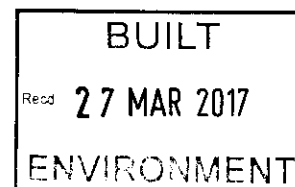


APPLICATION NO: 17/00365/FUL		OFFICER: Mr Ben Hawkes
DATE REGISTERED: 22nd February 2017		DATE OF EXPIRY : 19th April 2017
WARD: Battledown		PARISH: CHARLK
APPLICANT:	Boo Homes Limited	
LOCATION:	The Water Garden, Birchley Road, Cheltenham	
PROPOSAL:	Demolition of existing building and garage and replacement with two new detached dwellings	

Appendix 1

Representations from the Battledown Estate Trustees



24th March, 2017

E : planning@battledown.co.uk
T : 01242 513 611

Cheltenham Borough Council

Planning Department

Attn : Mr Ben Hawkes Planning Officer

Dear Mr Hawkes :

Ref Application dated 22 February : 17/00365/FUL : The Water Gardens

On behalf of the **Trustees of the Battledown Estate**, I am writing further to my original 'consultee comment' of 15th March 2017 concerning the above planning application.

The enclosed booklet has recently been passed to the Trustees (*original is available if you are unable to locate a copy in your files*). It is referenced in a number of the 'Objections' submitted concerning this application, as now shown on your web-pages, including that dated 9 March 2017 by the owner of Carlton House, 4 Battledown Drive, which is located in 'Plot 2' as specified in the enclosed booklet, nearby to The Water Gardens.

The Trustees believe that the Planning Committee may find this booklet to be of great assistance when engaged in their deliberations concerning the merits or otherwise of this application. The booklet, published by Cheltenham Borough Council itself in (July or August) 1975, demonstrates clearly to the Planning Committee why the existence of the Battledown Estate's 1859 Deed of Covenants and its various provisions should rightly be taken into consideration when determining the outcome of this application. The Trustees have referred extensively to this Deed in their original 'consultee comment', as have approximately 90 other residents of the Battledown Estate when submitting their Objections.

As may be seen, the contents of this booklet refer to the sale of house-plots which are located just to the north-west of The Water Gardens house-plot (known as Highfields in 1975), adjacent to a new cul-de-sac road, subsequently named Battledown Drive. Some of these house-plots are on original Battledown Estate land and some are directly adjacent to it and/or lie across the original boundary of the Estate.

It is evident that Cheltenham Borough Council is not only the vendor of the various house-plots but is also concerned to ensure that the purchasers are fully aware of the 1859 Deed and that those purchasers know that they must abide by its provisions. There is no reason to think that such concerns on the part of CBC should have changed in the intervening years and CBC has certainly not advised either the Trustees or any other residents to the contrary.

It may be helpful to the Planning Department Officers and the Planning Committee if the following specific points are drawn to their attention :


1. The vendor is Cheltenham Borough Council and it is definitively stated by CBC that there are stringent controls over development on the Battledown Estate, that all developments **have to be approved by the Estate Surveyor** and that these controls protect and maintain the high standards of the Estate.
2. The Battledown annual acreage Rate applies to these properties, the funds generated from which are used for the upkeep of the Estate roads etc.
3. Normal planning permission will, of course, be required from CBC **but also** plans will in addition **have to be approved by the Trustees of the Battledown Estate**.
4. It is specifically stated by CBC that these properties are being sold subject to the covenants and conditions contained in the 1859 Deed
5. Plans and drawings must be previously approved in writing by the Trustees, as well as by the Vendor (i.e. CBC).

When taken either individually or together, the above five points provide evidence that the Battledown Estate's 1859 Deed of Covenants is a highly relevant and important document to Cheltenham Borough Council when it is considering any plans for housing development on land within the Battledown Estate.

The Trustees therefore respectfully request that their objection to The Water Gardens planning application, on the grounds that it would breach the provisions of the 1859 Deed, is both relevant and valid as an eminently sound reason for the application to be refused.

With thanks for your kind attention to this matter.

Yours sincerely,



Roger Willbourn

For and on behalf of the Trustees of The Battledown Estate

Enc.

CHELtenham BOROUGH COUNCIL

OFFER FOR SALE

BUILDING PLOTS

AT

BATTLE DOWN

CHELtenham

BATTLEDOWN BUILDING PLOTS FOR SALE

Cheltenham Borough Council offer for sale by tender

4 Individual Building Plots

off Battledown Approach, Battledown, Cheltenham.

Battledown is situated approximately 1 mile from the Town centre and is considered one of the best residential areas in this Spa Town. Rarely do building plots come up for sale at Battledown and these give an opportunity for the development of houses to a Purchaser's individual requirements.

Battledown is a private estate dating back to the 1800's. There are stringent controls over development, all of which has to be approved by the Surveyor to the Estate. This maintains the high standards of the estate and thus protects the estate and each inhabitant.

The site, which is on rising ground, is just off the south side of Battledown Approach, close to its junction with Stanley Road and Birchley Road. All main services including a new road have been laid to the site and the plots are ready for immediate development, subject to the normal consents.

PARTICULARS OF SALE

I. DETAILS OF INDIVIDUAL PLOTS.

Plot 1

Net area of plot - approx. 0.44 acres
Gross area of plot for Battledown Rate - approx. 0.510 acres
Frontage to estate road - approx. 145 feet

This plot is subject to a Wayleave in favour of Midlands Electricity Board for an underground cable running along the boundary between plots 1 & 2. This agreement is for 21 years from 17th October, 1974, on payment of 20p per annum.

The Purchaser will be responsible for the erection and maintenance of a boundary fence between Plots 1 and 2 and also will take over the section of the boundary fence between this plot and the proposed playing fields and be responsible for the maintenance of this fence. The Purchaser will be responsible for all other boundary fences to this plot.

Plot 2

Net area of plot - approx. 0.41 acres
Gross area of plot - approx. 0.48 acres
Minimum area for Battledown Rate - 0.5 acres
Frontage to estate Road - approx. 120 feet

The Purchaser will be responsible for maintenance of the fence already in existence between this plot and the proposed playing fields and also will be required to erect and maintain a fence between this plot and the plot on the Southern side.

Plot 3

Net area of plot - approx. 0.33 acres
Gross area of plot - approx. 0.48 acres
Minimum area for Battledown Rate - 0.5 acres
Frontage to Estate Road - approx. 180 feet
Return frontage to cul-de-sac - approx. 140 feet

The Purchaser will be responsible for the erection and maintenance of a fence between this plot and plot 4.

Plot 4

Net area of plot - approx. 0.49 acres

Gross area of plot for Battledown Rate - approx. 0.647 acres

Frontage to Estate Road - approx. 80 feet

The Purchaser will be responsible for maintenance of existing hedge between this plot and Battledown Approach and also for the erection and maintenance of a fence between this plot and the plot on the Eastern side.

2. TENURE.

Freehold.

3. PLANNING PERMISSION.

A copy of the outline planning permission can be inspected at the Borough Valuer's Department. Purchasers must arrange for detailed approval including landscaping for the individual plot. Plans will also have to be approved by the Trustees of the Battledown Estate and the Borough Valuer.

4. SERVICES.

Drainage, water, gas and electricity have been laid to the site. Plans can be inspected at the Borough Engineer's Department. Reciprocal drainage easements will be granted as necessary and Purchasers will be responsible for the costs of connection to the main sewer.

The Purchaser will be responsible for ensuring that the reinstatement of all service trenches in the carriageway are carried out in accordance with specifications accepted by the Association of Gloucestershire Engineers and Surveyors. Purchasers should ensure that any quotation which they receive from Statutory Undertakers allows for the carrying out of this work. Any work which the Council have to carry out to bring trench reinstatements up to the specification may be charged to the Purchaser.

5. CARRIAGEWAY SURFACING, KERBS, FOOTPATHS, VERGES AND LIGHTING.

When all dwellings are completed and services connected the Council will carry out the final surfacing of the carriageway, the construction of the footpaths and verges and the erection and servicing of the street lighting. On completion of these works subsequent maintenance and repair of the estate road will be the responsibility of the Trustees of the Battledown Estate but the Council will be responsible for the maintenance of the street lighting.

The Council reserve the right to carry out the work in one operation and no guarantee is given that portions of the work will be

carried out as and when plots are developed. No alterations are to be made by Purchasers to any part of the estate road except in so far as it is necessary to open up the carriageway for the provision of services.

Each Purchaser will be responsible for making a temporary vehicular access to his plot for the purpose of developing the site and on completion to serve the dwelling and will be responsible for any damage to kerbs, channels, etc. during the erection of the dwelling.

Arrangements have been made for Purchasers to have the benefit of a right of way at all times and for all purposes over the road and footpaths on the Battledown Estate.

6. RATES.

In addition to the Borough Council Rate Purchasers will also be liable for the payment of the Battledown Rate. In the current year the Battledown Rate is £25 per acre and is levied equally on developed or undeveloped land.

7. LOCAL AUTHORITY.

Cheltenham Borough Council, P.O. Box 12, Municipal Offices, Promenade, Cheltenham, GLOS. GL50 1PP. Telephone Cheltenham 21333.

8. VIEWING.

The Plots may be inspected at any time.

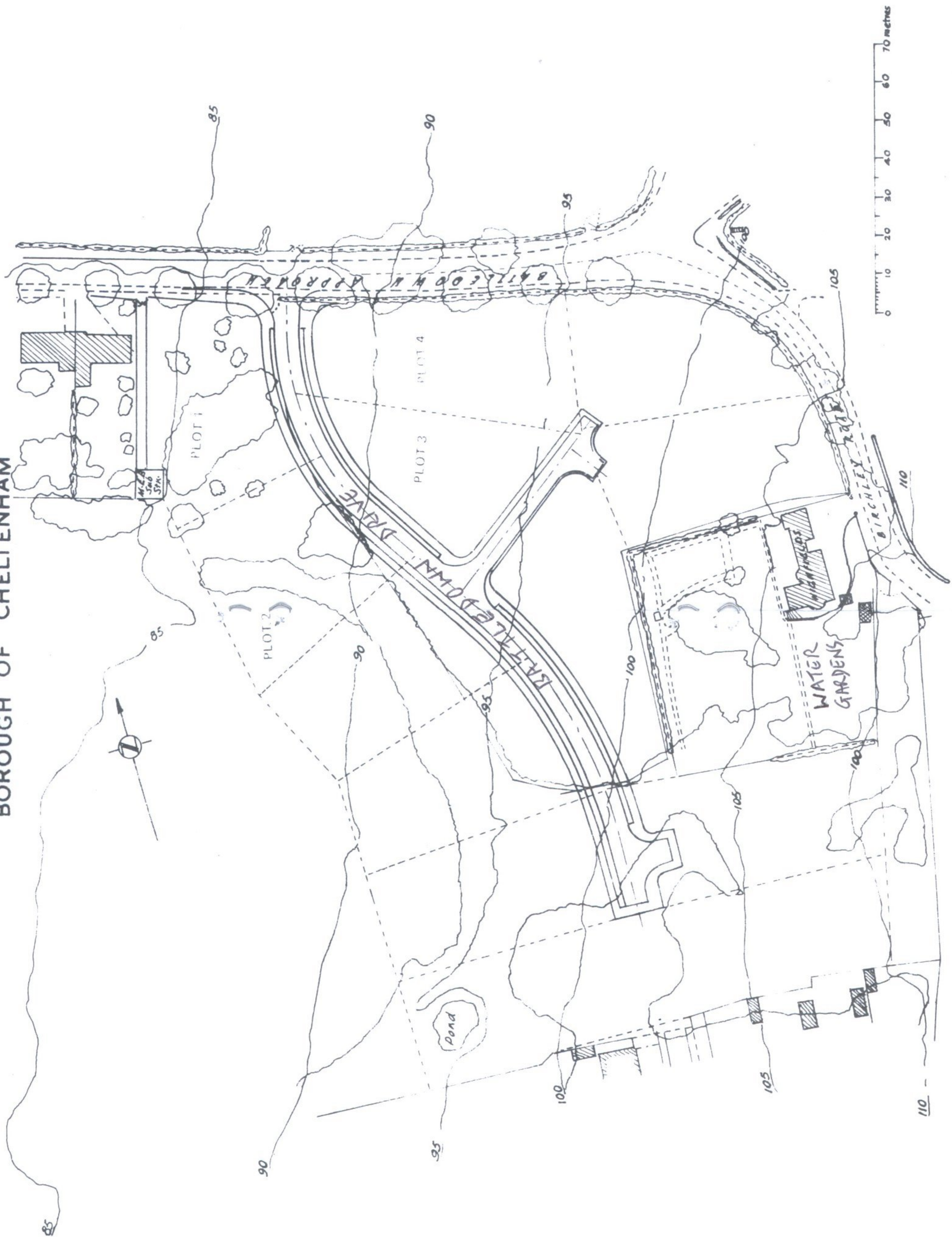
9. POSSESSION.

