

BARNSELY METROPOLITAN BOROUGH COUNCIL

Report of Assistant Director,
Highways, Engineering and
Waste Management to
Planning Regulatory Board on
17 February 2015

Extinguishment of part of public footpath 60 Barnsley between Edgecliffe Place, Smithies and the junction with footpath 61, and the diversion of part of public footpath 61 and 60 between Richard Road and the rear of the TA centre

1.0	<u>Purpose of Report</u>
1.1	To consider an application to extinguish part of public footpath 60 Barnsley between Edgecliffe Place, Smithies and the junction with footpath 61, and the diversion of part of public footpath 61 and 60 between Richard Road and the rear of the TA centre, both of which are affected by the Cypress Heights residential development.
2.0	<u>Recommendations</u>
2.1	That, in exercise of statutory powers, the Council makes Public Path Orders under the provisions of section 257 of the Town and Country Planning Act 1990, and under section 118 of Highways Act 1980 for the extinguishment of part of public footpath 60 and under section 257 of the Town and Country Planning Act 1990 for the diversion of part of public footpath 61 and 60 as shown on the plan attached at Appendix A of this report.
2.2	That the Common Seal of the Council be affixed to the Orders and that the Director of Legal and Governance be authorised to publish the proposal and to submit the Orders for confirmation by the Secretary of State or to confirm them himself in the event of there being no objections thereto.
2.3	In the event the Orders are confirmed, the Director of Legal and Governance be authorised to make a Definitive Map Modification Order to make the necessary changes to the Definitive Map and Statement for the area.
3.0	<u>Background and Proposal</u>
3.1	<p>Saul Homes have taken over the housing development known as Cypress Heights, off Carlton Road, Smithies. A revised planning permission for the remainder of the site, reference 2014/1139, was approved in December 2014.</p> <p>There are two public footpaths running across the north eastern part of the site which are both affected by the development.</p> <p>The previous developer significantly remodelled the ground levels to maximise the developable area. On the west and northern edges there is a steep slope down to the surrounding properties below and to the east the steep slope goes up to the properties above. In the south east corner is an almost vertical slope that is identified as inaccessible area. This terrain limits building space and the potential</p>

	suitable locations for alternative footpath provision.
3.2	Public footpath no. 60 runs from Edgecliffe Place (marked at point D on the attached plan) south westerly for 16 metres (to the site boundary) then north westerly for 115 metres to its junction with footpath 61 (marked at point B) then continues to join Wakefield Road. The planning permission authorises the erection of 6 residential units in 3 pairs on terracing to address the height changes between Edgecliffe and the access road, then 2 additional properties between the access road and point A. The new buildings and the domestic gardens that have been approved are shown in positions that lie over the whole width of this part of the path.
3.3	<p>Technically there is just enough space between the back of the 6 properties and the inaccessible ground to accommodate an alternative footpath. However, it would be very steep requiring several flights of steps and hand rails, and fencing to protect the public from the inaccessible area. This would also create an additional security risk to the 6 properties in having a footpath directly behind their garden boundaries.</p> <p>There is more room to install a route from the access road to point A and this was identified as a possible option during recent informal consultation. It would provide a link for residents of the new development onto Wakefield Road although they would need to use the steep flight of steps beside the TA centre. It is thought more likely they would walk down the access road/Cypress heights then down Carlton Road which is a surfaced pavement with a gentler slope.</p> <p>This suggestion was put to the developer but they have rejected the idea on the grounds of security of property and safety of users given the proximity to the western slope. The area of open space around the development that includes the slopes to the north and west is in different ownership and there appears no intention to fence it off. Thus if there is demand and space for a link at a later date when the properties are built and it is possible to install one, that can be done.</p>
3.4	<p>The informal consultation raised concerns that the removal of this footpath would have on the residents of Edgecliffe Place and Ravenfield Drive, especially in accessing bus stops on Wakefield Road. Letters explaining the proposals have been sent to the residents of 77 properties in the estate but no responses have been received. It is believed that residents use the alternative footpaths from the estate onto Carlton Road which have a gentler gradient and a good surface, then walk down Carlton Road to the bus stops on Wakefield Road.</p> <p>It is acknowledged that this path has not been available for use for some time as it is blocked at Edgecliffe Place by Heras fencing and is physically blocked by the changes to the terrain</p>
3.5	The extinguishment under the Town and Country Planning Act will be for the section of footpath 60 across the development site (B to the rear of Edgecliffe Place). The remaining 16 metres of the path between number 14 and 15 Edgecliffe Place is outside of the site boundary and so will have to be extinguished in a separate but concurrent legal order made under the Highways Act 1980, on the grounds that it is not needed.
3.6	Public footpath 61 runs from Richard Road at the northern boundary of the development site generally south westerly to join footpath no 60. The planning

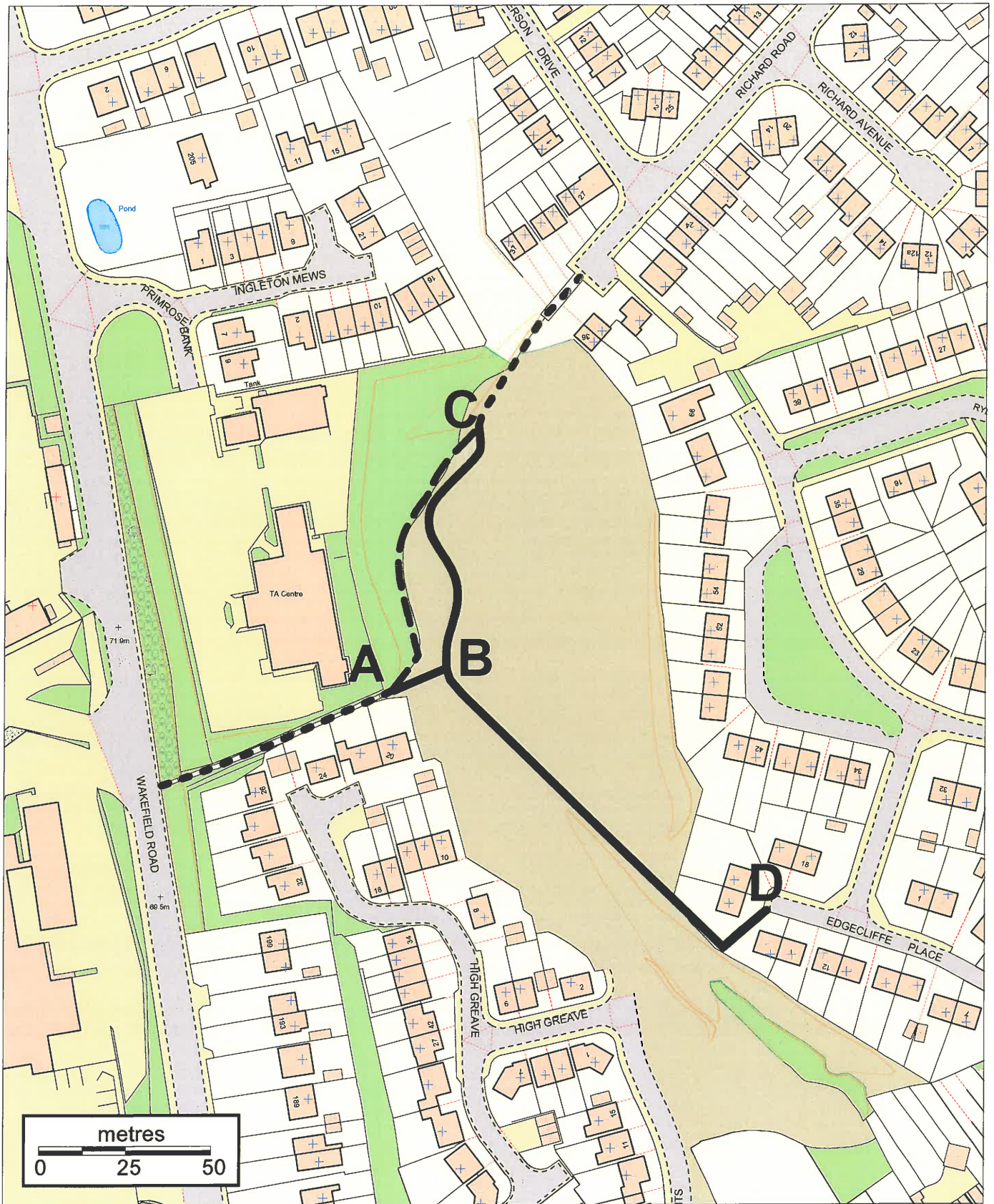
	permission authorises the erection of 3 new residential units and an access road, parts of which are shown as being positioned over the whole width of part of this footpath.
3.7	It is proposed to divert part of footpath 61 (C – B on the attached plan) and part of footpath 60 (B – A on the attached plan) around the boundary of the site within the sloping open space to continue to provide a pedestrian route between Richard Road and Wakefield Road (to the point marked A). The path will be at least 1.5 metres wide and will have a stone or tarmac surface. It will be at least 1 metre away from the property boundaries
3.8	Informal consultations have been carried out with statutory consultees, utilities, Ward Councillors. Comments from the informal consultations are shown in section 12 of this report.
4.0	<u>Statutory Criteria</u>
4.1	Section 257 of the Town and Country Planning Act 1990 enables public rights of way to be extinguished or diverted where the Council, as Planning Authority, is satisfied that it is necessary to do so in order to enable development to take place in accordance with planning permission that has been granted.
4.2	The planning permission that has been granted provides (inter alia) for the construction of new buildings, domestic gardens and access roads which will lie over parts of both footpath 60 and 61, as shown on the attached layout plan. Clearly the two cannot co-exist and given the reasons stated above the Council is satisfied that it will be necessary to extinguish part of footpath 60 to enable that development to take place (point B to the rear of Edgecliffe Place/site boundary).
4.3	For footpath 61 (C-B) and footpath 60 (B-A) as space and terrain allow for an alternative route to be built, we have sought a diversion in accordance with the legislation. The Council is satisfied the statutory criteria for the proposed diversion for parts of footpath 61 and 60 under the Town and Country Planning Act 1990 is met in this case. Defra guidance advises that the disadvantages or loss likely to arise as a result of the stopping up or diversion of a path to members of the public generally or to persons whose properties adjoin or are near to the existing footpath should be weighed against the advantages of the proposed order. There is no evident public demand to retain public footpath no 60 and the physical constraints on the site mean that even if a path were provided it would not likely be used and therefore be a drain on resources for the Council to maintain. The diversion of part of public footpath 61 and 60 is not considered to have any detrimental impact given its minor nature.
4.4	Section 118 of the Highways Act 1980 enables a path to be extinguished on the grounds that it is not needed for public use. Before confirming such an order, the Secretary of State or the Council, as the case may be, must be satisfied that it is expedient so to do having regard for the extent (if any)

	(i) that the path or way would be likely to be used by the public; and the effect which the extinguishment of the path would have as respect land served by the path or way.
4.5	If the section of footpath 60 (B - to the rear of Edgecliffe Place) is extinguished under the Town and Country Planning Act then this will leave a dead-end spur to point D. This is of no value to the network and will not be used by the public as it would go no-where, and therefore the Council is satisfied the statutory criteria for the proposed extinguishment of the remainder of the path, (D – the site boundary/rear of Edgecliffe Place) under the provisions of the Highways Act 1980 is met in this case.
4.6	The Council is further satisfied that it would be expedient to confirm the order because the path is not likely to be used by the public and the extinguishment of the path will have no effect on the land that is served by it.
5.0	<u>Options</u>
5.1	The Council makes the Orders applied for. Officers are satisfied that the necessary statutory criteria are met. There has been an objection to the proposed extinguishment of footpath 60 by Peak and Northern footpath society. It is likely that they will object in the formal consultation stage and as a result the matter will have to be passed to the Planning Inspectorate for a decision, delaying the building within this location by another 6 – 12 months. We have advised the applicant of the risks to continuing with the extinguishment as opposed to a diversion of footpath 60.
5.2	The Council could decline the application because it does not have a duty to make orders. However, the criteria is met in this case so that would be difficult to justify.
6.0	<u>Local Area Implications</u>
6.1	There are no implications for the local area as these proposals would have only minor changes to the Rights of Way network.
7.0	<u>Compatibility with European Convention on Human Rights</u>
7.1	This proposal is considered compatible with the Convention.
8.0	<u>Ensuring Social Inclusion</u>
8.1	These proposals have no negative impact on social inclusion for those with mobility impairments or accessibility issues.
9.0	<u>Reduction of Crime and Disorder</u>
9.1	Chris Squires (Crime Reduction Officer with South Yorkshire Police), in general supports extinguishment of routes rather than diversions where they are in proximity to property under ‘safer by design’ guidance. So supports the extinguishment of footpath 60. However, recognising the value of footpath 61, and the public’s continued access to the surrounding open space, he supports the

	diversion of footpath 61 and 60 provided additional fence height is added to improve property boundary security.
10.0	<u>Financial Implications</u>
10.1	<p>If there are objections to the orders there will be additional costs to the council that cannot be passed on to the applicant. This is especially the case if the matter has to be resolved at public inquiry.</p> <p>There would also be a risk of losing any grant funding attached to this development, should there be objections to the order and process delayed.</p>
11.0	<u>Risk Assessment</u>
11.1	The council has powers under the Town and Country Planning Act 1990 and Highways Act 1980 to make the necessary orders to extinguish/divert the footpaths. These applications fulfil the criteria for the legal orders to be made under those Acts.
12.0	<u>Consultations</u>
12.1	Statutory consultees, Local Access Forum members and Ward Councillors were all consulted on this proposal and comments are shown below. Chris Squires comments, Crime Reduction Officer, are shown above in section 9
12.2	<p>Councillor Platts replied</p> <p>“I am happy you have consulted on the permanent closure of the path from Edgecliffe Place in my opinion it is not a viable path and has been blocked for a long while .The other path from Richard Rd was included in the original development plans for Cypress Heights to reinstate into a usable path is this still going to happen?”</p> <p><i>Answer- We confirmed that footpath 61 from Richard Road would be diverted and remain available.</i></p>
12.3	<p>Councillor Tattersal replied</p> <p>“I am happy for both these foot paths. 60 and 61 to be closed, I too have concerns about the steepness and also it would not be lit at night which would be cause for concern. Could the route at the top, Edgecliffe place be properly sealed off as this has now become a dumping ground between the two homes.</p> <p>However can we ensure in planning that a suitable distance from the current back fences to the new property's that are to be built is a good/suitable distance away. This is to ensure light is not blocked in those persons gardens.”</p> <p><i>Answer - We explained that footpath 61 was proposed to be diverted (which she subsequently agreed with) and that the property location is a planning issue and outside of the remit of our report.</i></p>
12.4	No response received from Councillor Leech
12.5	<p>Tony Hunt Chair of the Local Access Forum raised the following</p> <ol style="list-style-type: none"> 1. No objection to diversion of footpath 61, although did ask about surfacing improvements on either side of the development and if lighting had been considered. <i>Answered – lighting was not an option on this diversion and</i>

