

HIGH PEAK BOROUGH COUNCIL

Report to Development Control Committee

22nd April 2024

TITLE:	Appeal relating to refusal of planning application HPK/2022/0456 for Proposed residential development comprising 92 dwellings including areas of public open space, landscaping and associated works on Land at, Dinting Vale, Dinting, Glossop, Derbyshire
CONTACT:	HEAD OF DEVELOPMENT SERVICES
WARDS INVOLVED:	Simmondley

The following item is exempt by virtue of Paragraphs 2 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972

Appendices Attached – Appellant’s Technical Note relating to Reason for Refusal 4

1. REASON FOR REPORT

1.1 To seek agreement on the approach to be taken by the Council for the forthcoming public inquiry against refusal of this application.

2. RECOMMENDATION

2.1 That the committee resolve to not to pursue a defence in respect of reasons for refusal 2 & 4 in the forthcoming proceedings and to “offer no evidence” at the Public Inquiry in respect of those reasons.

3. BACKGROUND

3.1 Full consent is sought for the construction of 92 dwellings (reduced from 100 units) which would comprise the following:

- a. Housing types (all open market):
 - o 1 bedroom flat – 6
 - o 2 bedroom house – 21
 - o 3 bedroom house – 50

- 4 bedroom house – 15
- b. Affordable housing: None proposed.
- c. The site would be served by vehicular access via a new junction off Dinting Vale (A57). The proposed housing development would comprise a linear grid settlement pattern with an irregular & organic edge.

3.2 Members will recall that this application was presented to Development Control Committee on 23rd October 2023 recommended for approval by Officers. Committee resolved to refuse the application for the following reasons:

1. *The A57 Dinting Vale is already designated as an Air Quality Management Area (AQMA) and there is potential for the level of air pollution in the area to be further increased due to increased traffic levels, leading to concerns around the impact on health of people, in particular children, in the area. Whilst it is acknowledged that the developer proposes Section 106 Contributions towards Air Quality Monitoring in the area and sustainable travel feasibility studies, this will not mitigate the actual impact of the development. As such the proposal is contrary to Policy EQ10 of the adopted High Peak Local Plan 2016 and the NPPF.*
2. *The position of the proposed highway access road from the A57, part of which lies outside the Local Plan allocation, in close proximity to the school, would result in an unacceptable risk to road safety. The proposal therefore fails to achieve safe and suitable access contrary to Policy CF6 of the adopted High Peak Local Plan 2016 and the NPPF.*
3. *The proposed section 106 package fails to achieve a policy compliant level of affordable housing and fails to fully mitigate for the substantial tree loss and loss of biodiversity on the site. Whilst the viability issues are noted, in the absence of a policy compliant Section 106 package the residual harm arising from the development is considered to outweigh the benefits of delivering this allocated housing site contrary to Policies DS4, EQ9, EQ5, H3 and H4 of the adopted High Peak Local Plan 2016 and the NPPF.*
4. *There is potential for the public right of way onto Simmondley Lane to be used as a “rat-run” for vehicle access, and the absence of any detailed and workable proposals for preventative measures within the application, which would also allow the access rights for existing residents to be maintained, the proposal is considered to pose a risk to the safety of users of the right of way and a highway safety risk at the junction with Simmondley Lane contrary to Policies EQ6 and CF6 of the adopted High Peak Local Plan 2016 and the NPPF.*

4. LEGAL POSITION

4.1 Following the decision of Development Control Committee on the 23rd October 2024, Development Services have sought legal advice in order to establish a case

sufficient to defend the Council's resolution based on the reasons for refusal and to instruct Counsel to appeal for the Council in the forthcoming seven day Public Inquiry. Work has also been undertaken to procure professional witnesses to present evidence in respect of the Committee's reasons for refusal.

Refusal Reason 1 – Air Quality.

The fact that there will be additional traffic is inevitable given the site is allocated for housing in the Local Plan. The AQMA was designated in 2019, after the adoption of the Local Plan and Para 5.86 of the Local Plan says that there were no AQMA in the plan area. As the AQMA post-dates the allocation, then this might amount to a change in circumstances to justify an approach contrary to that set out in the Local Plan. Following Counsel's advice we are seeking further clarification from environmental health and will report further in the update sheet.

Reason for Refusal 2 – Highway Safety at the junction with the A57

Whilst the Highway Authority raised some concerns regarding the scheme in relation to its acceptability by walking and cycling and the gradient of the access road, which they advised would discourage this, they raise no objection in principle to the formation of an access with the A57 at this point to serve the development.

