

DATED

21st November

2011

- (1) EAST DEVON DISTRICT COUNCIL
- (2) DEVON COUNTY COUNCIL
- (3) CG FRY & SON LIMITED

AGREEMENT

Pursuant to Section 106 of the
Town and County Planning Act 1990
relating to

land at The Phillips Centre, Lea Combe, Axminster, Devon



Battens Solicitors Limited
Mansion House, Princes Street,
Yeovil, Somerset, BA20 1EP
Telephone : 01935 846000

THIS AGREEMENT is made the 21st day of November 2011

BETWEEN

1. **EAST DEVON DISTRICT COUNCIL** of Council Offices Knowle Sidmouth Devon EX10 8HL ("the Council")
2. **DEVON COUNTY COUNCIL** of County Hall Exeter Devon EX2 4QD ("the County Council")
3. **C G FRY AND SON LIMITED** (Co Registration Number 1765396) of Litton Cheney Dorchester Dorset DT2 9AS ("the Developer")

WHEREAS:

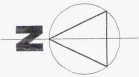
1. The Council is a local planning authority for the purposes of the 1990 Act for the area which the Land is situated
2. The County Council is a local planning authority for the purposes of the 1990 Act and the local education authority for the area in which the Land is situated.
3. The County Council is the registered proprietor of the Land which is registered as part of the freehold title number DN509796 subject to the entries disclosed in the registered title but otherwise free from encumbrances.
4. The Developer has entered into an agreement dated 10 January 2011 with the County Council to purchase the Land.
5. The Developer has applied to the Council by written application known to the Council by reference number 11/0718/FUL for planning permission to carry out the Development
6. The Council is minded to grant planning permission for the Development subject to the covenants contained in this Deed

