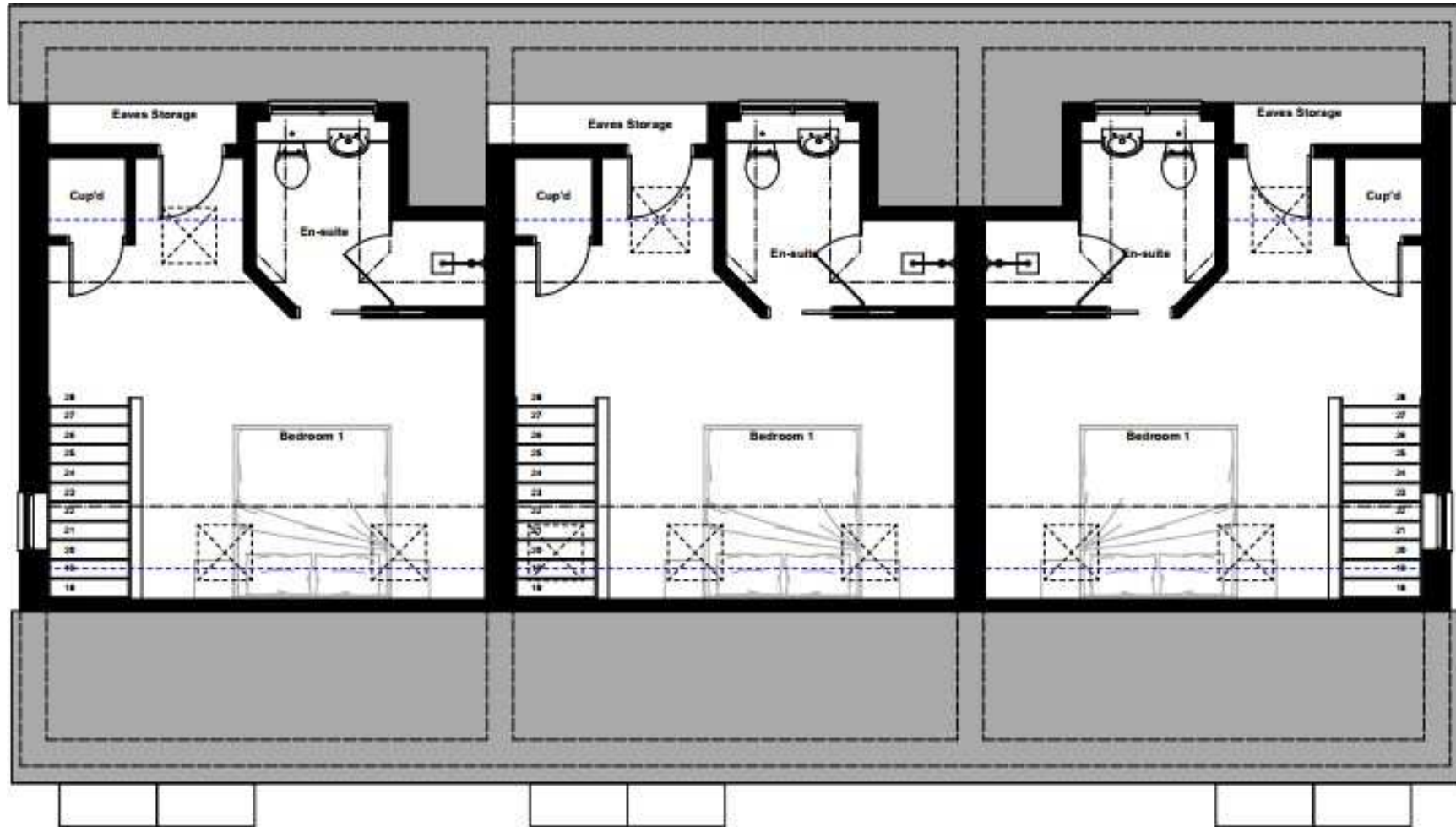


# Proposed Terrace First Floor Plan



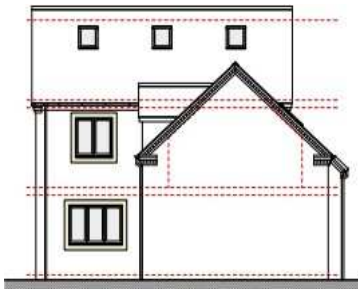
**PLN** Proposed FF Plan

# Proposed Terrace Attic Plan





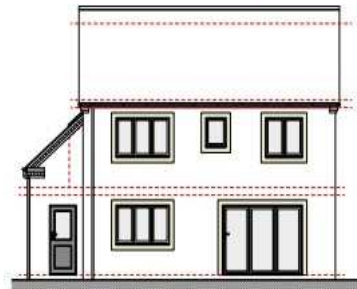
# Proposed Detached Dwelling



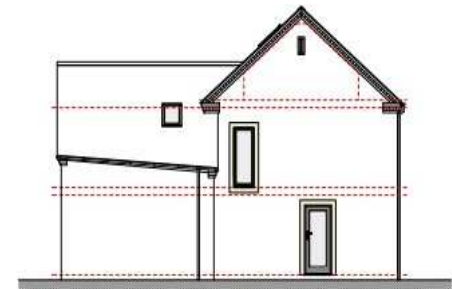
ELV Proposed NE Elevation  
01 1:100



ELV Proposed SE Elevation  
02 1:100

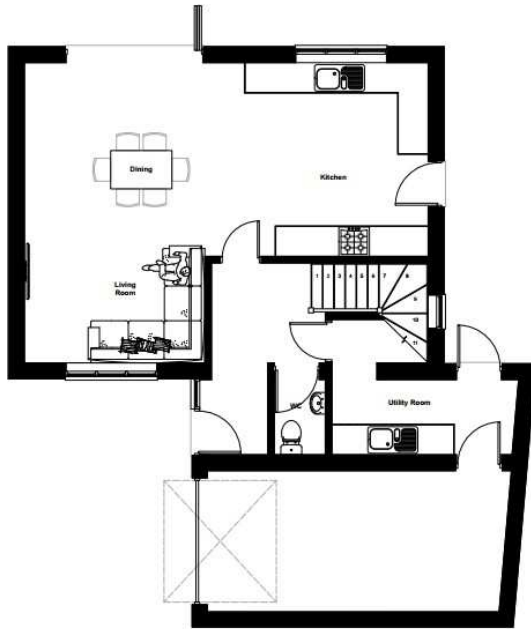


ELV Proposed SW Elevation  
03 1:100

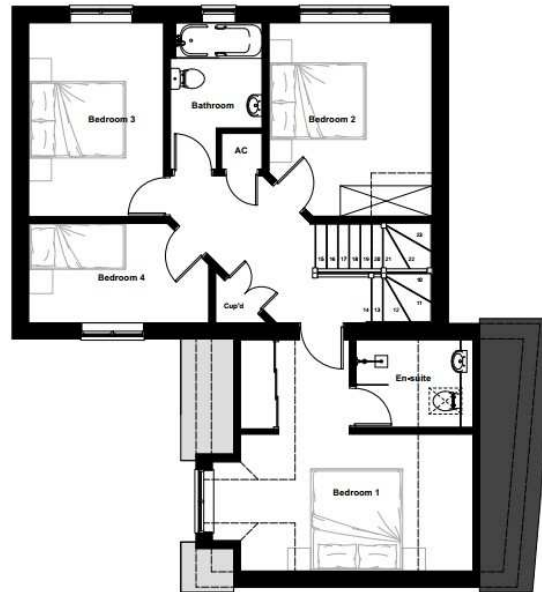


ELV Proposed NW Elevation  
04 1:100

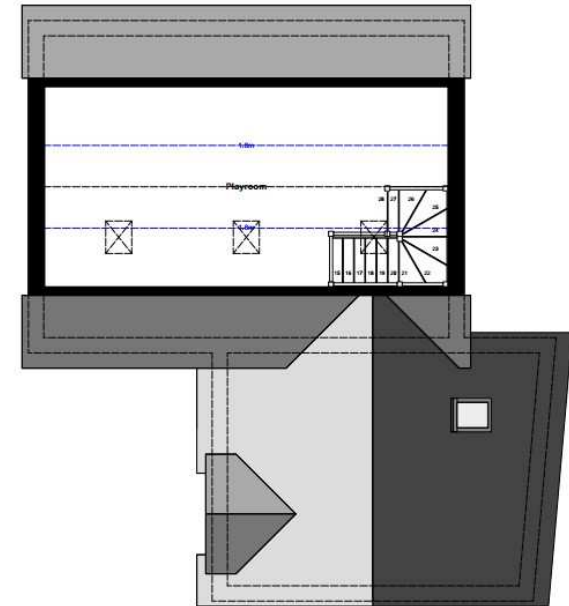
# Proposed Detached Dwelling Floor Plans



PLN Proposed GF Plan



PLN Proposed FF Plan  
02 1:50



PLN Proposed SF Plan  
03 1:50

# Proposed Site Drainage Plan



View of the site from public highway (the site is on the right)



Street Scene View (site on left with trees to be felled) and the Malthouse opposite the site (shown below right)



## Existing car parking hardstanding and garage block



View to 2 Silverthorne Close from the rear of the site



Number 74 with site on the right hand side





# 74 A with access – site is on the right

Trees are outside of Applicants control



Rear of 66



Properties opposite the site



# Western Area Planning Committee

9 June 2021