

**25/01097/MPO**

Land to the Rear of 30-40 Garden Close

Sutton

Cambridgeshire

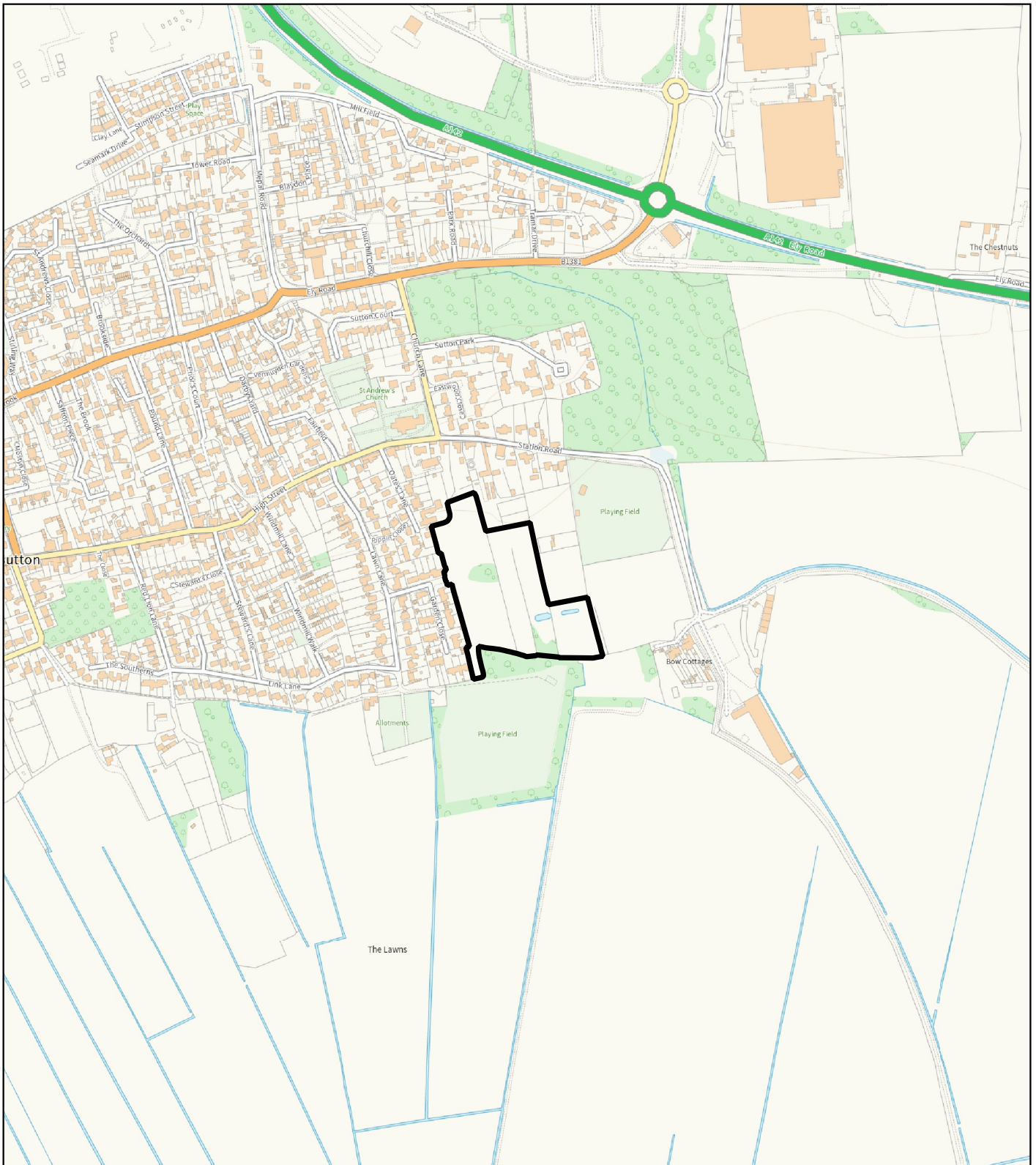
Application for the modification of planning obligation 17/01445/OUM for outline planning application for erection of up to 53 houses to include public open space and details relating to access

To view all of the public access documents relating to this application please use the following web address or scan the QR code:

<http://pa.eastcambs.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=T3RED5GG0CT00>







