

BEFORE THE LICENSING COMMITTEE

AT WEST BERKSHIRE COUNTY COUNCIL

On 16 April 2024 at 10am

B E T W E E N:-

WRITTEN SUBMISSIONS ON BEHALF OF THE
TOWN AND MANOR OF HUNGERFORD

INTRODUCTION

1. These are the written submissions on behalf of the Town and Manor of Hungerford (**T&M**) in opposition to the application for a 'Premises Licence' at Hungerford Park (**Hungerford Park**) under application reference no.:23636 (**the Application**).
2. In summary, granting the Application would not promote public safety and the prevention of public nuisance. Significantly, granting the application would breach the decision maker's duty pursuant to section 85 of the Countryside Rights of Way Act 2006 .

T&M'S STATUS AND INTEREST IN THE APPLICATION

3. T&M is charity incorporated and regulated by the Charity Commission of England and Wales under CIO No.:238379. T&M is subject to the requirements of a Charitable Scheme dated 1908 as amended.
4. The Trustees plus the Constable run the Charity.

5. All the land owned by the Charity is held by the Official Custodian of Charities on behalf of the Charity. T&M has owned and managed these lands since they were given to the people of Hungerford in the 13th century by John O'Gaunt. Hungerford Portdown Common (**'the Common'**) is the largest parcel of land within the Charity's ownership.
6. The 'rights of common'¹ that exist over the Common are the right to graze and to shoot. The Trustees of T&M have a legal obligation to protect these rights and the land upon which they are exercised as part of the objectives of the charitable scheme and are accountable to the Charity Commission should they fail to do so.
7. The Common is registered as common land under the Commons Registration Act 1965 (as amended by the Commons Act 2006) and is subject to the Countryside and Rights of Way Act 2006 (**'CROW 2006'**). Allowing activity contrary to or use of the land as a registered common places the Charity in breach of its duties as the owner of the Common and liable to enforcement action by the Secretary of State and/or the local authority. Driving a vehicle over CROW land is a breach of that Act, unless authorised by the landowner.
8. Under the terms of T&M's agreements with 'Natural England' and the 'Department for Environment, Food and Rural Affairs (**'DEFRA'**)', T&M must graze the Common in order to manage the grassland according to their stipulated guidelines. Approximately 120-150 head of cattle have the legal right to roam free on the common. T&M's neighbours have a legal obligation to maintain their fences to a 'stock-proof' standard. Letters are sent to adjacent landowners every year reminding them that it is their legal duty to fence their land against access and egress by the cattle.

¹ The Rights are not in dispute and therefore their legal basis are not expressly set out herein unless subsequently required by the decision maker.

9. T&M also has a duty to safeguard and promote the conservation of biological diversity and the provides for better management of the Common, which is within an Area of Outstanding Natural Beauty.

THE OBJECTIONS:

10. The decision maker will need to determine the Application with reference to the licensing objectives found in section 4 of the Licensing Act 2003 ('LA 2003') as follows:

'General duties of licensing authorities

(1) A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the licensing objectives.

(2) The licensing objectives are—

(a) the prevention of crime and disorder;

(b) public safety;

(c) the prevention of public nuisance; and

(d) the protection of children from harm.

11. These submissions will deal with the appropriate objectives below.

I. Public Safety

12. Access to the Common via the Hungerford/Kintbury Road and from the Inkpen/Hungerford Road are routes, which are used to gain access or egress to and from Hungerford Park.

13. These roads are, by their design and layout, not suitable for significant thoroughfare.

14. As noted above, there are around 150 head of cattle grazing and roaming free at any time on Hungerford Common. Increased vehicle traffic to the site is highly

likely to result in increased injury and death toll on livestock and/or drivers. It is also likely to result in significant financial losses to T&M.

