

Comments on the Applicants Responses to the EXa first questions by July 1st 2025 etc

**REP 3 - On behalf of Mr and Mrs R Cooke of [REDACTED]
[REDACTED]**

Background

Mr and Mrs Cooke first purchased [REDACTED]
[REDACTED]
[REDACTED].

BE retained most of the land he had rented but sold the house, farm buildings and some land to the Cookes. The farm had been rented by at least two generations of the Margetts family since before WW2; [REDACTED] also owned their own freehold land nearby in Long Hanborough, [REDACTED] had been a working farm for many years, as the mill had long ceased to be operational. So, contrary to the Applicants claim, [REDACTED] has been part of a small working farm for many years. The Cookes run a small beef suckler herd.

In 2005/6 I acted for the Cookes in a negotiation with the BE to buy some more of their adjoining land and buildings; there was quite a lengthy negotiation which resulted in the Cookes purchasing the red verged land in the conveyance of July 2006 (see attached). The purchase price was substantially higher due to the Cookes seeking to buy more land adjoining but BE not being willing to sell.

However a happy compromise (driven by the enlarged consideration) was achieved at the time, because BE agreed to impose a restrictive covenant on their adjoining (reserved) land that would, as far as the Cookes were concerned, ensure that nothing but agricultural use could be made of that reserved land in perpetuity.

The restrictive covenant on the reserved land

The covenant stated “...that the Vendor/Transferor would not erect any buildings on the Reserved land - and for the avoidance of doubt this included huts, greenhouses, sheds and barns.”

Whilst that list does not specifically include solar panels (as the concept of such a use was in its very early stages and not widely in common use), it is clear that the definition of a building can be either permanent or temporary and unless the context otherwise requires, it includes other structures or erection of whatsoever kind or nature (whether temporary or permanent).

As such, arrays of metal tables, secured on spikes drilled deep into the ground as stabilisers, and supporting solar photovoltaic panels plus any inverter shed type structures would fall into the definition and thus be precluded. If greenhouses were banned, it seems equally logical to include acres of solar panels on supporting tables - all made of glass like silicon panels and metal.

When one considers the facts, the parties had in effect agreed that nothing would be put on the reserved land that could detract from the unique rural and riparian setting of Mill Farm and its long views out over the Evenlode valley, near to Oxford - property characteristics that are always high on any criteria list of discerning, wealthy and very particular purchasers (some international) known to be seeking such properties in such popular and convenient locations. This applied in 2006 as it does now.

In this subject case, planning consent has to be obtained for all the land within the BW application because, as defined by the 1990 T&CP Act, it involves “engineering works in over or under land and making a material change of use of the land” - from agricultural to solar farm power station.

So there is a physical change of the appearance and use of the land involving structures made of metal and glass standing up to 2.3metres high - a typical height for a green house as it happens. Added to this 65 miles or so of 2 metre high fencing. Again such, a dramatic change of use and appearance, as is contemplated,

completely conflicts with what objectives were envisaged/agreed/accepted between the parties back in 2006.

So it is not unreasonable to expect any action, brought in a civil case for an injunction/breach of covenant in a Court, to uphold the clear intention of the parties and in turn enforcing the restricting effect of the covenant. This agreement was reached less than 20 years ago by the same parties - not 100 years ago and parties long gone; there are ample legal precedents indicating that such recent covenants - where there are clear dominant and subservient tenements involved (as is the case here) involving well defined benefits for the dominant property ie [REDACTED] - should be enforced.

Given the actual facts here, it would not be surprising if the Court were to grant additional exemplary or punitive damages to reflect the potential blatant breach of covenant by Blenheim Estate by agreeing to lease the land to Solar Five Ltd for the solar power station use - despite warnings from the the Cookes lawyers.

Temporary Use of the land

Much is made by the Applicant and BE that the scheme is only a temporary use. But whilst c.40 years may seem a short span for a long standing estate of Blenheim's 300 year plus existence, the Cookes are [REDACTED]

[REDACTED] - indeed that of any purchaser of their property.