Vacant Possession will be given on completion.

10. SALE.

Offers for the Plots must be submitted to the Borough Valuer in writing on or before Noon on Monday, 15th September, 1975, in a plain sealed envelope which should bear the words "Offer for Plot". The envelope should not bear any name or mark indicating the sender. The Council do not bind themselves to accept the highest or any offer. It is intended that no purchaser may purchase more than one plot, but

BOROUGH OF CHELTENHAM



purchasers may make alternative tenders for any or all plots. Only tenders from prospective Owner/Occupiers will be considered.

These particulars are prepared with all due care for the convenience of intending Purchasers but their accuracy is not guaranteed nor do they form nor shall be deemed to form part of any Contract.

SPECIAL CONDITIONS OF SALE

1. The property will be sold subject to The Law Society's Conditions of Sale (1973 Revision) so far as they are not varied or inconsistent with these Special Conditions.
2. The Vendor is Cheltenham Borough Council.
3. The Vendor's Solicitor is B.N.Wynn, Esq., Town Clerk & Chief Executive, Municipal Offices, Promenade, Cheltenham, Glos. GL50 1PP. Telephone Cheltenham 21333.
4. Completion of the sale will take place four weeks after the formal letter accepting a successful tender is posted or earlier by arrangement and shall be at the office of the Vendor's Solicitor.
5. The Vendor will sell as beneficial owner.
6. The property is sold subject to:-
 - (a) all matters appearing in the particulars and (whether stated in the particulars or not) to all outgoing easements and rights in the nature of easements affecting the same and without any obligations on the part of the Vendor to define the same and no objection or requisition shall be made in respect thereof.

(b) and with the benefit of the covenants and stipulations contained in a Memorandum of Agreement dated the 12th day of November 1874 and made between The Reverend Arthur Armitage of the one part and Charles Winstone of the other part so far as the same are still subsisting and capable of taking effect. (The whereabouts of the original Memorandum of Agreement is unknown and the Vendor does not possess an examined copy. The Purchaser shall not raise any requisition or objection thereto and will not be required to enter into a covenant of indemnity regarding the covenants and stipulations contained in the Memorandum of Agreement.

(c) the covenants and conditions contained in a Deed of Regulation dated the 2nd day of December 1859 and relating to the Battledown Estate so far as the provisions of such Deed relate to or affect any part of the land to be sold

(d) and with the benefit of the covenants rights and conditions contained in a Deed dated the 18th day of June 1975 and made between Eva Laura Frances Allpress James Probert Pearson Charles Hugh Massey Dobell and Leslie Thomas Palmer Banbury of the one part (hereinafter referred to as "the Trustees") and the Vendor of the other part so far as the provisions of such Deed relate to or affect any part of the land to be sold (but with the exception of sub Clauses (1) and (2) of Clause 2 to such Deed which relate to the initial construction of the roads and footpaths and to the payment of a lump sum for the future maintenance thereof)

(e) (in the case of Plot 1 only) a Wayleave Agreement dated the 17th day of October 1974 in favour of the Midlands Electricity Board

7. The Purchaser of any plot shall in the conveyance covenant with the Vendor for the benefit and protection of the land remaining in the ownership of the Vendor adjoining the plots to be sold and also for the benefit and protection of the other plots to be sold:-

(a) to within one year from the date of the conveyance or such other period or periods as the Vendor shall in its discretion agree in writing and in accordance with plans drawings and specifications previously approved in writing by the Vendor and the Trustees

to commence the building of one dwellinghouse together with a properly laid out and landscaped garden such building to be completed within two years from the date of the conveyance but subject to the right of the Vendor to extend the period as aforesaid

- (b) to erect and thereafter maintain to the satisfaction of the Borough Valuer a fence the height type and materials of which must first be approved by the Borough Valuer along those boundaries of the particular plot which are indicated in the Particulars

8. The conveyance to the Purchaser will contain a right of pre-emption in favour of the Vendor which may be exercised if the covenants set out in Clause 7 (a) above are not complied with. If the right is exercised the purchase price payable by the Vendor will be the lesser of the original sale price and the market value at the date of such exercise.
9. The conveyance to the Purchaser shall contain a clause preventing the Purchaser from selling the plot before completion of the building unless he previously offers the plot back to the Vendor at the original sale price and that offer is refused.
10. In the event of any inconsistency between the information contained in the Particulars of Sale and these Special Conditions the latter shall prevail.

CHEL TENHAM BOROUGH COUNCIL

FORM OF TENDER

To:- The Town Clerk of Cheltenham.

I,

of

.....

.....

.....

make the following (alternative) offer(s) for the land in Battledown which the Council is seeking to sell.

It is understood that these offers are on the basis of and subject to the Conditions of Sale set out in the Sale Particulars published by the Borough Valuer's Department.

Plot 1 £.....

Plot 2 £.....

Plot 3 £.....

Plot 4 £.....

Signed ;

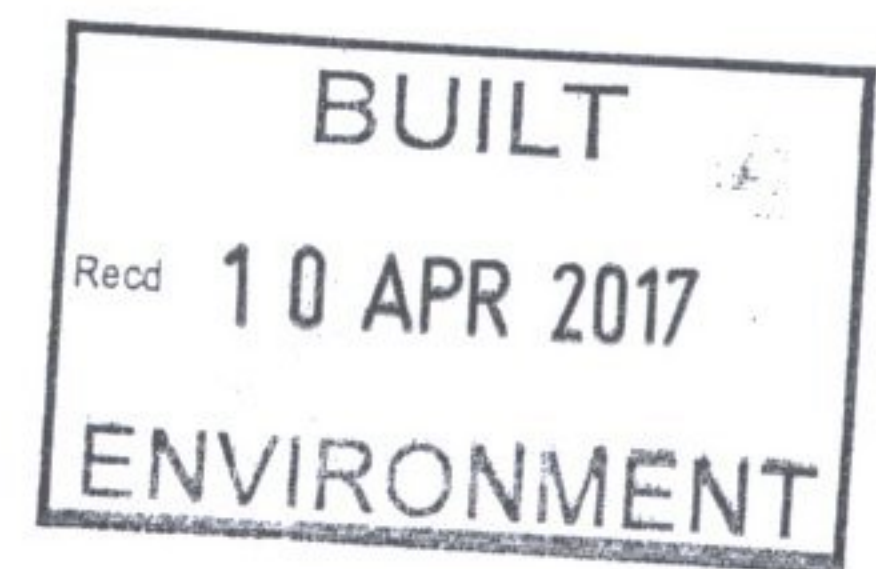
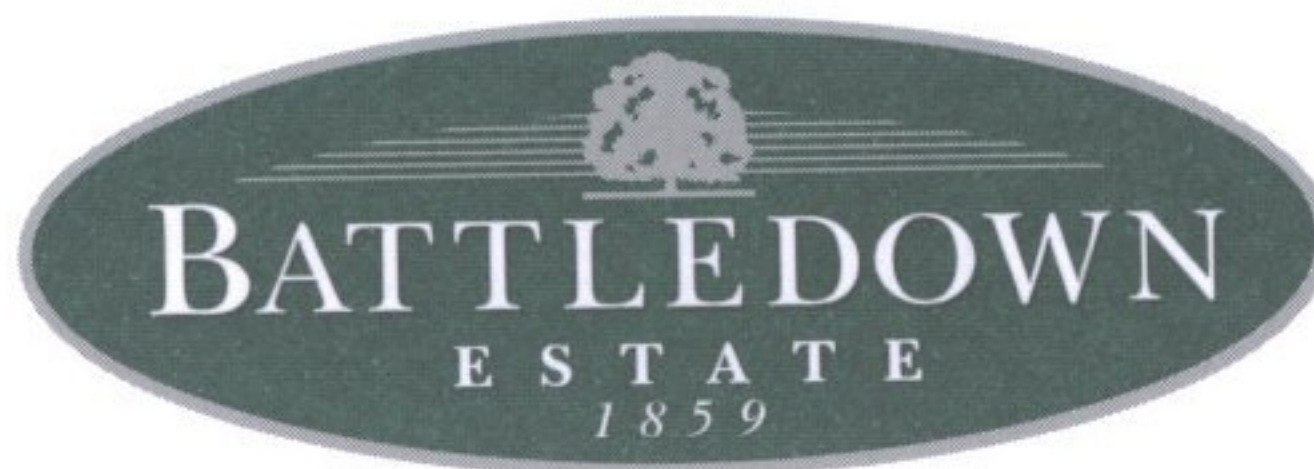
Date;

My Solicitor is

.....

.....

I understand that the Council is not bound to accept the highest or any offer.



10th April, 2017

E : planning@battledown.co.uk
T : 0124 [REDACTED]

Gloucestershire County Council
Shire Hall, Gloucester, GL1 2TH
Attn : David Simmons Esq. Development Coordinator

Dear Mr Simmons :

Ref Planning Application dated 22 February : 17/00356/FUL : The Water Gardens

On behalf of the Trustees of the Battledown Estate, I am writing further to the **Access Appraisal Note CTP - 17 - 218** dated April 2017, submitted by Cotswold Transport Planning ['CTP'] in relation to the above-mentioned planning application for The Water Gardens, which was published on the Cheltenham Borough Council Planning Application Documents web-page on 7th April 2017.

I wish to bring to the attention of the Gloucestershire County Council Development Coordinator that much of the information and data in that Appraisal Note has been based on invalid assumptions and the conclusions drawn by Mr Michael Glaze of CTP are, therefore, **incorrect**.

It is necessary for the Trustees to comment on the CTP Note because it relates to land within the ownership of the Trustees. This letter should allow the CTP Note to be reviewed with due consideration of the relevant physical features, in particular that in several cases the proposed splays mentioned in the Note rely on sight-lines over land which the applicant neither owns nor over which he has any rights.