NOW THIS DEED WITNESSETH

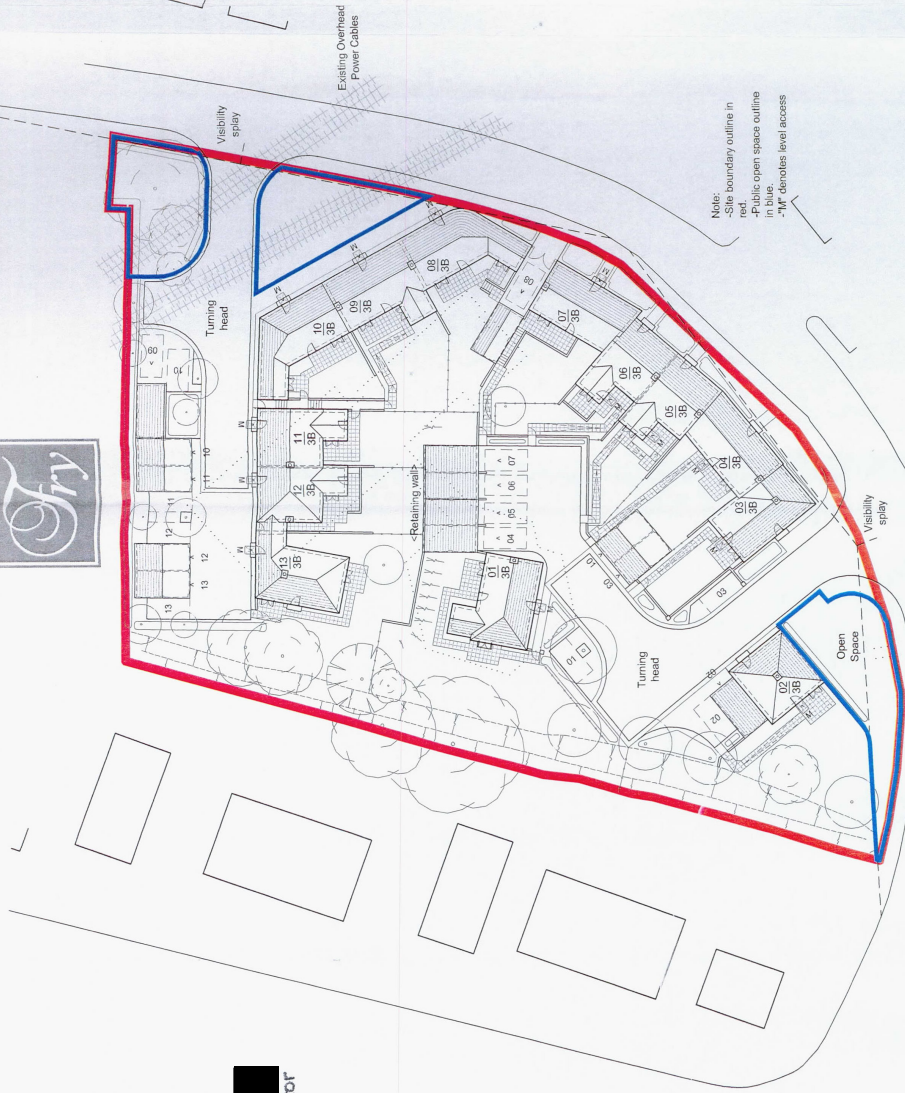
1 DEFINITIONS

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

"the 1990 Act"	means the Town and Country Planning Act 1990
"the 1972 Act"	means the Local Government Act 1972
"Commencement of Development"	means the first instance of the carrying out of a material operation as defined in Section 56 of the Act to implement the Planning Permission save that the definition shall not include works of ground investigation site surveys archaeological investigation and "Commence the Development" shall be similarly construed
"Contributions"	means the Open Space and Recreation Contribution, the Primary Education Contribution and the Secondary Education Contribution
"the Development"	means the demolition of existing buildings and the erection of 13 dwellings
"the District "	means the local authority district of East Devon District Council
"Dwelling"	means a building or part of a building on the Land designed for residential occupation by a single household
"Index"	Means the all Items Index of Retail Prices issued by the Office for National Statistics
"the Land"	means the land shown edged in red on the Plan
"Notice of Commencement"	means a notice in writing to advise the Council and the County Council of the date that Commencement of Development will take place



Assistant County Solicitor



13 DWELLINGS AT THE PHILLIPS CENTRE
AXMINSTER, DEVON
Public Open Space Plan Scale 1:500@A3 Drawing No PP-013

CG Fry and Son Ltd
Liton Cheney Dorchester DT2 9AW
Tel 01308 482000 Fax 01308 482249 e-mail: eugene@cgfry.co.uk
website: www.cgfry.co.uk
December 2009

"Occupation"	means for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display and Occupy and Occupied shall be similarly construed
"Open Space and Recreation Contribution"	means the sum of £48,000 (forty eight thousand pounds)
"Plan"	means the plan annexed
"the Planning Application"	means the application for full planning permission for the Development to which the Council have allocated registration number 11/0718/FUL
"the Planning Obligations"	are the covenants in Clause 4 of this Agreement
"the Planning Permission"	means a notice of decision issued by the Council pursuant to the Planning Application
"Primary School Contribution"	means the sum of £43,320.88 (forty three thousand three hundred and twenty pounds and eighty eight pence)
"POS"	means the Public Open Space land shown tinted green and edged blue on the Plan
"Secondary Education Contribution"	means the sum of £35,569.85 (thirty five thousand five hundred and sixty nine pounds and eighty five pence)

2 GENERAL PROVISIONS

- 2.1 In this Agreement:
- 2.1.1 words importing the singular include the plural and vice versa
 - 2.1.2 references to person include bodies corporate and vice versa
 - 2.1.3 save where the context otherwise requires all covenants obligations or other commitments given or undertaken by more than one person are given or undertaken by them jointly and severally
 - 2.1.4 any reference to the Council the County Council or the Developer or any other legal or natural person shall unless the context indicates otherwise include his her its or their heirs assigns and successors in title and in the case of the Council and the County Council shall also include any successor in function
 - 2.1.5 the clause headings shall not affect the construction of this Agreement
 - 2.1.6 save where otherwise stated any reference to a numbered clause or schedule means the clause or schedule in this Agreement which is so numbered
 - 2.1.7 every reference to any statute or any section of any statute shall be read and construed as including a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made in pursuance of such statute
- 2.2 If any provision of this Agreement shall be held to be illegal invalid or unenforceable the legality validity and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 2.3 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no third party shall have any rights to enforce the terms of this Agreement but for the avoidance of doubt the County Council may enforce the Planning Obligations and the terms of this