Temporary means "for a limited period or short term" - leases over 21 years are generally considered long term leases - as the Leasehold Reform legislation attests. So grasping the concept of 40 years being temporary is for most folk a real struggle.

Hiding behind the NISP process with its threat of CA of rights or land to serve their own private (not public) benefit, smacks of a frankly bullying approach with little or no apparent consideration (some might even say reckless and/ or cynical in nature) for other people's interests - which might be expected of the people associated with Solar Five Ltd but not of the Blenheim Estate trustees and its leading Directors.

The lack of compelling case for the exercise of CA powers in this case.

As has been abundantly clear to date, the vast majority of land included in the Application for a DCO belongs to Blenheim Estate and two other lesser owners - all known to be willing to make their land available. The other parcels of land and rights required etc are owned by a myriad of minute ownership interests.

The compulsory powers sought in the DCO are quite unjustified given the main ownerships have already entered into legally binding agreements for lease or sale and so CA powers will not be needed for their land.

It is only the very small ownership interests that might be required by the Applicant and the three big owners just to make their project work. If the scheme were approved the applicant and willing owners must negotiate terms privately with the rest or just avoid their land altogether; in that way there is no need to the use of CA powers when there is minimal public benefit compared to the private loss.

Furthermore the guidance on CA clearly says there must be a **compelling case in the public interest** for such CA powers to be granted - especially to a private company and indirectly for the benefit of one of Englands larger landed estates. Where is the public benefit, when any electricity generated has to be sold at a market price to NGET /NESO and onto the likes of Scottish and Southern or other providers around the national electricity grid, and finally in turn sold on to the consumers - all at a market price.

It is good to hear that the Applicant has at last seen sense to reduce the panel arrays south of Bladon and the Oxford airport take off safety zone plus a small area adjoining [REDACTED] - reducing the extent of panels by some 86 hectares(c.213 acres) of which 2.7ha (6.6acres) are part of the Reserved land subject to the BE covenant.

It is clear that the project must still remain viable even with 213 acres fewer panels - no doubt they can tell us what the power output reduction is estimated to be.

What they have overlooked is that whilst the overall size of the

solar power station is reduced, the proportion of BMV increases to nearer 45% as most of the land they propose removing is grade 3B.

The Cookes case, therefore, can be summarised very simply.

The applicant has now acknowledged the legal restriction by now proposing to omit part of parcel 6.18 - all the Cookes are asking is for the applicant not to place any panels or inverters on the other part of the restricted land - probably a similar additional area of 6 acres or so.

The omission of that further small amount of land (the rest of parcel 6.18 and the northern triangle of 8.06) would have very little impact on the overall output of the power station and only a marginal reduction of income for the applicant and BE.

In contrast however, the result of such removal for the Cookes would mean a significant reduction in the potentially massive private loss they currently face suffering, even if the very latest variation proposed were to be approved.

If the scheme omits the reserved/restricted land ie there are no panels or inverters on any of it, the Cookes would only be Part 1 claimants based on the criteria that apply under Part 1 claims under the 1973 Act and related legislation - the most important aspect being no account can be taken of any loss of view, whereas in the real world all valuers and agents know that views /settings are an integral part of LOCATION and thus VALUE.

However if an owner, such as the Cookes, are affected by the exercise of CA powers and loses any freehold land or rights - such as the Cookes have over the BE land, they are entitled to be full claimants and can claim for every aspect of loss - namely reduction in the OMV of their whole property due to the impact on setting and views, disturbance, injurious affection, consequential losses, costs VAT etc etc. In this case, the amount is likely to be in the order of at least a large six figure sum, possibly more.

As far as the Cookes are aware, no formal inspection by any professional valuer representing the Applicant has been made, so any estimate that may have been made (but not yet declared) on behalf of the applicant, is bound to be a desk top one and thus wholly unreliable as an RICS Red Book valuation that is legally required in such circumstances.

Furthermore, if that task has not been done, the applicant cannot satisfy the test about comparing private loss etc with the claimed albeit minuscule public benefit; in addition no clear evidence of where the compensation money, referred to in the Funding Statement, is coming from. The Applicant seems to have avoided any further provision of meaningful and reliable financial detail despite being requested to supply that.