25/01097/MPO



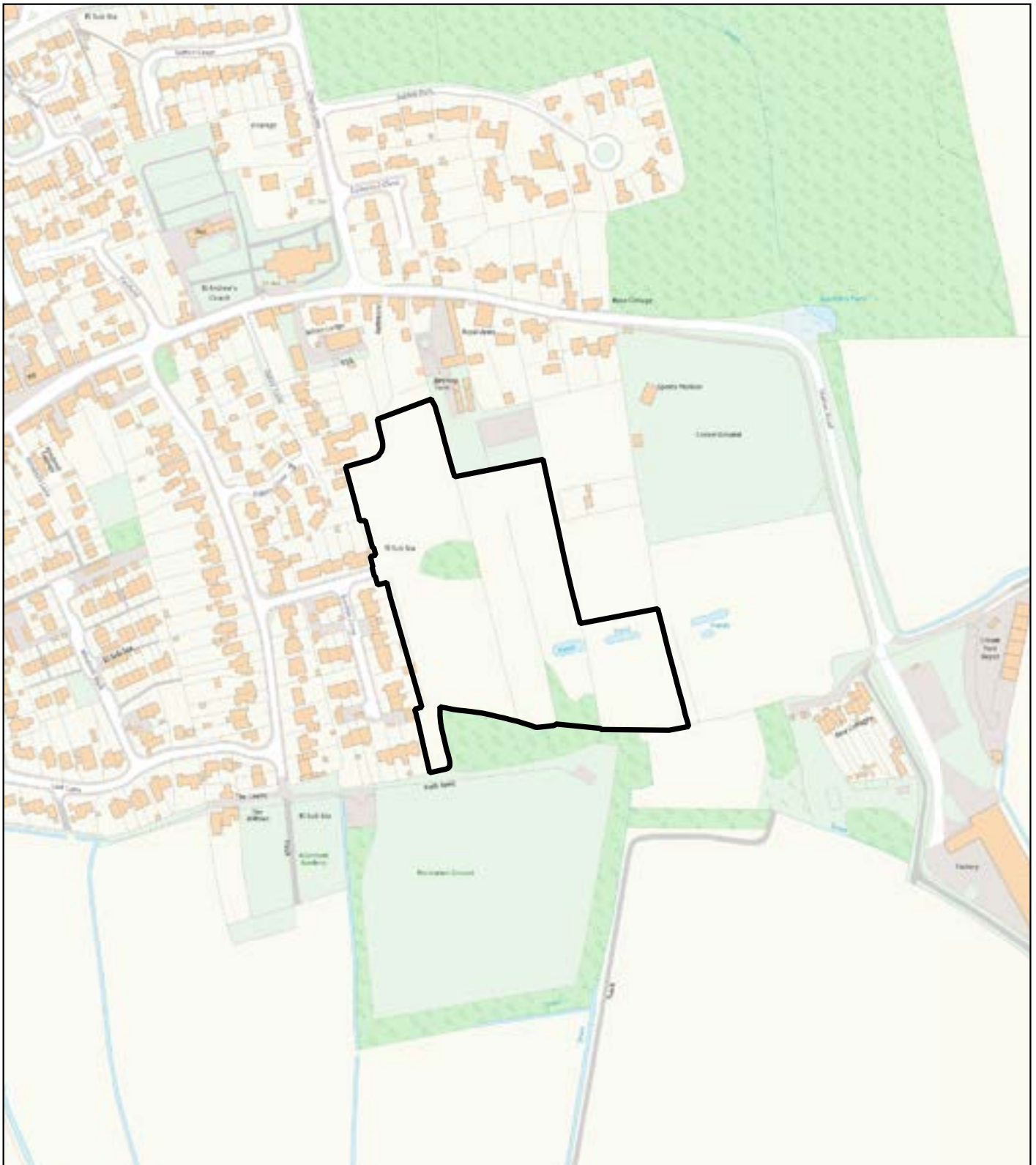
Land Rear Of 30 To 40  
Garden Close  
Sutton  
Cambridgeshire

East Cambridgeshire  
District Council

Date: 20 May 2026  
Scale: 1:8,000



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25/01097/MPO

Land Rear Of 30 To 40  
Garden Close  
Sutton  
Cambridgeshire



East Cambridgeshire  
District Council

Date: 20 May 2026  
Scale: 1:4,000



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**TITLE: 25/01097/MPO**

Committee: Planning Committee

Date: 3 June 2026

Author: Planning Team Leader

Report No: AB8

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**Site Address: Land Rear Of 30 To 40 Garden Close Sutton Cambridgeshire**

**Proposal: Application for the modification of planning obligation 17/01445/OUM for outline planning application for erection of up to 53 houses to include public open space and details relating to access**