Please note the following, which we hope will be of assistance to both yourself and the Cheltenham Borough Council Planning Committee in its deliberations :

1. Gloucestershire County Council ['GCC'] has specified that the requirement for visibility splays must take account of both speed and gradient. The proposed site access is on a steep hill and it is not apparent from the report that the gradient has been taken into account.
2. Implicit in the report is that the intensification of use would be 100% (increase from one house to two). However the existing house is quite modest whereas the two proposed new houses are both significantly larger. On the basis of the number of bedrooms and therefore the number of intended occupants and therefore the intensification of use of the access, the potential increase is actually 200% (increase from max 8 occupants to max 24 occupants).

3. GCC has said that it does not support the idea that Birchley Road be considered an urban street for the purpose of establishing the method of establishing the visibility splays. CTP disputes this by saying that Battledown is a housing estate. The Trustees would contend that Battledown is not a housing estate in the normally understood sense of the word but a collection of individual houses originally established in a rural location, which has retained much of its initial rural character due to the existence of the Covenants limiting development, as set out on the founding trust Deed for Battledown of 1859. These characteristics include a very high level of arboreal landscape and, of particular relevance to highway safety, an absence of any paved footpaths adjacent to the roads. Consequently all pedestrians have little option but to walk in the road. This can be observed on any day, when one can see people walking (and running) around the Estate roads.

4. CTP acknowledge in their report (page 3) that Birchley Road is a "windy road and relatively narrow width".

5. The report states at "Highway Safety" that there have been no recorded personal injury collisions nearby within the last 5 years. Whilst this may be accepted at face value, there have, however, been a significant number of accidents on this short stretch of road, some of which have resulted in minor injuries, and it is only a matter of luck that no serious injuries have taken place (*please see attached list of some recent accidents and two photos*). The applicants proposed intensification of use will clearly add to that risk. The gradient and narrowness makes this a very dangerous section of road especially in the winter and at night. The Trustees have done what is possible to reduce traffic speeds by (i) installing speed humps (ii) applying a skid-resistant surface to the road and (iii) installing verge-posts with light-reflectors -- but regrettably all these measures are of limited effect in the era of large 4x4s. Notwithstanding the installation of the above safety features, at some considerable cost to the residents, vehicle speeds estimated at 30 mph or so are still common, much to the disappointment of the Trustees.

6. Drawing SK01 shows the proposed vision splay to the south encroaching significantly on two sections of land which are not owned by the applicant and over which the applicant has no rights and no control. These are shown coloured blue on the plan. Consequently the drawing demonstrates that there are NOT junction visibility splays of either 2.4m x 54m to the south or of 2.4m x 17m to the south.

7. Drawing SK02 shows the proposed visibility splay to the north encroaching significantly on land which is not owned by the applicant and over which the applicant has no rights and no control. This is shown coloured blue on the plan. Consequently the drawing demonstrates that there is NOT a junction visibility splay of 2.4m x 27m to the north.

8. Similarly Drawing SK04 shows that the proposed visibility splay to the north, based on a relaxed "X" distance of 2m, also encroaches significantly on land which is not owned by the applicant and over which the applicant has no rights and no control. This demonstrates that there is NOT a junction visibility splay of 2m x 21m to the north.

9. All of the visibility splays proposed by the applicant on drawings SK01, 02 and 04 are compromised by established road-side features over which the applicant has no influence.

10. Marked on Drawing SK02A is the extent of the visibility splay to the north and to the south which can be achieved based on an "X" distance of 2.4m utilising land which, although not owned by the applicant, is the maximum extent of the land over which the applicant as owner of The Water Gardens is believed to have rights. This results in splays which are very considerably reduced from those proposed by CPT and underlines the fact that any intensification of use of this access onto this particularly dangerous part of Birchley Road represents an increased road safety risk which the Trustees can definitely not endorse.

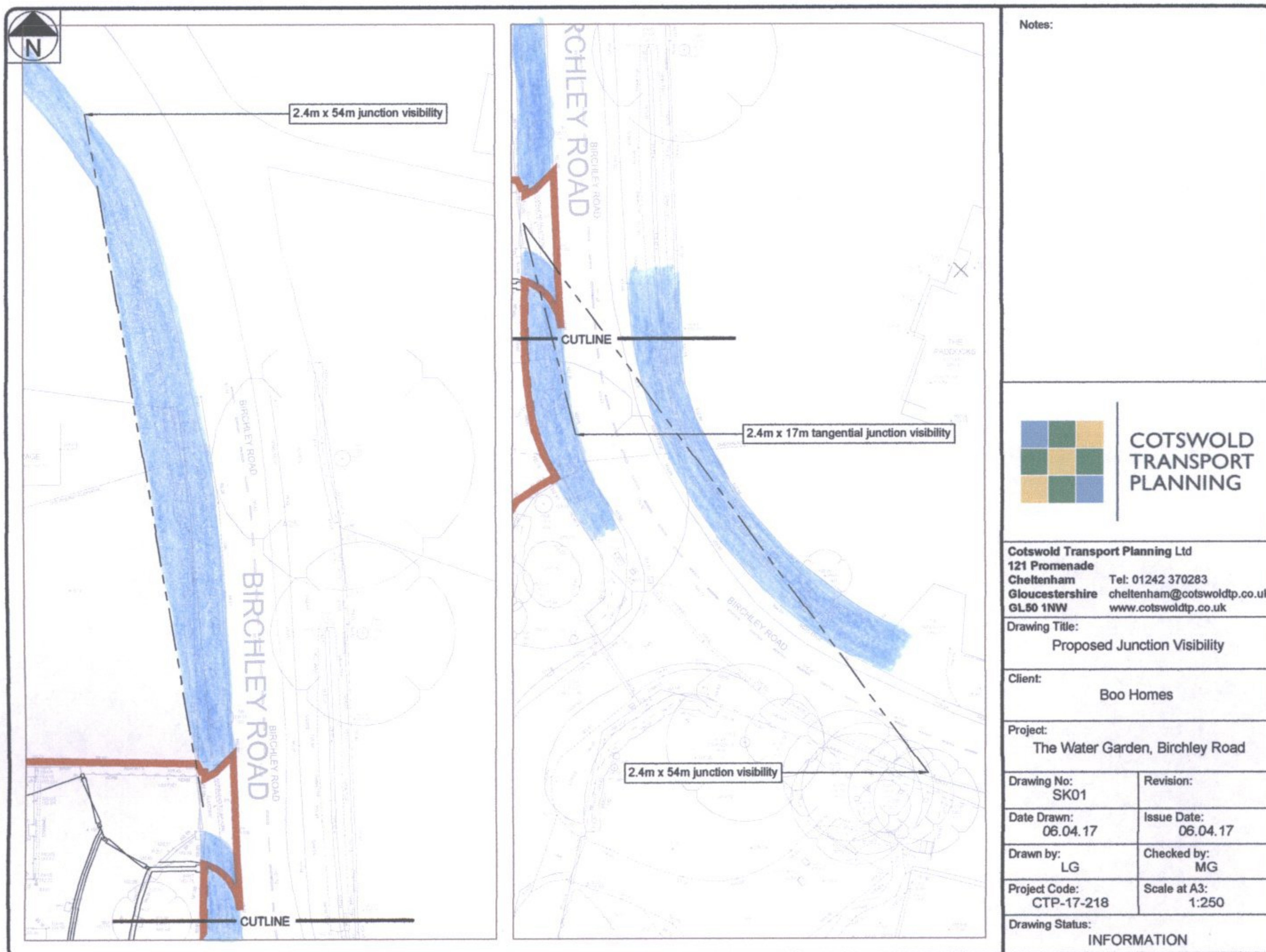
Yours sincerely,

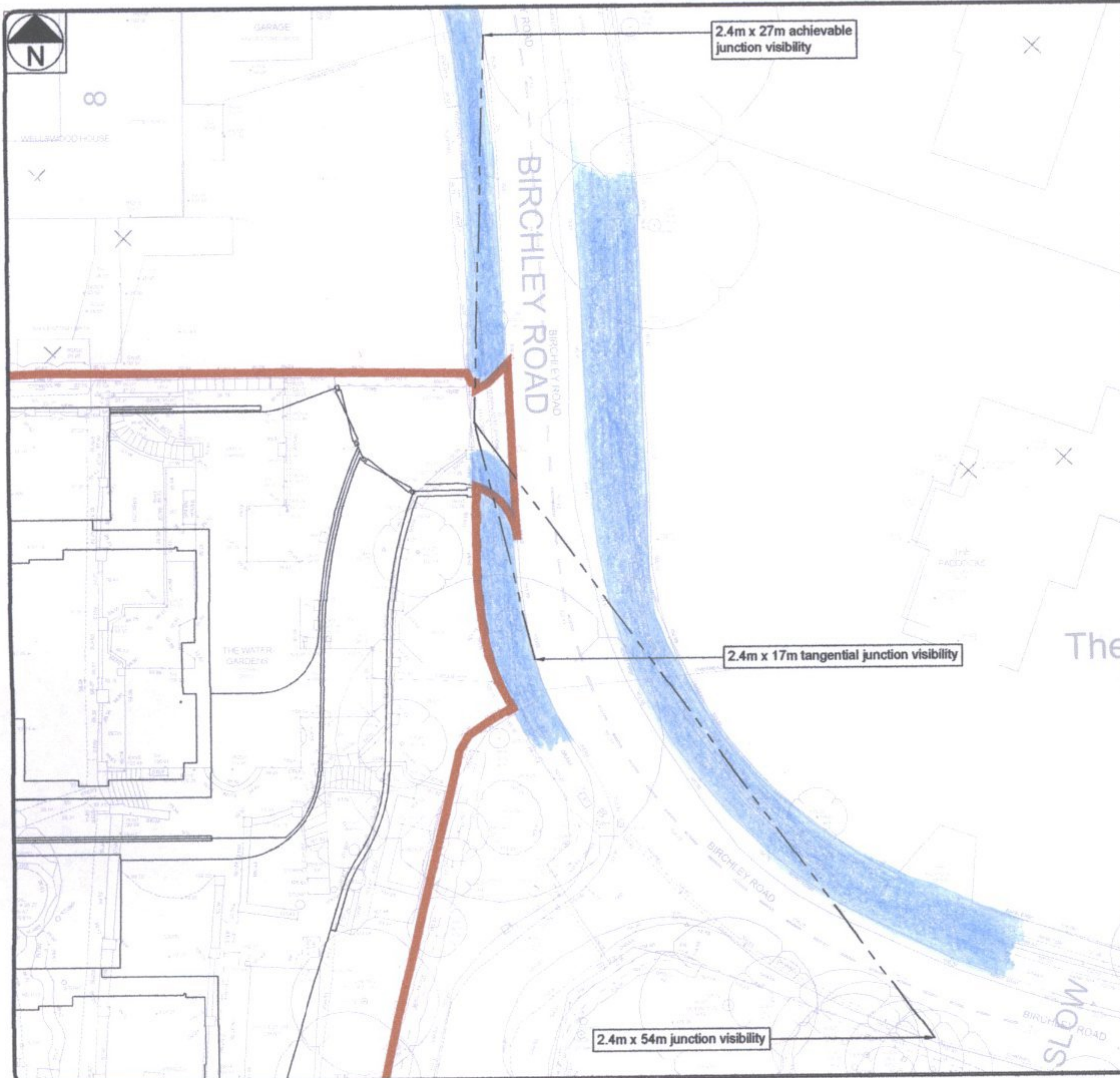


For and on behalf of the Trustees of The Battledown Estate

cc : Mr Ben Hawkes : Planning Officer : Cheltenham Borough Council

Enc:





Notes:



**COTSWOLD
TRANSPORT
PLANNING**

Cotswold Transport Planning Ltd
121 Promenade
Cheltenham Gloucestershire
GL50 1NW
Tel: 01242 370283
cheltenham@cotswoldtp.co.uk
www.cotswoldtp.co.uk

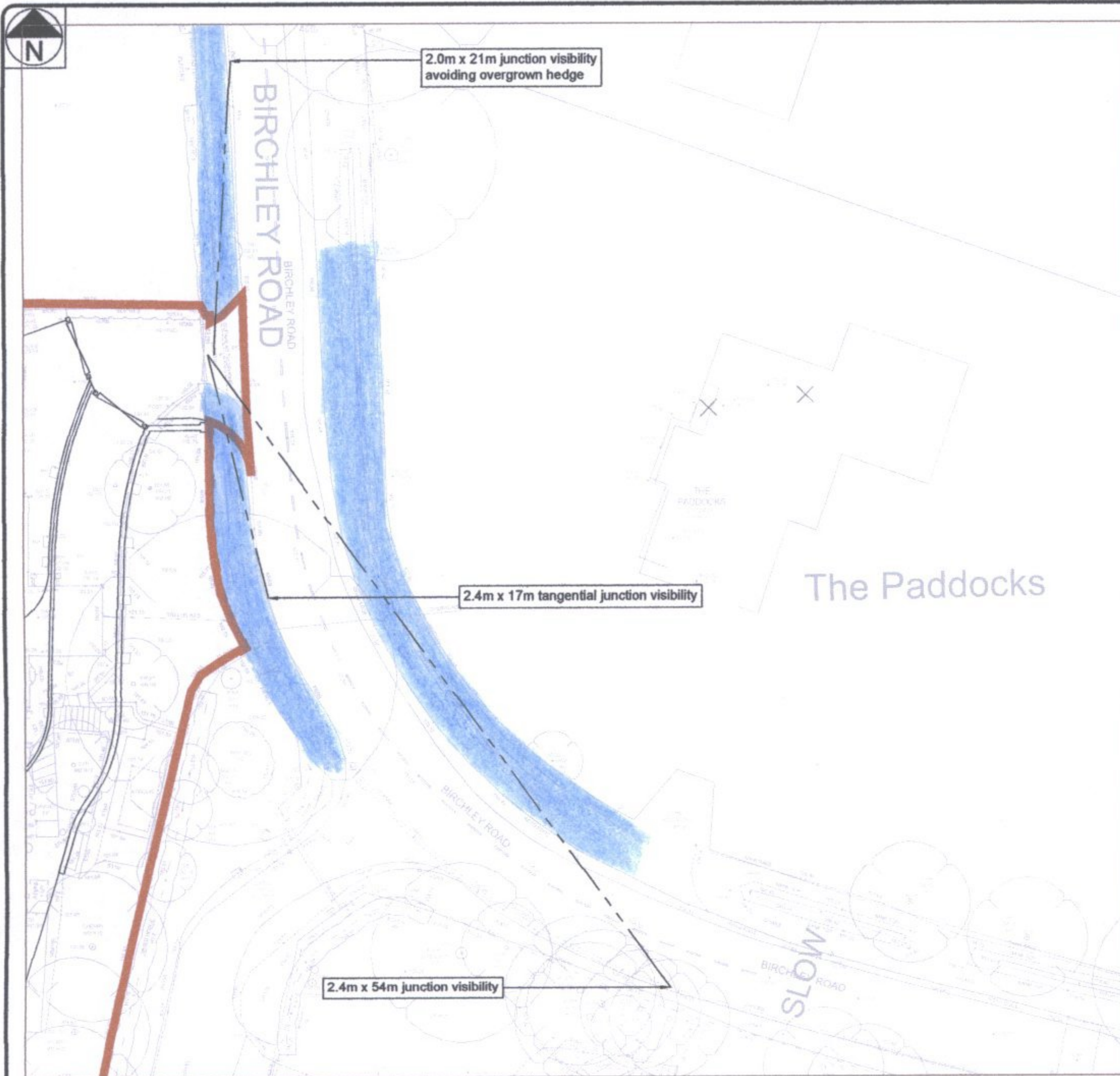
Drawing Title:
Proposed Junction Achievable Visibility

Client:
Boo Homes

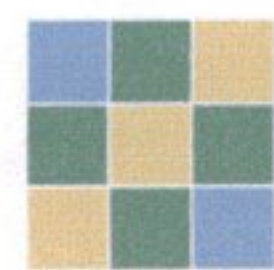
Project:
The Water Garden, Birchley Road

Drawing No: SK02	Revision:
Date Drawn: 06.04.17	Issue Date: 06.04.17
Drawn by: LG	Checked by: MG
Project Code: CTP-17-218	Scale at A3: 1:250

Drawing Status:
INFORMATION



Notes:



**COTSWOLD
TRANSPORT
PLANNING**

Cotswold Transport Planning Ltd
121 Promenade
Cheltenham
Gloucestershire
GL50 1NW
Tel: 01242 370283
cheltenham@cotswoldtp.co.uk
www.cotswoldtp.co.uk

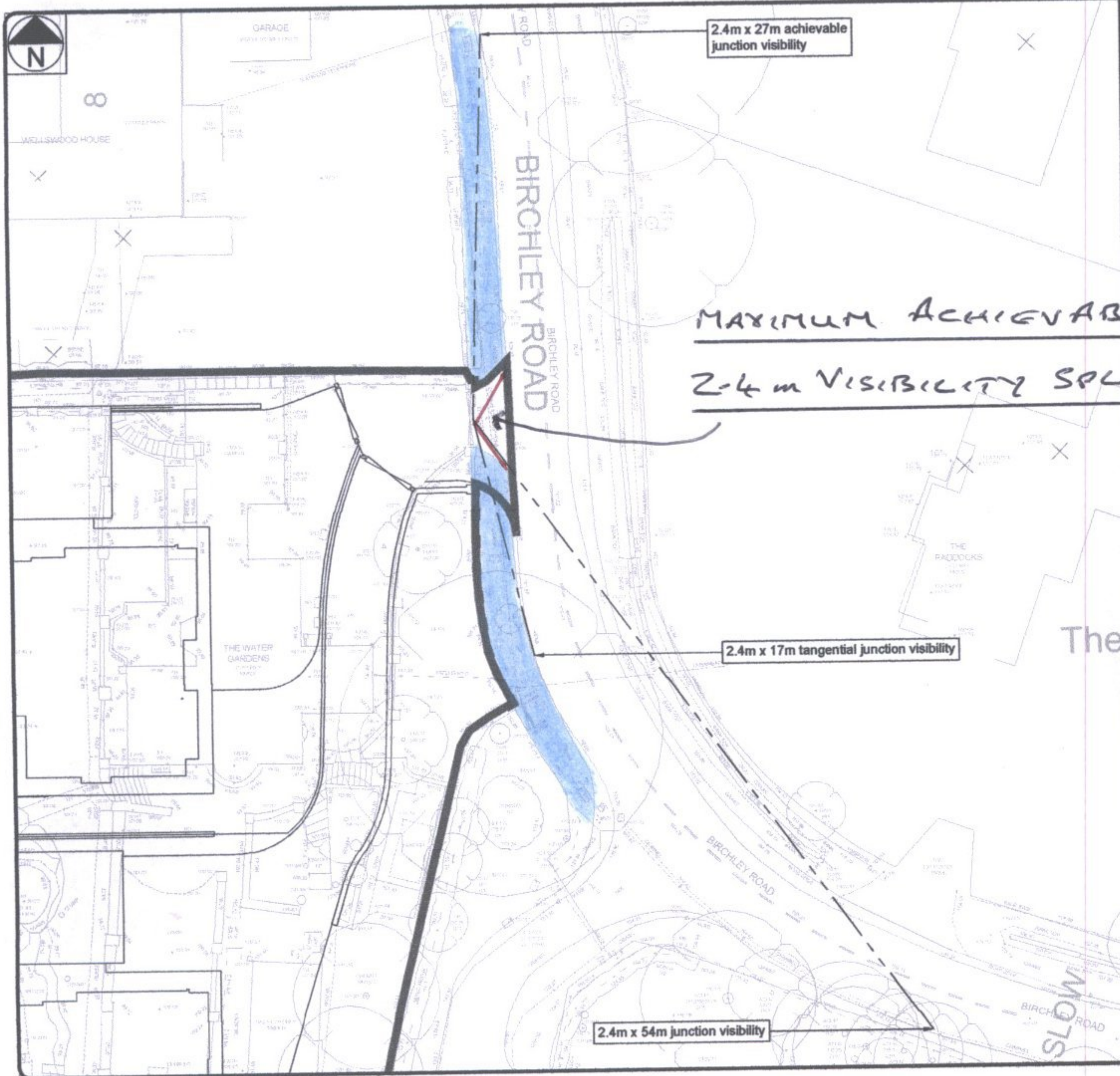
Drawing Title:
Proposed Junction Visibility

Client:
Boo Homes

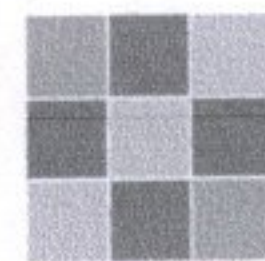
Project:
The Water Garden, Birchley Road

Drawing No: SK04	Revision:
Date Drawn: 06.04.17	Issue Date: 06.04.17
Drawn by: LG	Checked by: MG
Project Code: CTP-17-218	Scale at A3: 1:250

Drawing Status:
INFORMATION



Notes:



**COTSWOLD
TRANSPORT
PLANNING**

Cotswold Transport Planning Ltd
121 Promenade
Cheltenham
Gloucestershire
GL50 1NW
Tel: 01242 370283
cheltenham@cotswoldtp.co.uk
www.cotswoldtp.co.uk

Drawing Title:
Proposed Junction Achievable Visibility

Client:
Boo Homes

Project:
The Water Garden, Birchley Road

Drawing No:
SK02 **A**

Revision:

Date Drawn:
06.04.17

Issue Date:
06.04.17

Drawn by:
LG

Checked by:
MG

Project Code:
CTP-17-218

Scale at A3:
1:250

Drawing Status:
INFORMATION

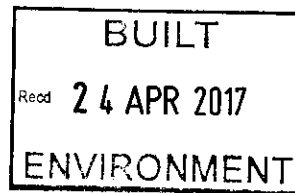
Enclosure :

This is a non-comprehensive catalogue of accidents that have taken place on or adjacent to this corner of Birchley Road in recent years :

- 1 Car ran into The Water Gardens wall. Wall partially demolished including gate-post; the top ball on the left-hand gate-post has never been replaced.
- 2 Car written off when it hit silver birch to north of The Water Gardens entrance. Car was wedged between silver birch tree and Wellwood House hedge.
- 3 Car lost control and demolished Wellwood House sign, then running through hedge, down driveway and almost reaching front door of Wellwood House. (**photo** attached of damage at that time).
- 4 Car lost control going downhill, ending up in Wellwood House hedge facing uphill. Hedge is still struggling to recover.
- 5 Vehicle ran through hedge to the north of Wellwood House entrance. Driver left scene.
- 6 Car hit young silver birch to the north of Wellwood House entrance. Tree pushed in to Wellwood House hedge.
- 7 Car travelling downhill lost control and landed in The Paddocks ditch, opposite the entrance to The Water Gardens (**photo** attached)
- 8 Car overturned in The Paddocks ditch at night.
- 9 Car going **uphill** lost control and ran through fence into Birchley House gardens.
- 10 Cyclist going downhill hit a car parked outside The Water Gardens.
- 11 Micro-scooter user lost control on the corner and was injured.







E : planning@battledown.co.uk
T : 01242 513 611

20th April, 2017

Cheltenham Borough Council
Planning Department
Promenade, Cheltenham GL50 1PP
Attn : Ben Hawkes Esq.
Planning Officer

Dear Mr Hawkes :

Ref Planning Application dated 22 February : 17/00356/FUL : The Water Gardens

The Trustees of the Battledown Estate note the Revised Plans for the above application, as posted/published on the relevant page of CBC Planning Department's web-site and as mentioned in your letter of 10th April to many local residents. Thank you for your e-mail of Thursday 13th April, in which you confirmed that all Objections already received are still relevant and will form part of the consideration of this application.

As you correctly observed, the Revisions submitted are not significant and do not address any of the substantive concerns raised within the 'Objections' already lodged by over 90 local residents. However, whilst all the above is noted with appreciation, the Trustees wish to bring to the attention of the Planning Officers and the Planning Committee two further matters in particular that may assist them in their deliberations.

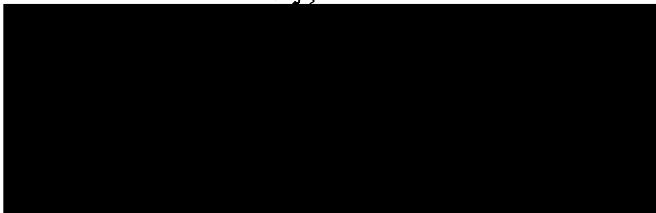
Firstly, please note that the Applicant, Boo Homes Ltd (BHL), has still made no comment or revision to its plans in order to take into account the fact that BHL does not own all the land delineated in the applicant's drawings. Specifically, we note that the applicant's plans show that the driveway entrance to his property will be widened by up to 50% above its present size. As you and your colleagues will be aware from our previous submission dated 16th March, the verges of Birchley Road are owned by the Trustees; therefore the applicant has no right to widen his access driveway over the verges without the permission of the Trustees. This permission has **not** been requested and will **not** be granted if it facilitates in any way the potential construction of two separate properties on The Water Gardens house-plot, as this would be in breach of the terms of the Deed of Covenants, which the Trustees have a duty and responsibility to uphold -- in the interests of all residents of the Battledown Estate.

Secondly, as the CBC Planning Officers and Committee are well aware, one of the Trustees' primary objections to this proposed development is that it would be in breach of the 1859 Deed of Covenants. Therefore, in this context we note with appreciation that the provisions of these Covenants have very recently been taken into consideration by CBC Planning Officers in an evaluation of another proposed property development on land situated within the Battledown Estate. The application by Savignac Developments to build three houses on 'The Bredons' house-plot and adjoining land off Harp Hill (ref 17/00015/FUL) was recently the subject of a 'Permit' recommendation in the Delegated Officer's Report (Mrs Lucy White). The Trustees are pleased to note that in section 6.28 of her Report and Permit Recommendation dated 12th April 2017, Mrs White made specific mention of the Battledown 1859 Deed of Covenants and the fact that Cheltenham Borough Council has "taken the pragmatic approach" of accepting the provisions of the Deed and their influence on the planning / development possibilities on this site --- and stated that the Council has therefore issued its recommendation in compliance with the provisions of the Deed. This pragmatic and considered approach to a very recent development application on the Battledown Estate is greatly appreciated by the Trustees and we hope that a similarly pragmatic and considered approach will be followed with regards to The Water Gardens, in the interests of all current and future Battledown residents, together with the wider Cheltenham population.

In this context, it is also worth noting that 'The Bredons' development consisted of demolishing one house and building more than one property in its place. The reason that the Trustees were, and are, able to support that application (and yet oppose The Water Gardens application) is simply because the former does not breach the housing density limitations of the Covenants, whereas the latter most certainly does.

Thank you for your kind attention.

Yours sincerely,

A large black rectangular redaction box covering the signature of Roger Willbourn.

Roger Willbourn

For and on behalf of the Trustees of The Battledown Estate

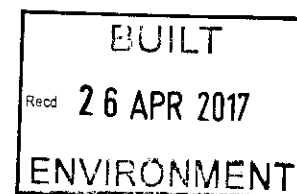


E : planning@battledown.co.uk

T : [REDACTED]

25th April, 2017

Cheltenham Borough Council
Planning Department
Promenade, Cheltenham GL50 1PP
Attn : Ben Hawkes Esq.
Planning Officer



Dear Mr Hawkes :

Ref Planning Application dated 22 February : 17/00356/FUL : The Water Gardens

We understand that the existence of private covenants, and the provisions contained therein, are conventionally not matters of concern to the planning officers at Cheltenham Borough Council [CBC]. CBC will be aware, however, that one of the primary reasons why the Trustees, together with over 90 other residents of the Battledown Estate, object so strongly to the above application is because it would, if permitted, be a very serious breach of the 1859 Deed of Covenants. It is the continuing compliance with the provisions of these Covenants by all residents that has maintained the Battledown Estate for over 150 years as a unique heritage district of which all Cheltenham's residents can be proud.

The Trustees have therefore brought to the attention of the Planning Officers a number of past occasions on which the provisions of the Covenants have been deliberately and positively taken into account by **Cheltenham Borough Council** when considering development and building works on land within the Battledown Estate; these include instances from 1975 through until 2017 and are referenced in our original 'Objection' submission dated 15th March and our further letters dated 24th March and 20th April 2017.

Today, however, a further instance of CBC including compliance with the provisions of the 1859 Deed of Covenants **as a condition in its own requirements** for building works on the Estate has been brought to the Trustees' attention and we attach it hereto. We believe this additional precedent will be of considerable assistance to the planning officers and committee when reaching a decision on this current application, 17/00356/FUL.

We are enclosing the documents concerning this particular instance; they are a Conveyance of a property from Cheltenham Borough Council to a private owner, plus its associated Land Registry Charges and Schedules register. We have highlighted for ease of reference those sections which clearly demonstrate the requirement by **Cheltenham Borough Council** that the developer and future owner(s) of a property on the Estate abide by the provisions of the 1859 Deed of Covenants, **including the necessity of obtaining approval from the Trustees and/or the Estate Surveyor.** This particular property was Plot 5, Battledown Approach, which became 8 Battledown Drive which became Wellswood House. This plot lies entirely within Original Lot 60 of the Battledown Estate, the same Original Battledown Lot in which The Water Gardens sits and, indeed, it is the house-plot directly adjacent to The Water Gardens.

As you are aware, in the case of 'The Water Gardens' both the Estate Surveyor and the Trustees have advised that the applicant's development proposals are in breach of the Covenants and are, therefore, unacceptable. This information has been repeatedly conveyed to the applicant. So, in line with CBC's previous upholding of the provisions of the 1859 Deed of Covenants, we sincerely request that CBC maintains its earlier position on related issues by refusing permission for this applicant's development proposal.

We trust that these documents will be of assistance to CBC and we thank you for your kind attention.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

For and on behalf of the Trustees of The Battledown Estate

Enc.

DATED 21st July 1976

⑨

CHEL TENHAM BOROUGH COUNCIL

- to -

MR. AND MRS. B. BABBAGE

Conveyance

- of -

Plot 5, Battledown Approach,
Battledown, Cheltenham in the
County of Gloucester

Messrs. Keith & Co.,
5 Imperial Square,
Cheltenham,
Glos.
GL50 1PB

For Sealing - min No 3.
Policy & Finance 20.4.76
Council 26.4.76.

26 JUL 1976

IN. REG. ACT 1231

SHAW & SONS LTD.
SHAWAY HOUSE,
LONDON, S.E.26.

This Conveyance

is made the *Twenty-first* day of

July

One Thousand Nine Hundred and Seventy Six BETWEEN

CHELTENHAM BOROUGH COUNCIL of Municipal Offices Promenade Cheltenham in Gloucestershire (hereinafter called "the Vendor") of the one part and BRIAN BABBAGE and MARIAN BABBAGE his Wife both of "Lynworth" Leckhampton Hill Cheltenham aforesaid (hereinafter called "the Purchasers") of the other part
W H E R E A S :-

- (1) The Vendor is seised (inter alia) of the property hereinafter described for an estate in fee simple absolute in possession subject only as hereinafter mentioned and otherwise free from incumbrances
- (2) The Vendor has agreed with the Purchasers for the sale to them of the said property for the like estate at the price of Ten Thousand Five Hundred Pounds AND IT HAS BEEN AGREED that the same shall be vested in them as joint tenants in manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:-

1. IN consideration of the sum of Ten Thousand Five Hundred Pounds paid by the Purchasers to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys unto the Purchasers ALL THAT the property described in the First Schedule hereto together with the benefit of the rights of way and drainage mentioned in the Second Schedule hereto AND EXCEPT AND RESERVED unto the Vendor the rights set out in Part II of the Third Schedule hereto TO HOLD the same unto the Purchasers in fee simple as joint tenants SUBJECT TO and with the benefit of the rights easements covenants conditions and other matters contained or referred to in the Fourth Schedule hereto AND SUBJECT TO the covenants on the part of the Purchasers hereinafter contained AND SUBJECT ALSO to the conditions and other matters set out in Part III of the Third Schedule hereto
2. FOR the benefit and protection of the lands comprised in the Vendor's Battledown Approach Building Estate shown edged green on the said plan annexed hereto or any part or parts thereof other than the land hereby conveyed so as to bind the land hereby conveyed into whosoever hands the same may come the Purchasers hereby jointly and severally covenant with the Vendor that they the Purchasers and those deriving title under them will at all times hereafter observe and perform the restrictions and stipulations set out in Part I of the Third Schedule hereto but so that neither of the Purchasers nor those deriving title under them shall be liable for a breach of the said restrictions and stipulations so far as they are negative in character which may occur on or in respect of the land hereby conveyed or any part or parts thereof after he she or they shall have parted with all interest therein

3. IT IS HEREBY DECLARED that the Trustees for the time being of this Deed shall have full power to sell mortgage charge lease or otherwise dispose of all or any part of the said property with all the powers in that behalf of an Absolute Owner

4. THE Vendor hereby acknowledges the right of the Purchasers to the production of the documents specified in the Fifth Schedule hereto (the possession of which are retained by the Vendor) and to delivery of copies thereof and undertakes with the Purchasers for the safe custody of the said documents

5. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Fifteen Thousand Pounds

IN WITNESS whereof the Vendor has caused its common seal to be hereunto affixed and the Purchasers have set their hands and seals the day and year first before written

THE FIRST SCHEDULE before referred to

(the property)

ALL THAT piece or parcel of land containing an area of 0.44 of an acre or thereabouts and situate and known as Plot 5 Battledown Approach Battledown Cheltenham in the County of Gloucester which said land is for the purpose of identification shown edged red on the plan annexed hereto

THE SECOND SCHEDULE before referred to

(rights granted)

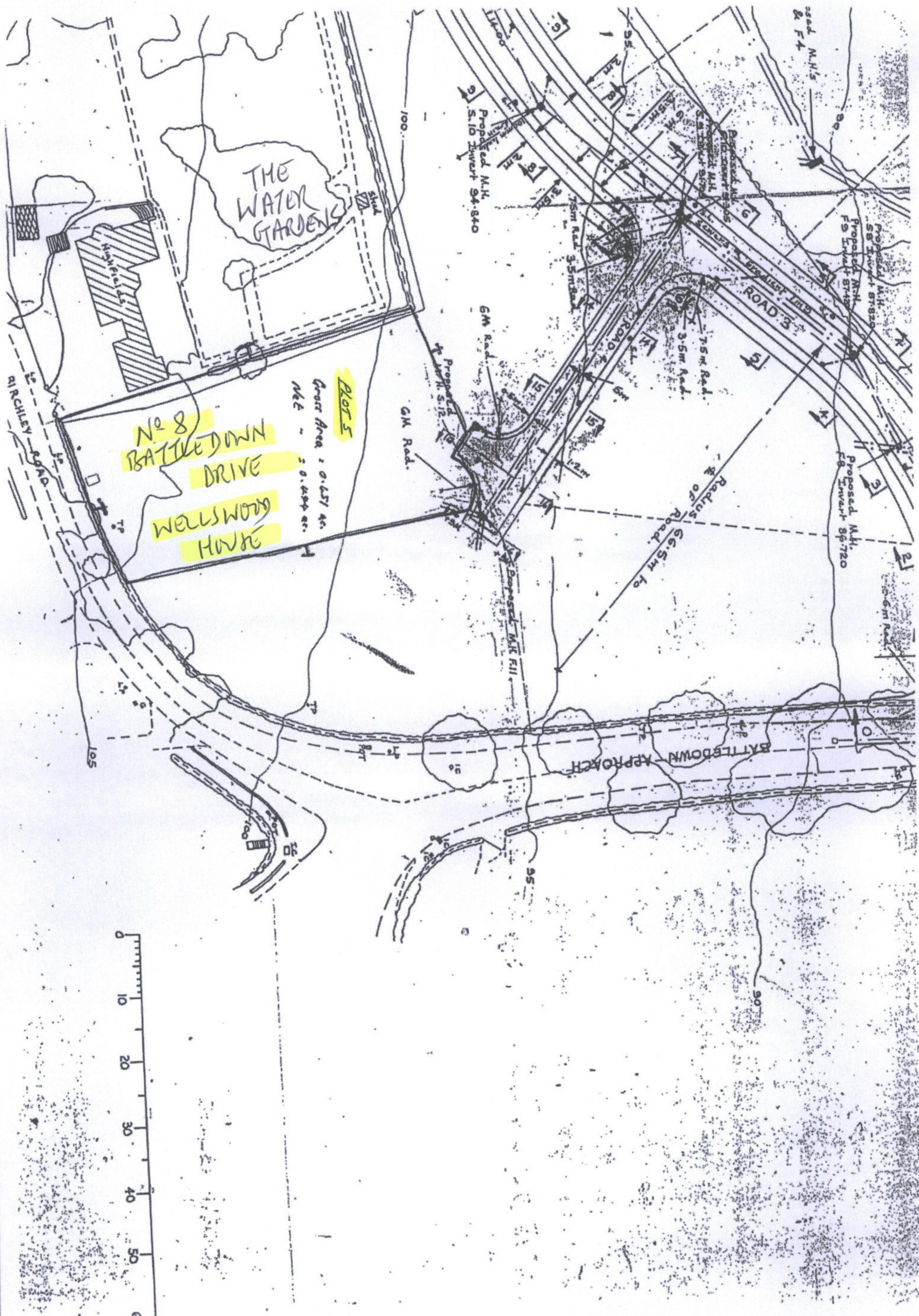
1. A right of way at all times and for all purposes over the roads and footpaths as more particularly contained in a Deed of Grant and covenant dated the 18th day of June 1975 and made between the Trustees of the Battledown Estate of the one part and the Vendor of the other part

2. The right to connect (at the Purchasers expense) into the main sewers or drains situate in the adjoining highway and the right in common with any other person or persons having the like right to use the existing sewers and drains situate under any of the adjoining or neighbouring Plots shown on the said plan annexed hereto the Purchasers being responsible for the costs of reinstating all necessary excavations made to the adjoining land footpaths and roads for the purpose of connecting their property to the main sewers such reinstatement to be carried out in accordance with specifications accepted by the Association of Gloucestershire Engineers and Surveyors

THE THIRD SCHEDULE before referred to

PART I (restrictions and stipulations)

1. To maintain in good condition and properly trimmed the existing hedge situate between the land hereby conveyed and Birchley Road and to maintain



the fence on the same boundary

2. Within one year from the date hereof or such other period or periods as the Vendor shall in its discretion agree in writing to commence the building of one dwellinghouse with garages and necessary outbuildings together with a properly laid out and landscaped garden on the said land all such work to be completed within two years from the date hereof but subject to the right of the Vendor to extend the period as aforesaid

3. No building shall be erected on the said land which shall not be in accordance with plans drawings and specifications which shall have been approved in writing by the Vendor and the Trustees of the Battledown Estate

4. No trade or business shall be carried on upon the said land or any part thereof and no act or thing shall be done or suffered thereon which shall be a nuisance or annoyance to the owners or occupiers of any of the lands forming part of the said building estate

5. Not to damage alter or build over the drains or sewers serving the said property

PART II (Rights except and reserved)

1. Full right of entry at all reasonable times for the purpose of inspecting repairing and replacing the said drains and sewers serving the property whenever necessary subject to the making good of damage so caused

2. The right to modify waive or release any of the restrictions or stipulations mentioned in Part I of this Schedule in relation to adjoining or neighbouring land whether imposed or entered into before or at the same time as or after this Conveyance and whether they are the same as the restrictions and stipulations set out in Part I of this Schedule or not and notwithstanding that such adjoining or neighbouring lands forms part of the said building estate including any restrictions and stipulations which may become binding on the Vendor by virtue of this deed and the right to modify waive or release hereby reserved shall be exercisable by the Vendor and those deriving title under it to the said building estate or any part or parts thereof except that in the case of those so deriving title by conveyance on sale the said right shall be exercisable only by those to whom it is expressly assigned

PART III (conditions and other matters)

1.(a) In the event of the Purchasers failing to either commence building in accordance with approved plans within one year from the date hereof or such other period or periods as agreed in

by writing/the Vendor shall have the option of re-purchasing the unincumbered fee simple of the land hereby conveyed such option to be exercised within a period of three months from the date that the Purchasers either fail to commence building or fail to complete all building work by giving notice in writing to that effect and if it is not so exercised the Purchasers shall hold the said land free from their covenant

- (b) In the event of the above option being exercised the price to be paid by the Vendor will be the lesser of the original sale price to the Purchasers and the market value at the date of such exercise and in default of agreement the price shall be fixed by the valuation of a qualified valuer to be agreed upon by the parties or in default of agreement to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors and the cost of such valuation shall be paid equally by the parties hereto

- 2.(a) The Purchasers shall not sell the said land or any part thereof at any time prior to the completion of the building works unless the Purchasers shall have first notified the Vendor of the proposed sale and offered to sell the said land to the Vendor on the terms hereinafter contained and the Vendor has refused such offer or has failed to accept it within two months after it is made

- (b) If the Vendor shall accept such offer before the expiration of the said period of two months the Purchasers shall sell the said land to the Vendor upon the following terms and conditions:-

(i) The purchase price shall be in the sum of Ten Thousand Five Hundred Pounds

(ii) The sale shall be completed and the amount of the purchase money paid within six weeks after such acceptance in writing as aforesaid

- (c) Any notification or offer under this covenant shall be made by the Purchasers in writing and sent by recorded delivery service addressed to the Town Clerk and Chief Executive of Cheltenham at his office at the Municipal Offices Cheltenham or left for him there and any acceptance by the Vendor shall be well and sufficiently made if under the hand of the said Town Clerk and Chief Executive and sent by recorded delivery service addressed to the Purchasers at their last known address or left for them there and any such offer or acceptance shall be deemed to have been made at the time of delivery

THE FOURTH SCHEDULE before referred to

(rights easements covenants conditions and other matters)

1. The right of the owner or occupier for the time being of the adjoining property known as "Highfield" Birchley Road Battledown aforesaid to use the existing foul water sewer shown by a yellow line on the said plan annexed hereto with full right of entry at all reasonable times for the purpose of inspecting repairing and replacing the said sewer whenever necessary subject to the making good of any damage so caused

2. To the following matters and to all outgoing easements and rights in the nature of easements affecting the property hereby conveyed so far as the same are still subsisting and capable of taking effect:-

(i) the covenants and stipulations contained in a Memorandum of Agreement dated the 12th day of November 1874 and made between the Reverend Arthur Armitage of the one part and Charles Winstone of the other part

(ii) the covenants and conditions contained in a Deed of Regulation dated the 2nd day of December 1859 relating to the Battledown Estate

(iii) the covenants rights and conditions contained in the said Deed of Grant and Covenant dated the 18th day of June 1975 (but excepting sub-clauses (1) and (2) of Clause 2 of the said Deed)

THE FIFTH SCHEDULE before referred to

(Deeds and Documents)

<u>Date</u>	<u>Document</u>	<u>Parties</u>
20.7.1962	CONVEYANCE	Webb Brothers Limited (1) Charles Edmund Clerke Burton Alec Nevile Birkmyre Christopher Vincent Smith (2) Cheltenham Corporation (3)
18.6.1975	DEED OF GRANT AND COVENANT	Trustees of the Battledown Estate (1) Cheltenham Borough Council (2)

THE COMMON SEAL OF CHELTENHAM)
BOROUGH COUNCIL was hereunto)
affixed in the presence of:)

SIGNED SEALED AND DELIVERED)
by the said BRIAN BABBAGE)
in the presence of:-)

SIGNED SEALED AND DELIVERED)
by the said MARIAN BABBAGE)
in the presence of:-)

[REDACTED]

John
Chittenden

[REDACTED]



OFFICE COPY

This office copy shows the entries subsisting on the register on 4 JUNE 1997.
 This date must be quoted as the 'search from date' in any official search application based on this copy.
 Under s.113 of the Land Registration Act 1925 this copy is admissible in evidence to the same extent as the original.
 Issued on 5 June 1997 by HM Land Registry. This title is administered by the GLOUCESTER District Land Registry.

Edition date : 13 March 1996

TITLE NUMBER : GR177692

Entry No.	A. PROPERTY REGISTER containing the description of the registered land and the estate comprised in the Title
	<p>COUNTY DISTRICT</p> <p>GLOUCESTERSHIRE CHELTENHAM</p>
1.	(27 February 1996) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 8 Battledown Drive, Battledown, Cheltenham, (GL52 6RX).
2.	(27 February 1996) The land has the benefit of the rights granted by but is subject to the rights reserved by the Conveyance dated 21 July 1976 referred to in the Charges Register.
	NOTE:-The rights of way granted by the Deed of Grant dated 18 June 1975 referred to are over Battledown Drive.

Entry No.	B. PROPRIETORSHIP REGISTER stating nature of the Title, name, address and description of the proprietor of the land and any entries affecting the right of disposing thereof TITLE ABSOLUTE
1.	(27 February 1996) Proprietor: DAVID WILLIAM PRITCHARD and MARGARET ANN PRITCHARD both of 8 Battledown Drive, Battledown, Cheltenham, Glos., GL52 6RX.
2.	(27 February 1996) The Transfer to the proprietor contains a covenant to observe and perform the covenants referred to in the Charges Register and of indemnity in respect thereof.
3.	(27 February 1996) RESTRICTION: Except under an order of the registrar no disposition by the proprietor of the land is to be registered without the consent of the proprietor of the Charge dated 26 January 1996 in favour of Lloyds Bank PLC referred to in the Charges Register.

Entry No.	C. CHARGES REGISTER containing charges, incumbrances etc, adversely affecting the land and registered dealings therewith
1.	(27 February 1996) The land in this title is with other land unknown subject to two perpetual yearly rentcharges of £10 and £10 created by a Deed dated in or about the 8th year of the reign of King Charles I under the hand and seal of Dame Mary Morrison. No other particulars of the rent charges were produced on first registration.
2.	(27 February 1996) A Deed of Mutual Covenant dated 2 December 1859 and made between (1) Somerset Tibbs and others and (2) the several persons whose names were contained in the schedule thereto contains covenants and

Continued on the next page

WELLSWOOD
HOUSE •
LOCATED
ENTIRELY
WITHIN
THE
BATTLEDOWN
ESTATE •

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 Issued on 5 June 1997 by HM Land Registry. This title is administered by the GLOUCESTER District Land Registry.

TITLE NUMBER : GR177692

Entry No.	C. CHARGES REGISTER (continued)
	provisions relating to the regulation of the Battledown Estate. <i>NOTE:-Copy in Certificate. Copy filed.</i>
3.	(13 March 1996) A Deed dated 18 June 1975 made between (1) Eva Laura Frances Allpress and others (Trustees) and (2) Cheltenham Borough Council (Grantee) contains covenants details of which are set out in the schedule of restrictive covenants hereto.
4.	(27 February 1996) A Conveyance of the land in this title dated 21 July 1976 made between (1) Cheltenham Borough Council and (2) Brian Babbage and Marian Babbage contains restrictive covenants. <i>NOTE: Copy in Certificate.</i>
5.	(27 February 1996) REGISTERED CHARGE dated 26 January 1996 to secure the moneys including the further advances therein mentioned.
6.	(27 February 1996) Proprietor: LLOYDS BANK PLC (Co. Regn. No. 2065) Dept. No. 9187 Bristol Regional Securities Centre, P.O. Box 853, Unit 8, City Business Park, Easton Road, Bristol BS99 5HZ.

Item No.	SCHEDULE OF RESTRICTIVE COVENANTS
1.	<p>The following are details of the covenants contained in the Deed dated 18 June 1975 referred to in the Charges Register:-</p> <p>THE Grantee hereby COVENANTS with the Trustees (which expression shall in this Deed include the Trustees from time to time of the Deed of Regulation) as follows:-</p> <p>(5) That not more than seven dwellinghouses (with the usual outbuildings) shall be erected on the said land of the Grantee shown edged in red on the said plan without the prior written consent of the Trustees and that no trade or business shall ever be carried on thereon or in any of such dwellinghouses and that every such dwellinghouse shall be used and enjoyed as a private dwellinghouse only</p> <p>(6) That no such dwellinghouse or outbuilding shall be erected until lay-out and detailed plans and drawings thereof have been approved by the Trustees or their Surveyor on their behalf.</p> <p><i>NOTE:-The land in this title forms no part of the land edged red referred to.</i></p>

Continued on the next page

OFFICE COPY

This office copy shows the entries subsisting on the register on 4 JUNE 1997.
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Issued on 5 June 1997 by HM Land Registry. This title is administered by the GLOUCESTER District Land Registry.

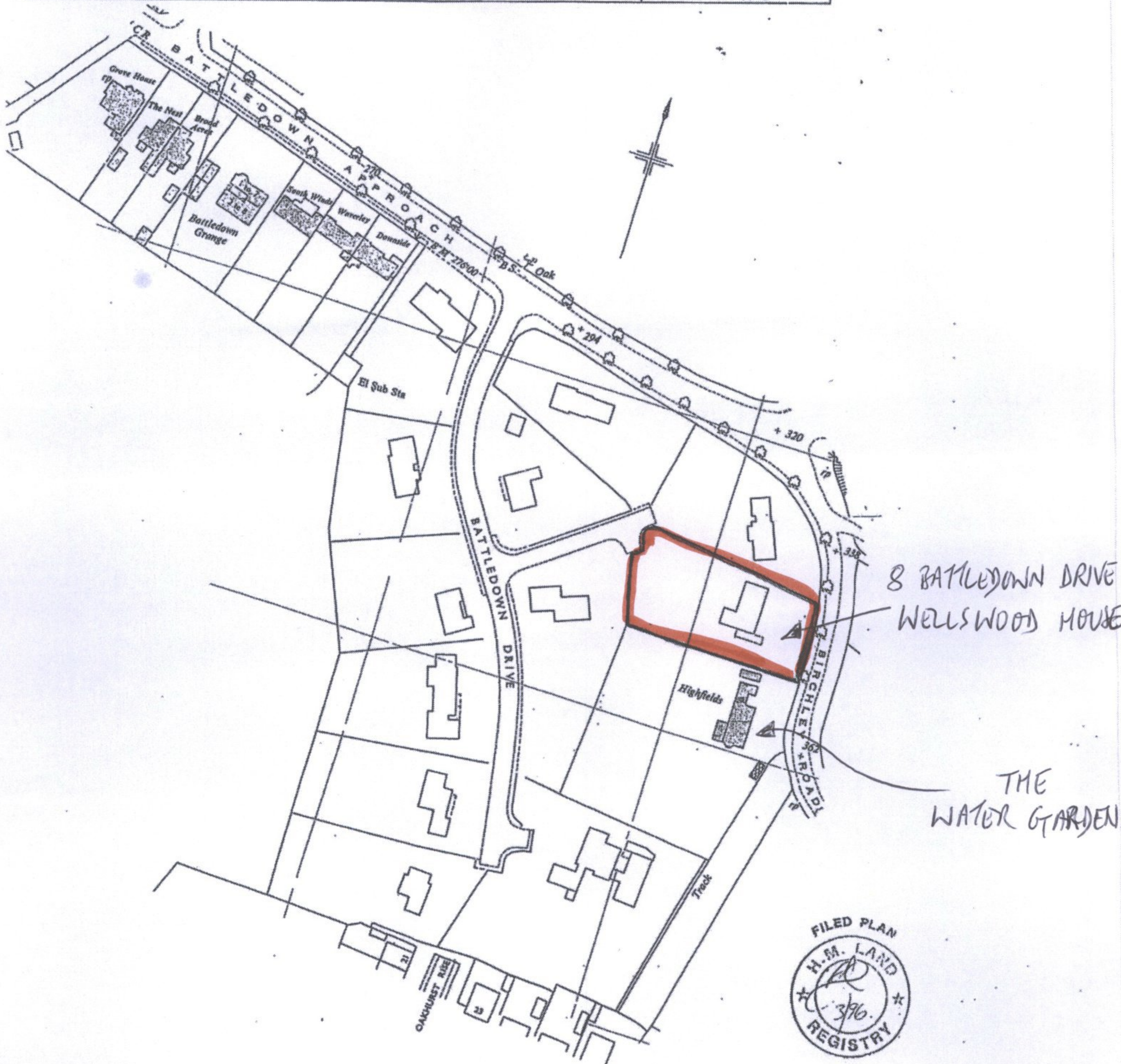
TITLE NUMBER : GR177692

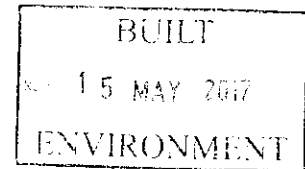
***** END OF REGISTER *****

NOTE : A date at the beginning of an entry is the date on which the entry was made in the Register.

This OFFICE COPY shows the state of the title plan on 4 June 1997
Under s.113 of the Land Registration Act 1925 this copy is admissible in evidence to the same extent as the original.
This Office Copy of the title plan may be subject to minor distortions in scale.
Issued on 4 June 1997 by H.M. Land Registry. This title is administered by the Gloucester District Land Registry.
Crown Copyright All rights reserved.

H.M. LAND REGISTRY		TITLE NUMBER	
		GR 177692	
ORDNANCE SURVEY PLAN REFERENCE	SO 9621	SECTION J	Scale 1/1250
COUNTY GLOUCESTERSHIRE	DISTRICT CHELTENHAM	© Crown copyright 1978	





E : planning@battledown.co.uk

15th May, 2017

Gloucestershire County Council

Shire Hall, Gloucester, GL1 2TH

Attn : David Simmons Esq. Development Coordinator

Dear Mr Simmons :

Ref Planning Application dated 22 February : 17/00356/FUL : The Water Gardens

We refer to the various documents published on the CBC Planning website on 11 May 2017 concerning the above application, in particular the 'Access appraisal note' CTP-17-218 dated April 2017 and the 'Addendum to access appraisal' note issue 02 dated May 2017.

In this connection, the Trustees wish to bring the following matters to the attention of both Glos County Council and the CBC Planning Officers, as we believe these factors will be helpful to them when the various interested parties are considering the above Application.

1. As I said in my letter to yourself dated 10th April 2017, the location of this site access is an accident black spot. That there may not be any "recorded personal injury collisions" on the CrashMap database is irrelevant, because the risk is evident from the data that we as Trustees hold and it is merely due to good fortune and the Trustees' efforts to reduce this risk that, so far, no serious injuries or death have occurred. CTP have acknowledged that Birchley Road is at this point a "windy road of relatively narrow width". I have already provided you with a list of the accidents which have taken place recently, together with photographs, and I would ask you to look at those items again. The Trustees have, at some considerable expense, addressed this risk and the continuing danger by installing speed humps, applying a skid-resistant surface to the road and installing verge posts with light reflectors. It cannot be right, therefore, to add to the existing risk by intensifying the use of this access.
2.
 - 2.1. CTP's report seeks to rely on traffic data which it has already admitted is inaccurate due to the method of its collection (see CTP's email of the 29th March 2017). The existence of a parked car will have the effect of slowing the traffic and, having observed the 360TSL survey vehicle on site on the 25th April, I can confirm that that is likely to have been the case. When the vehicle was not located in entirely the wrong place (*see 2.2 below*), it was parked in the driveway to The Water Gardens as though it was about to emerge onto the road. It thereby represented a potential hazard to which drivers will have reacted instinctively. This was exacerbated by the fact that the vehicle's bonnet protruded out onto the road adding to the perceived risk.

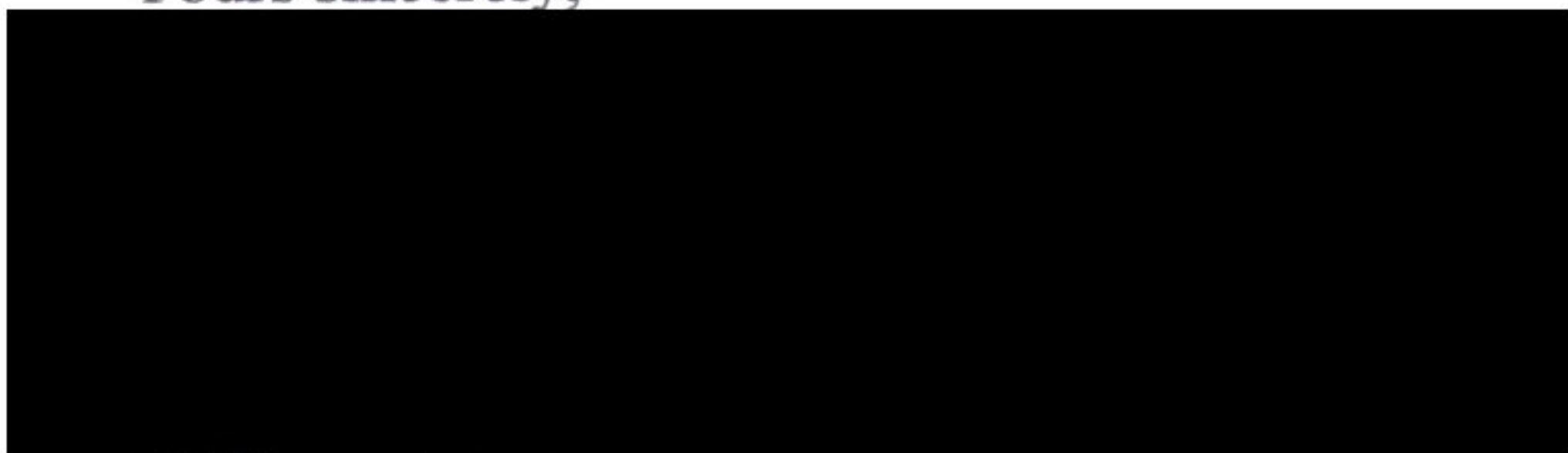
2.2. As mentioned above, for part of the day the vehicle was collecting data from entirely the wrong location (Wellswood House). This continued until the house owner instructed the 360TSL driver to remove his car from the Wellswood House driveway.

2.3. The traffic-speed data cannot therefore be relied upon as the basis for making reliable judgments regarding the suitability of the visibility splays or for any other purpose associated with the application.

3. The visibility splay to the north shown on Drawing SK04 can only be drawn by relaxing the usual criteria, both by moving the X point forwards by 400mm and by offsetting the other end of it by 300mm away from the edge of the highway. This is unsafe, in view of the traffic speeds most likely being higher in practice than the speeds recorded by the unreliable measuring exercise conducted by 360TSL on behalf of CTP.
4. The visibility splays to the north and to the south shown on the drawings submitted to GCC are already compromised by established features/planting etc. and are on land which the applicant does **not** own and over which he has **no** control. Consequently, the applicant cannot remove any such impediments to visibility and cannot ensure that there are no new features and/or planting in the future.
5. Since the traffic speed data is inaccurate, it is unsafe to relax the vision splay criteria to the north in order to facilitate single-access working.
6. GCC have required that the drawings demonstrate that single-access working does not cause a danger to traffic from the south. The addendum fails to address this at all. This is of particular concern to us as Trustees because most of the accidents which have occurred have been caused by vehicles approaching this accident black spot from that direction. This approach from the south is downhill and around a tight bend to the right. An unexpected stationary vehicle in the road will increase the accident risk, which the Trustees most certainly can not endorse.

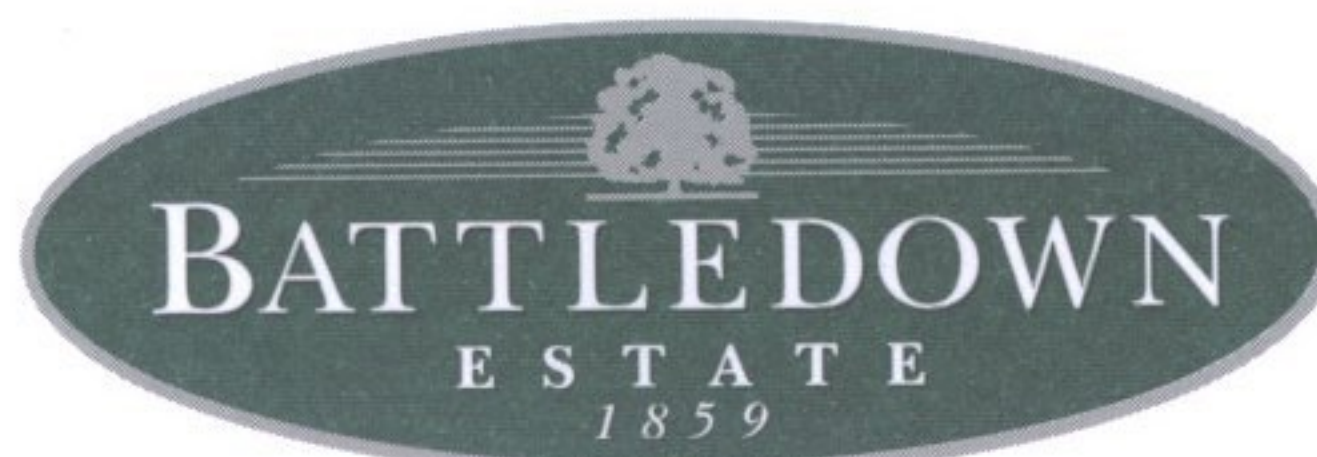
We trust that these observations will be of assistance to both yourselves and CBC and we thank you for your kind attention.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

For and on behalf of the Trustees of The Battledown Estate

cc : Mr Ben Hawkes : Planning Officer : Cheltenham Borough Council



E : planning@battledown.co.uk

T : [REDACTED]

24th May, 2017

Gloucestershire County Council
Shire Hall,
Gloucester, GL1 2TH
Attn : David Simmons Esq.
Principal Development Coordinator

Dear Mr Simmons :

Ref Planning Application dated 22 February : 17/00356/FUL : The Water Gardens

I refer to the various documents published on the CBC Planning website on 22 May 2017 concerning the above application, in particular the e-mails from Michael Glaze of Cotswold Transport Planning [CTP] and the correspondence from Paul Castle of 360TSL Ltd, both dated 19th May 2017.

With reference to the above, the Trustees wish to bring the following matters to the attention of both Glos. County Council and the CBC Planning Officers, as we believe these factors will be helpful to them when the various interested parties are considering the above Application.

From the documents posted on the CBC website, it is apparent that you have asked for clarification as to the methods used to measure speeds in Birchley Road, resulting in the production of data which has been used by CTP to inform two reports and an addendum relating to highways issues, as part of the planning process for the above property. You have received a statement prepared by the traffic surveyor, Paul Castle of 360 TSL Limited, in support of the survey data and contending that the data is sufficiently accurate -- but unfortunately the statement contains comments within it which are materially incorrect. Consequently it is incumbent upon me as Trustee of the Battledown Estate to draw these matters to your attention, and to the attention of CBC, so that you can properly consider the reports.

In this context, please be aware of the following :-

1. 360 TSL is not independent. There are two reasons for this. Firstly, it is in its commercial interests to minimise any defects in its data collection methodology when these are questioned by its client. Secondly its client is a planning applicant and the survey was commissioned by the applicant in order to support the application and thus implicitly preferring a certain outcome.


2. Mr Glaze says in his email to you of the 19th May that "the Trustees did not allow us to undertake an ATC..." This is **incorrect** in that the Trustees have neither granted nor refused permission. The Trustees were asked by BPA (Wendy Hopkins) in her emails of the 5th and 13th April, whether speed survey equipment could be installed in Birchley Road. I replied to BPA by email on 13th April, at which time I undertook to convene a meeting of the Trustees and stated that ".... in order for the Trustees to be fully informed of the proposal so that they can give proper consideration to the request, we shall need to know what type of monitoring equipment BPA wishes to use, given that certain correspondence we have seen indicates that such installation of certain types of speed survey equipment could be unsafe in this location." I have **not** received any reply to this request and so the Trustees are still awaiting this information in order that they can give the matter proper consideration.
3. Furthermore, with reference to Mr Castle's statement of the 19th May :-
 - 3.1. Mr Castle admits that for some time the vehicle was parked in the wrong location and that the data is flawed for that period. This was not revealed in the report and calls into question what other aspects of the data collection exercise are flawed but which he does not wish to disclose.
 - 3.2. Mr Castle says that the vehicle was collecting data from the wrong driveway from 7.00am till 7.30am. You will have seen the email from Mr Hartley, (the owner of Wellswood House) dated the 22nd May. Mr Hartley states that when he left for work at about 7.20am on that morning, which is when Mr Castle says that the survey vehicle was parked on Mr Hartley's drive, there was no vehicle there. Clearly the survey vehicle was **not** where Mr Castle says it was between 7.00am and 7.30am. Furthermore, you will have seen the photograph of the survey vehicle at Wellswood House taken at 7.59am. It would appear that Mr Castle does not know for what period the vehicle was wrongly placed and therefore what data is flawed. If he is mistaken in respect of these simple facts, then what else is he mistaken about ?
 - 3.3. As the survey vehicle was not at Wellswood House nor at The Water Gardens when the report says it was, then where has the data for the period of absence in the survey report come from? Was it simply manufactured? I know that Mr Glaze says in his email that speeds during this period were not used in the assessment but this was not disclosed in the report. Also, if these speeds were not used, what was the purpose of purporting to having collected them?
 - 3.4. GCC has requested a speed survey over a period of 12 hours. It is now clear that a 12 hour survey was not conducted -- but the report misleadingly says that it was.
 - 3.5. Mr Castle says that the survey vehicle did not protrude onto the carriageway. However he also says that the speed camera equipment was located within the vehicle and that the enumerator had an unrestricted view. These statements are inconsistent. For the vehicle to be positioned on the driveway of The Water Gardens such that the occupant has an unrestricted view, it must have been positioned sufficiently far forwards for the front of it to be overhanging the carriageway.

- 3.6. The survey vehicle was not inconspicuous. It was a relatively large white four-door estate-car parked in the entrance to The Water Gardens and facing forward towards the road as though it was about to emerge. As I said in my letter to you of the 15th May, the survey vehicle represented a perceived hazard to other road users and so inevitably will have influenced their speeds at this location. This effect was admitted by Mr Glaze in his email to you of the 29th March, when he acknowledged that a survey vehicle "in this location.....would be likely to influence traffic speeds and would not represent free flow traffic conditions."

Given the circumstances outlined above, there are serious concerns over the manner in which the speed survey has been conducted and hence the accuracy and validity of the data collected from the survey on 25th April. I am also very concerned at the obvious inaccuracies in the details that have been given to you, in reply to your legitimate request for clarification.

I trust that these observations will be of assistance to both yourselves and CBC and thank you for your kind attention.

Yours sincerely,

A large black rectangular redaction box covering the signature of the sender.

For and on behalf of the Trustees of The Battledown Estate

● cc : Mr Ben Hawkes : Planning Officer : Cheltenham Borough Council