CONCLUSION

So the Applicant has a simple choice - keep the panels where indicated and suffer a very large compensation claim or just withdraw the panels from the relevant reserved land and avoid the greater cost and consequential complications.

We would ask the Inspectors to direct the Applicant to reduce their application a tiny bit more and if they do not, to recommend to the S of S that he should not confirm the CA powers sought in respect of the Cookes property rights in any part of parcels 6.18 or 8.06 that are restricted.

Harry St John
On behalf of Mr and Mrs Cooke.
July 22nd 2025

1. Stamp Duty

Place "X" in the box that applies and complete the box in the appropriate certificate

☐ It is certified that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

☐ It is certified that the transaction 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 the sum of

£

2. Title Number(s) out of which the Property is transferred *(leave blank if not yet registered)*

3. Other title number(s) against which matters contained in this transfer are to be registered *(if any)*

Unless otherwise arranged with Land Registry headquarters, a certified copy of the transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

8. Transferee's **address for service** *(insert full postal address including postcode for entry on the register)*

The Property

9. The Transferor transfers the property to the Transferee.

10. Consideration (Place "X" in the box which applies. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.)

☐ (insert other receipt as appropriate)

☐ The Transfer is not for money or anything which has a monetary value

11. The Transferor transfers with (place "X" in the box which applies and add any modifications)

☐ full title guarantee

☒ limited title guarantee

12. Declaration of trust. Where there is more than one transferee, place "X" in the appropriate box.

13. Additional Provision(s) Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations, etc.

1. Use this panel for :

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- other agreed provisions
- required or permitted statements, certificates or applications

2. The prescribed subheadings printed in the form as set out in Schedule 1 to the Land Registration Rules 1925 may be inserted, added to, amended, repositioned or omitted

1 Definitions and interpretation

In this transfer:

- 1.1 'the Perpetuity Period' means the period of 80 years commencing on the date of this transfer
- 1.2 'the Plan' means the plan annexed to this transfer and if numbered plans are annexed any reference to a numbered plan is to the annexed plan so numbered
- 1.3 'the Retained Land' means the land and buildings retained by the Transferor being land comprised in the Conveyance as is not comprised in the Property
- 1.4 'the Sporting Track' means the track marked in green on Plan 1 being a minimum of 3 metres wide and running between points A, B and X
- 1.5 'the Farm Track' means the track marked in Brown on Plan 1 between points X, C and D
- 1.6 'the Hedgerow' means the hedgerow marked in blue on Plan 1 between points E and F
- 1.7 'the Reserved Land' means the land edged in orange on Plan 2
- 1.8 'the Gate' means a gate at the point marked with an X on Plan 1
- 1.9 'Transferee's Deed of Covenant' means the Deed attached hereto in Schedule 1

- 1.10 words importing one gender shall be construed as importing any other gender
- 1.11 words importing the singular shall be construed as importing the plural and vice versa
- 1.12 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa
- 1.13 where any party comprises more than one person the obligations and liabilities of that party under this transfer shall be joint and several obligations and liabilities of those persons
- 1.14 the panel and clause headings do not form part of this transfer and shall not be taken into account in its construction or interpretation
- 1.15 any reference to a clause is to one so numbered in this panel unless otherwise stated
- 1.16 any reference to a colour or letter is to one on the Plan

2. Rights reserved for the benefit of the Retained Land

2.1. There are reserved out of the Property for the benefit of each and every part of the Retained Land the following rights but subject to the observance and performance of the covenants contained in clause 2.2.:

- 2.1.1. a right of way over the Sporting Track at all times on foot or with vehicles which for the avoidance of doubt shall include agricultural machinery for the Transferor its guests servants agents and otherwise authorised third parties in order to access and egress the Retained Land for exercising sporting rights, agricultural and equestrian purposes and forestry operations
- 2.1.2. a right of way across the Property between points X and D on Plan 1 until the Transferee has constructed the Farm Track
- 2.1.3. all rights of light and air over the Property or any part thereof
- 2.1.4. all rights to perform works of construction maintenance repair renewal of whatsoever kind on the Retained Land or any part thereof subject to the provisions of clause 3.2.2. hereof
- 2.1.5. a right to use the Gate
- 2.2. In exercising the Rights the Transferor hereby covenants to:
 - 2.2.1. act in a proper and reasonable manner
 - 2.2.2. Not cause any unreasonable damage or nuisance to the owners or occupiers of the Property

3 Restrictive covenants by the Transferor

3.1. The Transferor covenants with the Transferee to observe and perform the Restrictions specified below and it is agreed and declared that:

- 3.1.1. the benefit of this covenant and the Restrictions is to be attached to and enure for each and every part of the Property
- 3.1.2. the burden of this covenant and the Restrictions is intended to bind and binds each and every part of the Retained Land into whomsoever's hands it may come
- 3.1.3. a Restriction not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person

3.2. The Restrictions mentioned in clause 3.1 are the following:

- 3.2.1. not to remove the Hedgerow
- 3.2.2. not to erect any buildings which for the avoidance of doubt shall include huts, greenhouses, sheds and barns on the Reserved Land

4. Restrictive Covenants by the Transferee

The Transferee covenants with the Transferor in the terms of clause 4.3. and it is agreed and declared that:

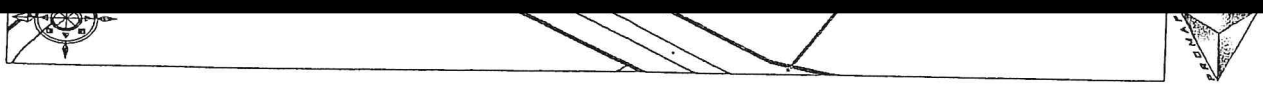
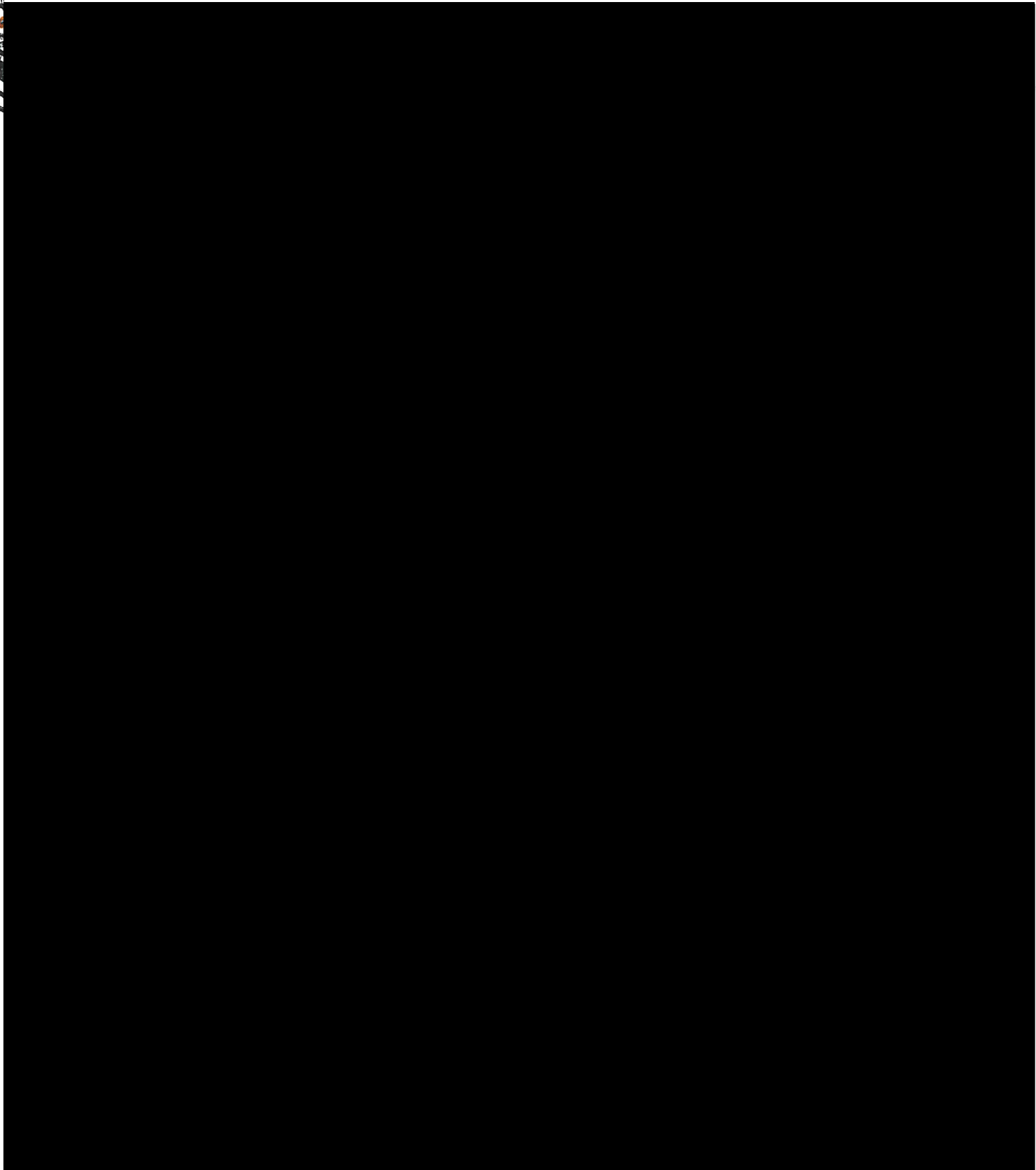
- 4.1. the benefit of this covenant is to be attached to and enure for each and every part of the Retained Land
- 4.2. the burden of this covenant is intended to bind and binds each and every part of the Property into whomsoever's hands it may come
- 4.3. The Transferee covenants that it will not
 - 4.3.1. dispose of the Property without complying with the provisions of paragraph 5.5. hereof
 - 4.3.2. obstruct the Sporting Track or the Gate

