	<p align="center"><b>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</b></p> <p align="center">In consultation with the Chairman of the Assets Regeneration and Growth Committee</p>
<p align="center"><b>Title</b></p>	<p><b>Grant of Easement and Supplemental Lease for new Depot at Oakleigh Road South to widen the access road and provide additional parking on Network Rail land.</b></p>
<p align="center"><b>Report of</b></p>	<p>Assistant Chief Executive, Stephen Evans Director of Resources, Anisa Darr</p>
<p align="center"><b>Wards</b></p>	<p>Mill Hill East and Oakleigh</p>
<p align="center"><b>Status</b></p>	<p>Public</p>
<p align="center"><b>Officer Contact Details</b></p>	<p>Alan Zierler, <a href="mailto:alan.zierler@barnet.go.uk">alan.zierler@barnet.go.uk</a> T. 020 8359 5354</p>

### Summary

This decision is to Enter into a Deed of Grant (easement rights) for the land shown coloured brown (Appendix1.4) and Supplemental Lease of the land edged blue (Appendix1.5), to enable the Council to Highway requirements for the new Depot.

This is supplemental to the Council's decision to form a consortium with private partners to redevelop the waste and recycling depot at Mill Hill East for housing and following the Council's acquisition of Abbots Depot and lease of the adjacent Winters site at Oakleigh Road South to relocate the Mill Hill depot as shown on the enclosed plan at Appendix 1.

Relevant properties to this decision are:

- A) The freehold interest in the land shown edged red (Title nr. NGL710738) - 'the Abbots Site'; Appendix 1.1 and,
- B) The leasehold interest in the three parcels of land shown edged blue, 'the Winters Site'; Appendix 1.2.

Both of the above properties enjoy rights of access over the length of the access road (shown coloured brown on the Lease plan, Appendix 1.2) leading from the junction with Oakleigh Road South to the most northerly corner of the land shown on the plan at Appendix 1.1.

Barnet Council is redeveloping both the 'Abbotts Site' and the 'Winters Site' as a depot for waste recycling, highways maintenance and street cleansing and Council vehicle maintenance together with associated offices and car-parking.

The council submitted a planning application as attached on plan 69046/ENV/LR/01 (see appendix 1.3) and part encroached onto Network Rail land causing a number of issues.

1. Network Rail land is required for the vision splay at the entrance from Oakleigh Road South.
2. The two smaller areas edged blue on the plan at Appendix 1.2 in the Winters Site along the access road are for storage of vehicles and skips only and not for the proposed access use.
3. Wider and diverted access by the Abbots site entry encroaches on Network Rail land.

In order to facilitate this redevelopment, the Council will carry out improvement works to widen the shared access road along its present route. In order to achieve this, the Council and Network Rail have agreed in principle that the Council will surrender the two smaller areas edged blue on the plan at Appendix 1.2 out of the lease of the Winters Site and that Network Rail will grant the Council an easement for access over the area coloured brown on Appendix 1.4. Existing access rights over the area shown coloured brown on the plan in Appendix 1.2 are not affected.

In addition the Council proposes to incorporate the land between Oakleigh Road South and the 'Winters Site' as a Supplemental Lease; shown edged blue, part therein hatched red on Appendix 1.5. The use is for parking and (in relation to the hatched red area) embankment, wall and landscaping purposes only. Network Rail, as landlord, has also agreed to give the Council permission to carry out works under the lease of the Winters Site and the new lease.

## **Decisions**

- 1. Approval to the Council taking a Deed of Grant for an easement initially of 20 years with a Tenants option to break at the end of the 10<sup>th</sup> year, at a rent of £55,000pa subject to review (shown coloured brown on Appendix 1.4). The tenant will also have an option to extend this term for a further 99 years after the initial 20 year period on the same basis.**
- 2. Approval to the Council taking a Supplemental Lease for a term co-terminus with the Winter's lease at a rent of £18,000pa subject to review to 24<sup>th</sup> December 2020 (shown edged blue on Appendix 1.5), surrendering the two smaller areas edged blue in the plan at Appendix 1.2 and entering into a licence for alterations to the land in the lease of the Winters Site and the new lease.**

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 This report is required to ensure that the access to the new Depot complies with the planning consent, as the existing access is not suitable (improving vision splays at the entrance to the main road and widening the internal access road).

## **2. REASONS FOR DECISIONS**

- 2.1 The reason for the decision is that the Council needs to agree the easement to enable the access road to be widened and the supplemental lease for additional parking on land which is owned freehold by Network Rail.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 3.1 If the Council does not secure the easement rights by a Deed of Grant, for the land as shown coloured brown on the plan attached at Appendix 1.4, this will severely impact on the Council's ability to utilise the new depot. This is due to the existing access being too narrow to service the traffic required for the new depot.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 Once the decision has been approved the Deed of Grant, Lease surrender, Supplemental Lease and Option to Extend can all be completed by HB Public Law.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 The Council's Corporate Plan 2015-20 states that the Council, working with local, regional and national partners, will strive to ensure that Barnet is a place:

- of opportunity, where people can further their quality of life.
- where people are helped to help themselves, recognising that prevention is better than cure.
- where responsibility is shared, fairly.
- where services are delivered efficiently to get value for money for the taxpayer.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.2.1 The Deed of Grant (easement rights) for a term of 20 years with a Tenant option to break at the end of the 10<sup>th</sup> year, at a 'rent' of £55,000 pa, and

5.2.2 The Supplemental Lease for a term co-terminus with the 'Winters Site' lease at a rent of £18,000pa to 24th December 2020.

5.2.3 Budget provision has been set up for these two leases; allocated to cost code 11514.

5.2.4 The fees for completing this matter are as follows;

Network Rail: Surveyor's - £7,200 plus vat (75%paid), Legal - £4,500 plus vat.

LB Barnet: Surveyor's - £8,800, Legal - £3,500

### **5.3 Legal and Constitutional Reference**

5.3.1 The Management of, Assets, Land and Property Rules in the Council's Constitution provides that the Chief Operating Officer or Director of Resources, in consultation with the Chairman of Assets, Regeneration and Growth Committee, can make a decision on Authorisation of: Acquisitions Lease in (as tenant), Lease out (as landlord) for = rent or Consideration (£25,001-£100,000), and decisions on Licences, Easements and Consents, Compensations, Settlements and Covenants (£25,001-£100,000).

5.3.2 Following a recent June 2017 senior management restructure the applicable authorisations are the Assistant Chief Executive and the Director of Resources, in consultation with the Chairman of Assets Regeneration and Growth Committee.

## **6. Risk Management**

6.1 I have considered whether the issues involved give rise to significant levels of public concern or policy considerations and I am satisfied that there are no such concerns.

## **7 Equalities and Diversity**

7.1 The signing of the lease and Deed of easement will not give rise to any issues under the Council's Equality Policy and do not compromise the Council in meeting its statutory equalities duties.

## **8. Consultation and Engagement**

8.1 None

## **9 BACKGROUND PAPERS**

9.1 Full Council approval to enter into an agreement to purchase Abbotts Depot, Oakleigh Road South, 16 December 2014:

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MId=7816&Ver=4>

- 9.2 Full Council Decision to approve the re-assignment of the Waste Operation Lease at Oakleigh Road South, 14 April 2015:  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MId=7820&Ver=4>
- 9.3 Officer DPR - Authority to enter into a Pre-Construction Agreement with Willmott Dixon under the Southern Construction Framework Agreement for Oakleigh Road Depot, 28 July 2015:  
<http://barnet.moderngov.co.uk/documents/s25095/Depot%20Relocation%20Contractor%20Procurement%20Public.pdf>
- 9.4 Capital Programme and Procurement Forward Plan reported to the Policy and Resources Committee in December 2015:  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=8349&Ver=4>
- 9.5 Officer DPR – Licence for Enabling Works – Oakleigh Park South Depot, 18 March 2016: <http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=6192>
- 9.6 Officer DPR - Oakleigh Road Depot Design & Build Contract, 22 April 2016:  
<http://barnet.moderngov.co.uk/documents/s31621/Oakleigh%20Road%20Depot%20Design%20Build%20Contract.pdf>

## 10 DECISION TAKER'S STATEMENT

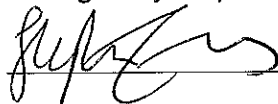
- 10.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

## 11. OFFICER'S DECISION

### I authorise the following action

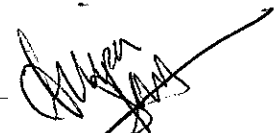
- 11.1 Entering into a Deed of Grant (easement rights) for the land shown coloured brown (Appendix1.4), surrender of the lease in relation to the two smaller areas edged blue on the plan at Appendix 1.2, licence for alterations and Supplemental Lease of the land edged blue (Appendix1.5), to enable the Council to Highway requirements for the new Depot.

Signed

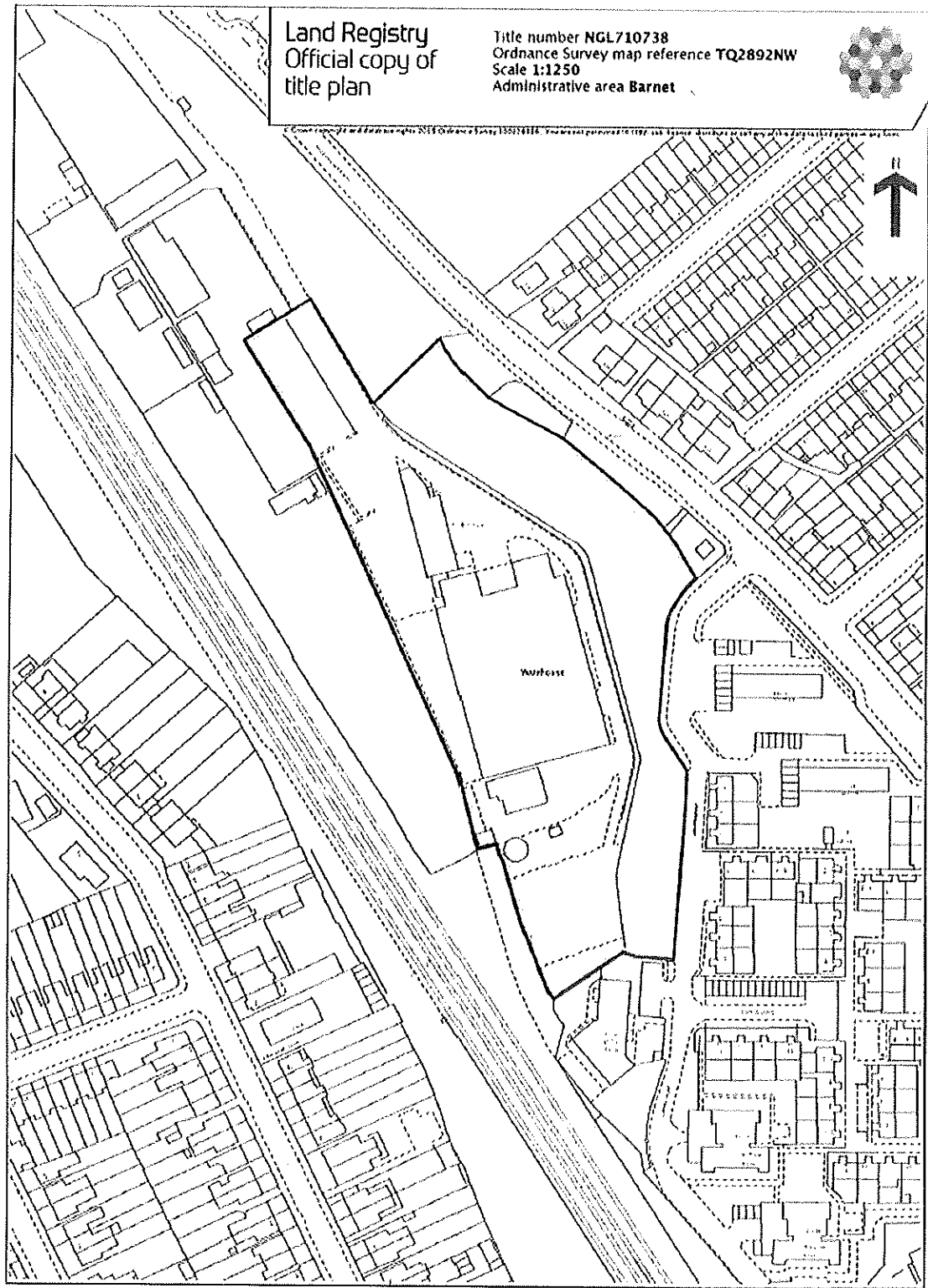
 ASSISTANT CHIEF EXEC,

Date

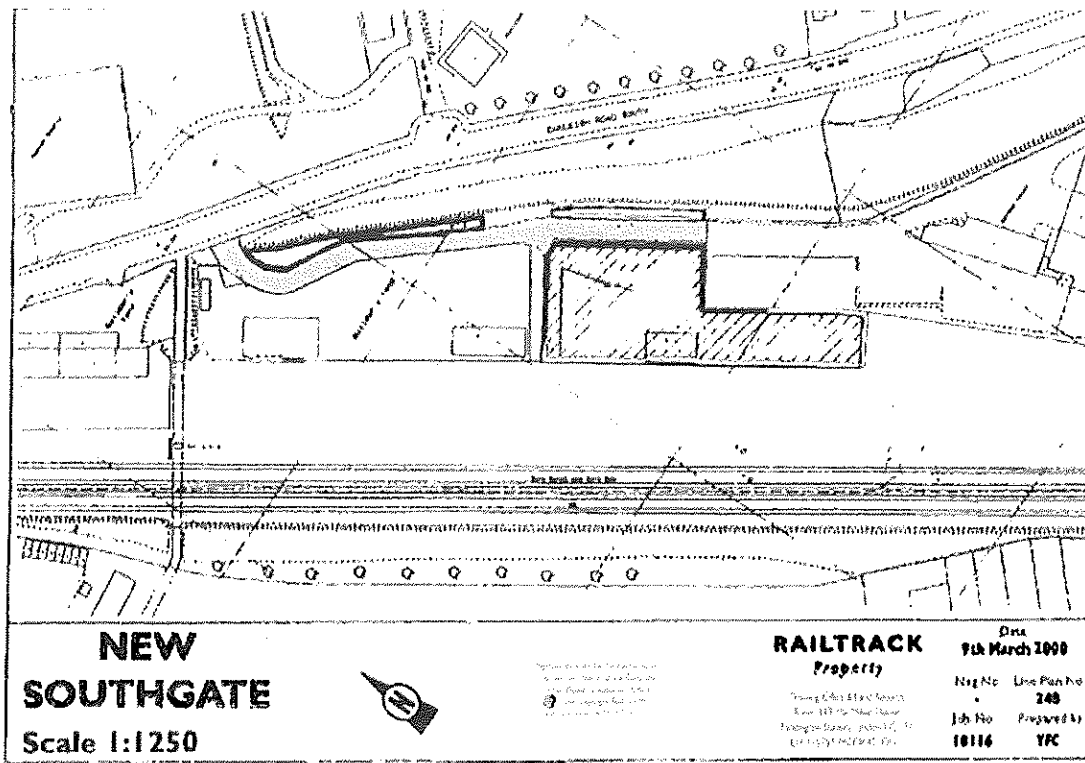
14/7/17

  
DIRECTOR OF RESOURCES.