Agreement providing that it has transferred the Land to the Developer

2.4 The Developer hereby covenant with the County Council and Council for themselves and their successors in title:

2.4.1 That the Land shall be permanently subject to the restrictions and provisions herein contained

2.4.2 Not to develop or cause or permit any part of the Development other than in strict conformity with this Agreement and with the Planning Permission

2.5 Any Contribution as defined and payable under this Agreement by the Developer shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

3 LAND BOUND AND ENFORCING AUTHORITY

3.1 This Agreement is entered into pursuant to Section 106 of the 1990 Act and Section 111 of the 1972 Act and all other statutory and other enabling powers and shall be enforceable accordingly

3.2 This Agreement is a Local Land Charge and shall be registered as such in the Register of Local Land Charges maintained by the Council

3.3 The Planning Obligations:

3.3.1 are planning obligations for the purposes of Section 106 of the 1990 Act

3.3.2 relate to the Land

3.3.3 are enforceable by the Council and the County Council

3.3.4 shall not be enforceable against any person in respect of any period during which it no longer has an interest in the Land or as part of the land but without prejudice to liability for any subsisting breach which may have occurred prior to parting with that interest

3.3.5 except for the covenants imposed by clauses 4.4 and 4.5 shall not be enforceable against the residential owners or occupiers of any Dwelling once that dwelling has been purchased from the Developer

3.4 Nothing in this Agreement fetters or restricts the exercise by the Council

of any of its powers

- 3.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the Planning Permission relating to the Development granted after the date of this Agreement
- 3.6 This Agreement shall terminate and cease to have effect if the Planning Permission expires without being begun or if the Planning Permission is quashed revoked or modified
- 3.7 The covenants in this Agreement shall take effect on the Commencement of Development save for clauses 7, 8 and 9 which shall take effect on the date of this Agreement
- 3.8 For avoidance of doubt nothing herein contained or implied shall prejudice or affect the County Council's right powers duties and obligations in exercise of its functions as a Local Authority and rights powers duties and obligations of the County Council under all public and private statutes bye-laws ordered and regulations may be as fully and effectually exercised in relation to the Land as if this agreement had not been executed by the County Council as freehold owner of the Land

COVENANTS BY THE DEVELOPER

- 4. The Developer hereby covenants with the Council and the County Council for themselves and their successors in title:
 - 4.1 Not to Commence the Development until a Notice of Commencement has been served on the Council and the County Council
 - 4.2 To pay the Contributions to the Council and County Council as applicable prior to first Occupation of any Dwelling
 - 4.3 Not to permit Occupation of any Dwelling until the Contributions have been paid to the Council or the County Council as applicable

Open Space

- 4.4 To transfer the POS to the first owners of one or more Dwelling(s) and to ensure that a covenant substantially in the form set out below is imposed in

the first transfer of such of the Dwelling(s) as shall include the whole or any part of the areas of the POS to provide for public use of and the ongoing future maintenance of the POS by the owner(s) for the time being as follows:

“To use the POS as public open space only and to keep the same open and available for use by members of the public for such purpose and properly maintained at all times”

Surface Water Drainage

- 4.5 To ensure that a covenant is imposed in the first transfer of each Dwelling to provide for the ongoing future maintenance of a private surface water drainage system substantially as set out in clause 4.5.1 below

4.5.1

“Service Installations”

means the sewers channels drains pipes watercourses mains wires cables poles soakaways gutters lamp posts and any other apparatus for the supply of water gas electricity or communication signals or for the disposal of foul or surface water or fumes or the provision of lighting and including for the avoidance of any doubt the Surface Water System

“Surface Water System”

means the surface water attenuation tanks at the Phillips Centre and associated Service Installations serving more than one plot

“The Transferor (in respect of any unsold plots at the Phillips Centre only) and the Transferee mutually covenant inter se and the Transferee likewise covenants with the Transferor’s successors in title in respect of any plots at the Phillips Centre previously disposed of:-