**Applicant: Abbey New Homes**

**Parish: Sutton**

**Ward: Sutton**

Ward Councillors: Lorna Dupre  
Mark Inskip

**Date Received: 7 October 2025**

**Expiry Date: 2 December 2025**

**Extension of Time Expiry Date: 5 June 2026**

### **Recommendation**

1. Members are recommended to REFUSE the application and to determine that, in accordance with Section 106A, paragraph (6)(a) of The Town and Country Planning Act 1990, as amended, the planning obligation shall continue to have effect without modification, for the reasons set out at paragraph 7.33 of this document.
2. The application is being heard by Committee having been called in by the Strategic Planning and Development Management Manager under the relevant Constitutional right to refer to Committee for determination any application for planning permission or other consent or matter which would otherwise be dealt with under delegated powers. Given the complex site history and historic sensitivity of the site, it is

considered appropriate that this application should be determined by the Planning Committee.

## Summary of Application

3. The current application is for the modification of the Section 106 legal agreement attached to permission 17/01445/OUM. It seeks to modify the obligation contained therein (Second Schedule, Part 1), which requires the provision of an affordable housing scheme prior to the first occupation of any market housing within the development, along with subsequent triggers in relation to the build out and occupation of the approved affordable housing scheme.
4. An affordable housing scheme was included within the reserved matters application (reference 22/00057/RMM), providing a policy-compliant scheme of fourteen affordable units in a scheme of forty-seven total dwellings, equating to 30% affordable homes.
5. The original proposal under the current application was for the omission of all affordable housing from the scheme, delivering 100% market housing on the site. During the lifetime of the application, two other potential proposals were put forward: the provision of four 'First Homes' within the site, or the provision of a commuted sum of £310,000 towards off-site affordable housing provision in lieu of on-site provision.
6. An application (reference 25/00667/VARM) to vary condition 1 (approved plans) of permission 22/00057/RMM is also currently pending consideration. This seeks to amend the approved plans to omit the approved affordable housing. As the determination of that proposal is directly related to the determination of the current proposal to modify the S106 agreement, application 25/00667/VARM is also before the Planning Committee for consideration today.
7. The full planning application, plans and documents submitted by the Applicant can be viewed online via East Cambridgeshire District Council's Public Access online service, via the following link [Simple Search](#).

## Planning History

8. The planning history of the site is complex. Two outline permissions, both for up to 53 dwellings, have been granted planning permission on the site, with applications to discharge conditions, vary the original permissions, and for approval of reserved matters subsequently submitted for both outline permissions. The following planning history sets out the history for each outline permission separately, for ease of understanding. In order to reduce the volume of information, applications for the discharge of conditions relating to the alternative permission on the site (outline permission 18/01053/OUM) have been omitted from this history.

### **17/01445/OUM** [to which the current application relates]

9. Outline planning application for erection of up to 53 houses to include public open space and details relating to access

*Refused* 5 January 2018  
*Allowed at Appeal* 18 January 2019

**20/00177/RMM**

10. Reserved matters for Outline planning application 17/01445/OUM for erection of up to 53 houses to include public open space and details relating to access

*Refused* 19 May 2020

**20/01169/RMM**

11. Reserved matters for Outline planning application 17/01445/OUM for erection of up to 53 houses to include public open space and details relating to access

*Refused* 4 January 2021  
*Dismissed at Appeal* 23 December 2021

**22/00057/RMM**

Reserved Matters for appearance, landscaping, scale and layout for the erection of 47 homes including public open space of previously approved Outline planning application 17/01445/OUM for erection of up to 53 houses to include public open space and details relating to access

*Refused* 27 April 2023  
*Allowed at Appeal* 8 July 2024

**17/01445/DISA**

12. To discharge Conditions 6 (fire hydrants) 7 (CEMP) 8 (surface water drainage) 10 (foul water) 13 (contamination) and 15 (archaeology) of decision dated 18/01/2019 (Appeal reference APP/V0510/W/18/3195976) for 17/01445/OUM Outline planning application for erection of up to 53 houses to include public open space and details relating to access
13. *Partially discharged* 22 August 2025, pending the submission of acceptable details in relation to Condition 15, parts iv and v (relating to the submission of reports and publication of findings from the fieldwork only).