Appendix 1.1

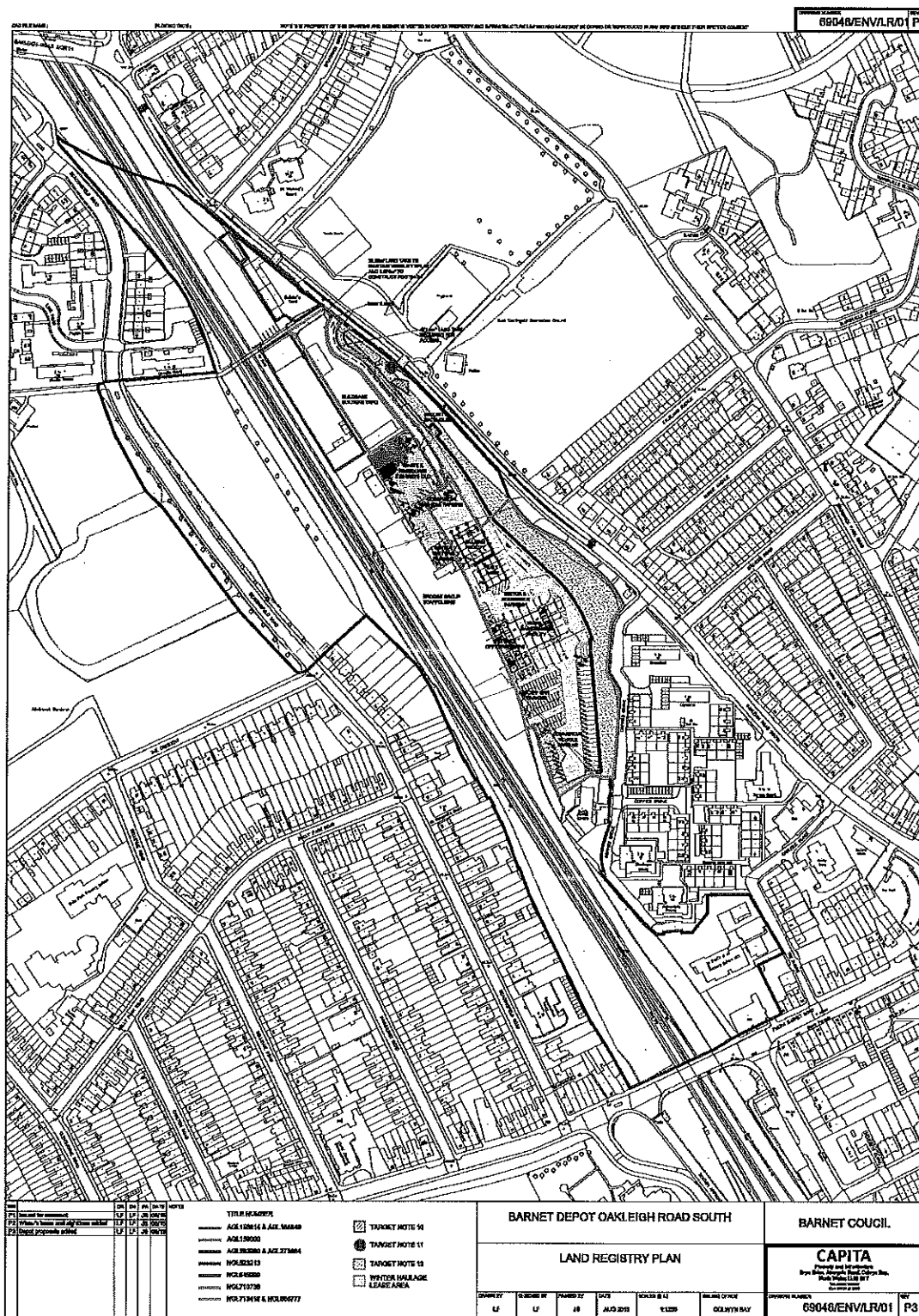


Appendix 1.2



Extract from Winters Lease plan

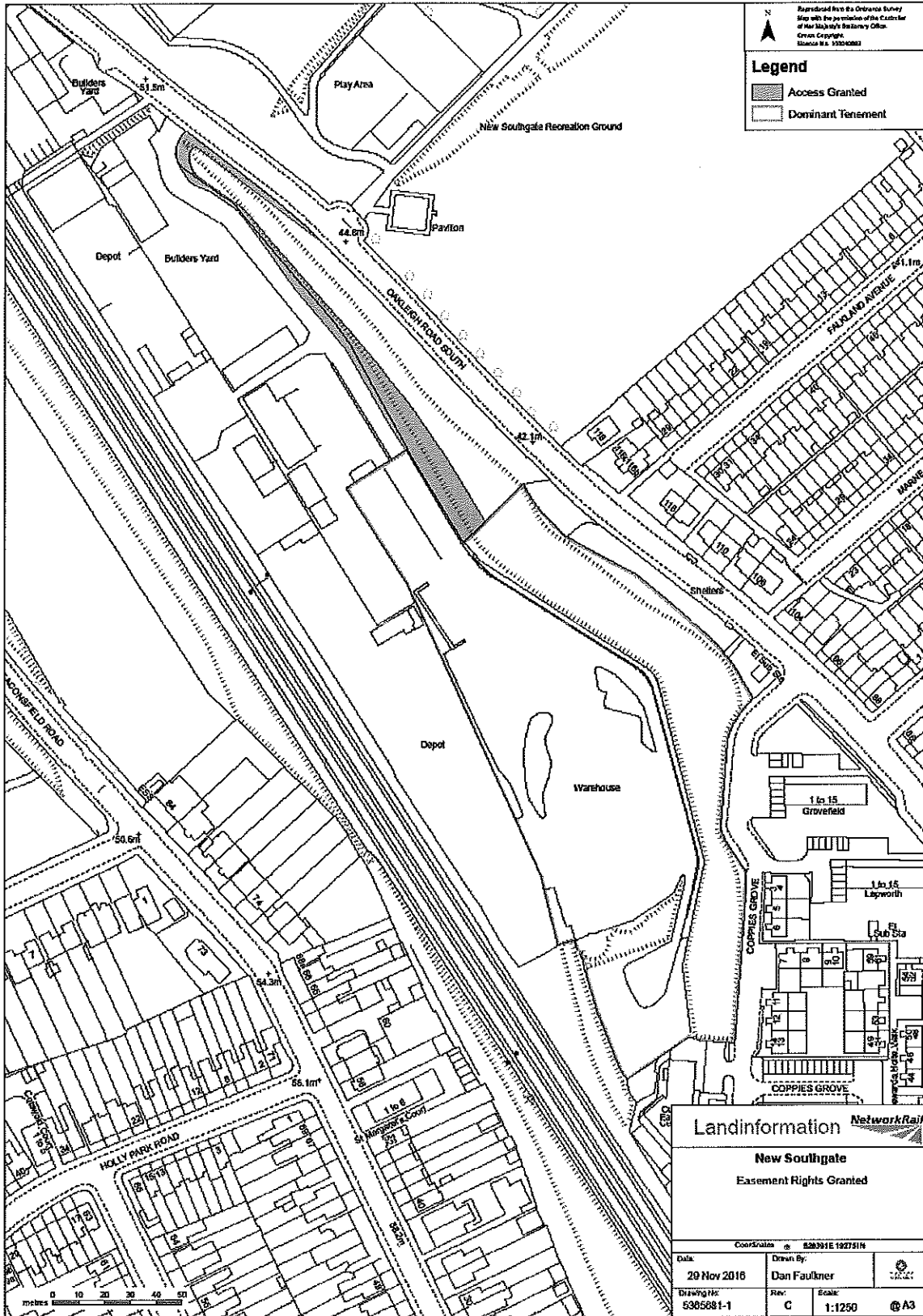
# Appendix 1.3



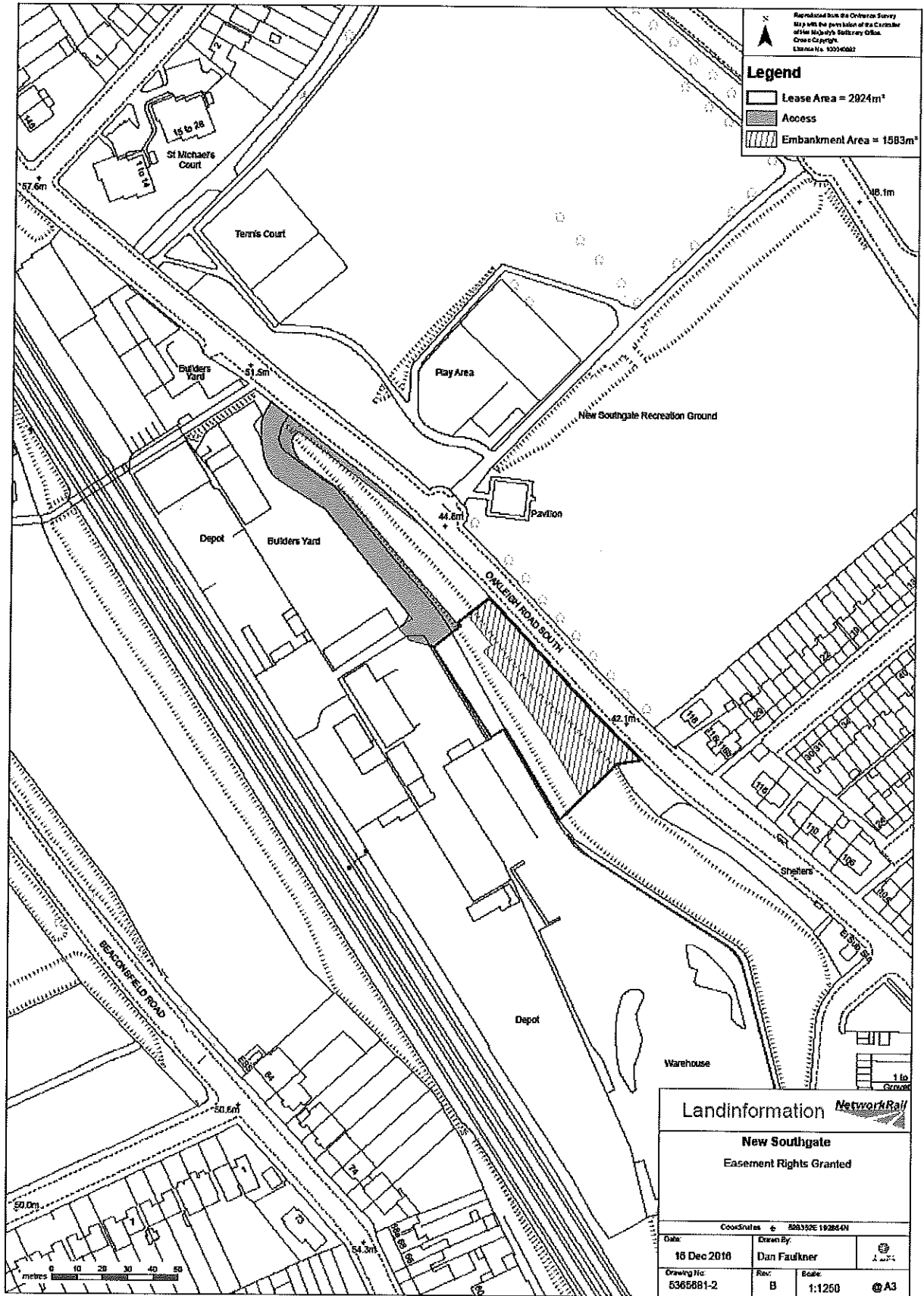
Plan 69046/ENV/LR/01 relating to the Council's planning application for the new depot.



# Appendix 1.4



# Appendix 1.5



## Appendix 2.1 – Heads of Term

# Agreed Heads of Terms - **CONFIDENTIAL**

## New Southgate – property rights required by Barnet Council

*Subject to Contract / Without Prejudice*

### Prepared for

Network Rail Property

Revised 17<sup>th</sup> November 2016

### 1. Parties

- a) Landlord: Network Rail Infrastructure Limited. Company no. 2904587. Registered office: Kings Place, 90 York Way, London N1 9AG
- b) Grantee/lessee: London Borough of Barnet.

### 2. Background

Barnet Council is in the process of acquiring/has recently acquired interests in the properties shown on the attached drawing no. 900-003/P00:

- (a) Freehold interest in the land shown coloured brown (the 'brown land');
- (b) Leasehold interest in the three parcels of land shown coloured green (the 'green land').