15. While the Application suggested a pedestrian gate to be installed on the boundary between the Common and Hungerford Park, a 5-bar gate has been installed (**'the Gate'**). Thus far, T&M ensured that the 'openings' onto the Common that do exist are generally bounded by stiles and cattle grids for the safety of the cattle. New 'openings' in the form of the Gate create significant risks of the cattle escaping from the common onto the private ground and, more importantly, other roads where cattle are not expected to be found. If the Gate is left open, livestock can exit the common and into areas including Hungerford Park where is unsuitable to contain and/or repel cattle. This will likely lead to personal injury, damage and loss.
16. Such escapes can lead to damage and injury to the cattle and neighbouring property.
17. Most significantly, escape of cattle can lead to Road Traffic Collisions involving potentially serious personal injuries, which can and will likely cause significant insurance claims and costs for both the Charity and the people onto whose land the cattle have escaped.
18. The decision maker on the Application will need to appreciate that while CROW 2006 allows 'open access' onto the Common, such open access does not give people - including the Applicant or, indeed, the Decision Maker on the Application - the right to create new gates and cut through their fences to create new access onto the Common. People are not able to drive over land registered under CROW 2006. This is because pursuant to section 48 of CROW 2006 anyone entering the Common has a 'Restricted By Way Right', which only permits the exercise of that right as follows:

(4)In this Part—

“restricted byway rights” means—

(a) a right of way on foot,

(b) a right of way on horseback or leading a horse, and

(c) a right of way for vehicles other than mechanically propelled vehicles; and

“restricted byway” means a highway over which the public have restricted byway rights, with or without a right to drive animals of any description along the highway, but no other rights of way.

19. All access roads in the general area are narrow lanes with many dangerous bends. To the North are 90-degree corners and Hungerford Common. To the south any visitor is led into a network of narrow lanes into Inkpen and Kintbury. These areas would suffer significantly from increased traffic, particularly late at night.

20. Regular users who exit Hungerford Park are aware of cars pulling in as they try to exit. Vehicles pulling in cannot see cars in the lane until the last moment. Larger numbers of first-time visitors would greatly increase the risk of accidents, especially serious accidents involving cattle, which may have escaped if the Application is granted.

21. Legal and insurance expenses and the likely increase in the number of deaths and injury to T&M's livestock, would be detrimental to the Charity, whose income is made up partly from the grazing fees obtained from the cattle. There have been several deaths of livestock over the last 5 years caused by vehicles. These occur after dark, principally. The existing speed limit across the Common is 30 mph. T&M's DSD downloads show that over 42% of vehicle traffic exceeds this limit. Speeds of over 50mph are regularly recorded. This is despite a significant investment in road signs/warning signs and the purchase of a DSD

speed monitoring device. This problem is going to be significantly exacerbated if the Application is granted.

22. Access to the Common via the Hungerford/Kintbury road and from the Inkpen/Hungerford road lead to straight sections where most of the speeding occurs. The risk to the cattle of increased late-night traffic from the proposed venue is made worse by the likely consumption of alcohol by drivers accessing the Common.

23. In summary, the Application should be refused because the Premises Licence proposed would:

- a) Increased traffic around the Common, which would increase the risk of serious Road Traffic Collisions.
- b) Granting the Application would increase the risk of cattle escaping onto neighbouring land and/or roads.

II. Prevention of Public Nuisance

24. The Common is within Area of Outstanding Natural Beauty ('AONB').

25. Granting a Premises Licence to sell alcohol right next to the Common, will create a disturbance to wildlife, livestock or habitats and is contrary to the aims and objectives of CROW 2006.

26. T&M perceives that the Application has the ultimate aim of a venue with scope for direct walking out onto the Common to enjoy the drinks / the Common to almost be part of Hungerford Park's ambience. An increase of people on the common, with drinks/food etc. brings with it the strong likelihood of increased rubbish and bottles/broken glass, which clearly runs contrary to the T&M's obligations to promote conservation, biodiversity and the protection of the local environment.

27. The decision maker is reminded of its own statutory obligation pursuant to section 85 of CROW 2006 in relation to AONB's including the Common as follows:

85. General duty of public bodies etc.

(A1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

28. Accordingly, when deciding the Application the decision maker **'must seek to further the purpose of conserving and enhancing the natural beauty of the AONB'**.

29. It is submitted that the granting of a Premises Licence with its concomitant increase in foot and vehicular traffic will **NOT** further the purpose of conservation and enhancement of the natural beauty of the Common.

SUMMARY OF OBJECTION:

30. Granting the Application for a Premises Licence as proposed would be contrary to the licensing objectives and in particular it would not promote:

- a) Public Safety; and/or
- b) The Prevention of Public Nuisance.