**25/00667/VARM**

14. To Vary Condition 1 (Approved Plans) of previously 22/00057/RMM approved at appeal APP/V0510/W/23/3328203, dated 08 July 2024 for Reserved Matters for appearance, landscaping, scale and layout for the erection of 47 homes including public open space of previously approved Outline planning application 17/01445/OUM for erection of up to 53 houses to include public open space and details relating to access

*Pending Consideration*

**18/01053/OUM** [the alternative permission on the site]

15. Outline planning application for erection of up to 53 houses on land to the east of Sutton to include public open space and details relating to access

*Permitted* 12 January 2022

**23/00870/RMM**

16. Reserved matters for outline planning application 18/01053/OUM for 41 residential dwellings including Appearance, Layout Scale and Landscaping, along with parking and open space

*Permitted* 11 March 2024

**24/01096/VARM**

17. To Vary Condition 1 (Approved Plans) of previously approved 23/00870/RMM dated 11 March 2024 for reserved matters for outline planning application 18/01053/OUM for 41 residential dwellings including Appearance, Layout Scale and Landscaping, along with parking and open space

*Refused* 6 August 2024

18. [Officer comments: 24/01096/VARM was similar to the current proposal insofar as it sought to vary the approved plans to omit the approved affordable housing from the site, on the grounds that such provision was no longer viable.]

## **The Site and its Environment**

19. The site extends to approximately 3.17 hectares (7.8 acres) and is situated within the development envelope of Sutton following the allocation of the site in the Sutton Neighbourhood Plan as a housing allocation. The site adjoins the built form of the village along the north and west boundary, which marks the current edge of the built form of the village with modern residential development in Garden Close and a more historic pattern of development along Station Road.
20. A number of ponds and water features are located in the south-eastern corner of the site inhabited by Great Crested Newts (GCNs). In terms of land levels there is a gradual slope down from north to south, representing approximately 7m (23ft) across the length of the site. The Sutton Conservation Area adjoins the northern boundary of the site and there are a number of listed buildings on Station Road and within close proximity of the site, including the Grade I Listed Church of St Andrew. The site is bounded by hedgerow and woodland to the south and open land to the east and there is a Tree Preservation Order (E/04/20) on three groups of trees, a hedgerow of hawthorn and a field maple.

## Response from Consultees

21. Responses were received from the following consultees: Strategic Planning, Housing Section, and the Ward Councillors, and these are summarised below. The full responses are available on the Council's web site.
- Strategic Planning - 27 April 2026**
22. Detailed response provided to submitted document 'Assessment of East Cambridgeshire Five Year Housing Land Supply' by Emery Planning. The consultation response sets out how the LPA projects its five year housing land supply (5YHLS) and defines what is a 'deliverable site' before directly and individually addressing the sites that the Emery Planning document asserts are not deliverable. The starting point for the comments is that the LPA's most recent 5YHLS report, published in December 2025, demonstrated a comfortable supply of 6.17 years. Each disputed site is addressed in turn and, for each, it is concluded that the LPA continues to be confident that the projected completions are reasonable.
- Housing Section – 7 May 2026**
23. Offer of four First Homes considered acceptable in light of viability appraisal.
- Ward Councillors (Cllrs Dupre and Inskip) - 15 December 2025**
24. Objection on the grounds that removal of all affordable housing from the site is contrary to the Local Plan and the local need identified by the Sutton Parish Council Housing Needs Assessment produced in support of the Neighbourhood Plan.
- 5 May 2026
25. Further response following proposal for the provision of a commuted sum or four 'First Homes' noted the viability appraisals but Cllrs Dupre and Inskip "*believe that neither offer is sufficient. In the event however that the council makes a choice between two inadequate offers, we both believe that the four 'First Homes' offer is preferable to the commuted sum offer firstly because it delivers a return within NPPG guidance, but also because it retains four properties below market levels on the site, and in the village of Sutton.*"
- 5.2 Owing to the nature of the application, there was no requirement to display a site notice nor write to neighbouring residential properties.

## The Planning Policy Context

26. Given the limited nature of the proposal and related material considerations, the policy context provided below is limited to that which is considered relevant to the proposal.
27. **East Cambridgeshire Local Plan 2015 (as amended 2023)**  
HOU3 Affordable housing provision
28. **Sutton Neighbourhood Plan 2024**  
SUT3 Land East of Garden Close

29. **Supplementary Planning Documents**  
Developer Contributions SPD
30. **National Planning Policy Framework (December 2024)**  
Section 4 Decision-making  
Section 5 Delivering a sufficient supply of homes
31. **Draft National Planning Policy Framework (December 2025)**  
Section 3 Decision-making policies  
Section 6 Delivering a sufficient supply of homes
32. On 16th December 2025, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework). Whilst broad changes to the structure of the Framework are proposed as part of this consultation, these proposals could be subject to further change and can only be given very limited weight at this stage. Regard has therefore been had to the NPPF published in December 2024 in assessing the current application.
33. **Planning Practice Guidance (PPG)**

