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# Title review: New Berry Lane and Hersham Car Park owned by Elmbridge Borough Council

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This report has been prepared for the sole benefit of Elmbridge Borough Council (EBC) for the sole purpose of explaining the rights of way over EBC's land and for no other purpose. No third party can rely on the content or accuracy of this information in relation to this land or any land within the vicinity. Any third parties should rely on their own investigations and legal advice.

This Review will be set out in three sections:

1. a summary of the findings.
2. the extent of EBC owned land in the New Berry Lane Area will be identified.
3. registered rights and permissions for third parties over this land will be identified and explained.

## Section one

### Summary

This report has reviewed the land in EBC's ownership over Hersham Car Park and New Berry Lane. The report highlights the registered rights and one permission granted over Hersham Car Park and New Berry Lane only, in section 3. On wider issues it should be noted that:

- EBC is aware that planning application number 2024/0498 has been made, which includes New Berry Lane and Hersham Car Park within its proposed development scheme. Planning applications can be made (as has happened in this case), in respect of land that is not owned by the applicant. The rights identified in section 3 of this report would not prevent the developer from implementing this planning permission if it was granted.
- The developer's planning application suggests that their proposed scheme includes work on EBC's land. For example, landscaping at Hersham Car Park and vehicular and pedestrian access via New Berry Lane. Nothing legally prevents this from being included in a planning application.
- Even if the developer's scheme was approved by the local planning authority, this does not mean that EBC (as landowner) consents to it.



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- EBC has the right to manage its land independently and is at liberty to grant or deny persons (subject to any legal or prescriptive/implied rights) using EBC-owned land to access their own - as can be demonstrated by the registered rights and permissions indicated in section 3 of this report.
- Although New Berry Lane is not a publicly maintained highway, the developer could argue that there is a general public right of access over this road and similarly over Hersham Car Park. The developer could use arguments that there are prescriptive rights (rights acquired over time) for the general public to use New Berry Lane and that their site can benefit from access via New Berry Lane because of these rights.
- However, EBC is still free to negotiate an easement with the developer to access/exit their development via New Berry Lane or Hersham Car Park and seek consideration.
- As regards the proposed landscaping at Hersham Car Park, EBC could refuse for these works to be undertaken. If EBC were minded to permit these works, a suitable licence for access to carry out works would be required. Parties should also negotiate who would be responsible for maintaining the landscaping in the future.



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## Section 2

### The extent of EBC owned land in the New Berry Lane Area

The ownership of EBC land in the New Berry Lane and Hersham Car Park area is registered under 3 separate titles at the Land Registry:

- SY483609
- SY467068
- SY468478

Map 1 has been provided at Annex A to show the extent of EBC owned land registered under these title numbers at the Land Registry. This is shown within the areas outlined in red.

## Section 3

### Registered Rights of Way identified over EBC land

We have reviewed the original deeds to the land and checked these against the Land Registry plans, which record EBC's ownership over the area of land identified in section 2 of this report.

These documents were reviewed to determine whether there are any third parties who would have rights over EBC's land.

As a result of this research, six registered rights of way have been identified and one permission under a licence has been identified. In this section each right will be explained.

Also, extracts of the plans from the original deeds have been provided to illustrate which part of EBC's land is affected by the rights. For ease of reference all the rights have been plotted on Map 2 at Annex A to give a general overview.

#### **Right 1: Partial Right of Way over New Berry Lane**

Under a deed of grant dated 5 September 1994 between (1) Elmbridge Borough Council and (2) Nigel Andrew Allen and Sarah Vanessa Allen, there is a grant of a right of way over New Berry Lane over the area shaded brown in the extract of the plan below. The land outlined in red benefits from a legal right of way over the area shaded brown:



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This right of way has been granted to the owners of the land outlined in red (above) under the following conditions:

1. from time to time to contribute a sum representing 15% of the costs incurred in repairing, lighting and maintaining New Berry Lane. The right of way cannot be exercised if there is a breach of this payment provision. NB: Asset Management has confirmed that no payments have been demanded pursuant to this condition.
2. up to 18 vehicles can access a car parking area (which was to be constructed under planning permission granted in 1994) within the area of the land outlined in red.
3. this deed states explicitly that there is no right to park on New Berry Lane and no one is to be encouraged to park on New Berry Lane.

The grant of this right of way does not prevent the council from granting anyone else a similar right across this part of New Berry Lane.

### **Rights 2 and 3: Rights of Way over Hersham Car Park**

A deed of grant and surrender dated 5<sup>th</sup> June 1987 made between (1) EBC and (2) M.B Trustees Limited, JG Trustees Limited, FR Playford Esq and RJ Dodson Esq grants 2 rights of way, which provides access to Ember House. The rights granted under this deed are as follows:

- a right of way with or without vehicles across the land coloured brown and hatched blue on the extract below (Right 2). The permission for vehicular access granted by Right 2 is to allow access to the yard within the boundary



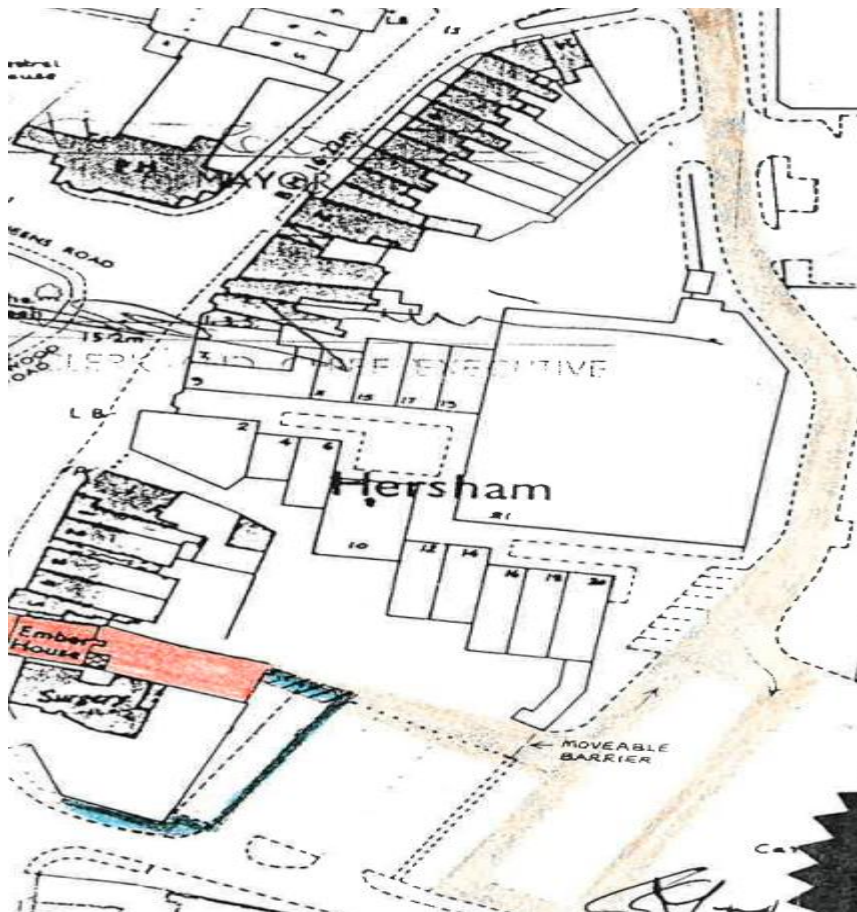
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of Ember House. Permission to park on this accessway has been expressly excluded. You will see that Right 2 appears to cut across the top of Hersham Car Park and land owned by Centrica.

- there is also a right of way on foot over Hersham Car Park coloured blue and hatched black on the extract below (Right 3). This right of way does not hinder the function of Hersham Car Park. This is a public car park and anyone can have access to the car park.

**Please note:** At the time these rights were granted, EBC was the freehold owner of the land coloured brown. However, EBC no longer owns this land. Hersham Car Park is still owned by EBC and is still affected by the rights granted in this document.

The grant of these rights of way does not prevent the council from granting anyone else a similar right across the Hersham Car Park.



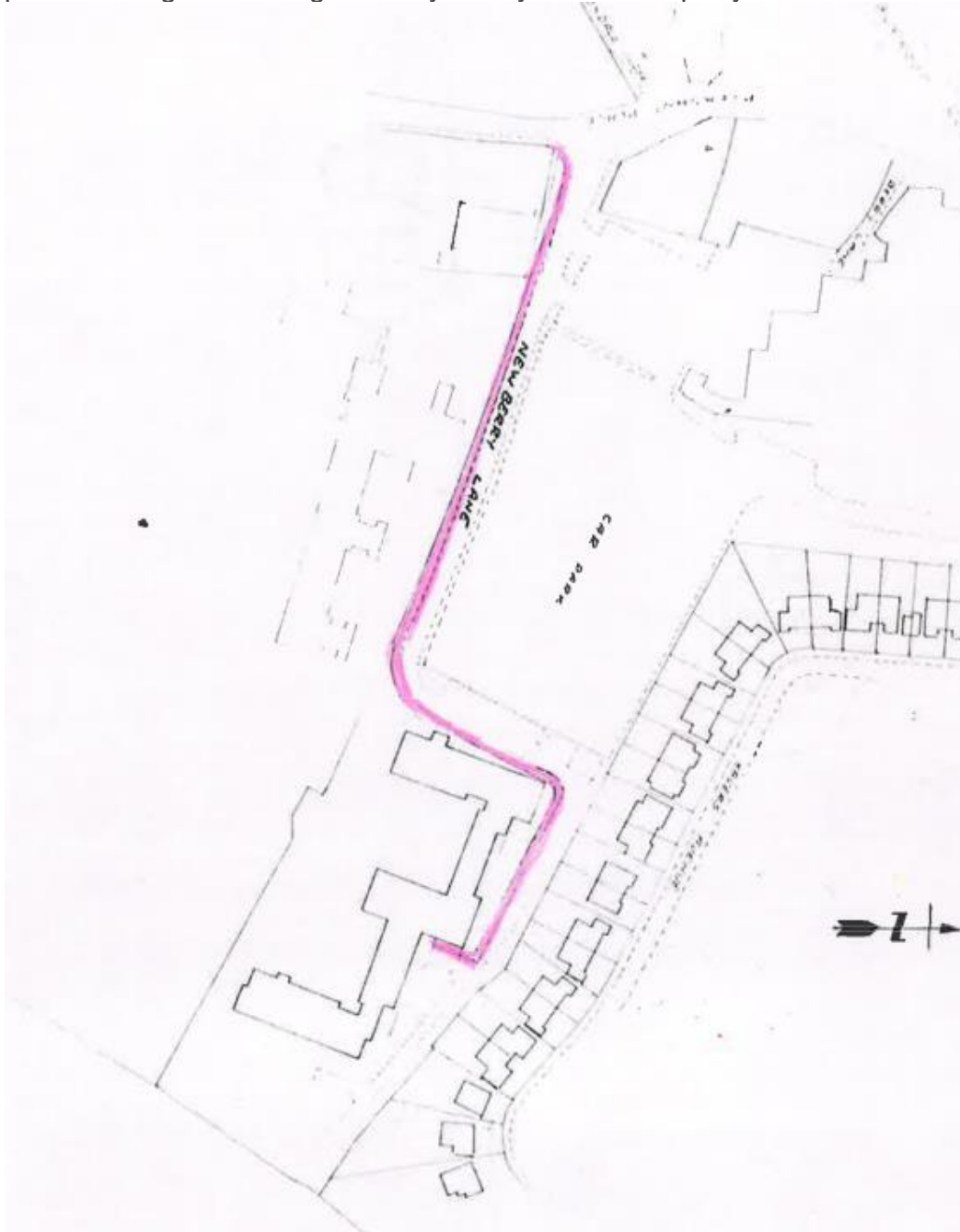
Right 4: British Gas



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British Gas have been granted rights over New Berry Lane for access to lay/repair gas pipes. The right is for a 2-metre wide strip of land which is depicted by the pink line on the plan below.

This right granted to British Gas along New Berry Lane would not be a reason to prevent the grant of a right of way to any other third party.



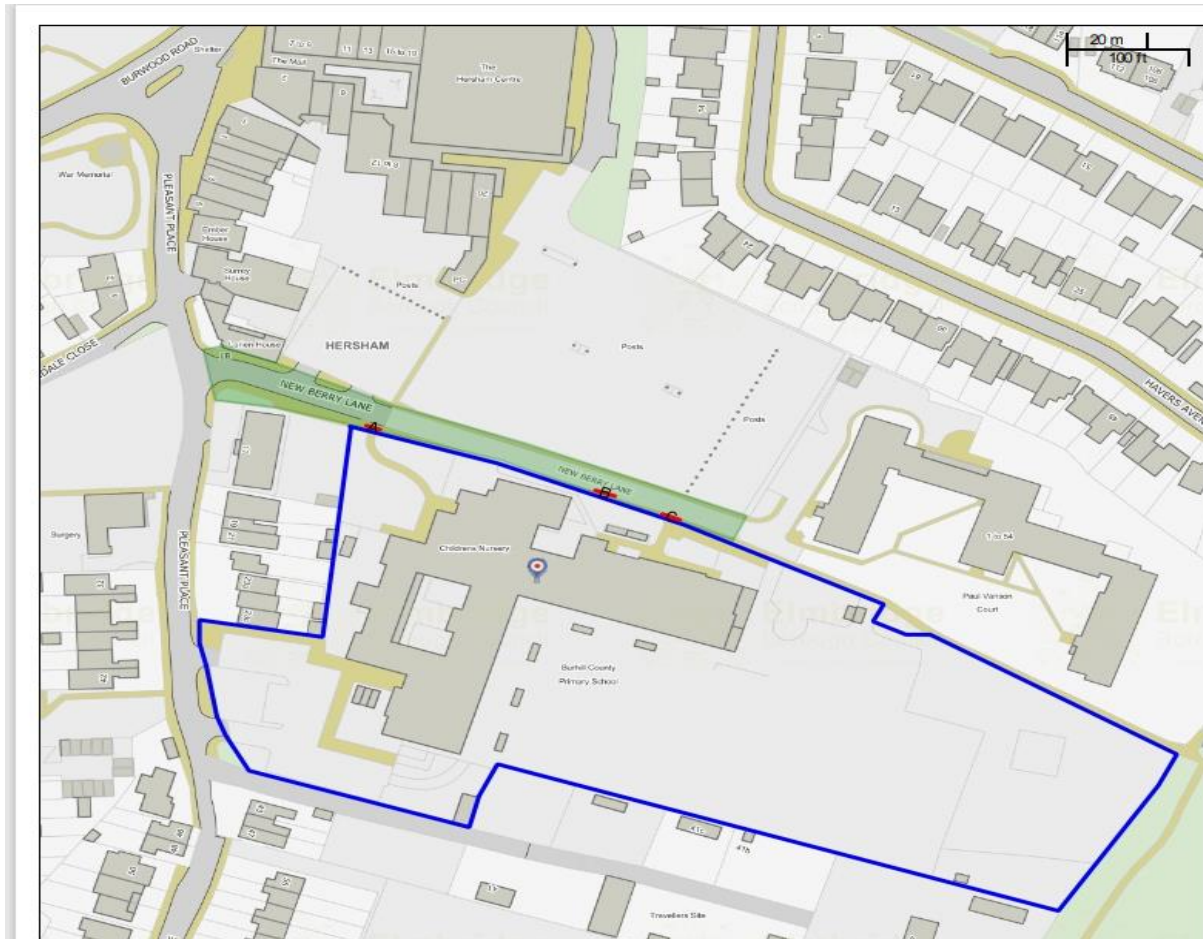
### Right 5: Licence to Burhill Primary School

Burhill Primary School was granted a licence in 2017, to use New Berry Lane (shown highlighted green on the extract below) by foot or by car to access the pedestrian



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and vehicular gateways at points A, B & C. This licence covers the staff, students and agents of the school. The school is currently exercising these rights even though the 2017 licence has expired. A licence renewal is in the process of being completed. Please note that the licence does not give the school legal rights over New Berry Lane. The licence is simply a permission granted by EBC to the school to access their property over a route that goes over EBC land. New Berry Lane isn't a publicly maintained highway and this is the reason why a licence has been granted.



The grant of this licence does not prevent the council from granting anyone else a similar right or other rights of way across this part of New Berry Lane.

### **Right 6: Transfer dated 28 March 1991**

The current owner of the Hershams Shopping Area is Centrica Combined Common Investment Fund (Centrica). Centrica is the owner of the area outlined in red in the extract on the plan below. EBC originally sold the land (now owned by Centrica) under a transfer dated 28 March 1991 to Letinvest PLC. This transfer set out covenants that are binding on EBC and the current owner Centrica. Centrica has rights over New Berry Lane (area hatched in black on the plan below).



By way of summary:

1. Centrica has the right to use the sewers, drains, water, gas and electric pipes (collectively called service conductors) that run through New Berry Lane and which serve Centrica's land.
2. EBC is responsible for maintaining these service conductors. However, the cost of the repairs is to be shared between Centrica and EBC.
3. Centrica also has rights in certain circumstances to come onto New Berry Lane to carry out repairs to these service conductors. EBC also has similar rights over Centrica's shopping centre car park for the repair/maintenance of service conductors which would benefit New Berry Lane.

The impact of any proposed development on the exercise of these rights would need to be considered at the relevant time.

Also, please note that the 1991 transfer provides that the car park (owned by Centrica) needs to be used as a public car park until the date of implementation of planning permission for the whole or a substantial part of the property. Public toilets need to be provided up to this point as well. **Please note:** that the implementation of the planning permission is different from the grant of planning permission. The grant of planning permission is a decision taken independently by the local planning authority. Whether or not it can be implemented is a separate issue.

In the 1991 transfer, EBC reserved the following rights regarding the land that it has kept next to Centrica's land ("Retained Land"):

1. to use the Retained Land for any purpose.
2. the right to erect/alter, or give permission to the erection or alteration of any buildings on the Retained Land provided that the access to light and air for Centrica's property is not obstructed.



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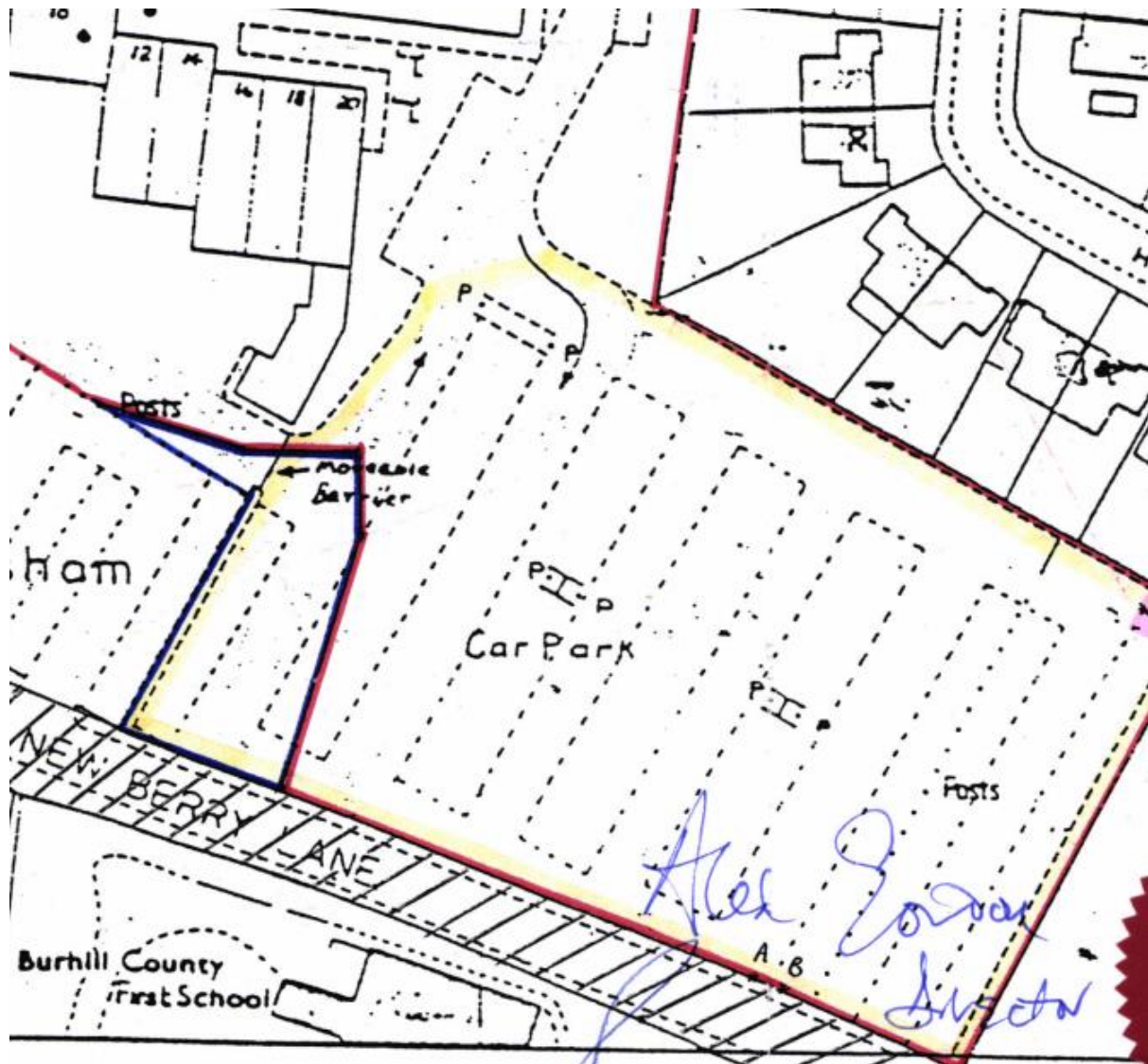
### Right 7: Right of Way for the Residents of Paul Vanson Court

The transfer dated 28 March 1991 (mentioned at Right 6 above) also reserves a right for the residents of Paul Vanson Court situated on New Berry Lane, to access the Centrica owned car park through the points marked A and B on the extract of the plan below. EBC can give one month's notice to end this right. If this notice is served, then the boundary between A and B needs to be made good by EBC to the satisfaction of Centrica. You will see from the plan attached that the points marked A & B are on the boundary of New Berry Lane and the existing Herisham Shopping



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Centre car park. Paragon Asra Housing now own Paul Vanson Court. Elmbridge Borough Council will explore whether this right is still exercised.



The grant of these rights of way does not prevent the council from granting anyone else a similar right across the Hersham Car Park.

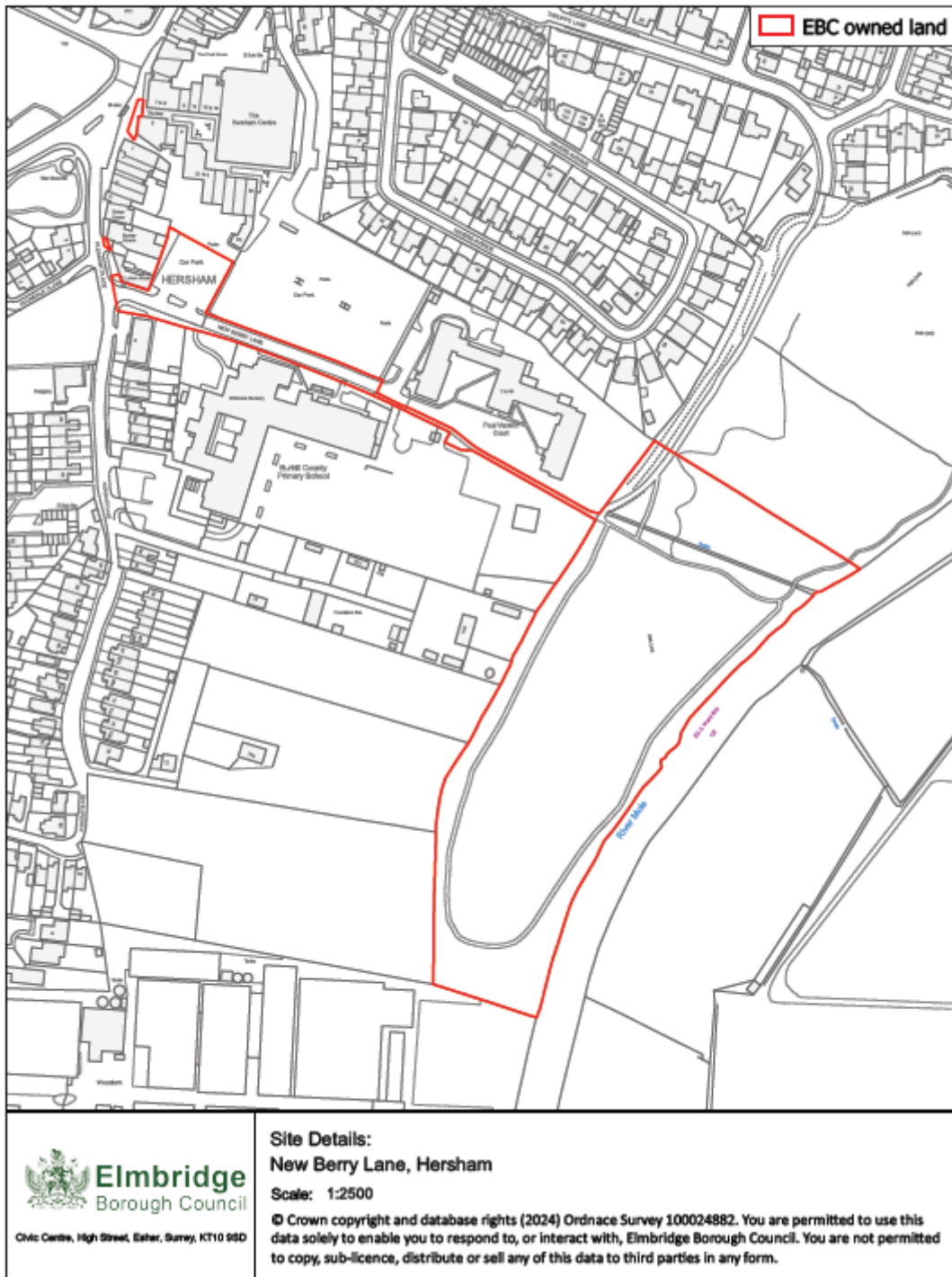


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# Annex A

## Map 1

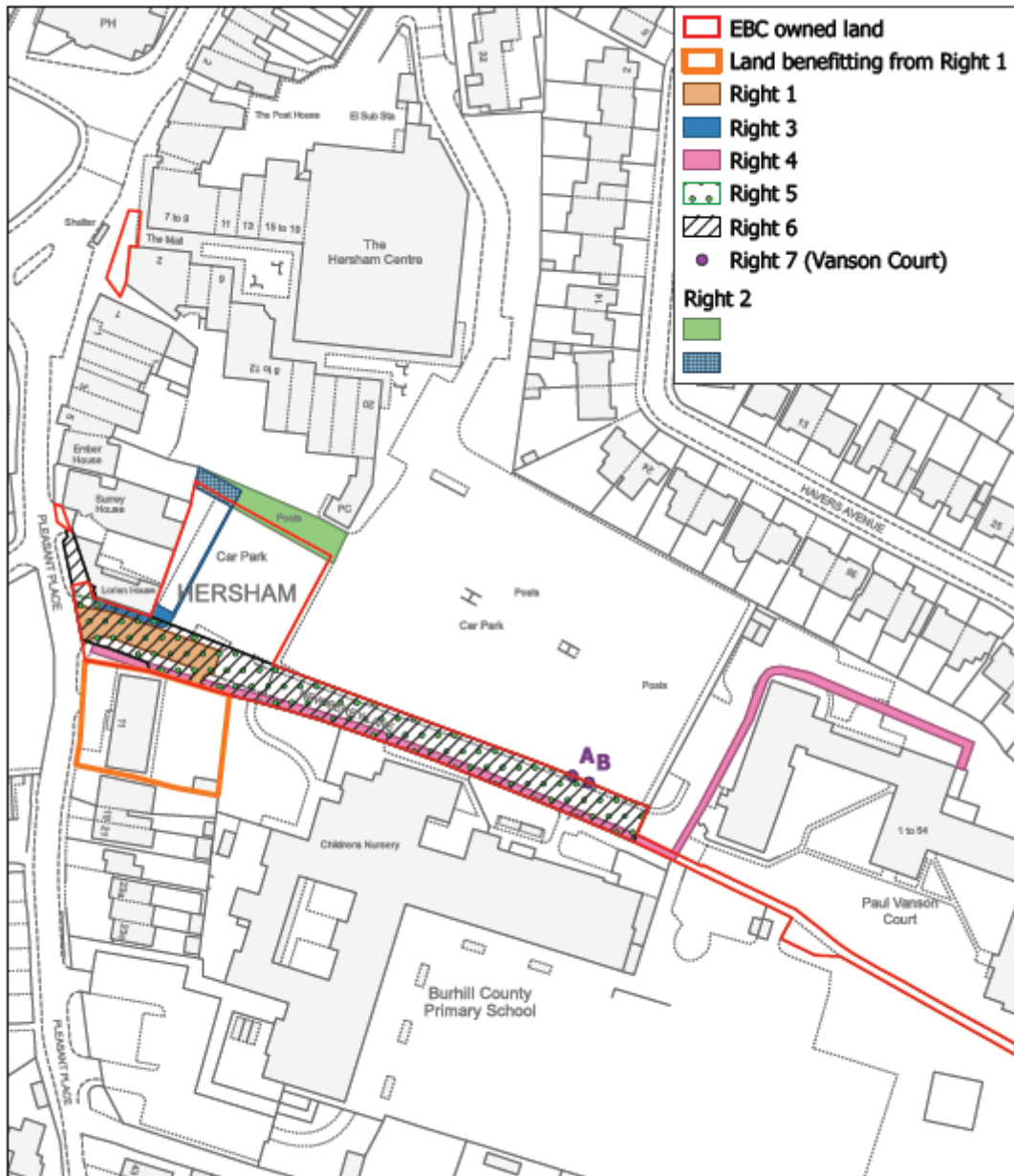
Extent of EBC Land




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# Map 2

## Rights over EBC Land



 <p><b>Elmbridge</b> Borough Council</p> <p><small>Civic Centre, High Street, Esher, Surrey, KT10 9SD</small></p>	<p><b>Site Details:</b> New Berry Lane, Hersham Scale: 1:1250</p> <p><small>© Crown copyright and database rights (2024) Ordnance Survey 100024882. You are permitted to use this data solely to enable you to respond to, or interact with, Elmbridge Borough Council. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.</small></p>
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