- 1) To join with the other owner or owners from time to time of the remainder of the Phillips Centre in inspecting maintaining cleaning repairing renewing reinstating and keeping functional as often as and to the extent reasonably necessary the Surface Water System including for the avoidance of any doubt associated Service Installations and to pay within 21 days of written demand to the person who shall have incurred the cost a fair and proper proportion of all costs associated therewith where the items to which such costs relate do not solely serve one plot only
- 2) In the event of default in respect of the provisions of the preceding clause hereof to pay within 21 days of written demand the due proportion of all costs incurred by any other person in observing and performing the defaulting parties obligations pursuant to the preceding clause hereof pursuant to the provisions of this Transfer

PROVIDED THAT it is agreed and declared that the total liability pursuant to this clause is intended to be met by the owners of plots at the Phillips Centre AND PROVIDED FURTHER THAT C G Fry and Son Limited shall be automatically released and shall not be personally liable for damages in respect of any subsequent breach of any of the covenants in this clause [] in connection with any plot retained by it at the date hereof occurring after it shall have parted with all its interest in the relevant plot(s) and it shall have no liability whatsoever pursuant to this clause [] after it shall have parted with all its interest in all of the plots at the Phillips Centre”

5 COVENANTS BY THE COUNCIL

- 5.1 In respect only of such sums as each may have received the Council covenants with the County Council and Developer that if any of the following contributions are received by the Council they shall only be used by the Council for the purposes set out below
 - a) The Open Space and Recreation Contribution shall be used solely for the provision of open space and recreation facilities in Axminster
- 5.2. To hold the Open Space and Recreation Contributions in an interest bearing deposit account
- 5.3. If any of the Contributions or part of the Contributions set out in clause 5.1

have not been spent within 5 years, of the date of payment for the purpose set out in clause 5.1 that contribution or part shall be repaid to the party who made the Contribution together with any accrued interest

6 COVENANTS BY THE COUNTY COUNCIL

- 6.1 In respect only of such sums as each may have received the County Council covenants with the Council and Developer that if any of the following contributions are received by the County Council they shall only be used by the County Council for the purposes set out below
- a) The Primary School Contribution shall be used solely for the provision of additional teaching accommodation and ICT equipment in the sums of £42,386.50 and £934.38 for Primary School education in the Axe Valley Local Learning Community area
 - b) The Secondary School Contribution shall be used solely for the provision of additional teaching accommodation and ICT equipment in the sums of £32,742.45 and £2,827.50 for Secondary School education in the Axe Valley Local Learning Community area
- 6.2 If any of the Contributions or part of the Contributions set out in clause 6.1 have not been spent or committed within 10 years, of the date of payment for the purpose set out in clause 6.1 that contribution or part shall be repaid to the party who made the Contribution together with interest at one per cent below Barclays Bank PLC base rate from time to time in force from the date of the payment of the contribution to the date of refund
- 6.3 The County Council as freeholder will not develop any part of the Development other than in strict conformity with this Agreement and with the Planning Permission

7. LEGAL COSTS

- 7.1 The Developer covenants that they will pay to the Council and the County Council no later than the date of completion hereof the Council's and the County Council's reasonable legal costs incurred in connection with this Agreement

8 INTEREST

- 8.1 If any sum due to the Council or the County Council under this Agreement remains unpaid at the time specified herein the party responsible for making the payment shall pay to the Council interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment at the rate of 4% per annum over Lloyds TSB Bank Plc base rate from time to time in force and such amount shall be recoverable by action as a liquidated sum

9 NOTICES

- 9.1 Any notice consent or approval required to be given under this Agreement to any party to this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class post to the address of the party as aforesaid or such other address for service as shall have been previously notified by the party to the other parties

10 SETTLEMENT OF DISPUTES

- 10.1. Any dispute arising out of the provisions of this Agreement shall be referred to a person having appropriate qualifications and experience in such matters ("the Expert") for the determination of that dispute PROVIDED THAT the provisions of Clause 12 shall be without prejudice to the right of any Party to seek the resolution of any matter relating to the Agreement to the Courts and/or in accordance with Section 106 (6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any Party to the Courts or to the provisions of Section 106 (6) of the 1990 Act for the resolution of any matter arising from the Agreement
- 10.2 The Expert shall be appointed jointly by the relevant parties to the dispute ("the Relevant Parties") or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the Parties
- 10.3 The decision of the Expert shall be final and binding upon the Relevant Parties and the following provisions shall apply: -
- 10.3.1. The charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct

10.3.2. The Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision

10.3.3 The Expert shall be entitled to obtain opinions from others if he so wishes

10.3.4. The Expert shall make his decision within the range of any representations made by the Relevant Parties themselves

10.3.5. The Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment

10.4 Where there is a dispute as to the amount of any Contribution the Owner shall pay its estimate of such Contribution to the Council or the County Council as applicable at the time specified in this Agreement and shall pay any difference between that figure and the amount determined by the Expert within 28 days of the Expert's decision together with interest thereon calculated from the date the payment was required until the date it is made at the Lloyds TSB Bank Plc Base Rate

IN WITNESS whereof the Council the County Council and the Developer have caused their common seals to be affixed as their deed

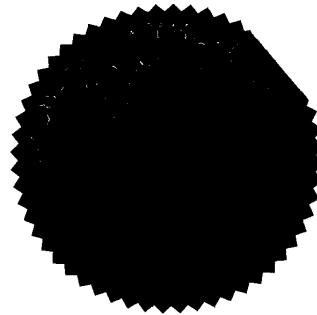
EXECUTED AS A DEED BY)

EAST DEVON DISTRICT COUNCIL)

whose Common Seal was affixed in the presence)

of: [REDACTED])

Senior Solicitor
Authorised Officer



18596

EXECUTED AS A DEED BY)

DEVON COUNTY COUNCIL)

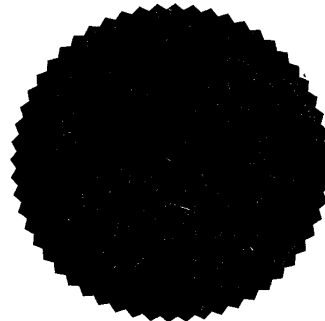
whose Common Seal was affixed in the presence)

of: [REDACTED])

~~Authorised Officer~~

~~Assistant~~ County Solicitor

DOCUMENT No. 43142



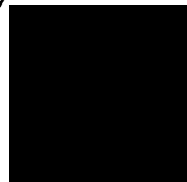
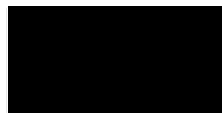
THE COMMON SEAL of)

CG FRY AND SON LIMITED was)

affixed in the presence of:)

Director

Director/Secretary



THIS PLANNING OBLIGATION BY UNDERTAKING is given this *Seventh* day of November Two Thousand and Eleven

By:

JAN-ERIC OSTERLUND of Knightstone Manor Ottery St Mary Devon (the 'Owner')

To

EAST DEVON DISTRICT COUNCIL of Council Offices Knowle Sidmouth Devon (the 'District Council')

WHEREAS

- A. The District Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 ('the Act') for the area within which the land ('the Land') described in the First Schedule is situated
- B. The Owner is the freehold owner of the Land
- C. The Owner has submitted a planning application (the 'Planning Application') to the District Council for permission to develop part of the Land for the purposes set out in the Second Schedule hereto (the 'Proposed Development')

NOW THIS UNDERTAKING WITNESSES as follows:

1. Legal effect

- 1.1 This Undertaking shall constitute a Planning Obligation for the purposes of Section 106 of the Act
- 1.2 This Undertaking shall be enforceable by the District Council
- 1.3 The obligations in this Undertaking are given with the intent to bind the Owner
- 1.4 No person shall be liable for any breach of this Undertaking unless he or it holds an interest in the part of the land in respect of which such breach occurs or held such an interest at the date of the breach
- 1.5 Where a party includes more than one person any obligations of that party shall be joint and several

11/2560/FU

- 1.6 The obligations in this Undertaking are conditional upon the grant of planning permission for the Proposed Development (the 'Planning Permission')
- 1.7 The covenants contained in this Undertaking shall take effect only upon the date specified by or on behalf of the Owner in a written notice served upon the District Council as the date upon which the Proposed Development is to be commenced or if no such notice is served the actual date on which the Proposed Development was begun within the meaning of Section 56 of the Act (the 'Commencement Date')
- 1.8 Operations such as archaeological investigations, demolition, site clearance, site preparation, diversion and laying of services, the erection of fences gates and hoardings and construction of access or service roads shall not be regarded as the commencement of the proposed Development
- 1.9 If the Planning Permission shall expire before the Proposed Development is begun as defined above or shall at any time be revoked this Undertaking shall forthwith determine and cease to have effect
- 1.10 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission referred to in 1.6 above) whether or not granted on Appeal
- 1.11 The Owner recognises that this Undertaking is a Local Land Charge and shall be registered as such in the Register of Local land Charges maintained by the District Council

2 Covenants

2.1 The Owner Covenants with the District Council:

That the part of the proposed development described as being for use as ancillary accommodation and shown coloured green on the attached plan shall be used and occupied only for purposes incidental to the enjoyment of the adjoining dwelling house known as Knightstone Manor and shall not be disposed of at any time hereafter otherwise than as an integral part of the said dwelling house

IN WITNESS whereof this Undertaking has been duly executed by the Owner as a Deed the day and year first before written

THE FIRST SCHEDULE

(The Land)

ALL THAT freehold Land at Knightstone Manor Ottery St Mary in the County of Devon shown edged red on the attached plan

THE SECOND SCHEDULE

(The Proposed Development)

The provision on the Land of ancillary staff accommodation, estate office, workshops and storage

EXECUTED as a DEED by the said

JAN-ERIC OSTERLUND

In the presence of:-

Signature of Witness

Name (in BLOCK CAPITALS)

Address

) 

) 

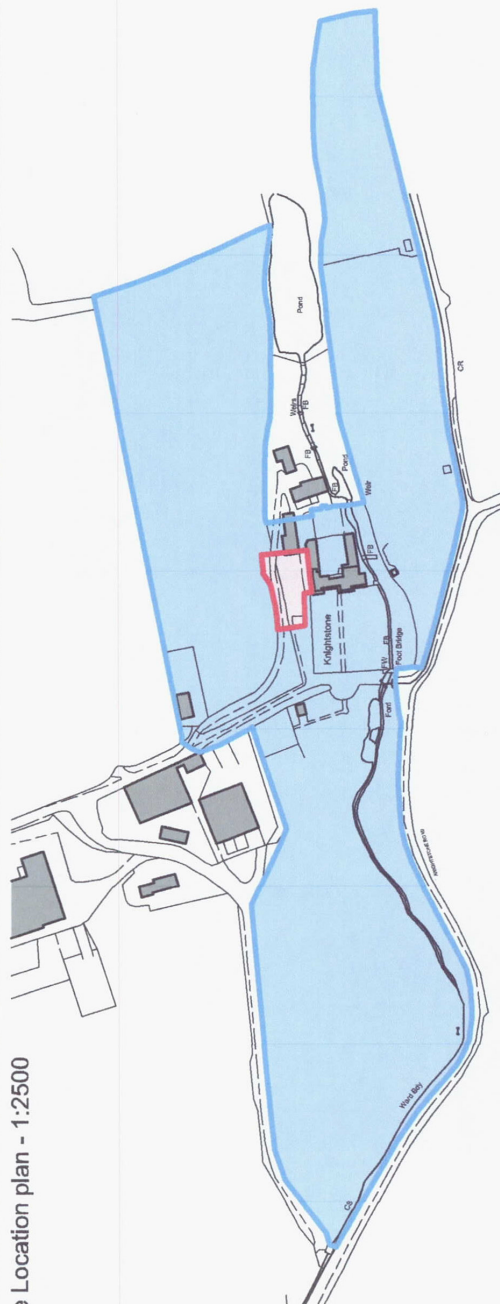
... GRENVILLE CHARLES GILBERT

14 NEWLANDS ROAD

SIDMOUTH, DEVON, EX10 9NL

This map shows the Knightstone area, including buildings, roads, and water features. A red rectangle highlights a specific area near the Knightstone building. Labels include 'Knightstone', 'Weir', 'Pond', 'Foot Bridge', 'Ford', 'STONE ROAD', 'Wells', 'FB', 'FW', and 'C'. A scale bar at the bottom indicates 0, 10, 20, and 30 meters.

Site Location plan - 1:2500



388 001 B