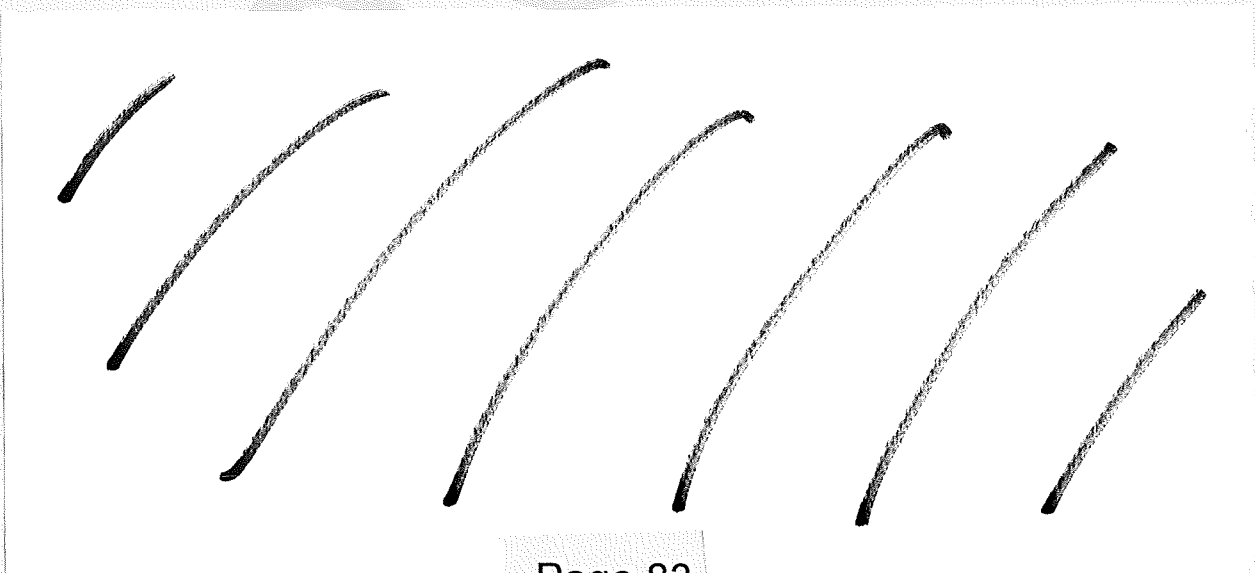
Under the provisions of paragraph 115 of the NPPF:

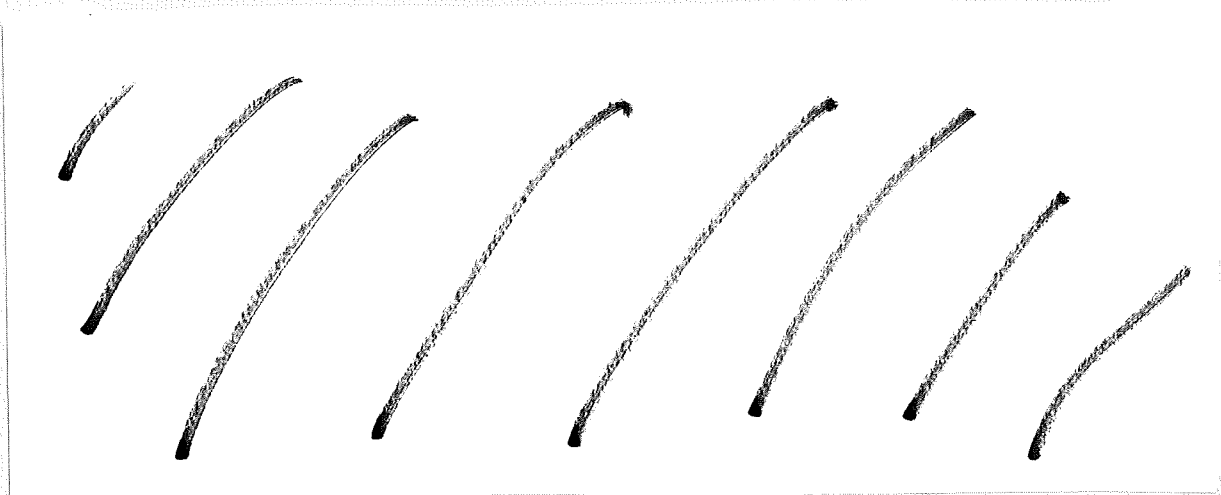
Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Whilst the concerns of the DC Committee are acknowledged, the site is an allocation in the adopted Local Plan with only one practical point of access which is referenced in the adopted Policy.

In light of this professionally DCC officers would not be able to offer evidence at the inquiry to support the Council's position or reason for refusal.

Counsel has advised as follows:





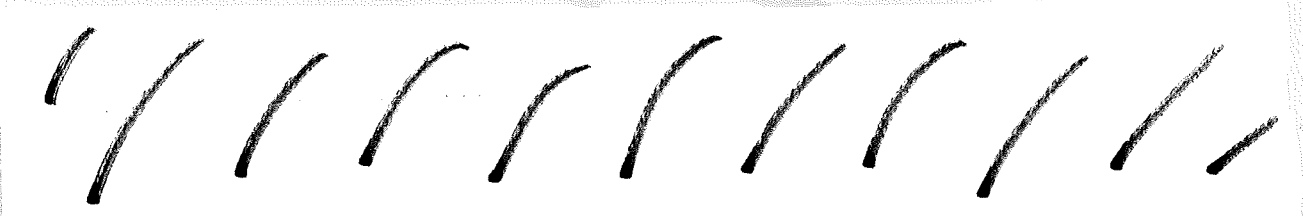
The assessment of the proposal by DCC has not highlighted any area where the design of the access fails to meet safety standards or any other technical reason why the proposed access in this location would cause an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The local plan inspector and the Council at the time of the allocation were satisfied that a safe access could be formed in this location, the movement of access slightly outside of the allocation allows a better sightline to be achieved. DCC confirm that technically the access is acceptable.