### **Planning Material Considerations and Comments**

34. Evidence has been provided that the applicant submitted a CIL Commencement Notice to the Council with a projected commencement date of 2<sup>nd</sup> March 2026 and that a CIL payment was received by the Council on 10<sup>th</sup> April 2026, both in relation to permission 22/00057/RMM, with photographic evidence provided of material operations having commenced on site (in the form of foundations having been dug). In addition to this, records indicate that the pre-commencement conditions relating to the outline application (17/01445/OUM) have been complied with. On this basis, the permission to which the current application relates appears to have been implemented and is therefore considered extant.
35. Under Section 106A of The Town and Country Planning Act 1990 (as amended), a person against whom a planning obligation is enforceable may, after a prescribed period of time, apply to the Local Planning Authority (LPA), as the appropriate authority, for the obligation to be modified or discharged. In this context, the term 'discharged' means to be released from the planning obligation. Where such an application is made, the LPA may determine:
- that the obligation shall continue to have effect without modification,
  - that it shall be discharged if it no longer serves a useful purpose, or
  - that it shall have effect subject to the modifications specified in the application if it would continue to serve a useful purpose subject to those modifications.
36. The matters considered relevant to the current proposal are considered in turn below.

## Viability

37. Local Plan Policy HOU3 seeks to secure affordable housing provision in developments of over ten dwellings at a level of at least 30% of the total number of dwellings for schemes in the north of the District. It makes provision for the negotiation of the proportion and type of affordable housing with applicants, taking into account the financial viability of the development and requiring applicants to provide a financial viability assessment as part of the planning application where the provision of less than 30% affordable housing is sought. It goes on to state that affordable housing should be provided on-site unless exceptional circumstances have been agreed with the Council and justified as part of the planning application.
38. NPPF paragraph 59 sets out that the onus is on the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage and that the weight given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the development plan and underpinning evidence are up to date and any change in circumstances since the plan came into force.
39. The basis for the current proposal to discharge or modify the S106 obligation is that the legal agreement dates from September 2018 and housebuilding economics have changed significantly in the interim, with escalating build costs set against significantly slower rates of house price rises. The covering letter submitted with the application states that *“In general terms, house prices have risen by about 16% since September 2018 and construction costs have risen by about 40% (depending on which index is used).”* Given this, the applicant contends that the policy-compliant scheme approved under application 22/00057/RMM is no longer financially viable and seeks to remove or reduce the requirement to provide affordable housing as part of the scheme in order to remedy this.
40. In relation to the financial viability of development proposals, the PPG sets out that *“an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers”* (Paragraph: 019 Reference ID: 10-019-20190509).
41. The application is supported by a viability appraisal by BNP Paribas, along with a number of subsequent addendum letters reflecting the assessments of the differing affordable housing offers discussed during the lifetime of the application. The LPA commissioned an independent viability consultant, BPC, to review and assess the appraisal and subsequent addendums.
42. The reviews by BPC concur with the appraisals provided by BNP Paribas, the BPC report of November 2025 concurring that a policy-compliant scheme with 30% affordable housing provision would return a profit of 9.57% of GDV, with the conclusions of the subsequent BPC letter dated 13<sup>th</sup> April 2026 summarised as follows:
- A 100% market scheme would return a profit of 16.56% of GDV
  - A scheme providing four First Homes would return a profit of 15.65% of GDV
  - A 100% market scheme with a commuted sum of £310,000 towards off-site AH provision would return a profit of 14.67% of GDV

43. On the basis of the above, it is clear that the return to the developer on the delivery of the approved, policy-compliant, scheme would return a profit well below the guidance values provided within the PPG. Similarly, the provision of a 100% market scheme with a commuted sum towards off-site provision would fall short of the guideline 15-20% return. A scheme providing four on-site First Homes would return a profit within the bracket set out within the PPG, with a 100% market scheme providing the maximum return to the developer, albeit still at the lower end of the PPG guideline bracket.