31. The decision maker is reminded of its mandatory obligation to seek to conserve and enhance the natural beauty of the Common.

OTHER MATTERS:

32. As aforesaid T&M has a duty to safeguard the Common. Accordingly, if the Premises Licence is granted it will seek to appeal the decision.

33. T&M will also wish to explore if all the advertising requirements on the Application have been satisfied.

34. T&M attaches herewith a number of Maps, which will be further explored at the hearing on 16 April 2024.

BEN LEB
8 April 2023
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Postcode Title number

RG17 0EH

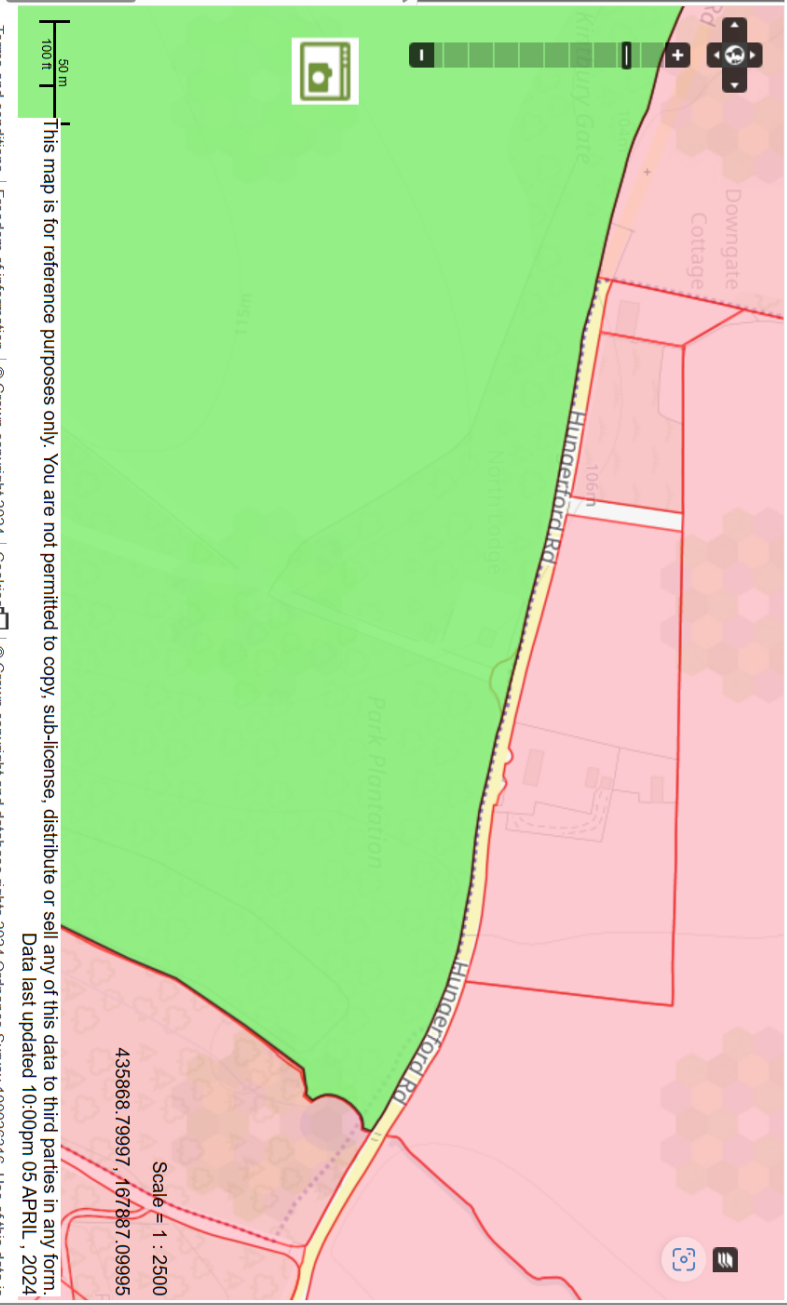
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Street name only

Town or Locality

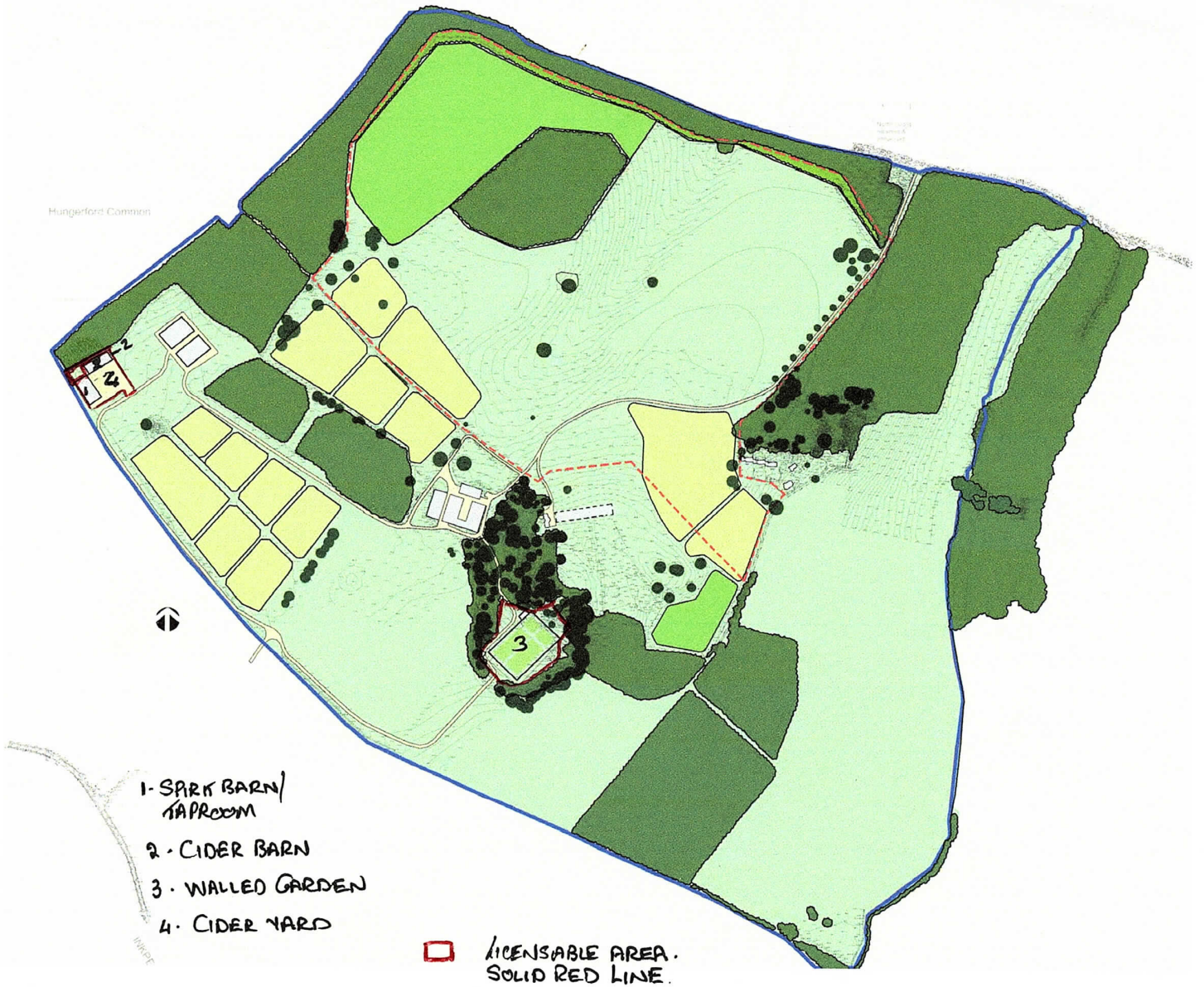
Search **Reset**

- 5 PARK COTTAGES, HUNGERFORD PARK, HUNGERFORD RG17 0UU
- LANDAT HUNGERFORD PARK ESTATE, HUNGERFORD
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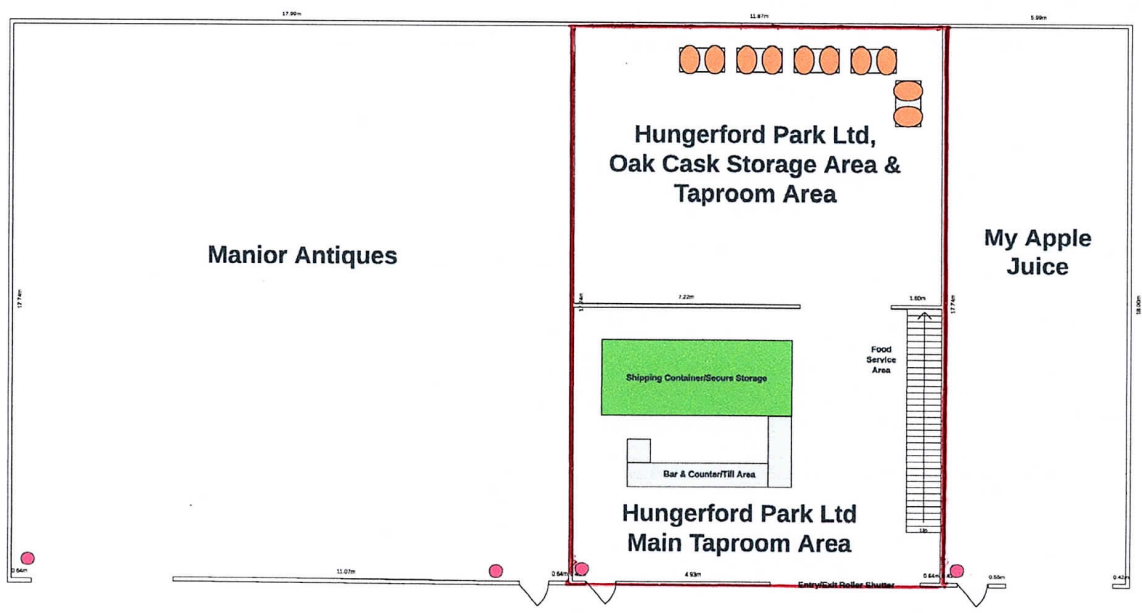
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SITE PLAN HUNGERFORD PARK.



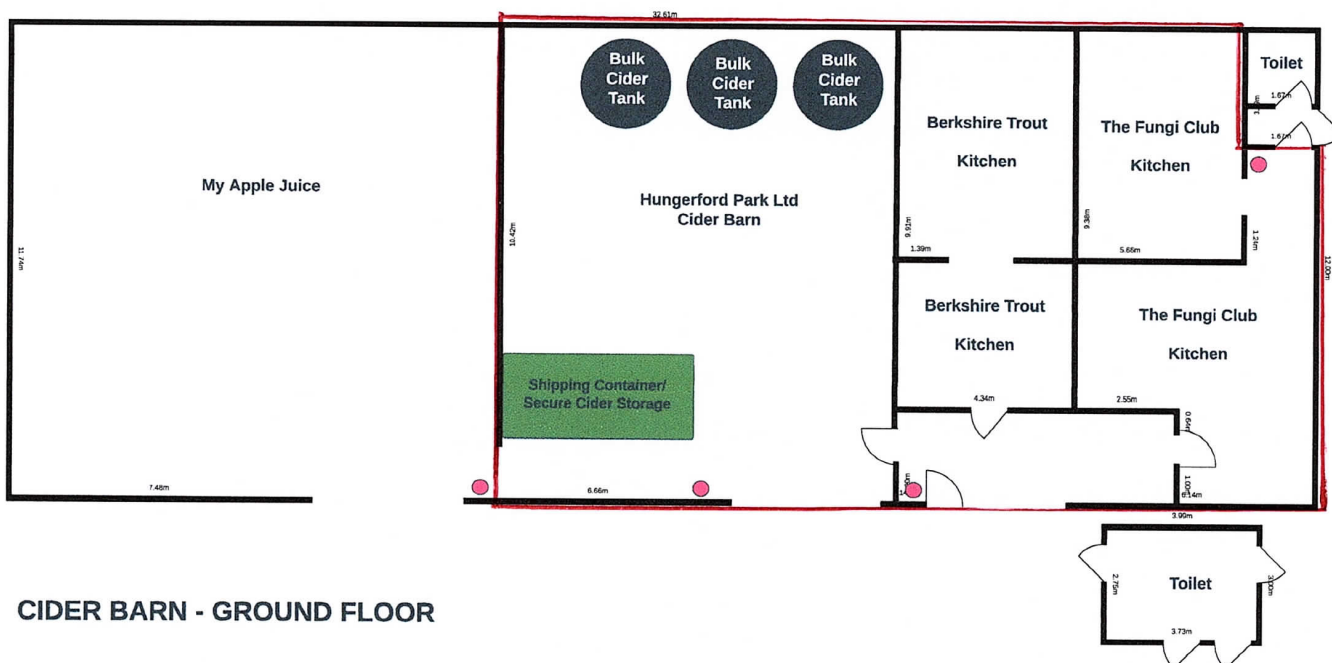
- 1. SPIRIT BARN / TAPROOM
- 2. CIDER BARN
- 3. WALLED GARDEN
- 4. CIDER YARD

□ LICENSABLE AREA.
SOLID RED LINE.



SPIRIT BARN & TAPROOM - GROUND FLOOR

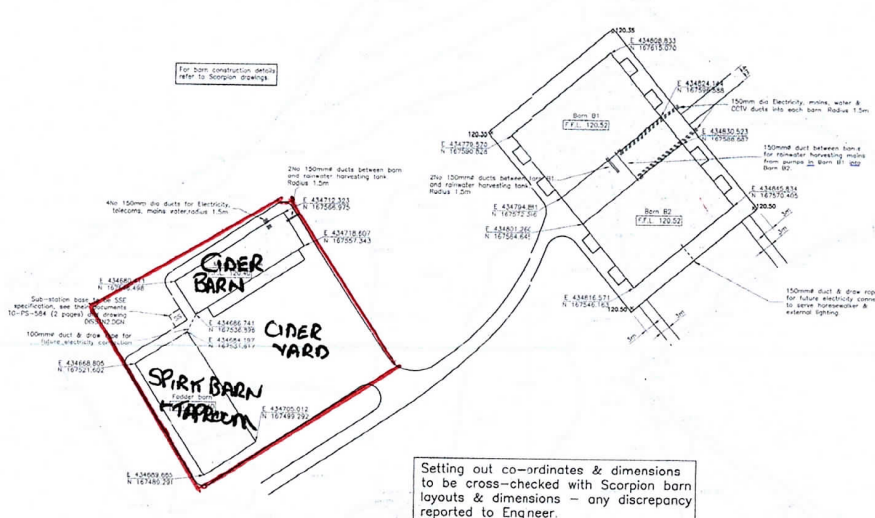




CIDER BARN - GROUND FLOOR



● = Fire Extinguisher Point



- NOTES**
- The drawing to be read in conjunction with all relevant Architect's, Engineer's and specialist drawings and specifications.
 - No dimension to be scaled.
 - This drawing is confidential and the copyright is the property of Gifford.
 - The drawing is based on the basis that it must not be used except under a contract with Gifford and must not be copied or issued without Gifford's written permission from Gifford. Any drawings issued for construction together with any information provided and used must not be used for construction.
 - See drawing 12303/GE/001 for joint locations.
 - See drawing 12303/OK/002 for built-ups.
 - See drawing 12303/OK/003 for mobile joints.

Legend:

- Fibre reinforced concrete
- (all other areas shown in hard-core building)

Rev	Description
A	FOR CONSTRUCTION
1	ISSUED FOR COSTING
2	
3	
4	
5	
6	
7	
8	
9	
10	

MR & MRS HUNTER

HUNGERFORD PARK ESTATE

BARN SETTING OUT AND DUCT LOCATIONS

Gifford

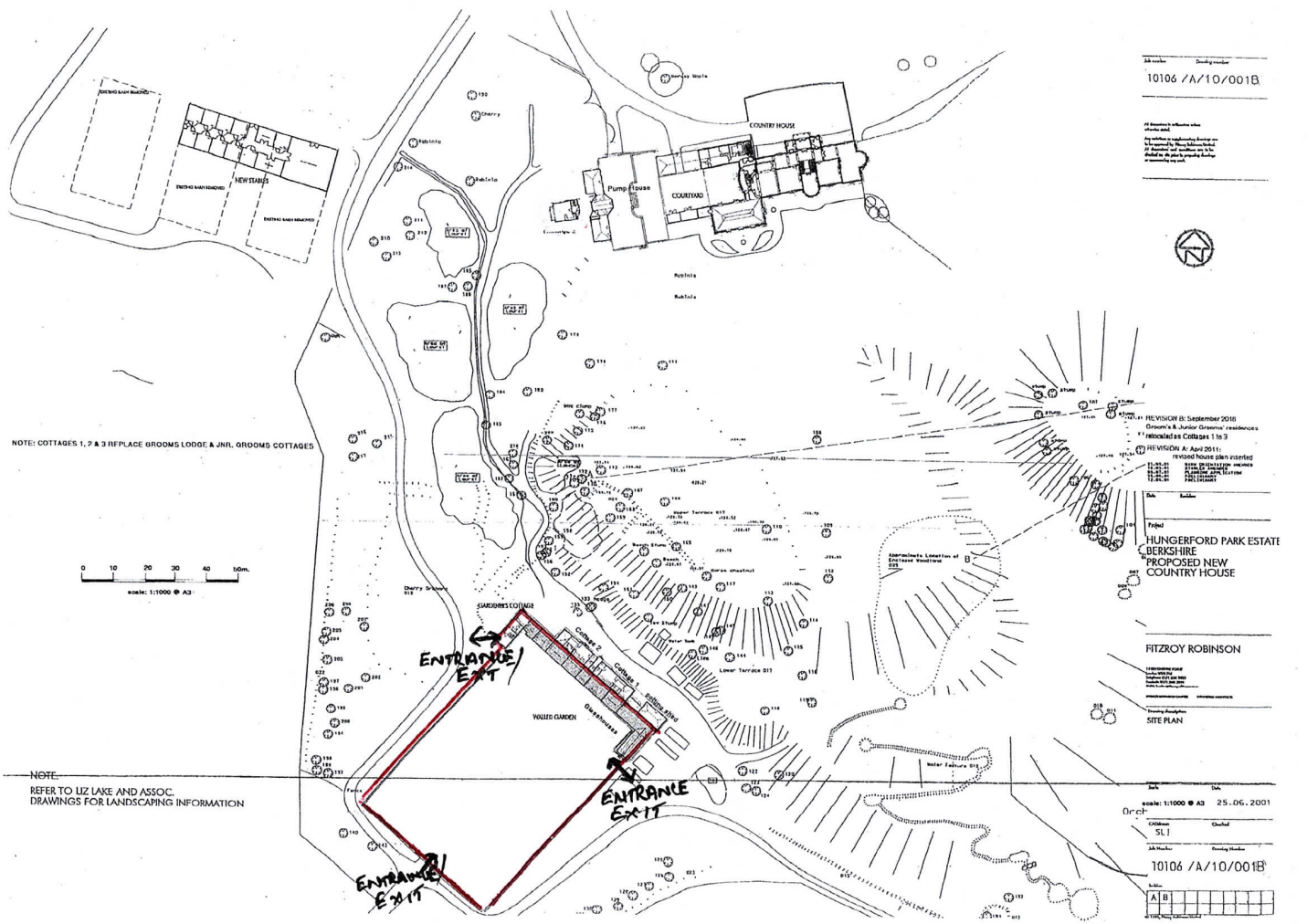
1500 APR 08 AD

12303/GE/003

100mm NATURAL SCALE

10106 /A/10/001B

As shown on other sheets
 All dimensions are in meters
 All areas are in square meters
 All areas are in square meters
 All areas are in square meters



NOTE: COTTAGES 1, 2 & 3 REPLACE GROOMS LODGE & JUNI. GROOMS COTTAGES



NOTE:
 REFER TO LIZ LAKE AND ASSOC.
 DRAWINGS FOR LANDSCAPING INFORMATION

- REVISION B: September 2016
 Groom's & Junior Groom's residences
- REVISION A: April 2015
 Cottages 1 to 3
- REVISION A: April 2015
 Revised house plan started
- REVISION A: April 2015
 1000 sqm of new garden
- REVISION A: April 2015
 1000 sqm of new garden
- REVISION A: April 2015
 1000 sqm of new garden

HUNGERFORD PARK ESTATE
 BERKSHIRE
 PROPOSED NEW
 COUNTRY HOUSE

FITZROY ROBINSON

Scale: 1:1000 @ A3 25.06.2001

10106 /A/10/001B

A	B