5 Positive covenants by the Transferee

The Transferee covenants with the Transferor

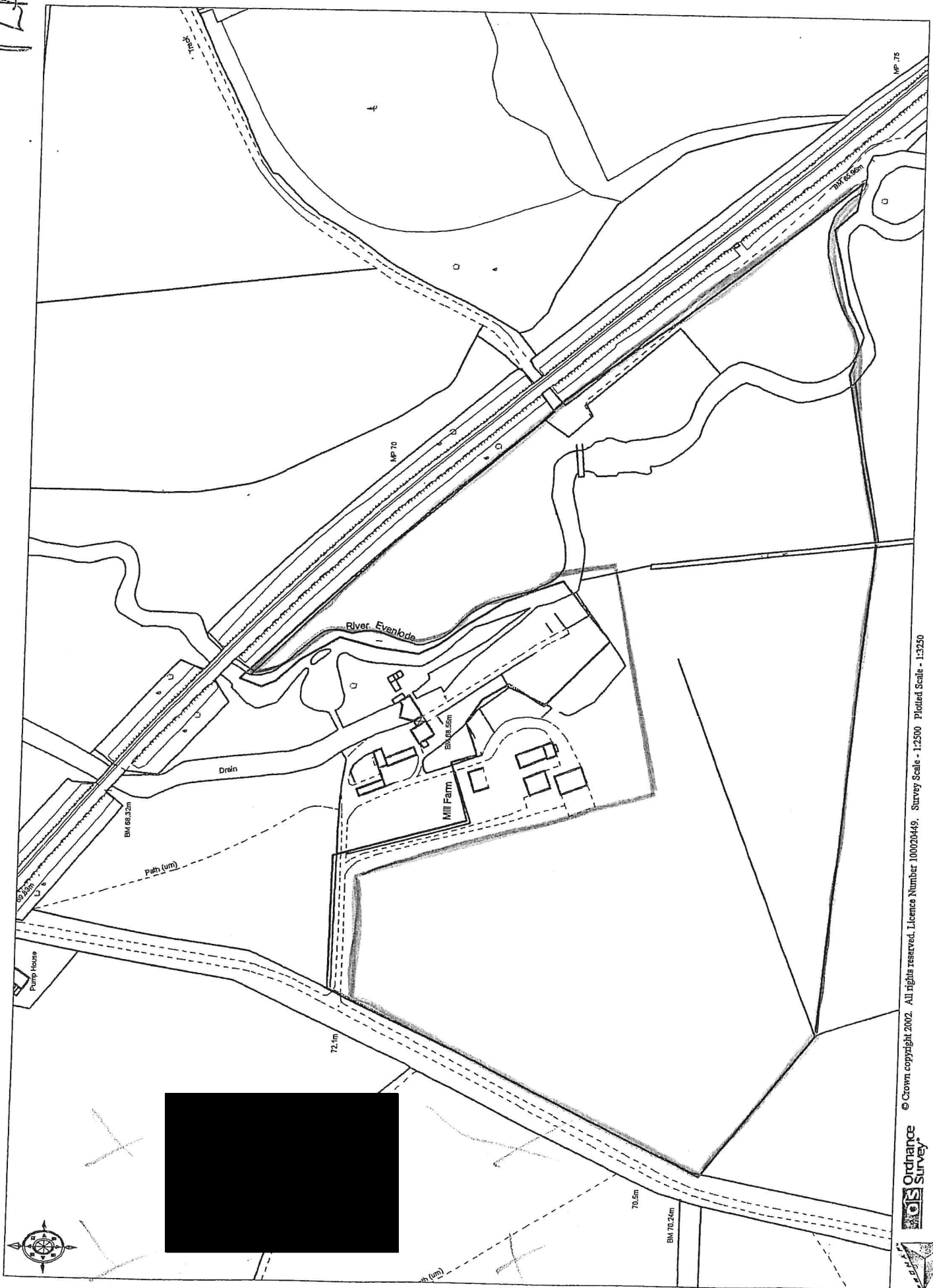
- 5.1 that the Transferee will observe and perform the restrictions covenants and conditions contained in the Conveyance so far as they relate to the Property and are capable of being enforced and will indemnify and keep the Transferor and his successors in title fully and effectually indemnified against all actions

PLAN



PLAN

PLAN 2



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PLAN 2

proceedings damages costs claims and expenses which may be suffered or incurred by the Transferor or his successors in title in respect of any future breach or non-observance or non-performance of those restrictions covenants and conditions

5.2 to construct at its own cost and using good quality materials and acting in a good and workmanlike manner to the reasonable satisfaction of the Transferor:

5.2.1. the Gate which must be conveniently usable by agricultural and other vehicles and livestock

5.2.2. Suitable boundary structures consisting of hawthorn or other suitable mixed hedges as the Transferor shall approve (such approval not to be unreasonably withheld or delayed) around the boundary of the Property between points A, B, X, C and D on Plan 1 which shall be stockproof

5.3. to maintain and repair, and where beyond economic repair, renew and replace to a good standard:

5.3.1. the Sporting Track

5.3.2. the boundary hedges and/or other boundary structures erected around the Property

5.3.3. the Gate

5.4. to construct the Farm Track which shall be a minimum of 3 metres wide and shall be constructed of good quality hardcore and stone suitable for the purposes to which it is intended to the Transferor's reasonable satisfaction

5.5. to procure that all new owners of the Property enter into a Transferee's Deed of Covenant with the owners of the Retained Land before they are registered as proprietor of the Property:

5.5.1. to comply with the Transferee's Positive Covenants

5.5.2. to apply to the Land Registry for a restriction to be noted onto the registered title in the form set out in clause 6.1.1. hereof

6 Restrictions and Other Entries on the Register

6.1. The Transferor and the Transferee apply to the Land Registrar for 2 restrictions to be entered on the title to the Property in the following Land Registry standard forms.

