

**Management Agreement for Frieze Hill,
Part of Fairwater Allotments, Staplegrove, Taunton**

An Agreement Between

Taunton Deane Borough Council

and

The Committee of the Frieze Hill Community Orchard Group

Management Agreement for Frieze Hill, Part of Fairwater Allotments,
Staplegrove, Taunton

AN AGREEMENT made the 3rd day of NOV, 2005

BETWEEN

TAUNTON DEANE BOROUGH COUNCIL, The Deane House, Belvedere Road, Taunton,
TA1 1HE (hereinafter called "the Council")

AND

The COMMITTEE OF THE FRIEZE HILL COMMUNITY ORCHARD GROUP of 18
Roughmoor Cottages, Frieze Hill, Taunton, TA1 1HA, (hereinafter called "the Community
Orchard Group") acting by MARGARET GIBSON the Chairman for the time being of the
Community Orchard Group.

WHEREAS

1. The Council is the freehold owner of land situated at and known as Fairwater Allotments as shown outlined in red on the plan annexed (hereinafter called "the Land")
2. The Council has agreed to enter into this agreement (hereinafter called "the Management Agreement") with the Community Orchard Group on the terms hereinafter set out.

NOW IT IS HEREBY AGREED as follows

In this Management Agreement, unless the context requires otherwise, the following definitions are agreed:

- i) "Community Orchard" shall mean the development of an area dedicated to the planting and nurture of fruit and nut bearing plants and other features that are deemed appropriate and for conservation and enhancement of the natural beauty and amenity of the Land.
- ii) "Management Plan" shall consist of an written document to aid the efficient and effective management of the Land as prescribed within '*A Guide to Producing Park and Green Space Management Plans*,' available from CABE Space, The Tower Building, 11 York Road, London, SE1 7NX or online at

(www.cabespace.org.uk).

- iii) "Action Plan" shall form part of the Management Plan that defines the projects or activities required to meet the goals and objectives outlined in the Management Plan and should be updated and reviewed at least annually.
 - iv) "Local Nature Reserve" shall mean any area designated as a Local Nature Reserve under Section 21 of the National Parks and Access to the Countryside Act 1949.
 - v) "Agents, Officers or Servants" shall mean any person or persons officially recognised or employed by the Council who works for the benefit of the Council.
1. The Community Orchard Group agrees and undertakes with the Council to hold the Land for the purpose of a Community Orchard from year to year (hereinafter called "the Period") until determined in accordance with Clause 5 hereof provided that the Land is improved in lieu of rent and will be maintained in accordance with the terms of this Management Agreement and any subsequently approved Management Plan.
 2. Subject to due performance of the terms of this Management Agreement by the Community Orchard Group, the Council agrees and undertakes during the Period to:
 - 2.1 Continue to meet its statutory obligations under relevant legislation and provide a duty of care.
 - 2.2 Take ownership of any fixtures installed on the Land by the Community Orchard Group upon satisfactory inspection of its condition and purpose.
 - 2.3 Work alongside the Community Orchard Group in ensuring that the local residents are made fully aware of the Management Plan or in absence of a Management Plan any prescriptions on the Land by the Community Orchard Group agreed by the Council.
 - 2.4 Manage existing mature trees on the Land.
 - 2.5 To manage injurious or noxious weeds on the Land such as Common Ragwort *Senecio jacobaea*, Broad-leaved Dock *Rumex obtusifolius*, Curled Dock *Rumex crispus*, Creeping Thistle *Cirsium arvense*, Spear Thistle *Cirsium vulgare*, Japanese Knotweed *Fallopia japonica* and Giant Hogweed *Heracleum mantegazzianum*.
 - 2.6 Provide advice as necessary at no cost to the Community Orchard Group. The Council shall deal promptly with enquiries and requests for information from the Community Orchard Group.
 - 2.7 The Council may be asked to provide additional services by the Community Orchard Group and in doing so the Council shall provide quotes for work or materials for use by the Community Orchard Group. Such services, work or materials shall be provided on the basis that a cost is agreed between the parties and the Community Orchard Group duly pays any invoices raised.
 - 2.8 Carry out the work required under the provisions of Clause 4.3 in addition to those outlined in the First Schedule attached at the cost of the Council.
 3. In addition to any legal, health and safety, duty of care and other legislative requirements of the operations of the Community Orchard Group, the Community Orchard Group agrees that and undertakes with the Council throughout the Period and any agreed extension of the same to:

- 3.1 Provide two copies of their full constitution within thirty calendar days of signing this Management Agreement and two copies of any subsequently amended constitution within thirty calendar days of any amendment.
- 3.2 Not use the Land for any purpose which constitutes 'business' within the meaning of Part II of the Landlord and Tenant Act 1954 or use or permit or suffer the use of the Land or any part thereof for any purpose other than as a Community Orchard managed in accordance with an agreed Management Plan or where a Management Plan is not in place as agreed between the Council and the Community Orchard Group from time to time save that the Land may be used by either party for agreed community events in accordance with the principles and aims of the Community Orchard on adequate notice being given by one party to the other and to manage the Land using their best endeavours at no additional cost to the Council except where items are maintained or agreed to be maintained by the Council.
- 3.3 Develop a Management Plan to be adopted by the Council.
- 3.4 Supply copies of all drawings, documents and similar information as may be requested by the Council, including all certificates, insurances documents, quality and other related papers in relation to the Community Orchard and the Land as may be appropriate.
- 3.5 Ensure that all proceeds received from the sale of any part or whole of the Community Orchard harvest and other produce deriving from the aforesaid, including honey, or proceeds arising from, but without limiting the generality of the foregoing, other funds received from the Community Orchard Group's activities in relation to the Land, any income or payments from insurance carried, subsidy or grant, shall be used without deduction only to further the objects of the Community Orchard Group in accordance with their constitution.
- 3.6 Operate a policy of no burning of waste materials or prunings and no tipping on site. No storage of materials on site without the agreement of the Council.
- 3.7 Notify to the Council of locations of injurious or noxious weeds including Common Ragwort *Senecio jacobaea*, Broad-leaved Dock *Rumex obtusifolius*, Curled Dock *Rumex crispus*, Creeping Thistle *Cirsium arvense*, Spear Thistle *Cirsium vulgare*, Japanese Knotweed *Fallopia japonica* and Giant Hogweed *Heracleum mantegazzianum*.
- 3.8 Leave the said Land and any fixtures and fittings there, whether above or below ground, in good condition and to use the said Land and premises hereby demised for the purposes set out in the Management Agreement hereto.
- 3.9 Inform the Council of any damage, wilful or accidental to the Land, its fixings or boundaries at the Community Orchard Group's earliest convenience.
- 3.10 Refrain from the use of motorised or powered tools and refrain from applying chemicals (including pesticides, herbicides, fertiliser) of any kind unless suitably qualified to do so and then only using motorised or powered tools or chemicals whilst wearing the correct personal protective equipment, using the equipment correctly and safely in accordance with manufacturers recommendations and being adequately covered by the relevant insurance.
- 3.11 Provide appropriate adult supervision when young people or youth groups are performing work on the Community Orchard. A responsible adult must accompany participants under 18 years of age performing such work.
- 3.12 Work on the Land is only carried out during hours of daylight.

- 3.13 Keep the Council informed with respect of meetings and minutes of the Community Orchard Group.
 - 3.14 Assist with the Council with any community consultation in respect of the Community Orchard.
 - 3.15 Save as contemplated by this Management Agreement not to permit or allow to arise any rights of third parties in respect of the Land and to immediately report any infringement of this provision or any encroachment on the Land to the Council.
 - 3.16 Not permit any works, use or action on the Land or any part of the same in any manner that may cause unreasonable annoyance to or may prejudice the safety of others lawfully on or in the vicinity of the Land.
 - 3.17 Not to restrict impede or deny public access to the Land except where necessary from time to time for reasons of public safety or maintenance that cannot be carried out without such restriction and being aware of any restrictions placed on closing or rerouting any affected Public Rights of Way.
4. The Community Orchard Group further agrees and undertakes:
- 4.1 To comply with all statutory regulations and requirements made by any competent authority relating to the use of the Land or the management of the same as a Local Nature Reserve.
 - 4.2 To arrange adequate third party insurance cover in respect of the activities of the Community Orchard Group on the Land.
 - 4.3 To advise the Council of any work that it is necessary to be carried out from time to time on the trees within or on the boundaries of the Land except those that are the responsibility of the Community Orchard Group and to ensure that the grassed areas are maintained in accordance with the Management Plan agreed or where a Management Plan is not in place as agreed from time to time with the Council.
 - 4.4 To ensure that all contractors employed by the Community Orchard Group are adequately insured indemnifying the Council against any claims and use their best endeavours to see that contractors carry out the work required in a competent manner and in accordance with any Management Plan agreed between the parties.
 - 4.5 To ensure that all paths over the Land are in a safe condition and free from obstruction and holes by reporting any defects to the Council at the earliest opportunity.
 - 4.6 To submit a copy of the accounts of the Community Orchard Group to the Council following their adoption by the Annual General Meeting of the Community Orchard Group. The Community Orchard Group will indicate in such accounts the amounts paid to them by the Council in each year and the sums expended from such amounts.
 - 4.7 To submit an updated Action Plan or where a Management Plan is not in place a written position statement shall be provided that outlines the progress of the Community Orchard following the Annual General Meeting of the Community Orchard Group.
 - 4.8 To inform the Council if grants or other funding is available without condition on any immediately available funds to the Community Orchard Group for any of the matters for which the Council has agreed to reimburse the Community Orchard

Group that may affect the amount granted by the Council.

- 4.9 That, except for any buildings that have been previously approved by the Council, not to erect any building or other structure on the Land without prior notification to and approval by the Council. Such approval for a building of an agreed construction is not to be unreasonably withheld or delayed unless permission cannot be granted due to restrictive covenants on the Land.
 - 4.10 Not to bring any livestock excluding domestic pets onto the Land.
 - 4.11 To park any motor vehicle, motorcycle or other mechanically propelled vehicle only in the car parking area provided for that purpose. Reasonable vehicular access will be allowed from time to time for the purposes of carrying tools and delivering bulky materials or equipment. Vehicular access for other purposes must be agreed in advance.
 - 4.12 Not to affix or cause to be affixed any hose pipes to the water taps or tanks and ensure that so far as possible all wells tanks etc are kept clean and lidded.
 - 4.13 The Council reserve to themselves, their Agents, Officers or Servants, the right at all times to enter the Land and any buildings or structures erected thereon and (a) to inspect the state and condition thereof (b) erect maintain or remove any overhead or underground cables pipelines or sewers now or at any time laid made or running through the Land owned by the Council (c) cleanse or maintain any part of the Land or adjoining land provided that in the case of (b) and (c) reasonable notice of entry shall be given by the Council to the Community Orchard Group except in case of emergency and that the exercise of the said rights in cases (b) and (c) or either of them shall be without liability for payment of any compensation whatsoever save where the Council or its Agents, Officers or Servants act with negligence or wilful misconduct.
 - 4.14 The Council may restrict access to the Land in whole or in part during periods of outbreak of infectious livestock disease.
 - 4.15 The Council shall not be in anyway responsible to the Community Orchard Group for any loss or damage caused to the Land or to any buildings or structures erected thereon or to any goods or effects of the Community Orchard Group that may at any time be in on or upon the Land from any cause whatsoever save where the Council or its Agents, Officers or Servants act with negligence or wilful misconduct.
 - 4.16 The Council reserves the right to recover any costs from the Community Orchard Group in respect of any damage, theft or removal of items belonging to the Council resulting from any act of negligence or wilful misconduct by members of the Community Orchard.
- 5.0 It is hereby agreed between the parties as follows:
- 5.1 In the event that any of the agreements and undertakings entered into by the Community Orchard Group shall not be complied with or steps to comply have been taken after twenty eight calendar days written notice of the same shall have been given to the Community Orchard Group the Council has the right to terminate this Management Agreement at the expiration of such notice.
 - 5.2 This Management Agreement can be determined, by either party, at any time, by giving at least 28 calendar days written notice to that effect to the other party, subject to it being mutually agreed and all payments and other legal requirements that may be in force being brought to a satisfactory conclusion.
 - 5.3 On the expiration of written notice as provided in Clauses 5.1, and 5.2 this

Management Agreement shall determine and be of no further force and effect but without prejudice to any rights or remedies that may have accrued.

- 5.4 The liability of the Community Orchard Group and its members shall for all purposes be limited to the realisable value of the Community Orchard Group's assets and no personal liability shall attach to any member of the Community Orchard Group except to the extent of any fraud or dishonesty by them. No member of the Community Orchard Group shall be responsible for any liability of another member. For the avoidance of doubt each member's liability shall be several and not joint.
- 5.5 The Community Orchard Group agree not to sub-let or assign this Management Agreement, in full or in part and not sell or remove any turf mould clay soil sand mineral gravel or other substance from the Land other than in accordance with the Management Plan.
- 5.6 This Management Agreement may be varied at any time by the mutual written agreement of both parties.
- 5.7 The Community Orchard Group will quietly vacate the Land upon the legal termination of this Management Agreement without any claim whatsoever for compensation against the Council other than as provided for by law.
- 5.8 The Community Orchard Group will not attempt to levy any charge upon the Council in respect of either party's use of the Land.
- 5.9 The Community Orchard Group shall not ascertain or accrue any rights over the Land at any time other than as provided for by law.
- 5.10 Any dispute arising from or in connection with this Management Agreement shall be submitted to an arbiter jointly agreed for arbitration purposes and that this and any subsequent arbitration shall be conducted in English under the Law of England and Wales in accordance with statute in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.
- 5.11 This Management Agreement shall be automatically renewed annually (herein referred to as 'Annual Renewal') unless either party within twenty eight calendar days of the anniversary of signing this Management Agreement issue a written notice to terminate this agreement subject to all payments and other legal requirements that may be in force being brought to a satisfactory conclusion.
- 5.12 Any advertising on or around the Land shall be in accordance with guidelines set out by the Council.
- 5.13 The Community Orchard Group will indemnify (and keep indemnified) the Council against all proceedings, claims, demands, liabilities, damages, costs, charges and expenses whatsoever in respect of, or in any way arising out of the provision of the Community Orchard in relation to the injury to, or death of, any person, and loss of, or damage to, any property including property belonging to the council except and to the extent that it may arise out of the act, default or negligence of the Council, its employees or agents not being you or employed by you or on your behalf or from acts arising prior to or subsequent to the termination of this Agreement.
- 5.14 All notices to the parties required by this Management Agreement shall be delivered by hand or by first class mail to the last known address (6 Elm Grove, Taunton, TA1 1EG – at the time of this Management Agreement). This Management Agreement shall be binding upon the parties, their successors, assigns and personal representatives. Time is of the essence on all undertakings. All issues relating to this Management Agreement shall be

governed by and construed according to the Law of England and Wales. This and the schedules and annexes attached hereto form the entire agreement.

5.15 Each party shall bear its own legal and other fees in the preparation and submission of this agreement and from any formal agreement on subsequent Annual Renewal of this Management Agreement.

Signed the day and year first above written:

Signed (by and for):

The Council *R. J. Taylor*
Chief Solicitor

Designation of signature (Solicitor)

Frieze Hill Community Orchard Group

Margaret Gibson

Designation of signature (Chairperson)

Date *3/11/05*

Date *4/11/05*

FIRST SCHEDULE

This schedule attaches to and forms part of the Management Agreement between Taunton Deane Borough Council (the Council) and The Committee Of The Frieze Hill Community Orchard Group (the Community Orchard Group), agreed between the parties, dated 3 Nov 05

General Approach

In creating Frieze Hill Community Orchard Local Nature Reserve, Taunton Deane Borough Council has exercised a philosophy that emphasises conservation as well as amenity values in developing a Community Orchard. The Council will maintain this philosophy whilst the area is designated as Local Nature Reserve in perpetuity.

Grass

In addition to meeting its obligations in Section 4.3 of the Management Agreement, the Council shall extend, modify or re-seed the grassed areas of the Land as it sees fit, in a manner consistent with the general approach described above.

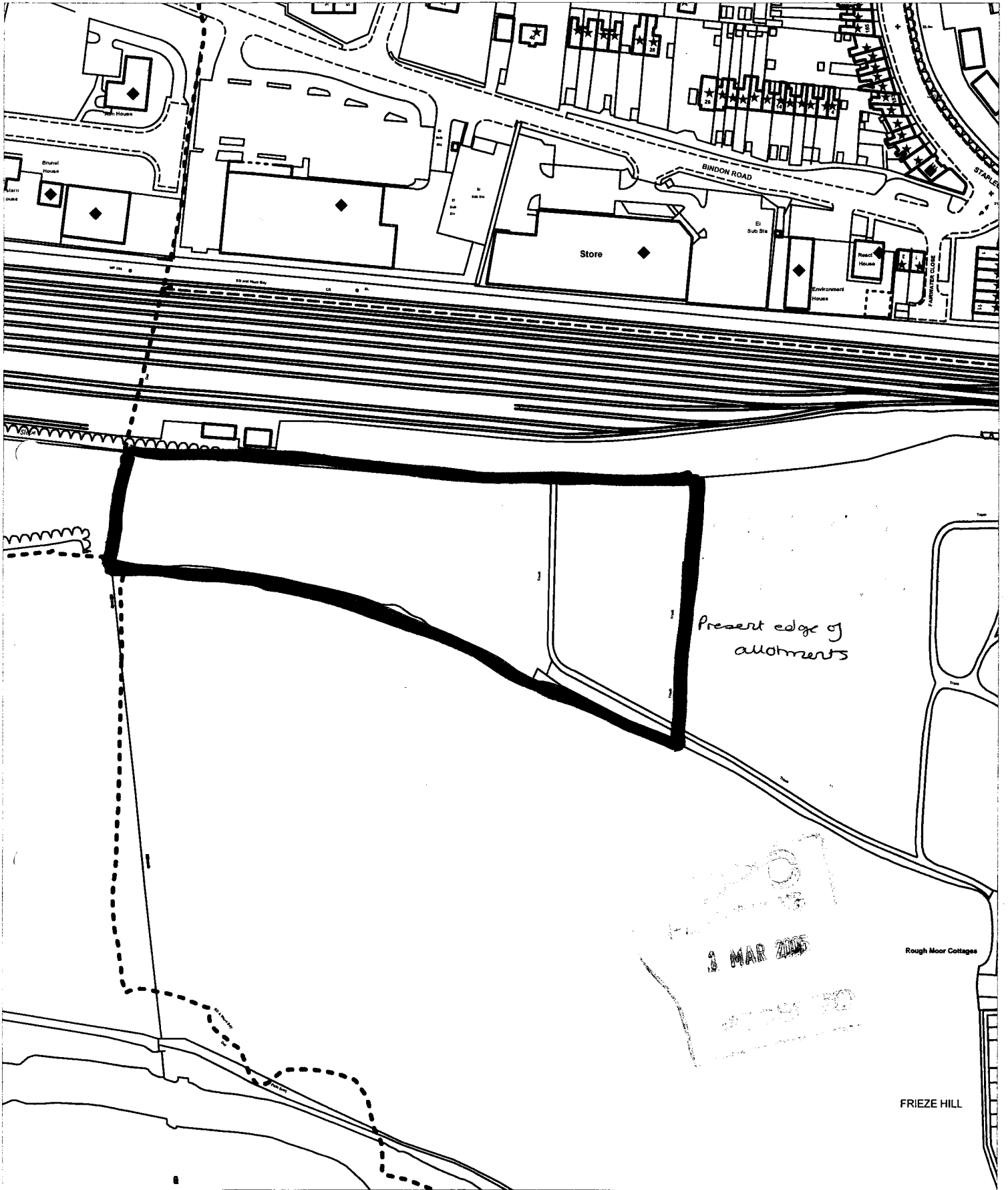
Trees

In addition to meeting its obligations in Section 4.3 of the Management Agreement, the Council shall only carry out any necessary work on immature trees planted on the Land where the Council is legally obliged to do so or in agreement with the Community Orchard Group from time to time. The Community Orchard Group shall be responsible for planting such new trees as is consistent with the general approach described above whilst implementing its Management Plan. The Council shall work in accordance with the mutually agreed Management Plan.

Hedges

The Council shall arrange to:

1. Cut or trim all hedges on the land as often as it sees fit. It will not do so when birds are nesting.
2. Remove from the site at the earliest opportunity all arisings from this and other work on the hedges.
3. Replace with suitable native species any damaged plants that create gaps in the hedges.



Store

BINDON ROAD

Env. Sub Site

Environment House

Recycl. House

Present edge of allotments

9 MAR 2005

Rough Moor Cottages

FRIEZE HILL