### **Affordable Housing**

44. As set out previously, Local Plan Policy HOU3 seeks, under most circumstances, to secure on-site affordable housing provision in developments of over ten dwellings at a level of at least 30% of the total number of dwellings for schemes in the north of the District. It makes provision for the negotiation of the proportion and type of affordable housing with applicants, taking into account the financial viability of the development, and expects affordable housing to be provided on-site unless exceptional circumstances can be demonstrated to justify off-site provision or the payment of a commuted sum in lieu of direct provision.
45. NPPF Section 5 seeks to ensure the delivery of a sufficient supply of homes. Paragraphs 63 and 64 relate to the requirement for planning policies to reflect evidenced local housing need, including the provision of affordable homes. Paragraph 66 states that *“Where major development involving the provision of housing is proposed, planning policies and decisions should expect that the mix of affordable housing required meets identified local needs, across Social Rent, other affordable housing for rent and affordable home ownership tenures.”* Footnote 31, which relates to this paragraph, states the requirement for 25% of affordable housing as First Homes no longer applies but that *“delivery of First Homes can, however, continue where local planning authorities judge that they meet local need.”*
46. As noted at paragraph 2.1 of this report, the initial proposal was for the omission of all affordable housing from the development. Over the lifetime of the application, two alternative proposals have been put forward, for the provision of four on-site First Homes or the payment of a commuted sum towards off-site provision. As set out at paragraphs 7.10 and 7.11 above, of the proposed schemes that include affordable housing provision, only the scheme providing four on-site First Homes would return a profit within the 15-20% expected range as set out in the PPG.
47. Over the lifetime of the application, extensive informal discussions with the Council’s Housing Strategy and Enabling Officer have taken place. From these, it is understood that there is currently a high demand for affordable rented homes in Sutton and that the primary affordable housing need across the District as a whole is also for affordable rented accommodation. Given this, and that NPPF support for the provision of First Homes is limited to *“where local planning authorities judge that they meet local need”*, it is considered that the provision of First Homes would not meet evidenced local housing needs, as required by the NPPF. Nevertheless, as reflected in the Housing Strategy Officer’s formal comments, the proposal for four on-site First Homes may be considered acceptable on balance, in light of the viability assessments.

48. It is noted that the LPA has recently received an Appeal Decision (reference APP/V0510/W/25/3368808), dated 1<sup>st</sup> May 2026, relating to a rural exception site for the provision of 126 affordable homes (application reference 24/01135/OUM). Whilst the Inspector recognised that the scheme conflicted with the locational strategy for development within the District and that it would give rise to harm in terms of landscape and visual impacts, it was also recognised that “*there is significant need for affordable housing with the district as a whole and the provision of 126 affordable homes should be afforded significant weight*” (Appeal Decision, paragraph 44). In combination with identified highway improvements and biodiversity benefits, the benefit of the affordable housing provision was considered to outweigh the identified harms and the Appeal was allowed. The weight attributed to the need for affordable housing within the District should be given due consideration in the assessment of the current proposal.

### **Five Year Housing Land Supply**

49. Within the cover letter submitted as part of the initial application package, it is noted that application 24/01096/VARM, to vary condition 1 (approved plans) of permission 23/00870/RMM (in relation to the alternative scheme consented at the site under outline permission 18/01053/OUM) in order to omit the affordable housing, was refused for the following reason:  
*The removal of Affordable Housing contribution from the approved plans under ref: 23/00870/RMM and the potential realisation of risk in its delivery is considered unacceptable in conjunction with the applicant not providing evidence of other options for the delivery of a policy compliant scheme and whether this is unviable. The current unviability of the scheme may also change over the lifetime of the permission and there is extant permission for a larger scheme which is viable. The Council's five year land supply report, last published in December 2024 also demonstrates a 6.28 supply over five year period and the immediate provision of a fully market scheme at the expense of much needed affordable housing is not justified and the 'tilted balance' is not being engaged. As such, the proposed removal of affordable housing contribution is considered contrary to policy HOU 3 of the East Cambridgeshire Local Plan 2015.*
50. In the interests of addressing the various elements of this refusal reason, the current application includes an assessment of the LPA's 5 year housing land supply (5YHLS) by Emery Planning, which challenges the deliverability of some sites and concludes that the LPA can demonstrate only a 4.76 year supply. On this basis, the applicant contends that the 'tilted balance' should be engaged and that the overall benefit of the market housing contribution of the scheme would, in this context, outweigh the disbenefits of the omission of affordable housing.
51. The Emery Planning assessment has been reviewed by the LPA's Strategic Planning team and a full response provided, which is summarised at Section 5 of this report. It refutes the findings of the Emery Planning assessment and evidences that the LPA is confident that it maintains a comfortable housing land supply of 6.17 years. Given this, it is considered that the 'tilted balance' is not engaged at the present time.