Counsel concludes:



Reason for Refusal 3 – Section 106 Package



Reason for Refusal 4 – Access on to Simmondley Lane / Public Right of Way (PROW)

Members raised concern that there is potential for the public right of way onto Simmondley Lane to be used as a “rat-run” for vehicle access. Officers had advised that a condition could be applied requiring a scheme of measures to be submitted to and approved by the Local Planning Authority to prevent unauthorised vehicle access to and from the site via this route. However, the Committee did not feel comfortable leaving this important detail to a subsequent condition. They consider that in the absence of any detailed and workable proposals for preventative measures within the application, which would also allow the access rights for existing residents to be maintained, the proposal would pose a risk to the safety of users of the right of way and a highway safety risk at the junction with Simmondley Lane.

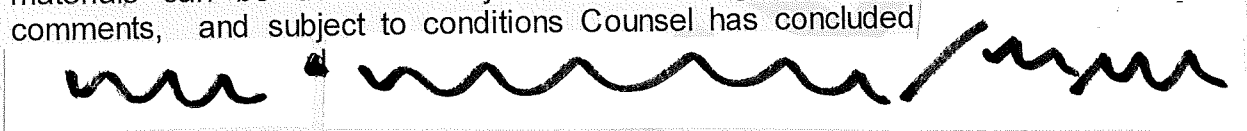
Since the refusal of the application, the Appellant has designed a scheme of physical works which could be implemented at the point at which the PROW intersects the spine road through the development. (See Technical Note Appended

to this report). Essentially this comprises islands and bollards which prevent vehicles from turning into the track to Simmondley Lane from the spine road and vice versa, whilst allowing those that have an existing right to access their properties from Simmondley lane to continue to do so by being able to drive straight across the spine road. Existing residents living to the west of the spine road would also be able to access their properties from the new spine road should they so wish but vehicles would not be able to access Simmondley Lane from the spine road.

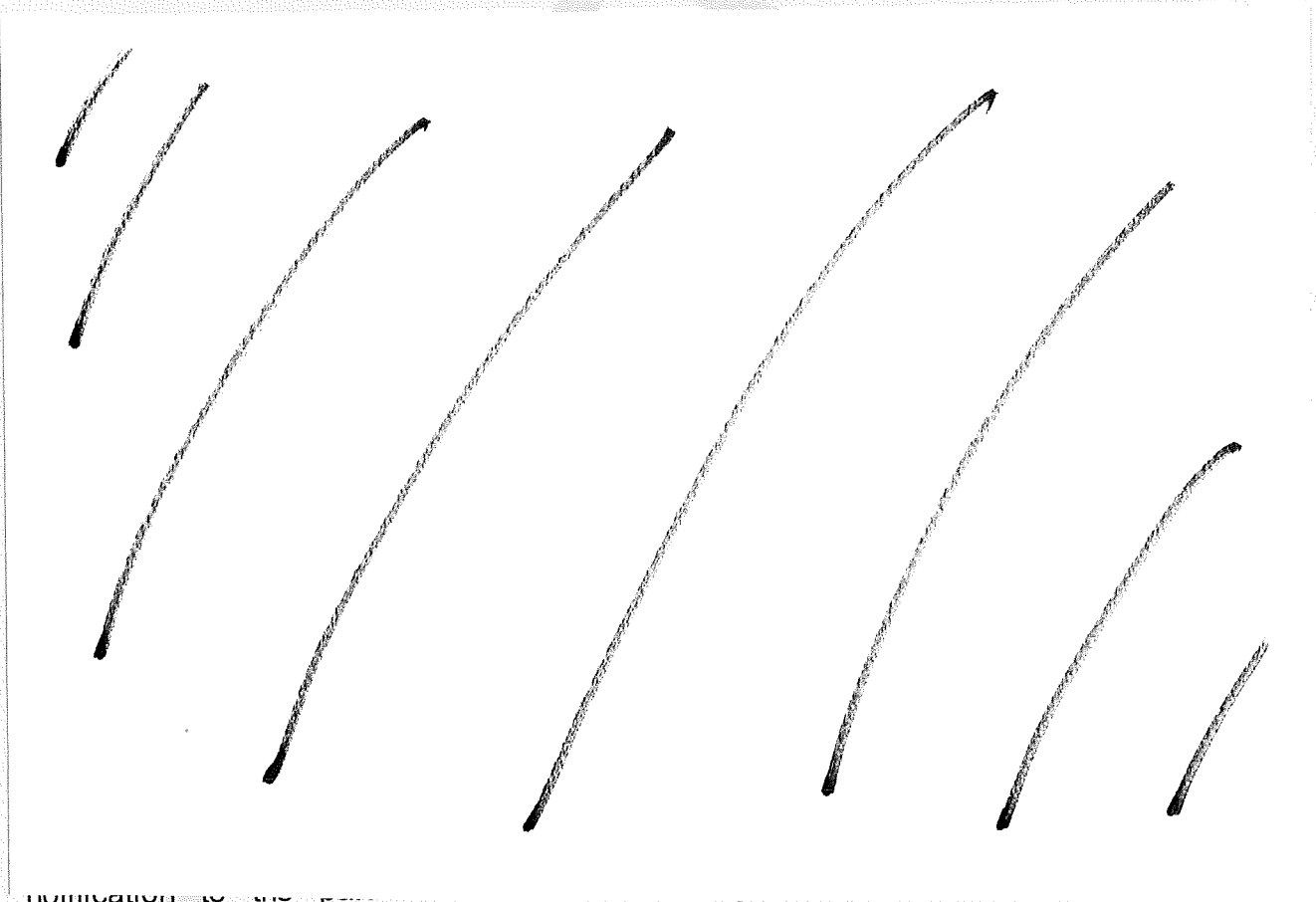
These physical measures would be supplemented by a scheme of signage.