	<p><i>path improvements outside of development are being considered</i></p> <p>2. Could a link route be considered between footpath 61 at the back of the TA centre and Cypress Heights road. As appears to be a desire line, and is through the open space. <i>Answered – link route has been suggested to the developer.</i></p> <p>3. Views of residents in Ravenfield Drive estate are important when considering the extinguishment of footpath 60. <i>Answered – we agree which is why we carried out additional consultation at this stage with local residents.</i></p>
12.6	<p>David Rhodes – Vice chair of Barnsley Local Access Forum commented “I think the local users should be asked about the closure (FP60), it does seem rather dramatic and there will have been no use or complaint if the site has been closed. People will often forego use if they think the path will be returned in the future. Just looking from google sat images is it not possible to make good route 60 around the site there seems to be plenty of space for an imaginative route. Finally preventing peoples access to the footpath network will at a later date only cause trespass issues as residents try to gain access to the routes when development built, is there no compromise between access and safety”</p> <p><i>Answer - We confirmed that we had direct mailed the residents at Ravenfield estate and waited for comments.</i></p>
12.7	<p>Chris Davison – Peak and Northern Footpath Society confirmed their holding objection to the extinguishment of footpath 60 with the following:</p> <p>“I have consulted with officers of Peak and Northern, and they agree with me that closing a footpath for reasons of convenience and cost (i.e. profit) is fundamentally wrong; for this reason we must sustain our provisional objection and await "official" developments, i.e. the formal proposal to extinguish fp 60. Are there real difficulties in building a replacement route or just builders view? We accept that the lack of local objection may tell against us.”</p> <p>The implications of this informal stage objection are as follows. We carry out informal consultation to gauge local and statutory consultees opinion whilst we can still amend any proposal within the Council responsibility and control. Once an order is formally made and published anyone has a legal right to object. If they do then the matter can only be confirmed by the Planning Inspectorate which will delay the building on site by up to another 12 months. It is possible that Peak and Northern will object should an order be made to extinguish footpath 60. The developers have been made aware of the situation and implications should an objection be made at that stage. They have decided to continue with the application to extinguish footpath 60 rather than divert it for the reasons outlined in the report above.</p>
12.8	<p>77 properties on Edgecliffe and Ravensfield received consultation letters and maps showing the proposals. 1 was returned undeliverable; there was no response by phone, email or letter from any of the properties. Whilst this cannot definitively be taken as support for the proposed extinguishment of footpath 60, it would indicate that residents either didn't read their letters or didn't feel sufficiently concerned one way or the other about the proposal.</p>
13.0	<p><u>Proposal</u></p>
13.1	<p>That Councillors approve all of the recommendations in section 2.</p>

14.0	<u>Glossary</u>
15.0	Appendices Appendix A – combined Plan showing extinguishment and diversion Appendix B – Development Site Layout Plan
	Officer Contact: Sarah Ford Tel: ext 2142
	Date: 6 February 2015



Proposed diversion / extinguishment of Barnsley footpaths 60 & 61	
Drawn by BMBC	Scale 1 : 1500
Map 1	-

Footpath(s) to be created

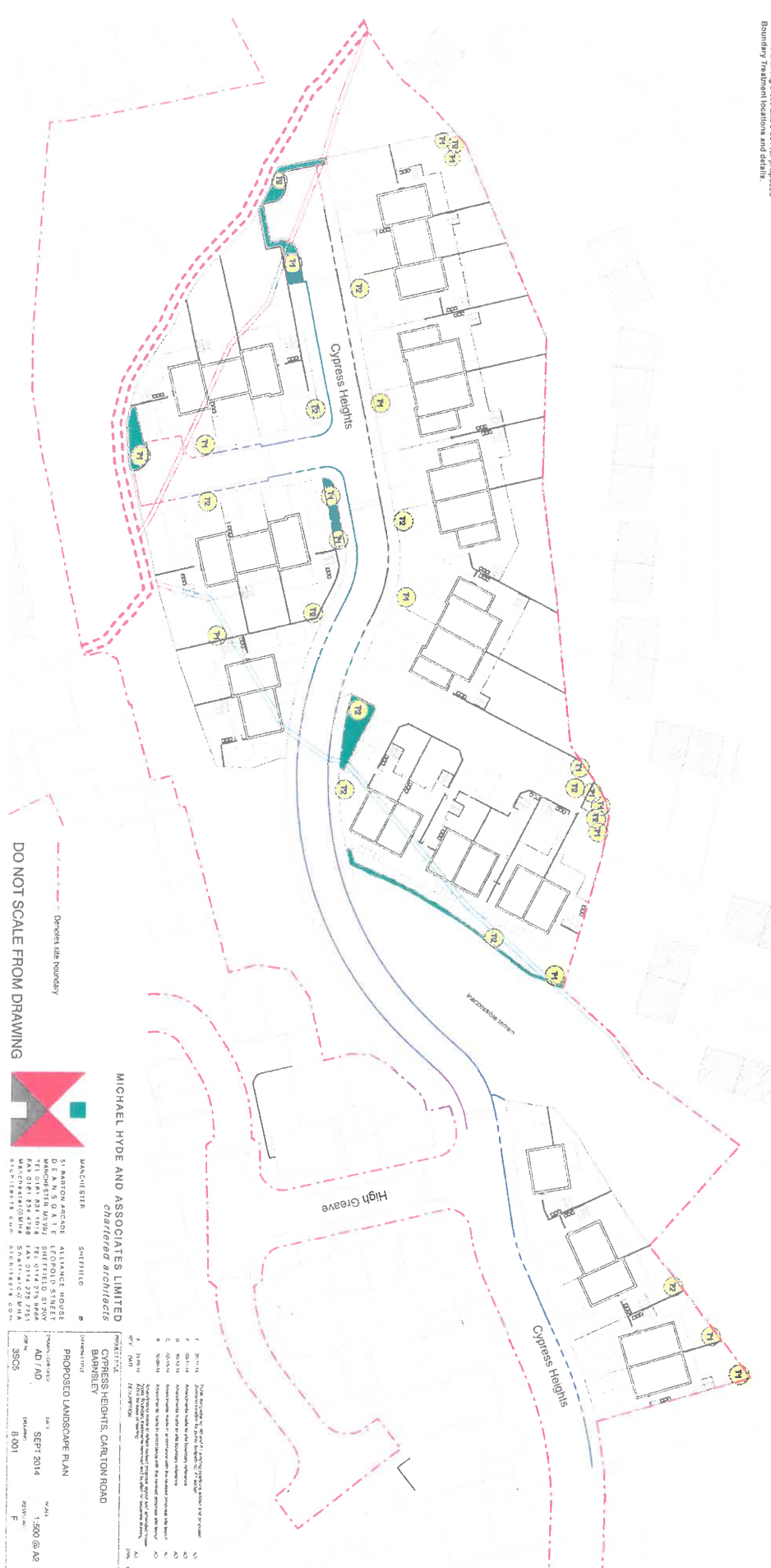
 Footpath(s) to be deleted

 Unaffected rights of way
 - - - - -



KEY

- Planting swales notes**
- P1 Crataegus monogyna (Hedgehog) 1725m BR (QJ-300) 1 x 1
 - Acer campestre (Field Maple) 125m BR (QJ-300) 1 x 1
 - Corylus avellana (Hazelnut) 1 x 2 x 1m (fruit)
 - 1 x 2 x 1m (fruit)
 - 1 (Dwarf Dog Rose)
 - QJ no BR (QJ-300) 1 x 1
 - Liquidambar styraciflua (Sweetgum) 25m BR (QJ-300) 1 x 1
 - Taxus baccata (Yew) 12m BR (QJ-300) 1 x 1
- Grass mown**
- G1 South island; width 2m; 4m
- Hard landscaping**
- H1 Made good / New masonry entrance road and/or parking to long-term specification
 - H2 New masonry boundary to engineer specification / Roadwork to provide in accordance with current standards and 4 grade cut no steeper than 1:20. The boundary width / depth within the proposal between 200mm and 1000mm.
 - H3 Material specified across ground concrete flag paving (to be installed on compacted subgrade). The difference between p1/4 of the paving and the top of the ground shall not be less than 150mm.
 - H4 1.5m wide, 2m high concrete wall to provide a 1:4 slope to the ground surface. The difference between p1/4 of the paving and the top of the ground shall not be less than 150mm.
- Trails**
- T1 Concrete/brick setts
 - T2 Concrete/brick/stone setts
 - T3 Concrete/brick/stone setts
 - T4 Concrete/brick/stone setts
 - T5 Concrete/brick/stone setts
 - T6 Concrete/brick/stone setts
 - T7 Concrete/brick/stone setts
 - T8 Concrete/brick/stone setts
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 - T27 Concrete/brick/stone setts
 - T28 Concrete/brick/stone setts
 - T29 Concrete/brick/stone setts
 - T30 Concrete/brick/stone setts
- Refer to drawing 3-03 and 3-04 for proposed Boundary Treatment locations and details.**



DO NOT SCALE FROM DRAWING

Depicts site boundary

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PROJECT: PROPOSED LANDSCAPE PLAN
 PROJECT: THE CYPRESS HEIGHTS, CARLTON ROAD, BARNESLEY
 SHEFFIELD S1 2ET
 DATE: SEP 2014
 SCALE: 1:500 @ A2
 DRAWN BY: [Name]
 CHECKED BY: [Name]