## **Other Matters**

52. The outline permission to which the current proposal relates was permitted at Appeal. In determining the Appeal, the Inspector noted both that the LPA could not demonstrate a 5YHLS at the time and that, since the refusal of the application that was the subject of the Appeal, *“the Appellant submitted a further application to the Council for the same development albeit with a different indicative site layout. Both main parties have confirmed that the Council have resolved to approve this subsequent application subject to the completion of a section 106 agreement to deliver various infrastructure requirements and affordable housing. This is a material planning consideration for which I give very great weight.”* (Appeal Decision, paragraph 9). The application that the Inspector referenced was the alternative permission on the site, reference 18/01053/OUM.
53. The Officer Report for application 18/01053/OUM sets out the planning balance at Section 7.9. It notes that the LPA was unable to demonstrate a 5YHLS at the time of the assessment and, separately, that the provision of affordable housing was afforded significant positive weight in the balance. Other planning benefits were noted and some limited harms identified, with the balance clearly weighing in favour of the scheme.
54. In addition to the above, it is noted that the Appeal Decision that allowed the reserved matters application (reference 22/00057/RMM) relating to permission 17/01445/OUM sets out, at paragraph 33, that the proposal would lead to less than substantial harm to the setting of the Sutton Conservation Area and nearby listed buildings but that the Inspector attributed *“great weight, in this case, the provision of up to 47 additional dwellings, a significant number of which are single-storey two-bedroom homes alongside the provision of affordable housing would be a public benefit which clearly outweighs”* this identified harm.

## **Human Rights Act**

55. The development has been assessed against the provisions of the Human Rights Act 1998, and in particular Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property). Under the Act, it is unlawful for a public authority, such as East Cambridgeshire District Council, to act in a manner that is incompatible with the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance. The Council is also permitted to control the use of property in accordance with the general interest and the recommendation set out below is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

## **Equalities and Diversities**

56. In considering this planning application due regard has been had to the public sector equality duty (PSED) under Section 149 of the Equality Act 2010, which means that the Council must have due regard to the need (in discharging its

functions) to put an end to unlawful behaviour that is banned by the Equality Act, including discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not. Account has been taken of the PSED and it is considered that the recommendation set out below would not undermine the objectives of the duty.

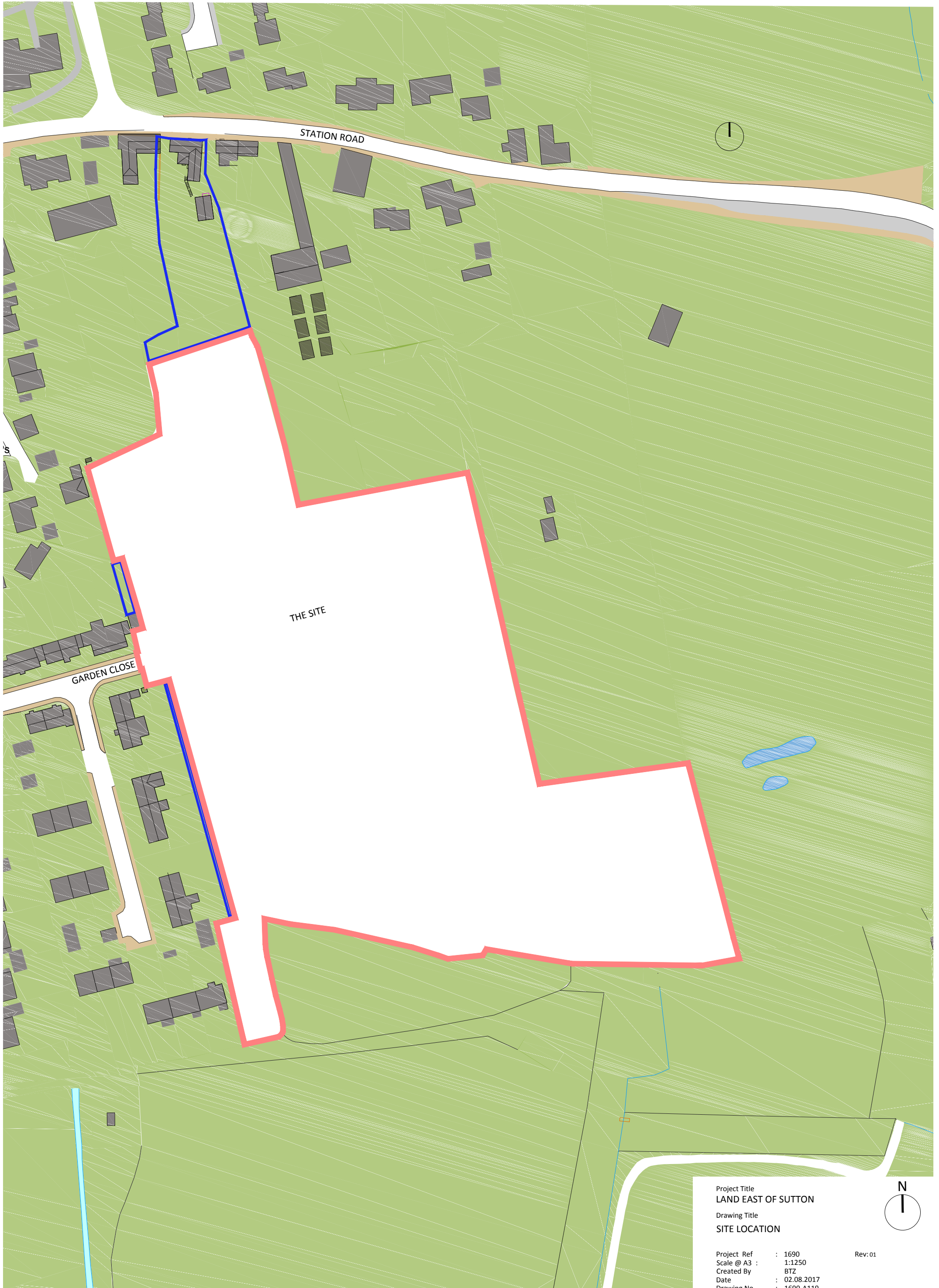
### **Planning Balance, Conclusion, and Recommendation**

57. The outline permission to which this application relates was approved in the context of the 'tilted balance' with significant weight being attributed to the provision of affordable housing. Similarly, the Appeal Inspector who allowed the reserved matters application attributed positive weight to the provision of affordable housing in the planning balance. A very recent Appeal Decision, dated 1<sup>st</sup> May 2026, has noted a "*significant need for affordable housing*" within the District and attributed significant positive weight to the provision of such in the planning balance, albeit at a greater scale than that under consideration within the current application.
58. The submitted viability assessments are accepted and it is recognised that the approved, policy-compliant, development would not return a profit that aligns with the guidance set out in the PPG, making delivery of the scheme financially unviable. The only proposal presented that included affordable housing that would return the expected level of profit would be the on-site provision of four First Homes, however First Homes are considered not to meet the identified affordable housing needs of the District.
59. The outline permission was granted at time when the LPA could not demonstrate a 5YHLS. This is no longer the case, with the LPA being confident in a 6.17 year supply. Given the scale of this development, at 47 dwellings, it is considered that the 5YHLS would not be undermined if this site did not come forward. It is noted, however, that the applicant has provided evidence that the development has been implemented, which means that it would now remain extant in perpetuity whether or not development proceeds in the short term.
60. As set out above, the considerations of the assessment are complex, inter-linked, and finely balanced. The current unviability of the approved scheme is recognised and weighs in favour of the proposal to modify the S106 agreement to reduce the required level of affordable housing, as this would allow the scheme to come forward and contribute to the housing stock for the District. Weighing against the proposal, however, is that the viable affordable housing provision would be small scale and not of a type that would meet local needs. The failure to deliver the site in the short term would not undermine the LPA's 5YHLS and the permission has been implemented: there is therefore the option to leave the site fallow at present on the basis that market forces may alter again in the future to create a more viable context for the provision of affordable housing within the scheme. Given this, on balance, the recommendation is that the application should be refused and that the planning obligation in the S106 Legal Agreement relating to affordable housing provision should continue to have effect without modification

## **Appendices**

### **Plans**

Owing to the nature of the application, there are no plans of direct relevance to the proposal. The site location plan for the parent application, reference 17/01445/OUM, is provided for reference.



STATION ROAD

THE SITE

GARDEN CLOSE

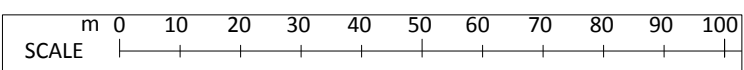
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**LAND EAST OF SUTTON**  
 Drawing Title  
**SITE LOCATION**

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 Created By : BTZ  
 Date : 02.08.2017  
 Drawing No : 1690-A119

Rev: 01



R01 01.11.2017 NORTH WEST & SOUTH EAST BOUNDARY ADJUSTMENT



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