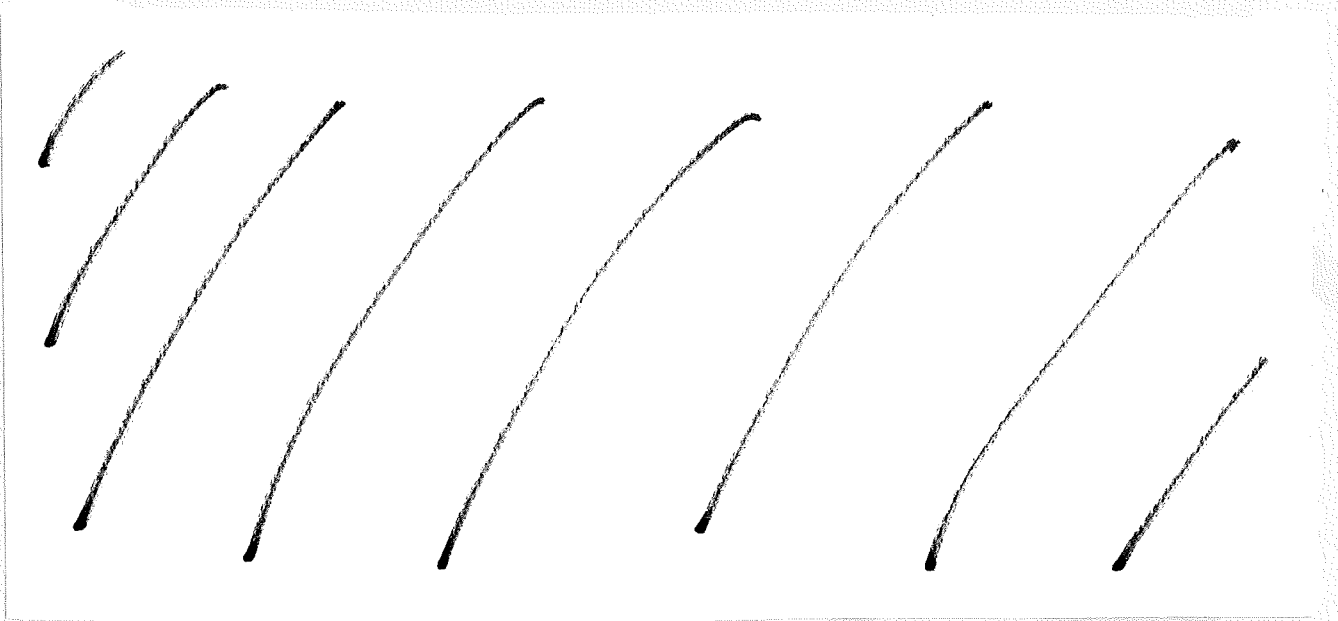
Consultation has taken place with the Highways Officers and PROW officers at Derbyshire County Council. They have confirmed that the tracking drawings provided by the applicant are acceptable and, whilst the proposed measures cannot guarantee that no unauthorised vehicle movements whatsoever would occur, they would ensure that an unauthorised a movement would require would require such a high degree of complex manoeuvring that it would in practice achieve the desired effect.

The implementation of the scheme of works and approval of final details such as materials can be dealt with by condition. In light of the revised plans, DCC comments, and subject to conditions Counsel has concluded

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Summary and Conclusion





Technical Note



Transportation Planning : Infrastructure Design
an RSK company

Proposed Residential Development

A57 Dinting Vale, Glossop

Our reference: CT/210087/TN05 Date: 9th April 2024

Introduction / Background

1. SCP have been appointed by Wain Homes (North West) Limited to provide transport planning and engineering advice in support of a proposed residential development on land to the south-west of the A57 Dinting Vale, Glossop. The site is allocated for residential development under Policy DS4 of the adopted Local Plan, therefore the principle of residential development is established and accepted by the Council.
2. The development proposals were the subject of a full planning application (Application Reference: HPK/2022/0456) for the erection of 100 dwellings, which was validated by High Peak Borough Council (HPBC) on 3rd November 2022, although the application was later amended to provide 92 dwellings.
3. SCP produced a Transport Assessment and Travel Plan which were submitted with the planning application. Derbyshire County Council (DCC), as local highway authority, reviewed these documents and provided a number of comments which were addressed through various Technical Notes and meetings. Subsequently, no highway objections were received although it was recommended that the following planning condition be imposed:

Prior to the commencement of development, a scheme to discourage new residents from using the private road (Adderley Place/ PROW 50) for vehicular access, including timescales for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details/ timescales and maintained for those purposes at all times during the lifetime of the occupation of the development.

4. The aforementioned planning application was refused, against Officer's recommendations, on 27th October 2023 and this Technical Note has been prepared in response to reason for refusal 4, copied below:



Reason for Refusal 4

"There is potential for the public right of way onto Simmondley Lane to be used as a "rat-run" for vehicle access, and the absence of any detailed and workable proposals for preventative measures within the application, which would also allow the access rights for existing residents to be maintained, the proposal is considered to pose a risk to the safety of users of the right of way and a highway safety risk at the junction with Simmondley Lane contrary to Policies EQ6 and CF6 of the adopted High Peak Local Plan 2016 and the NPPF."

Response to Reason for Refusal 4

5. Reason for refusal 4 relates to the potential for the public right of way onto Simmondley Lane to be used as a "rat-run" for vehicle access.
6. In terms of the measures to prevent development traffic using the PROW, this is anticipated to be largely self-enforcing when considering the PROW is accessed via a narrow cobbled section of carriageway off Simmondley Lane, as shown on **Figure 1** below, in comparison to the proposed high standard access road which is to be put forward for adoption and is not materially longer; hence the route of choice for prospective residents.

Figure 1 – Existing PROW



7. On the above basis, there are no proposals to upgrade the existing surfacing material as part of the measures to discourage development traffic from using the PROW and, as detailed earlier, it was agreed that further details on measures to prevent development traffic from using the PROW, such as signage to inform drivers of the private nature of the road, could be dealt with via a suitably worded planning condition and agreed with the PROW Officer.
8. During discussions with the Highway Officers at the County Council, it had been accepted that a scheme to discourage the use of Adderley Place/PROW 50 could be produced, and a condition to that effect was agreed with the officers. However, in response to the reason for refusal further discussions took place with the PROW Officer to prepare further details of that scheme. The Adderley Place Vehicle Discouragement Scheme shown on drawing number SCP/210087/SK04 Rev B, included as **Appendix A**, was presented to the Council for agreement.
9. The scheme consists of two kerbed central islands on the proposed access road in the vicinity of the PROW crossing with a number of bollards to physically restrict prospective residents of the site routing along the PROW when accessing/egressing the site, as demonstrated through swept path analysis. The lane widths between the kerbed central islands are proposed to be maintained at 2.75m which is sufficient to accommodate the movements of a refuse vehicle, as demonstrated through swept path analysis on drawing number SCP/210087/ATR03 Rev B, included as **Appendix B**. It should be noted that the scheme does not narrow the existing PROW at any point, or restrict the existing rights of access for existing residents of the dwellings to the west of the site. This has been demonstrated through swept path analysis of a refuse vehicle on drawing number SCP/210087/SK04 Rev B, included as **Appendix A**.
10. It was noted that the scheme to physically restrict movements will be complemented with appropriate signage such as 'no right/left turn' and 'Private Road' signs etc., as shown on drawing number SCP/210087/SK04.1 Rev A included as **Appendix C**.
11. Prior to the proposed scheme being constructed, all construction workers and HGV drivers will not be permitted to route along the PROW, through the implementation of a Construction Traffic Management and Routing Plan. This will be communicated to all construction contractors, displayed on-site and route plans passed to all drivers / construction workers at site inductions. Drivers and construction workers will be informed that they will face disciplinary action if caught contravening.

Updated Position

12. A meeting was held with the PROW Officer on 3rd April 2024 to discuss the principles of the Adderley Place Vehicle Discouragement Scheme. The PROW Officer confirmed that the scheme would discourage turning into / out of FP 50 from / to the proposed new road from / towards Simmondley Lane whilst also allowing the residents of Adderley Place to exercise their private vehicular rights of access along FP 50.
13. Notwithstanding the above, the PROW Officer did not see the benefit of the western bollards and requested further signage to indicate Adderley Place is not a through road and make clear that it is a public footpath only.
14. Following a meeting with the PROW Officer to discuss their comments, the western bollards were removed from the scheme. Furthermore, signage additions were made including 'private road no through road' signage as well as 'public footpath' signs where access would be achievable from the new road complemented with 'private road' and 'no unauthorised vehicles beyond this point' signage on the eastern section of Adderley Place towards Simmondley Lane. The updated Adderley Place Vehicle Discouragement Scheme is shown on drawing number SCP/210087/SK04 Rev C and SCP/210087/SK04.1 Rev B, presented in **Appendix D**.
15. The PROW Officer reviewed the revised scheme, presented in **Appendix D**, and confirmed that *"I am satisfied with the principles put forward."* and *"I would be satisfied with a condition requiring further details to be agreed at a later stage in the planning process"*. It was discussed that the further details would include the type and height of bollards. The other construction details would form part of the normal technical approval of the new residential access road, most likely through a S38 Agreement of the Highways Act 1980.
16. Since the above position was reached with the PROW Officer, another updated preliminary plan of the vehicle discouragement scheme has been produced to provide additional details on the signage and bollards etc. It should be noted that the central islands have been widened slightly to better accommodate the required signage/bollards, with the lane widths between the kerbed central islands maintained at 2.75m. The updated Adderley Place Vehicle Discouragement Scheme and swept path analysis is shown on drawing number SCP-210087-0000-001 Rev A, SCP/210087/SK04 Rev D and SCP/210087/ATR03 Rev D, presented in **Appendix E**.

Summary

17. In summary, whilst the narrow cobbled section of carriageway on Adderley Place is unlikely to be attractive to development traffic, reinforcement by physical measures included in the proposed Adderley Place Vehicle Discouragement Scheme will further restrict and discourage prospective residents of the site routing along the PROW, whilst allowing the access rights for existing residents to be maintained. The PROW Officer has reviewed the scheme and is satisfied with the principles put forward, and is supportive of a condition being attached to any planning permission requiring further details of materials, bollard types and heights etc. to be submitted at a later stage in the planning process.

PROTECT

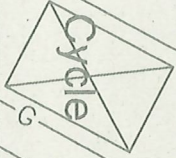
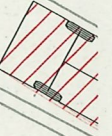
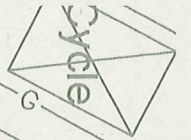
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APPENDIX A

GENERAL ARRANGEMENT.



LARGE REFUSE



PROPOSED BOLLARDS

PROPOSED KERBED ISLANDS

PROPOSED BOLLARDS

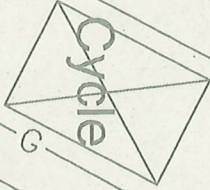
CAR - ATTEMPT AND RIGHT OUT

EXISTING PROW TO REMAIN UNSURFACED AS EXISTING

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Pedestrian/Cycleway route

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APPENDIX B
PRO



ian/Cycleway route

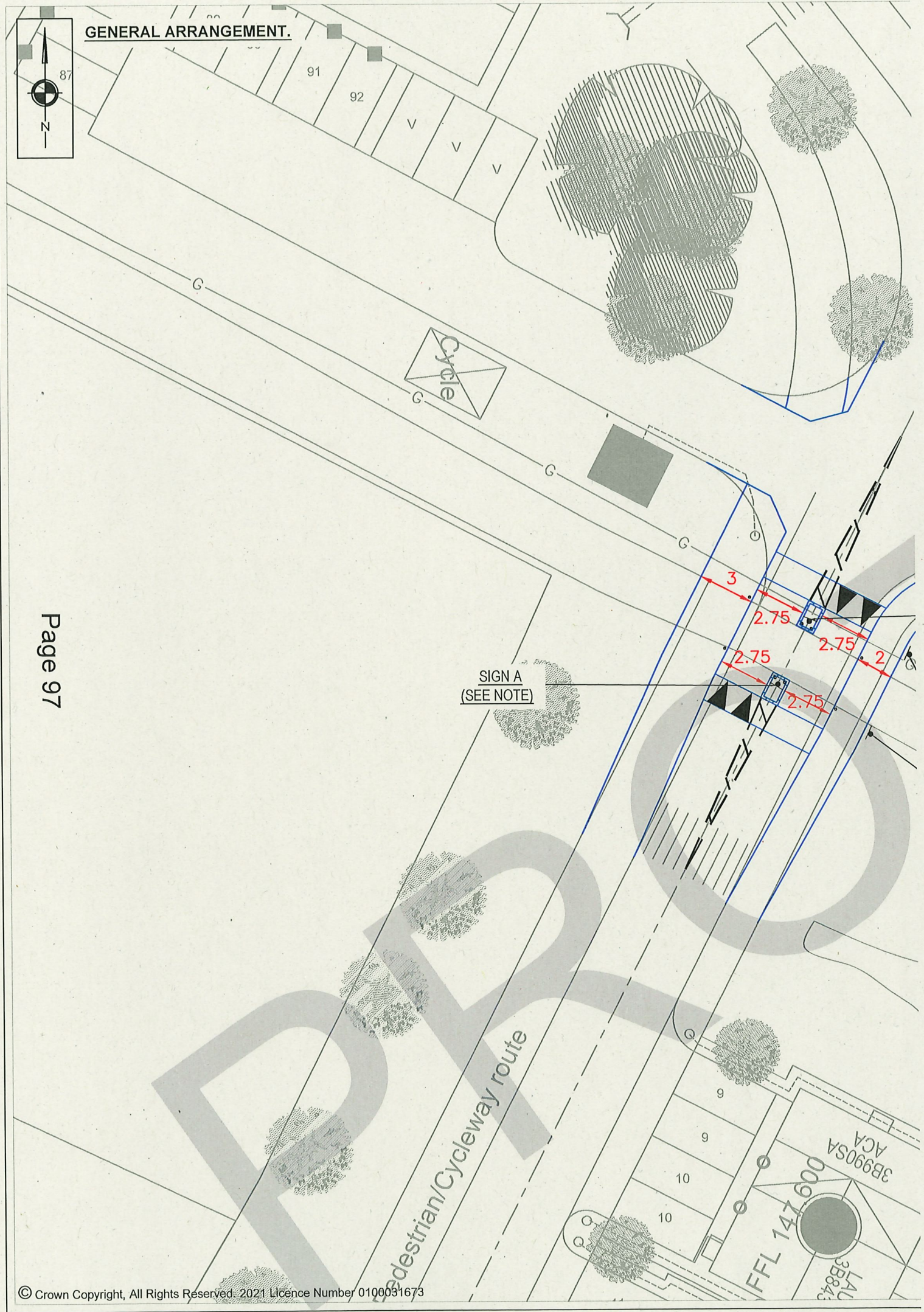
Large Refuse Vehicle (3 cones)

Large Refuse Van

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GENERAL ARRANGEMENT.

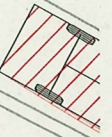
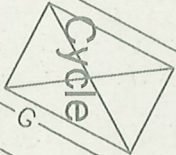
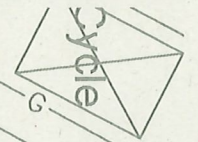


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GENERAL ARRANGEMENT.



LARGE REFUSE



PROPOSED BOLLARDS

PROPOSED KERBED ISLANDS

PROPOSED BOLLARDS

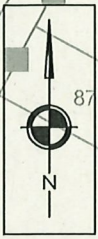
CAR - ATTEMPT AND RIGHT OUT

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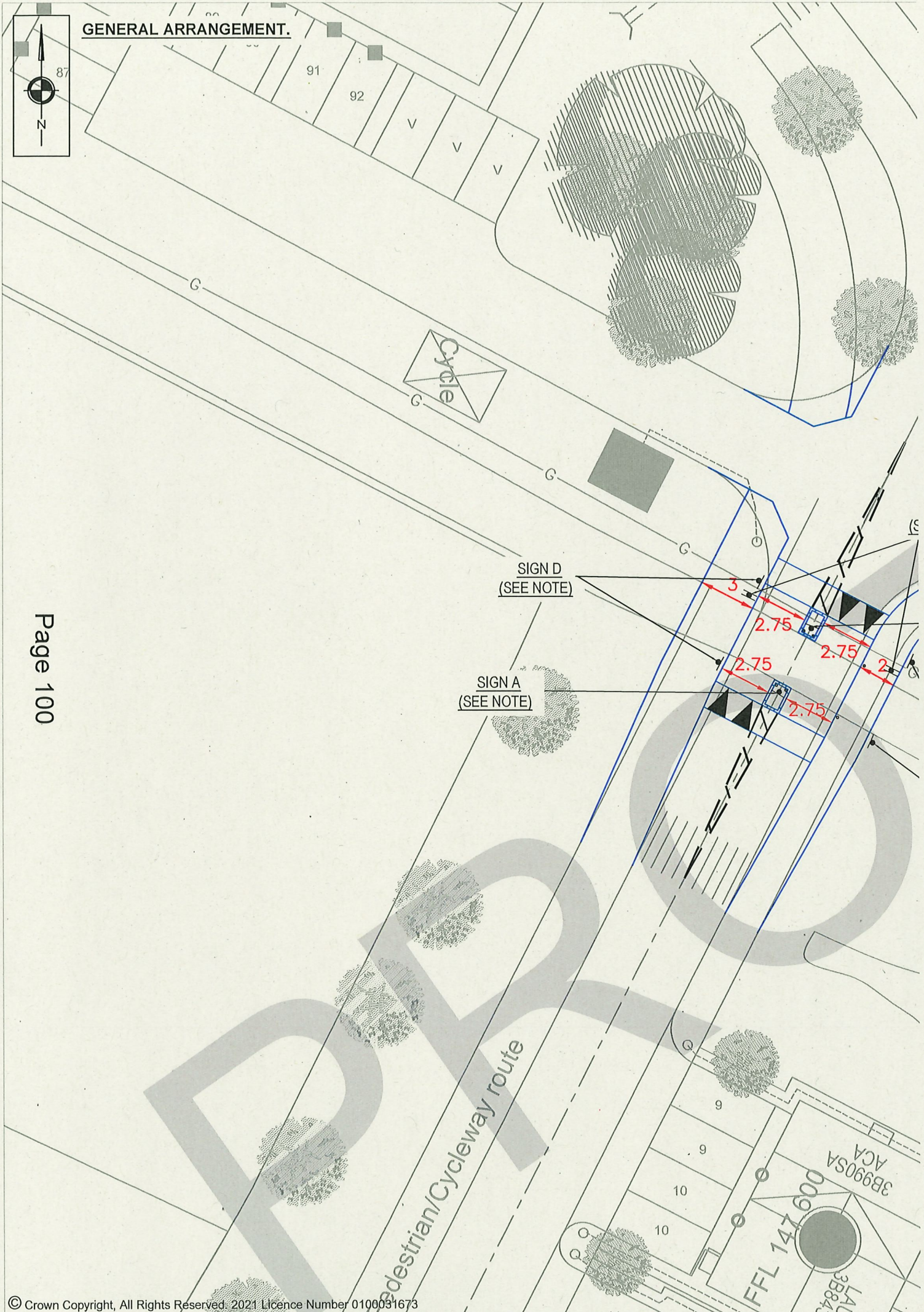
EXISTING PROW TO REMAIN UNSURFACED AS EXISTING

Footpath/Cycleway route

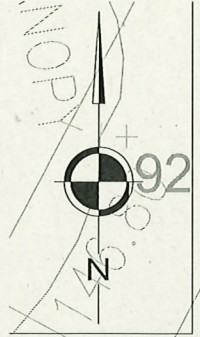
GENERAL ARRANGEMENT.



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APPENDIX E
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V

147.18

TREE CANOPY

Cycle

BUSHES

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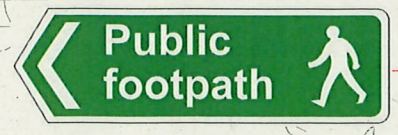
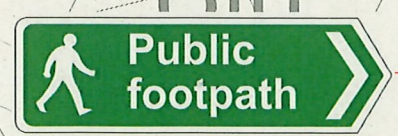
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CT2

Bin

BUSH



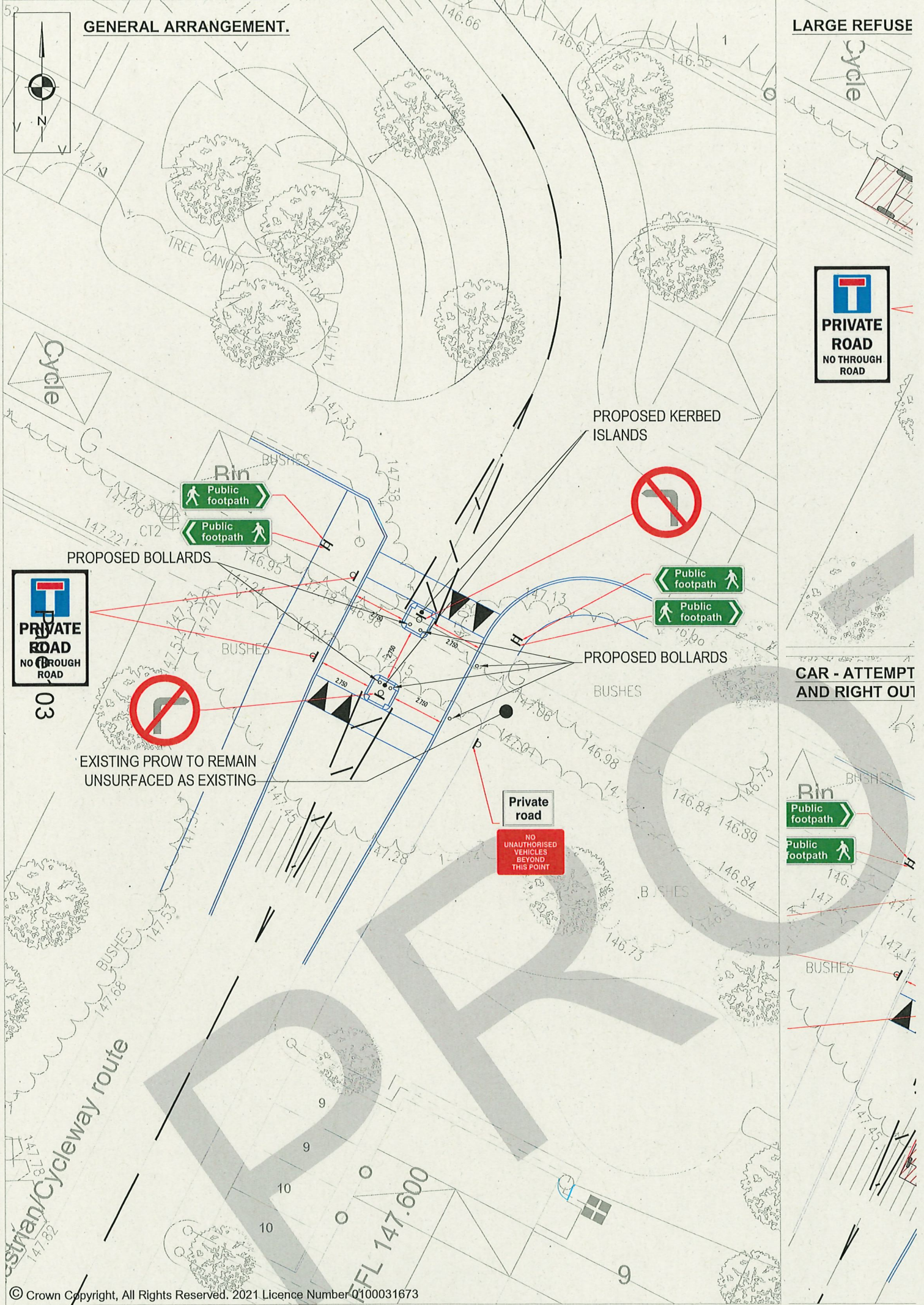
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GENERAL ARRANGEMENT.

LARGE REFUSE



CAR - ATTEMPT AND RIGHT OUT

Private road

NO UNAUTHORISED VEHICLES BEYOND THIS POINT

EXISTING PROW TO REMAIN UNSURFACED AS EXISTING