Both properties enjoy rights of access, appurtenant to the respective interests, over the length of access road leading from the junction with Oakleigh Road South to the most northerly corner of the brown land.

Barnet Council proposes redeveloping both the brown land and the green land as a depot for waste recycling, highways maintenance and council vehicle maintenance together with associated offices and car-parking. The proposed site layout is shown on the council's drawing 900-002/P12.

In order to facilitate this redevelopment, Barnet Council proposes to carry out improvement works to the shared access road along its present route, incorporating the two narrow parcels of the green land and other small parcels of land.

Additionally Barnet Council proposes to incorporate the southern section of the access road and another parcel of land within the overall depot premises.

### 3. Property

- (a) For the benefit of the brown land a right of access is required over widened access route (shown coloured blue on the attached drawing (Sketch 1).
- (b) For the purpose of securing an extension to the proposed depot premises the following variations to the green land lease are required (see drawing Sketch 2):
  - i) The two narrow parcels of the existing demise ('green land') to be surrendered;
  - ii) The access route to be revised, as shown coloured yellow;
  - iii) The areas shown coloured pink and hatched pink to be added to the demise by way of a supplemental lease.

### 4. Form of documentation

- (a) A Deed of Grant for an easement to widen the road access.
- (b) A Lease, supplemental to the existing lease dated 18th July 2000, for parking of Council vehicles.

### 5. Term

- (a) The Deed of Grant to be for a term of 20 years, with a Council break at 10<sup>th</sup> year. Network Rail agrees in principle to extending this term after completion up to 99 years, subject to a Deed of Variation and will provide an Option Agreement on suitable terms.
- (b) Supplemental Lease shall be co-terminus with the existing lease of the green land, dated 18<sup>th</sup> July 2000.

### 6. Start date

From a date to be agreed.

### 7. Rent

(a) £55,000 pa

(b) £18,000 p

Rents to be subject to vat.

### 8. Indexation and rent reviews

- (a) Rent to be indexed annually on 1st January in line with the RPI + 2%
- (b) Rent to be reviewed on the existing lease terms subject to the land hatched pink to be disregarded for rent review purposes

### 9. Other terms

- (a) Landlord to have right to serve six months' notice at any time if premises required for operational purposes only. Network Rail will only operate this break, provided there is

a bona fide railway requirement for the land and will use reasonable endeavours to accommodate such requirements elsewhere if possible

- (b) Use of the access road in common with the landlord, its lessees and other authorised users, also the adjoining freeholder
- (c) Lessee to contribute towards the cost of maintaining the access road according to type and extent of use
- (d) User for deed of grant; access for the benefit of the brown land to be used only as waste recycling, highways maintenance and council vehicle maintenance together with associated offices and car-parking.
- (e) User for lease variation:
  - (i) in respect of the land coloured pink, as for the existing lease user;
  - (ii) in respect of the land hatched pink, for the purpose of a gabion retaining wall, embankment re-profiling and landscaping only
- (f) Supplemental Lease demise to be subject to the existing access rights granted by the freehold title and proposed Deed Of Grant, such rights no to be obstructed or impeded at any time.
- (g) Sections 24-28 inclusive of the Landlord & Tenant Act 1954 shall not apply to the Supplemental Lease

#### 10 Alienation

##### Deed of Grant:

- a) grantee may assign only as a whole to a subsequent owner of the brown land subject to Network Rail's prior consent not to be unreasonably withheld
- b) grantee may sublet subject to Network Rail's consent but grantee is to retain liability for maintenance contributions, subject to Network Rail's prior consent not to be unreasonably withheld

Supplemental Lease: as for existing lease terms.

#### 11. Conditions

- a) Subject to contract
- b) Board approval
- c) Network Rail obtaining rail industry approval

#### 12. Legal costs & SDLT

Barnet Council to pay Network Rail's surveyors' costs not exceeding £10,000 + vat and its legal costs in full.

Barnet Council to pay any SDLT that may arise under either proposed transaction.