6.1.1. "No disposition of the freehold registered estate by the proprietor of the registered estate or by the proprietor of a registered charge is to be registered without a certificate signed by the solicitors for the person to

6.1.2. "No disposition of the registered estate on or before the 10th day of July 2036 by the proprietor of the registered estate or by the proprietor of a registered charge is to be registered without a written consent signed by the duly authorised representative of the Trustees of the Blenheim Maintenance Fund or their successor or the Property Director of the Blenheim Estates care of the Estate Office, Woodstock, Oxfordshire OX20 1PP or their conveyancer"

14. The Transferors and all other necessary parties should execute this transfer as a deed using the space below. Forms of execution are given in Schedule 3 to the Land Registration Rules 1925. If the transfer contains transferees' covenants or declarations or contains an application by them (e.g. for a restriction), it must be executed by the Transferees

Executed as a deed by

Signature.....

In the presence of:

Witness signature..

Name (print).....

Executed as a deed by

DATED

2006

- (1) [NAME OF NEW OWNER]
- (2) [NAME OF ADJOINING OWNER]

DEED OF COVENANT

relating to property known as Mill Farm,
Lower Road, Long Hanborough OX29 6LW

Darbys
52 New Inn Hall Street
Oxford
OX1 2DN
Ref.: 7314.36

PARTICULARS

Date

New Owner

Adjoining Owner

Original Transfer

Property

Retained Land

The land registered with title number

Transferee's Positive Covenants

Has the meaning given to it in the Original Transfer

THIS DEED OF COVENANT is made on the date set out in the Particulars

BETWEEN

- (1) the New Owner; and
- (2) the Adjoining Owner.

BACKGROUND

- (A) The New Owner has agreed to purchase the Property.
- (B) The New Owner has agreed to enter into this Deed of Covenant pursuant to the terms of the Original Transfer.

OPERATIVE PROVISIONS

1. CONSTRUCTION

- 1.1 References to the owners of the Property are to the New Owner and its successors in title to the Property and references to the owners of the Retained Land are to the Adjoining Owner and its successors in title to the Retained Land.
- 1.2 References to the Property include the whole and every part of the Property and references to the Retained Land include the whole and every part of the Retained Land.
- 1.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. **COVENANT**

2.1 The New Owner covenants with the Adjoining Owner and each of them that the New Owner:

2.1.1 will comply with the Transferee's Positive Covenants and will indemnify the Adjoining Owner against all actions, claims, demands and proceedings taken or made against the Adjoining Owner and all costs, damages, expenses, liabilities and losses arising from their breach; and

2.1.2 will not transfer the Property without ensuring that any transferee enters into a direct covenant with the owners of the Retained Land on the terms of this Deed of Covenant.

2.2 The New Owner will not be liable for any breach of the Transferee's Positive Covenants after it has transferred the whole of its interest in the Property so long as it procures that its immediate successor in title enters into a deed of covenant with the owners of the Retained Land on or before the date of such transfer on the same terms as this Deed of Covenant.

3. **LAND REGISTRY APPLICATION**

The New Owner is to apply to the Land Registrar on form RX1 for a restriction to be entered onto the title of the Property in the following Land Registry form:

"No transfer of freehold the registered estate by the proprietor of the registered estate or by the proprietor of a registered charge is to be registered without a certificate signed by the solicitors for the person to whom the disposition is made that the provisions of paragraph 5.5. of the Original Transfer have been complied with."

4. **EXECUTION**

The New Owner has executed this Deed of Covenant as a deed and it is delivered on the date set out in the Particulars.

THE COMMON SEAL of)
[PARTY NAME])
was affixed to this deed in the presence of:)

Director

Director / Secretary

SIGNED as a deed by)
[PARTY NAME])
acting by a director and its secretary)
or two directors)

Director

Director / Secretary

SIGNED as a deed on behalf of)
[PARTY NAME],)
a company incorporated in [COUNTRY],)
by [NAME OR NAMES], being)
[a person][persons] who, in accordance)
with the laws of that territory, [is][are])
acting under the authority of the company:)

Authorised signatory

Authorised signatory

SIGNED as a deed by)
[PARTY NAME])
in the presence of:)

Witness signature:

Name:

Address:

Occupation: