

The Planning Inspectorate
National Infrastructure Planning

Date 5 December 2023

Our ref: 5763\65691082.1\204702.1\2366

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Dear Sir/Madam

**Lower Thames Crossing Development Consent Order
Representations on behalf of: STUART MEE, RICHARD JAMES MEE AND A P MEE
PARTNERSHIP**
(Planning Inspectorate Reference: **20035885**)

As you are aware we are instructed to act on behalf of Stuart Mee, the owner/joint owner and occupier (in the name of his farming business, A P Mee Partnership) of land located within the wards of Upminster and Ockendon, such land falling within the Order Limits of the Lower Thames Crossing (**LTC**) project, in respect of which an application for development consent (**Application**) has been submitted by National Highways (**NH**).

We wish to submit further material to meet deadline 8. This consists of post-event written submission of oral comments made at the CAH5 hearings held 20 to 28 November 2023, which we now attach to this letter.

Should there be any queries in connection with the contents of this letter please direct them to Karen Howard whose details can be found above.

Yours faithfully

[REDACTED]

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Application by National Highways for an Order granting
Development Consent for The Lower Thames Crossing

(Planning Inspectorate Reference: **20035885**)

DEADLINE 8

**SUBMITTED ON BEHALF OF STUART MEE,
RICHARD JAMES MEE AND A P MEE**

CAH5 FOLLOW-UP WRITTEN REPRESENTATIONS

5 December 2023

Gateley LEGAL

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DEADLINE 8: EXECUTIVE SUMMARY – MEES' MANOR FARM

1. This Deadline 8 relates to the proposed compulsory acquisition of land at Manor Farm by National Highways (“NH”) for the northernmost parts of the scheme for Lower Thames Crossing (“LTC”) under an application for a development consent order (“DCO”) requested to be granted by the Secretary of State under the Planning Act 2008. This representation should be read together with the previous representations.
2. The structure of the Planning Act 2008 ensures that the tests under section 122 of the Act sit above all other tests in the Act by means of the extensive use of the phrase “subject to”.
3. This Deadline 8 representation addresses three broad points made orally at the CAH (21st November 2023) and supported by evidence and representations submitted at Deadline 7 (with other points previously referred to remain reiterated as before):
 - a) There remains a need for *concurrent access* to be ensured to be provided to Mr Mees during the construction of the project on and under his operational farm land because the dynamic weather conditions determine when he can and needs to farm the land. The generalized SACR-005 (that also places the whip hand with a yet to be appointed at Project Gateway Stage 5 contractor) precludes equivalent operation of the farm and significant and unnecessary severance would result in the absence of mitigation. The NH SACR-005 does not address the particular circumstances of the Mees Farm. The NPS NN requires, at paragraph 5.215-216, where development would worsen accessibility, as it would here by severance of fields from each other, then the Secretary of State must “as far as reasonably *possible*” mitigate those impacts. A Requirement would ensure that provision was guaranteed and so satisfy the NPS NN by ensuring that Mr Mees retained the necessary particular responsiveness to the changing dynamics of weather conditions as he farms land simultaneously during construction of the project under and on his land;
 - b) There remains a need for a scheme to ensure that ground water supply remains maintained at existing licenced volumes during and after construction of the project as stated in the Environment Agency’s abstraction licences permitting Mr Mee to irrigate his land at Agricultural Grade 1. A Requirement is necessary to ensure such a scheme with a measurable *output* water volume (the data collected by NH being unreliable and indicating that NH may not be required to ensure water volumes be maintained equivalent to the licences). Without such ensured irrigation output, the Grade of Mr Mees farmland would be reduced (by impediments to groundwater supply) from the current Grade 1 to Grade 3a and as a result of reduced range of crops that could be grown in drier conditions, contrary to NPS NN,

paragraphs 5.168 and 5.176. A Requirement would ensure that current water volume provision was maintained and so satisfy the NPS NN, paragraph 5.227 to ensure anticipated adverse effect of reduced water supply from intervening tunnel and cuttings structures are mitigated whilst preserving flexibility as to how that be secured;

- c) On their lawful interpretation and construction, affirmed by also applying *Sainsbury's* case, sections 131(4) and (11) of the Planning Act 2008 cannot be satisfied by land that has not been "given" by the *current* owner and that is included also in the red line area of the CPO. Instead, "replacement land" can only be given (and if not owned, can only be acquired by voluntary agreement) and then not included in the CPO red line (it being already owned by the acquiring authority), so as to then evidence satisfaction of sections 131(11), (4) and (3), and, in turn, enable satisfaction of section 122(1) in respect of the open space land inside the CPO red line desired to be taken. Then, section 131(11) is engaged to sterilize the land that has been bought and vest that land in the third party. Thereby, the land bought is transformed via statutory machinery into "replacement land". NH has no answer to that analysis – except to assert that the Act cannot be read that way or it has been done differently elsewhere. The simple response of Mr Mee is: the Act can and must be so read that way and his analysis above remains correct in law since a "taking" cannot *evidentially* satisfy the section 131(4) criteria of "giving".
- d) In this DCO application there is evidence from Mr Mees of a transaction by which section 131(4) can have been satisfied as "replacement land" given (if also outside of the red line of the CPO area (see section 131(12)) for a different area of land (inside the extent of the red line of the CPO area (see section 131(12)): being the *open market purchase* by NH of *Hole Farm* on private terms at open market value and, in consequence of which NH can now lawfully "give" (under section 131(4)) that bought land (if outside of the CPO red line area, see section 131(12)), definition of "replacement land") as "replacement land" (as satisfying the terms of section 131(4)) *for* the compulsory acquisition of some 'open space' land; and in turn satisfying section 122(1) acquisition of that open space land. As a result, section 131(11) would be engaged in due course. By contrast, the evidence of Mr Mees shows no offer to him from NH for his land or for part of his land as replacement land, nor its open market agreement to purchase any such land from Mr Mees as well as land inside the order land asserted to qualify under section 131(12) as "replacement land" when it cannot be. Yet NH assert that it can "take" (under section 131(4)) that only allows a "giving" by him) an operational agricultural field from Mr Mees, and then itself (necessarily post its cpo from Mr Mees) "give" that *same* land to a third party (via section 122(1)). That circular logic beggars belief and is wrong in law. On the NH interpretation of sections 122 and 131 and 132, NH's taking of "replacement land" remains ultra vires sections 122(1), 131(4) and (12) and remains logically circular.

- e) Contrary to the NH assertions, the *Sainsbury's* case requires an approach to interpretation to presume a construction *against* NH and the correct construction of sections 131(12), (4) and 122(1) is logically linear not circular. The asserted compulsory acquisition by NH of land by its reliance on section 131(4) to “take” that land *from* Mr Mee so that NH can in turn then under the same section 131(4) purport to “give” that same land to a third party as “replacement land” for land that NH is taking for its proposed highway, remains *ultra vires* the scope of sections 122((1) and (2) and 131(4) of the Planning Act 2008. Thereby, section 131(3) remains engaged to require the land taken from the *third party* be subject to the special Parliamentary procedure *before* the Secretary of State has jurisdiction to himself consider authorizing acquisition of the third party land. The same logic applies to the other areas of (so-called) “replacement land” that NH also has not purchased on the open market in order that NH can be awfully in a position to satisfy section 131(4).
- f) NH continues to have no answer to that analysis and evidence and instead merely asserts that it has been done elsewhere. Of course, where NH has purchased by agreement land so to have in its hand land that it can “give” (in satisfaction of section 131(4), then it has not yet disclosed any of those transactions into the public domain to evidence that section 131(4) is satisfied on the basis of such underlying transactions;
- g) It follows that the Secretary of State remains required to exclude all of the identified “replacement land” from the scope of the draft DCO (save for Hole Farm, unless it is included – in error - in the CPO red line area). i.e. one cannot CPO what ones already owns because it is not necessary. Hence, section 131(11) remains to ensure the replacement land is free from interests that may otherwise conflict with the purpose of the replacement land as a replacement for open space.

WITNESS STATEMENT OF

STUART MEE

In respect of

Manor Farm,

[REDACTED]

[REDACTED]

Objection Reference Number:

(Planning Inspectorate Reference: 20035885)

I, **STUART MEE** of Manor Farm, [REDACTED]

[REDACTED] make this witness statement in support of my representations to the proposed Development Consent Order for Lower Thames Crossing (DCO) and to expand on points I dealt with at the recent Examination hearing CAH5. I believe these facts to be true to the best of my knowledge and belief.

1. I live at the Manor Farm farmhouse and own Manor Farm and surrounding land including the land that has been identified as (so-called) 'replacement land' under the DCO. I have farmed the land for many years and took over farming from my father. The replacement land is an active field in agricultural use, and which is described as the best and most versatile land graded 1-2. It is not and has never been used as 'open space'.
2. NH propose a tunnel under and cutting in my land to carry a highway link to the M25 that bisects my land North/South. No doubt because of the key nature of my land for their desired infrastructure connection to the M25 under and across my land, National Highways ("NH") has been actively liaising as to its DCO proposals with me since 2018 about their tunnelling and cutting. NH approached me and we have had a number of meetings and discussions with me about their proposals.
3. Initially Alexander Creed of Strutt and Parker acted for me and was involved in early discussions. Michael Anderson formerly of Strutt and Parker assisted for a while but since 2019 Peter Cole of Ceres has been my adviser and has been engaging with National Highways on my behalf. In the last four to five years, I have either attended meetings with or have been provided with records of engagement with National Highways (always drafted by NH).
4. The reference to the period above shows that there has been liaison by NH with me for a number of years now (at November 2023). However, to be clear, that liaison has always been in the context of discussions with me being under the shadow or threat of a compulsory acquisition of my land and appears to me to have been for the purposes of NH and not for myself.

5. An example of the meetings being for NH is the requests for carrying out by NH of Intrusive Surveys on the land ongoing since 2019 which I have tried to facilitate.
6. I have agreed to NH accessing my land to try and avoid NH from having to use its (threatened) powers under S172 of the Housing and Planning Act 2016 for access although had to stop them from doing so in a certain instance because certain requirements set out in a mutually agreed licence agreement for access were not met.
7. I understand that the access was and is sought for the surveys of the installation of water monitoring data equipment in a culvert to the east of the M25 to monitor the surface water flows across my land. This monitoring equipment was set up by NH to record data from water running over a recording pad on the monitoring device in order to understand how the tunnel and cutting may affect groundwater and to enable the intervention of the tunnel and cutting on groundwater and surface water movement to be assessed. However, the location of the device was near to a place where leaves fall into that place and, indeed, leaves fell on top of the data pad that was meant to record the water flow over its surface. I raised the fact that the data recording pad was covered by leaves on several occasions with NH, but they chose to not relocate or clean the device. My water advisers also noted that the data being collected seemed to be incorrect and their November 2023 report that I have provided to the Secretary of State in my evidence records my advisor noting that the data about water that had been collected by NH was unreliable. I agree.
8. There is, however, reliable data about water volumes that I am entitled also to abstract. The data derives from the volume of water permitted by the Environment Agency's abstraction licences to be abstracted by me. These volumes and the licences are identified in the reports of my water advisers. There is nothing to doubt the veracity of the Environment Agency's data that underpins its abstraction licences. I consider that the concern of NH about its infrastructure interfering with ground water movements can be resolved by a Requirement that ensures provision and installation by NH of the scheme summarised in my water advisor's report of November 2023 and must include

a requirement to match the *output* of my abstraction licences. That is, the Requirement would set an output figure that is required to be matched by NH and so provides them with the flexibility to consider how to install a ground water system that can provide that equivalence. There seems no reason why the Agency could not independently verify an abstraction scheme.

9. I made oral representations at CAH5 before the Examiners regarding the importance of the irrigation system to crop production. NH seem to accept this given the installation of a water monitoring data pad and the ongoing work in trying to find an acceptable working solution. My case is simply that if such a system is not provided then I will lose the ability and flexibility for growing a wide range of crops including salad crops on the land which produce the best income and return.
10. I have been advised also that the compulsory acquisition of land should be a matter of *last* resort and only be relied on when necessary because a landowner, for example, refuses to sell his land and *before* compulsory acquisition processes are begun. It is a fact that NH has *never* offered to purchase my land, and never offered to purchase the land that it desires to be used for 'replacement land' nor has it done so before it started its compulsory purchase application process as part of its DCO application. I understand this to mean that the onus is on the acquiring authority to offer to purchase my land *before* proceeding with to and with any compulsory acquisition.
11. In previous oral representations to the Examining Authority ("ExA") assessing the Lower Thames Development consent order and its evidence base through the statutory examination process, and at the Examination CAH5 hearing I have made it clear that there has been no offer made by National Highways either prior to the submission of the application or following its submission for examination to purchase the farm or replacement land (or any part of the land) by private agreement. At most, I recall two matters raised with me. The first was at the end of meeting with NH in about 2020 when Sarah Collins asked whether I would be prepared to sell my farm. I assume that its purchase could have acted as an 'advance payment' which I understand to mean part of a compulsory purchase compensation payment calculated using compulsory purchase methodologies but is not the same as offering market value for the

land. I can say for sure that I have never been *made* an offer by NH to purchase my land or the replacement land at open market value.

12. I understand that NH has by contrast been buying up land before the application was made and, I understand, buying land for 'replacement land'. During 2020 I was made aware of Hole Farm being available for sale as an "off market" purchase. Hole Farm has since been privately acquired by Highways England in 2021 as mitigation land, ostensibly to support a few projects. Hole Farm appears referred to as Item 2.1.7 at page 5 of the document "Lower Thames Crossing – 5.4.5.2 Statement of Common Ground between (1) National Highways and (2) Forestry England (October 2022)". Forestry England said this:

Forestry England seeks clarification on the status of proposed replacement land at Hole Farm in Brentwood, Essex as compensation land due to impacts on Folkes Lane Woodland located in the different local authority area of, the London Borough of Havering.

13. NH responded as follows:

*Hole Farm inclusion in the Order Limits is to cover several functions required by the Project one of which includes compensation for loss of open space at Folkes Lane Woodland.
National Highways purchased the site on the open market to create a large community woodland in partnership with Forestry England.
National Highways confirmed at the Local Refinements Consultation (May 2022) that part of the site would now be used for compensation for Nitrogen Deposition, which will be compensatory tree planting.
A small part of the site will be classed as replacement open space land for that lost at Folkes Lane.
National Highways intend to transfer the freehold of that part with the remainder of the site leased to Forestry England
The masterplan for the entire site that is being developed in partnership with Forestry England and the wider Thames Chase Community Forest partners.*

14. (There is further reference to Hole Farm on pages 19 under Item 2.1.4.) I note the reference to the purchase by NH of the Hole Farm "on the open market" and can affirm that at no time has NH ever offered to buy either my farm, or any part of it, or any part for 'replacement land' "on the market" or otherwise than in the context of payment as part of a formal compensation payment.
15. In February 2023, National Highways showed me some land on the open market which amounted to approximately 88 acres and which was a small

holding south of Upminster. This land was 'presented' to me by NH as an option for me to buy using an 'advance payment' which NH had estimated to be my likely compensation and to allow me to purchase this land. However, this land was not suitable and had no proper irrigation facility, so I declined to take this matter further.

16. I am surprised at this inconsistent stance of NH because it appears to have chosen to pay for Hole Farm (including as replacement land) for its scheme and yet simultaneously is seeking to compulsorily acquire my land without ever having offered to buy either my land, or a part of it for replacement land on the open market. That seems to me arbitrary by NH and is clearly unfair.
17. Having regard to the facts presented above I can see no rational or reasonable explanation why National Highways have not been willing to offer to acquire my farm at open market value or to buy the replacement land from me, except that NH is actively seeking to avoid paying an open market price for those land parcels, to bypass that market and instead seek to rely on the compulsory purchase scheme to instead reduce the open market sum it must know that it would otherwise have to pay for either parcel. I am advised and understand that the stance of NH in that respect is potentially unlawful because one cannot rely on the compulsory purchase scheme to bypass open market acquisition because that approach is one of using compulsory purchase as a first and not as a last resort.
18. I am further advised that it is unlawful for NH to seek to compulsorily acquire any of my land as 'replacement land' because the Planning Act 2008 requires that kind of land to be "given" by the third party (or to have been acquired on the open market as Hole Farm was by NH, so that it can give that land in part as replacement land under that Act).
19. I am further advised and understand that, whilst there have been a lot of meetings and liaison between me and NH, such liaison that is self-serving for the benefit of NH and without regard to my particular situation is not engagement for the purposes of avoiding compulsory purchase as a last resort. In this respect I am advised that another Secretary of State has refused to confirm a CPO under another Planning Act (the Town and Country Planning

Act 1990) earlier in 2023 because the acquiring authority in that case – whilst also liaising with a person who owned land subject to a CPO – was not actually engaged with by that authority and nor were their particular concerns addressed despite the apparent numerous meetings between the parties. That is the same situation as in my case also. By way of example at the self-serving nature of liaising, I note that I have drawn to NH's attention on a number of occasions that its water data monitor was covered by leaves that affected the data being recorded, and yet NH consistently ignored that situation when drawn to its attention – as if it didn't matter to NH. But it matters a lot to me – because my farmland needs to be irrigated to a certain abstraction volume in order for me to maintain my farm, its agricultural grade, and its productivity. I note that the ExA observed at the CAH that if NH failed to collect the correct water data, then the Requirement on it to ensure volumes were maintained would never be triggered.

20. I am advised and understand that the corporate Governance document entitled "Project Control Framework" precludes NH from awarding any contract to a contractor *before* the Secretary of State has determined whether or not to grant a DCO, and, as his CPO Guidance (September 2013) indicates whether it would, or may not, include CPO powers over some or all of the DCO area.
21. I also note the self-serving manner of NH's response to my concerns about access and its failure to grapple with the particular circumstances of my farm when – having heard the concern about the *lack* of particularity for access around my farm during construction works, NH relied on a generalised provision in a document that places the decision about access in the hands of a contractor alone. This is further evidence of the failure by NH to engage with the particularity of my situation – and notwithstanding that my farmland seems a highly desirable location for NH to situate its tunnel under and cutting through.
22. Instead, my surveyor has prepared detailed plans showing the access issues arising that will prevent me getting to my land as and when the weather dictates the ability to service my land and would cut access off.



23. NH has referred me to a general commitment in SACR-005 – “Project wide” which provides as follows: *“Where access to a significant area of a landowner’s farmland is severed by construction works, the Contractor shall ensure that the farmer is provided with controlled access to their retained land”* and has said that this should provide me with reassurance on the availability of my access for farm access during construction. However, for reasons I have already indicated to NH this drafting prevents me with certain difficulties. It is only a general commitment; it gives absolute control to the contractor to decide which areas of land are deemed to be “significant” and therefore does not provide me with any guarantees or comfort that such access will be given. I have no direct relationship to the Contractor and can envisage all kinds of problems with this general commitment. I also note that I am being treated differently to another landowner for example having regard to the content of SACR-006 for Mr Mott and any successor in title.
24. I have also reviewed Plate 4.13 which offers a possible diversion route to my farm. Whilst I appreciate that NH are trying to limit access by the general public to what will be in effect a construction site, I regard those who work with me and myself to be highly experienced machine operators able to manoeuvre large complex machinery and follow the same safety and management procedures as any sub-contractor which means that I do not see why accommodation cannot be made for my business needs. The proposed diversion route is long and cumbersome and could cost a lot more to the farm than NH might realise.
25. For all the above reasons I consider that a Requirement that requires NH to give me access to my farm as and when the weather dictates is absolutely necessary and have prepared suitable wording for this in the ongoing absence of engagement with the particular facts of my farm’s situation.

Signature

Name: ... Stuart Mee

Date: 5th December 2023

<p>(Save where Mr Mees has needed to provide a plan) Applicant's Plan which has been annotated by Peter Cole:</p>	<p>Plan 1</p>	<p>Plan 2</p>	<p>Plan 3</p>
<p>Existing Access & Need for Continued Access</p>	<p>Mr Mee's existing access to the field outlined in purple is from the arable field to the North.</p> <p>The need for access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Mr Mee's existing access to the field outlined in purple is from the arable field to the North.</p> <p>The need for access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Mr Mee's existing access to the field outlined in purple is from the arable field to the North.</p> <p>The need for access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>
<p>National Highway's proposed replacement access to allow continued use of retained arable land by its future appointed contractor</p>	<p>Arrow at Proposed Access Point A on the above plan</p>	<p>Arrow at Proposed Access Point B on the above plan</p>	<p>Arrow at Proposed Access Point C on the above plan but not provided by the Applicant.</p>




<p>Photo from Roadside</p>			
<p>Orientation of Photo</p>	<p>Looking east into "Point A"</p>	<p>Looking west into "Point B"</p>	<p>N/A</p>
<p>Will access be shared with a contractor yet to be appointed?</p>	<p>Unclear</p>	<p>Unclear</p>	<p>Unclear</p>
<p>Will access for Mr Mee to his farm land be barred</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>
<p>Reference in CAH 21/11/2023 by National Highways in response to particular concerns of Mr Mee is to Access 'Commitment' for</p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>

retained land in Applicant's document [REP7-153]			
<p>Why the National Highways 'commitment' does not address the issue and the need of Mr Mee</p>	<p>1) The "SACR-005" 'commitment' is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury's</i> [2011] 1 AC 437 case, the SACR-005 'commitment' is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <p>i) whether a "significant area" of the person's land;</p> <p>ii) whether not access is 'required'; on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with "target cost" and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3,</p>	<p>1) The "SACR-005" 'commitment' is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury's</i> [2011] 1 AC 437 case, the SACR-005 'commitment' is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <p>i) whether a "significant area" of the person's land;</p> <p>ii) whether not access is 'required'; on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with "target cost" and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility</p>	<p>1) The "SACR-005" 'commitment' is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury's</i> [2011] 1 AC 437 case, the SACR-005 'commitment' is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <p>i) whether a "significant area" of the person's land;</p> <p>ii) whether not access is 'required'; on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the</p>

	<p>page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate assessment reviews” bullet 3: “All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>” and “prior to seeking investment authorisation”. See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor’s programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his</p>	<p>can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate assessment reviews” bullet 3: “All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>” and “prior to seeking investment authorisation”. See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor’s programme;</p>	<p>Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate</p>
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	<p>giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>assessment reviews" bullet 3: "All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>" and "prior to seeking investment authorisation". See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor's programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>
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<p>(Save where Mr Mees has needed to provide a plan) Applicant's Plan which has been annotated by Peter Cole:</p>	<p>Plan 4</p>	<p>Plan 5</p>	<p>Plan 6</p>
<p>Existing Access & Need for Continued Access</p>	<p>Existing access to the field outlined in purple is taken from North Road by "Redcroft Forge", further south and over the arable fields.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Existing access to the field outlined in purple is taken from North Road by "Redcroft Forge", further south and over the arable fields.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Existing access to the field outlined in purple is taken from Ockendon Road, over the arable field known has Hobbs Hole Field and over Pike Lane.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>
<p>National Highway's proposed replacement access to allow continued use of retained arable land by its future appointed contractor (save where Mr Mees has needed to provide a plan)</p>	<p>Arrow at Proposed Access Point D on the above plan</p>	<p>Arrow at Proposed Access Point E on the above plan</p>	<p>Arrow at Proposed Access Point F on the above plan but not provided by the Applicant.</p>




<p>Photo from Roadside</p>			
<p>Description of Photo</p>	<p>Looking north with “Point C” on the left-hand side</p>	<p>Looking south down Church Lane by “Point E”.</p>	<p>Looking north at existing access from Ockendon Road which is to be removed by the Applicant</p>
<p>Will access be shared</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes (if provided)</p>
<p>Will access be barred</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>	<p>(It appears) No.</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>
<p>Reference in CAH 21/11/2023 by National Highways in response to particular concerns of Mr Mee is to Access ‘Commitment’ for retained land in Applicant’s document [REP7-153]</p>	<p>SACR-005 - <i>Where access to a significant area of a landowner’s farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner’s farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner’s farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>

<p>Why the National Highways ‘commitment’ does not address the issue and the need of Mr Mee</p>	<ol style="list-style-type: none"> 1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO; 2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments: <ol style="list-style-type: none"> i) whether a “significant area” of the person’s land; iii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> 3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor; 4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways)); 	<ol style="list-style-type: none"> 1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO; 2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments: <ol style="list-style-type: none"> i) whether a “significant area” of the person’s land; ii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> 3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor; 4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 	<ol style="list-style-type: none"> 1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO; 2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments: <ol style="list-style-type: none"> i) whether a “significant area” of the person’s land; ii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> 3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor; 4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be
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	<p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with "Contracts are awarded" at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: "if a product is mandatory, then that process <u>must</u> be followed" ; and page 37: Stage gate assessment reviews" bullet 3: "All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>" and "prior to seeking investment authorisation". See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor's programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his</p>	<p>"final target cost", (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with "Contracts are awarded" at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: "if a product is mandatory, then that process <u>must</u> be followed" ; and page 37: Stage gate assessment reviews" bullet 3: "All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>" and "prior to seeking investment authorisation". See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor's programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates.</p>	<p>preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 "final target cost", (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with "Contracts are awarded" at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: "if a product is mandatory, then that process <u>must</u> be followed" ; and page 37: Stage gate assessment reviews" bullet 3: "All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>" and "prior to seeking investment authorisation". See page 38;</p>
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	<p>giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor's programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>
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<p>(Save where Mr Mees has needed to provide a plan) Applicant's Plan which has been annotated by Peter Cole:</p>	<p>Plan 7</p>	<p>Plan 8</p>	<p>Plan 9</p>
<p>Existing Access & Need for Continued Access</p>	<p>Existing access to the field outlined in purple is taken from Ockendon Road, over the arable field known as Hobbs Hole Field and over Pike Lane.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Existing access to the pond known as Hobb Hole Pond is from Pike Lane.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Existing access to the field outlined in purple is from Ockendon Road.</p> <p>The track is owned by National Highways as part of the M25 construction and our client has an all-purpose right of way over the track to farm the land.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>
<p>National Highway's proposed replacement access to allow continued use of retained arable land by its future appointed contractor (save</p>	<p>Arrow at Proposed Access Point G on the above plan</p>	<p>Arrow at Proposed Access Point H on the above plan</p>	<p>Arrow at Proposed Access Point I on the above plan</p>




<p>where Mr Mees has needed to provide a plan)</p>			
<p>Photo from Roadside</p>			
<p>Orientation of Photo</p>	<p>Looking north west along Pike lane with "Point G" to the left hand side.</p>	<p>Looking east at Pike lane to access Hobbs Hole Pond.</p>	<p>Looking east on Ockendon road with "Point I" on the right hand side.</p>
<p>Will access be shared</p>	<p>Yes (if provided)</p>	<p>Yes (if provided)</p>	<p>Yes (if provided)</p>
<p>Will access be barred</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>
<p>Reference in CAH 21/11/2023 by National Highways in response to particular concerns of Mr</p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period –</i></p>

<p>Mee is to Access 'Commitment' for retained land in Applicant's document [REP7-153]</p>			<p><i>throughout the construction as required.</i></p>
<p>Why the National Highways 'commitment' does not address the issue and the need of Mr Mee</p>	<p>1) The "SACR-005" 'commitment' is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury's</i> [2011] 1 AC 437 case, the SACR-005 'commitment' is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <ul style="list-style-type: none"> i) whether a "significant area" of the person's land; ii) whether not access is 'required'; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with "target</p>	<p>1) The "SACR-005" 'commitment' is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury's</i> [2011] 1 AC 437 case, the SACR-005 'commitment' is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <ul style="list-style-type: none"> i) whether a "significant area" of the person's land; ii) whether not access is 'required'; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with</p>	<p>1) The "SACR-005" 'commitment' is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury's</i> [2011] 1 AC 437 case, the SACR-005 'commitment' is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <ul style="list-style-type: none"> i) whether a "significant area" of the person's land; ii) whether not access is 'required'; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own</p>

	<p>cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate assessment reviews” bullet 3: “All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>” and “prior to seeking investment authorisation”. See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather</p>	<p>“target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate assessment reviews” bullet 3: “All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>” and “prior to seeking investment authorisation”. See page 38;</p>	<p>construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a</p>
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	<p>and not by the project or the contractor’s programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8)</p> <p style="padding-left: 40px;">By contrast, NH has in fact proposed to commit to specific access for others’ affect. [SACR-006]The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor’s programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8)</p> <p style="padding-left: 40px;">By contrast, NH has in fact proposed to commit to specific access for others’ affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate assessment reviews” bullet 3: “All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>” and “prior to seeking investment authorisation”. See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor’s programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8)</p> <p style="padding-left: 40px;">By contrast, NH has in fact proposed to commit to specific access for others’ affect. [SACR-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>
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(Save where Mr Mees has needed to provide a plan) Applicant's Plan which has been annotated by Peter Cole:	Plan 10	Plan 11	Plan 12
Existing Access & Need for Continued Access	<p>Existing access to the fields outlined in purple is from North Road.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Existing Access to the fields outlined in purple is taken from Dennises Lane. The access is approx. 7 metres in width.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Existing access to the fields outlined in purple is from Dennises Road. The access is approx. 6 metres in width.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>
Applicant's proposed replacement access to allow continued use of retained arable land	Arrow at Proposed Access Point J on the above plan	Arrow at Proposed Access Point K on the above plan	Arrow at Proposed Access Point L on the above plan



<p>Photo from Roadside</p>			
<p>Orientation of Photo</p>	<p>Looking south on North Road with "Point J" on the left hand side.</p>	<p>Looking east along Dennises Lane with "Point K" on the right hand side</p>	<p>Looking north on Dennis Road with "Point L" on the right hand side</p>
<p>Will access be shared</p>	<p>Yes</p>	<p>No</p>	<p>No</p>
<p>Will access be barred</p>	<p>No</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>
<p>Reference in CAH 21/11/2023 by National Highways in response to particular concerns of Mr Mee is to Access 'Commitment' for retained land in Applicant's document [REP7-153]</p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>

<p>Why the National Highways ‘commitment’ does not address the issue and the need of Mr Mee</p>	<ol style="list-style-type: none"> 1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO; 2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments: <ol style="list-style-type: none"> i) whether a “significant area” of the person’s land; ii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> 3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor; 4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways)); 	<ol style="list-style-type: none"> 1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO; 2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments: <ol style="list-style-type: none"> i) whether a “significant area” of the person’s land; ii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> 3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor; 4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 	<ol style="list-style-type: none"> 1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO; 2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments: <ol style="list-style-type: none"> i) whether a “significant area” of the person’s land; ii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> 3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor; 4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding
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	<p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with "Contracts are awarded" at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: "if a product is mandatory, then that process <u>must</u> be followed" ; and page 37: Stage gate assessment reviews" bullet 3: "All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>" and "prior to seeking investment authorisation". See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor's programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his</p>	<p>"final target cost", (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with "Contracts are awarded" at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: "if a product is mandatory, then that process <u>must</u> be followed" ; and page 37: Stage gate assessment reviews" bullet 3: "All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>" and "prior to seeking investment authorisation". See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor's programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates.</p>	<p>Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 "final target cost", (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways "Project Control Framework Handbook (November 2018)" prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with "Contracts are awarded" at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: "if a product is mandatory, then that process <u>must</u> be followed" ; and page 37: Stage gate assessment reviews" bullet 3: "All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>" and "prior to seeking investment authorisation". See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects</p>
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	<p>giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SACR-0069] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SARC-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>of the weather and not by the project or the contractor's programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8) By contrast, NH has in fact proposed to commit to specific access for others' affect. [SARC-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>
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<p>(Save where Mr Mees has needed to provide a plan) Applicant's Plan which has been annotated by Peter Cole:</p>	<p style="text-align: center;">Plan 13</p>	<p style="text-align: center;">Plan 14</p>
<p>Existing Access & Need for Continued Access</p>	<p>Existing access to the fields outlined in purple is taken from Dennis Road. The access has a 10 meter width.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>	<p>Existing access to the field outlined in purple is taken from the arable field to the south.</p> <p>The need for continued access by Mr Mee to his fields is created by his growing crops and the dynamic effects of the weather by which the crops grow, need to be sown, tendered and harvested, together with the need to plough, prepare and care for the soil for the crops.</p>
<p>Applicant's proposed replacement access to allow continued use of retained arable land</p>	<p style="text-align: center;">Arrow at Proposed Access Point M on the above plan not provided by the Applicant.</p>	<p style="text-align: center;">Arrow at Proposed Access Point N on the above plan</p>

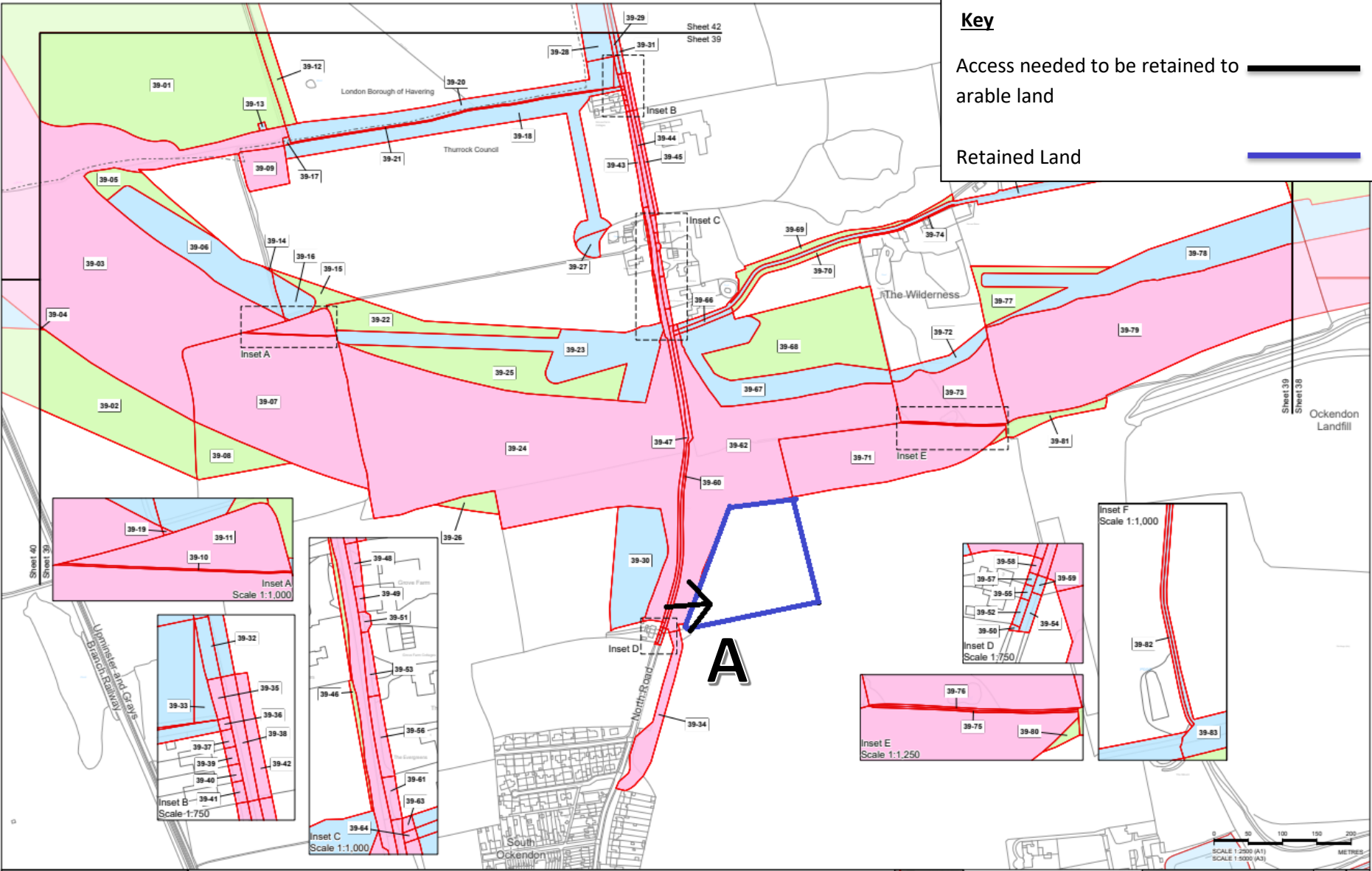
<p>Photo from Roadside</p>		
<p>Orientation of Photo</p>	<p>Looking north on Dennis Road with "Point M" on the right hand side</p>	<p>Looking north on Dennis Road at the proposed new access location - "Point N"</p>
<p>Will access be shared</p>	<p>No</p>	<p>Yes</p>
<p>Will access be barred</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>	<p>Yes. There remains no guarantee of access for Mr Mee to reach his field when he needs to.</p>
<p>Reference in CAH 21/11/2023 by National Highways in response to particular concerns of Mr Mee is to Access 'Commitment' for retained land in Applicant's</p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>	<p>SACR-005 - <i>Where access to a significant area of a landowner's farmland is severed by construction works the Main Works Contractor shall ensure that the farmer is provided with controlled access to their retained land. Time period – throughout the construction as required.</i></p>

<p>document [REP7-153]</p>	<p>1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <ul style="list-style-type: none"> i) whether a “significant area” of the person’s land; ii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways “Project Control Framework Handbook (November 2018)” prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See e.g. page 11 that</p>	<p>1) The “SACR-005” ‘commitment’ is expressed in generalised language for generalised application across all parts of the extent of the DCO;</p> <p>2) Properly interpreted and in line with paragraph 11 of the <i>Sainsbury’s</i> [2011] 1 AC 437 case, the SACR-005 ‘commitment’ is triggered not by the day-to-day dynamic weather conditions but by two assessments:</p> <ul style="list-style-type: none"> i) whether a “significant area” of the person’s land; ii) whether not access is ‘required’; <p>on terms that place the exercise of those discretions to make the evaluations in the hands of the (yet to be appointed under the Project Control Framework);</p> <p>3) The SACR-005 is not dictated by the day-to-day weather but by the desires of the contractor;</p> <p>4) When appointed, a contractor would have a financial interest to exclude Mr Mee so as to facilitate its own construction programme without sharing access because the contract would appear from the Project Control Framework to be an NEC Contract with “target cost” and a pain/gain mechanism designed to reduce cost by increasing flexibility for the contractor. Such flexibility can be expected to be preserved by the contractor by excluding Mr Mees. See, for example, pages 10, Stage 3, page 11, Stage 5 “final target cost”, (and page 55, (if any Smart highways));</p> <p>5) References in the SACR-005 to a contractor are misplaced because a contract has not and cannot yet be awarded and, therefore, there can be no current contractor other than in breach of the Governance Criteria regulating NH. The National Highways “Project Control Framework Handbook (November 2018)” prohibits an award of a contract to a contractor before the Secretary of State has determined the DCO and CPO, before a mandatory Stage Gateway Review has been undertaken by NH at the end of Stage 4 and before Notice to Proceed can be served. See</p>
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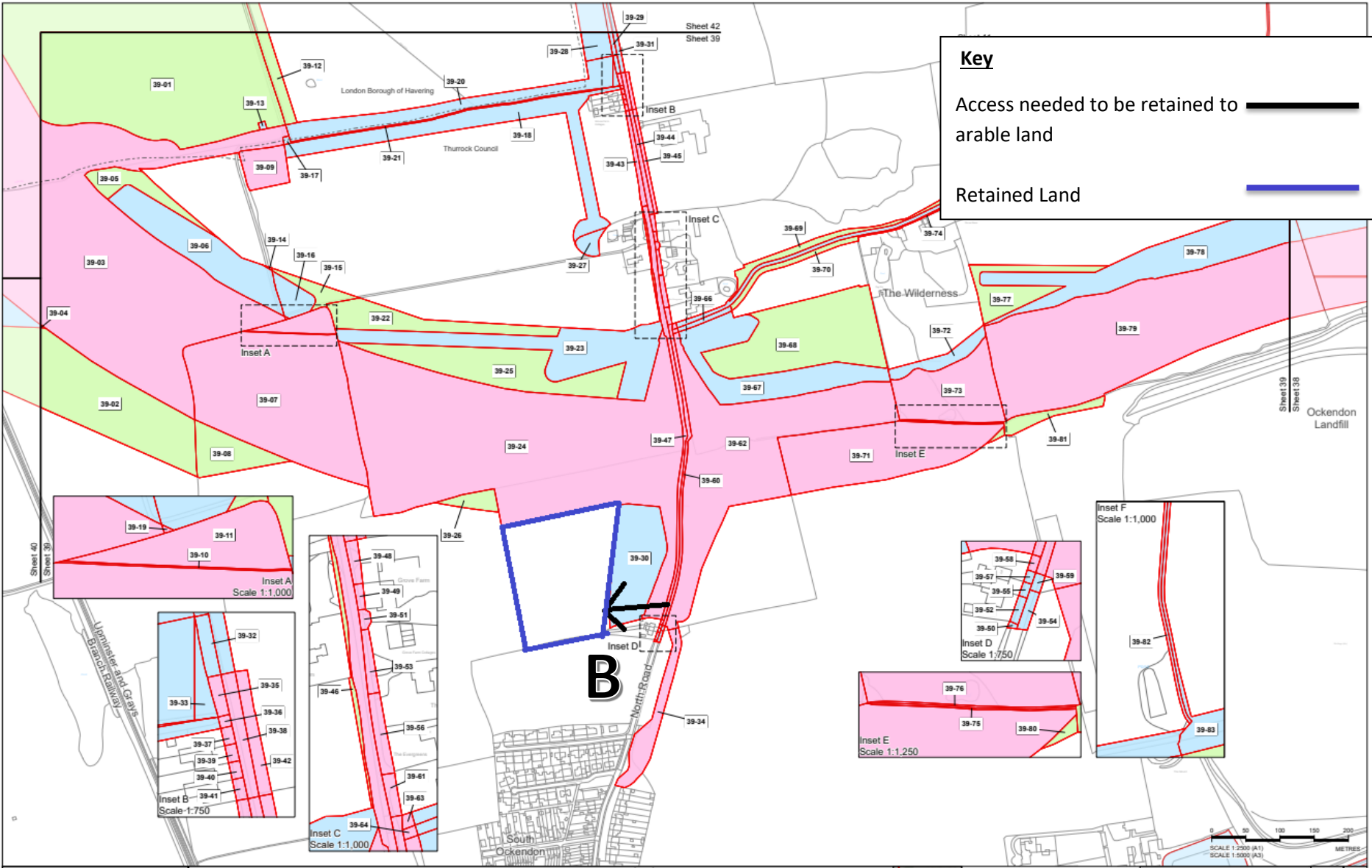
Why the National Highways ‘commitment’ does not address the issue and the need of Mr Mee

	<p>refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate assessment reviews” bullet 3: “All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>” and “prior to seeking investment authorisation”. See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor’s programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8)</p> <p style="padding-left: 40px;">By contrast, NH has in fact proposed to commit to specific access for others’ affect. [SARC-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>	<p>e.g. page 11 that refers to Stage 4 and DCOs, and to Stage 5 and Notice to Proceed; page 12-13, Stages 0-7, with “Contracts are awarded” at Stage 5 (not Stage 4), Figure 4; page 13, Stage 5, Column 3; page 20: “if a product is mandatory, then that process <u>must</u> be followed” ; and page 37: Stage gate assessment reviews” bullet 3: “All projects <u>must</u> complete a stage gate assessment review ... <u>at the end of every project stage</u>” and “prior to seeking investment authorisation”. See page 38;</p> <p>6) The need for access by Mr Mee to his fields is created by the dynamic effects of the weather and not by the project or the contractor’s programme;</p> <p>7) To be able to operate and run his farm during each year, Mr Mee needs to be able to access his land as and when the weather dictates. He remains prepared to do this by means of his giving 48 hours' notice of his access needs to NH during the construction process.</p> <p>8)</p> <p style="padding-left: 40px;">By contrast, NH has in fact proposed to commit to specific access for others’ affect. [SARC-006] The Applicant has failed to provide specific access requirements for Mr Mee;</p> <p>9) There are no access provisions for post-construction of the scheme (the operational phase) including design requirements and detail on where access will be shared.</p>
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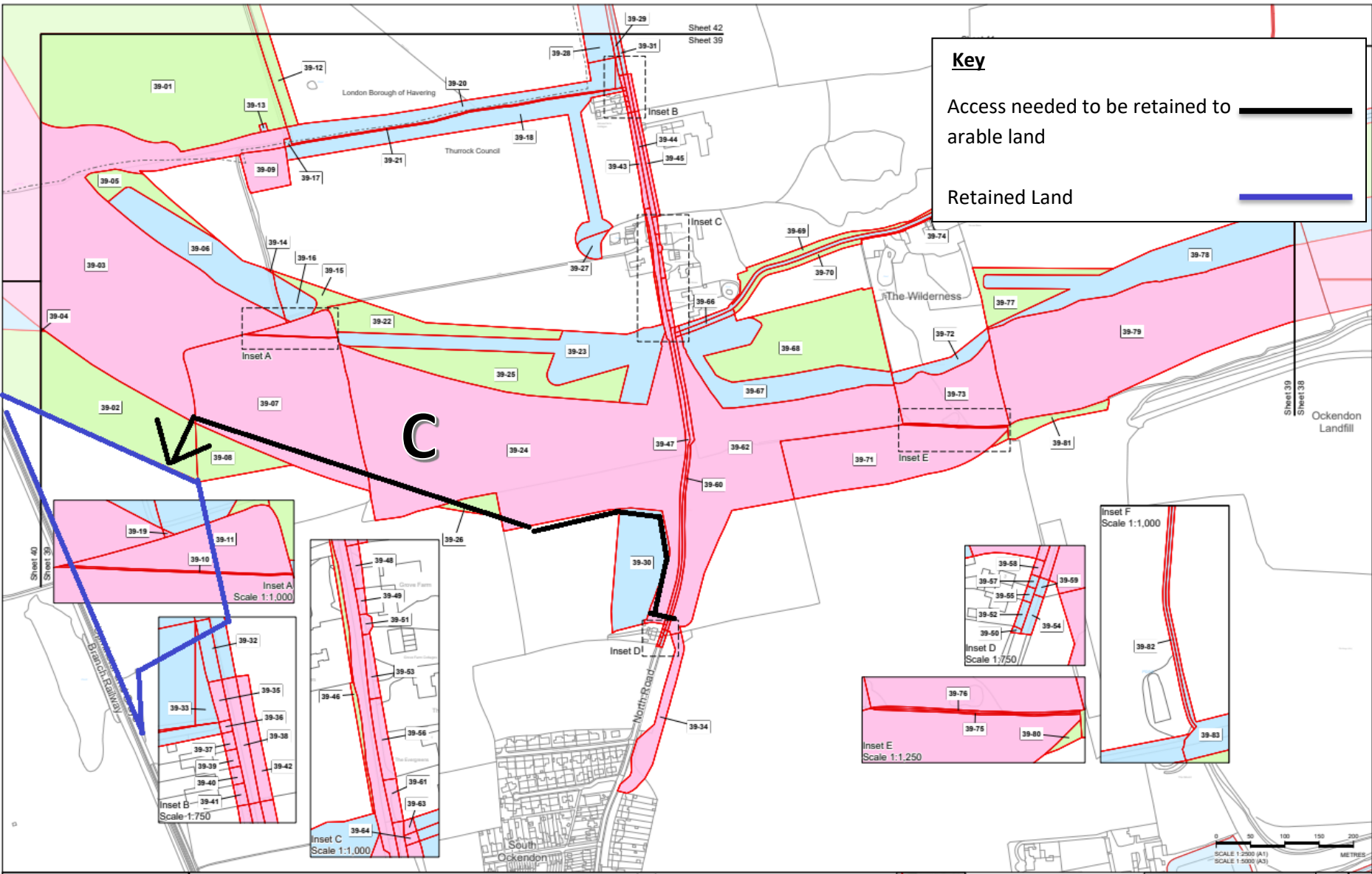
PLAN 1



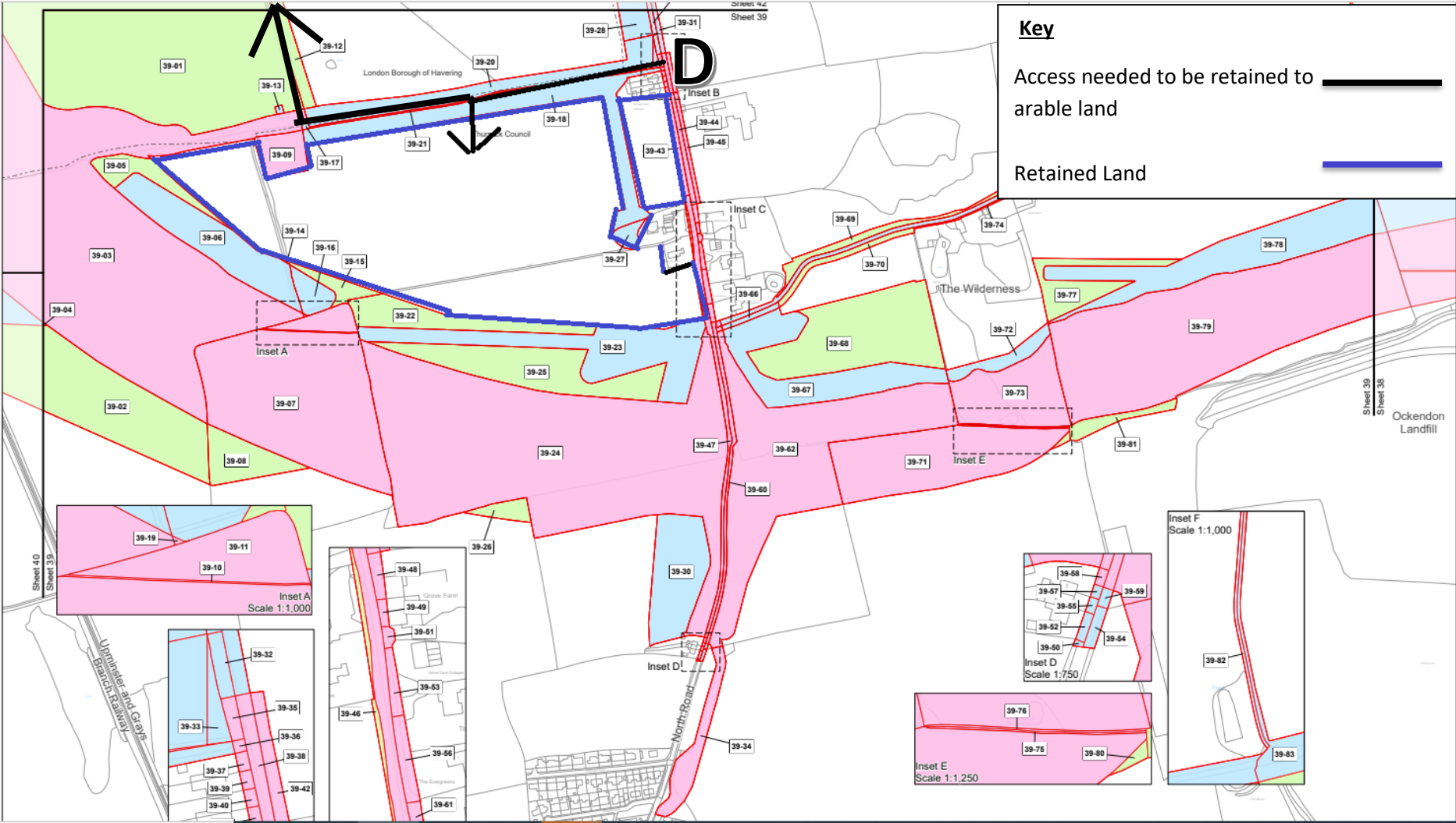
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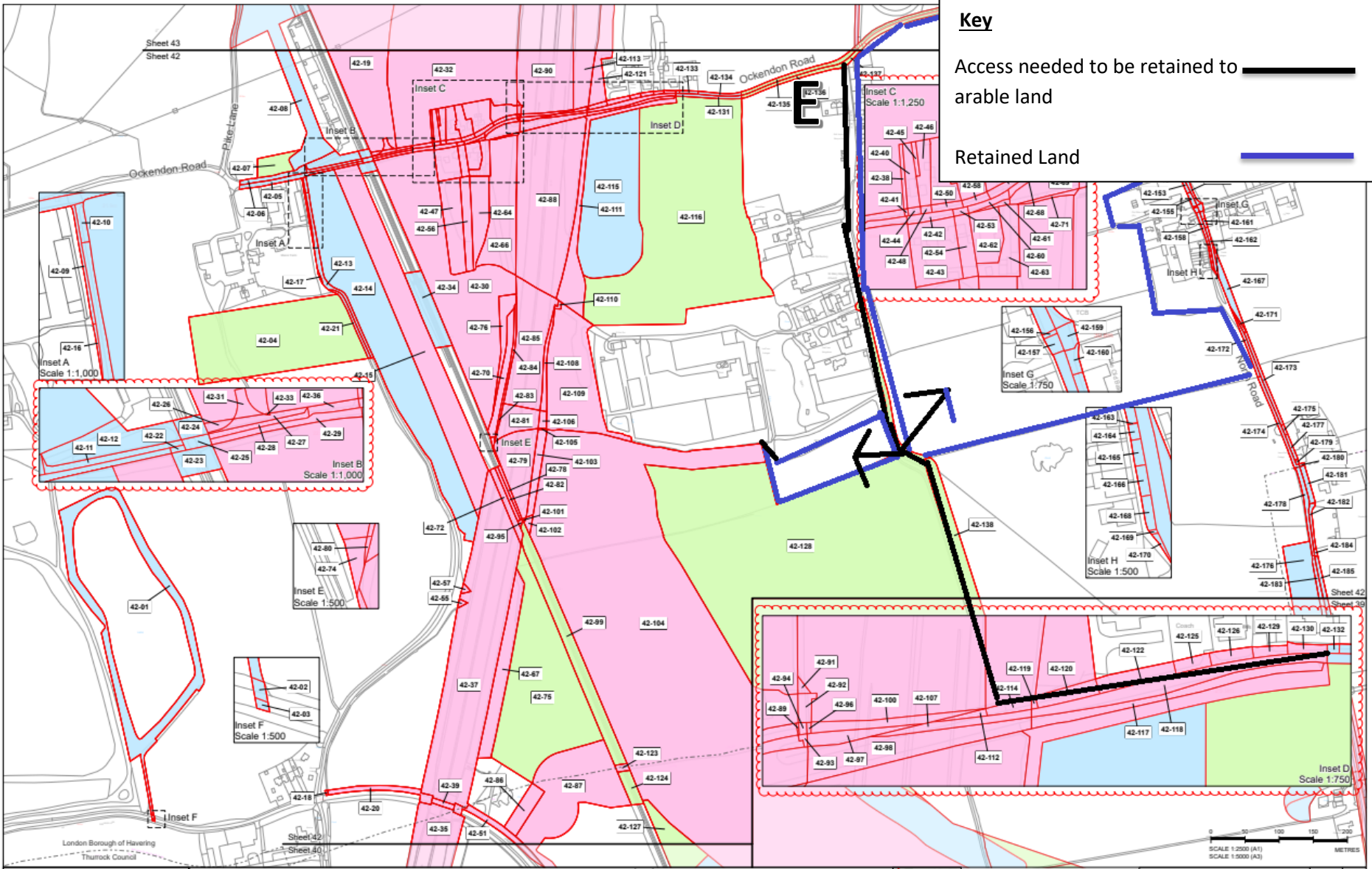
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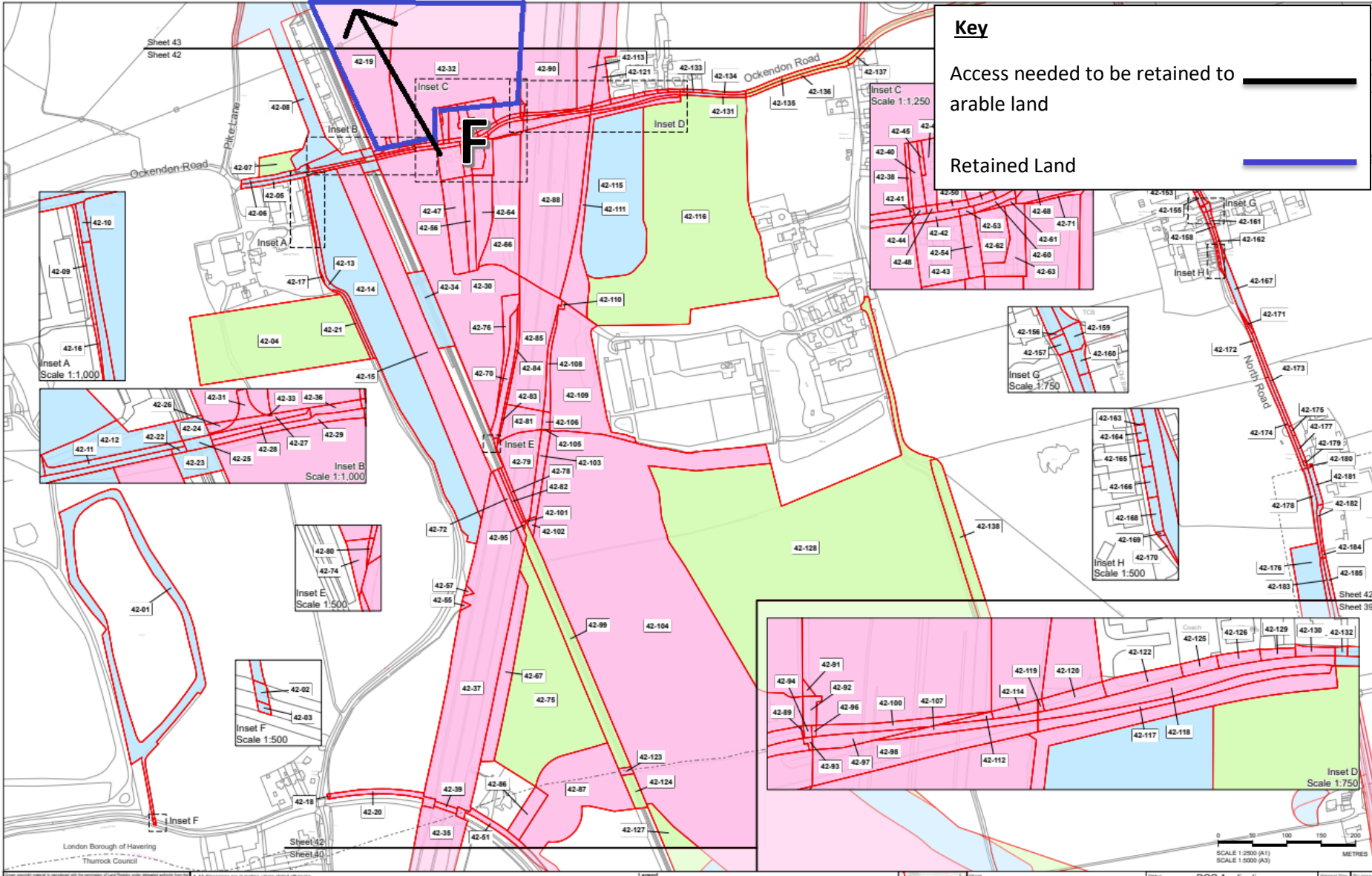
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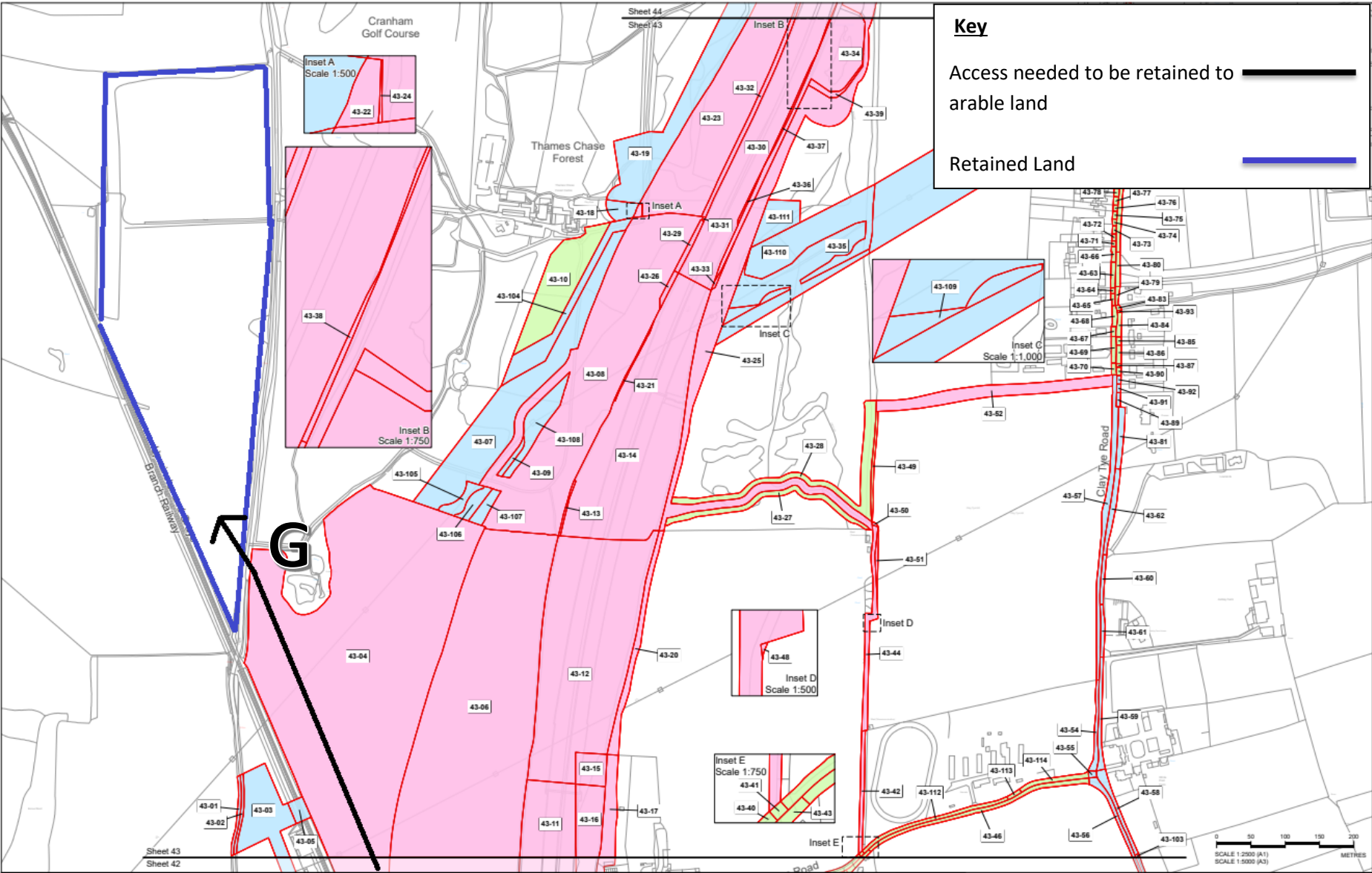
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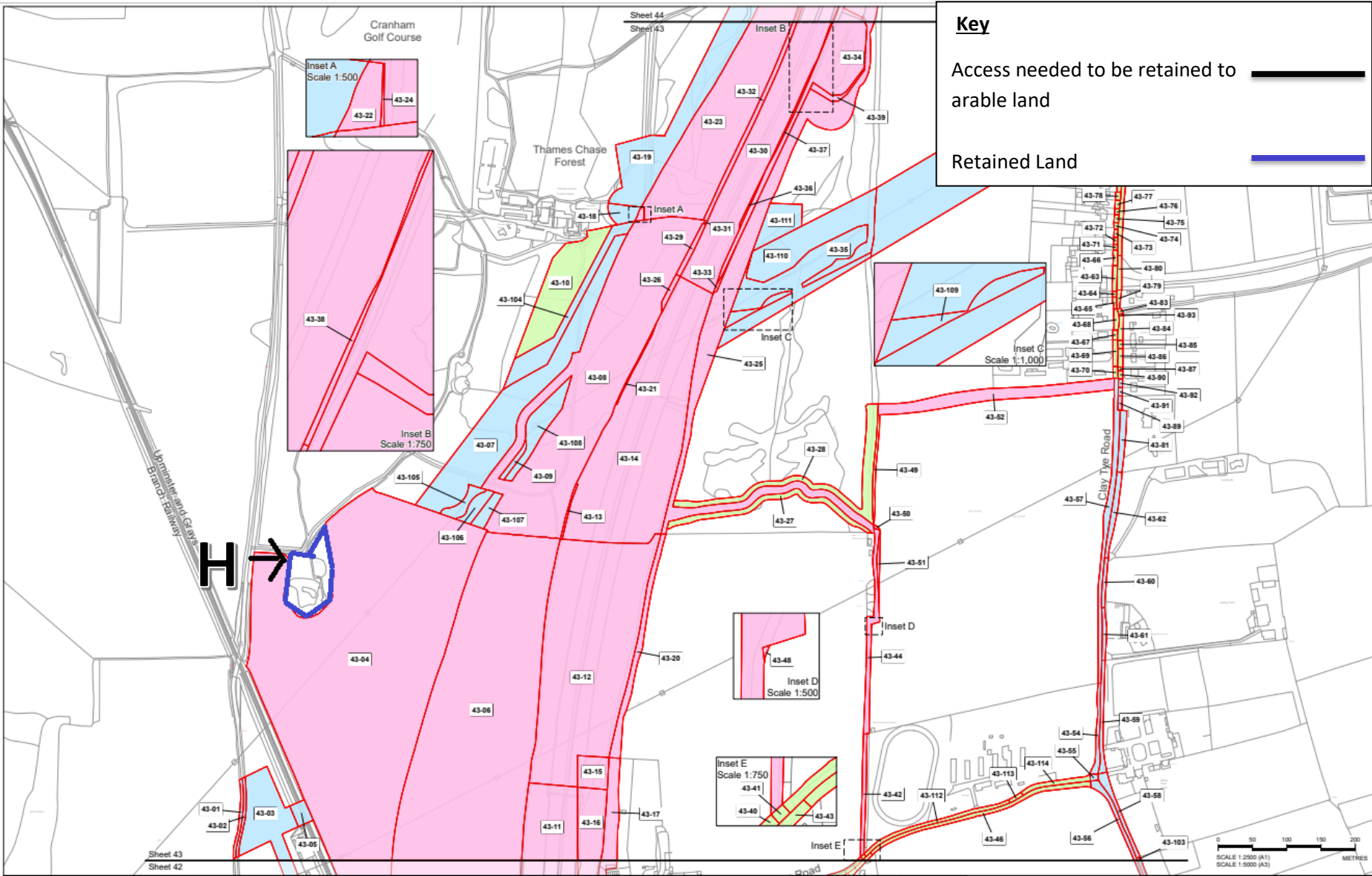
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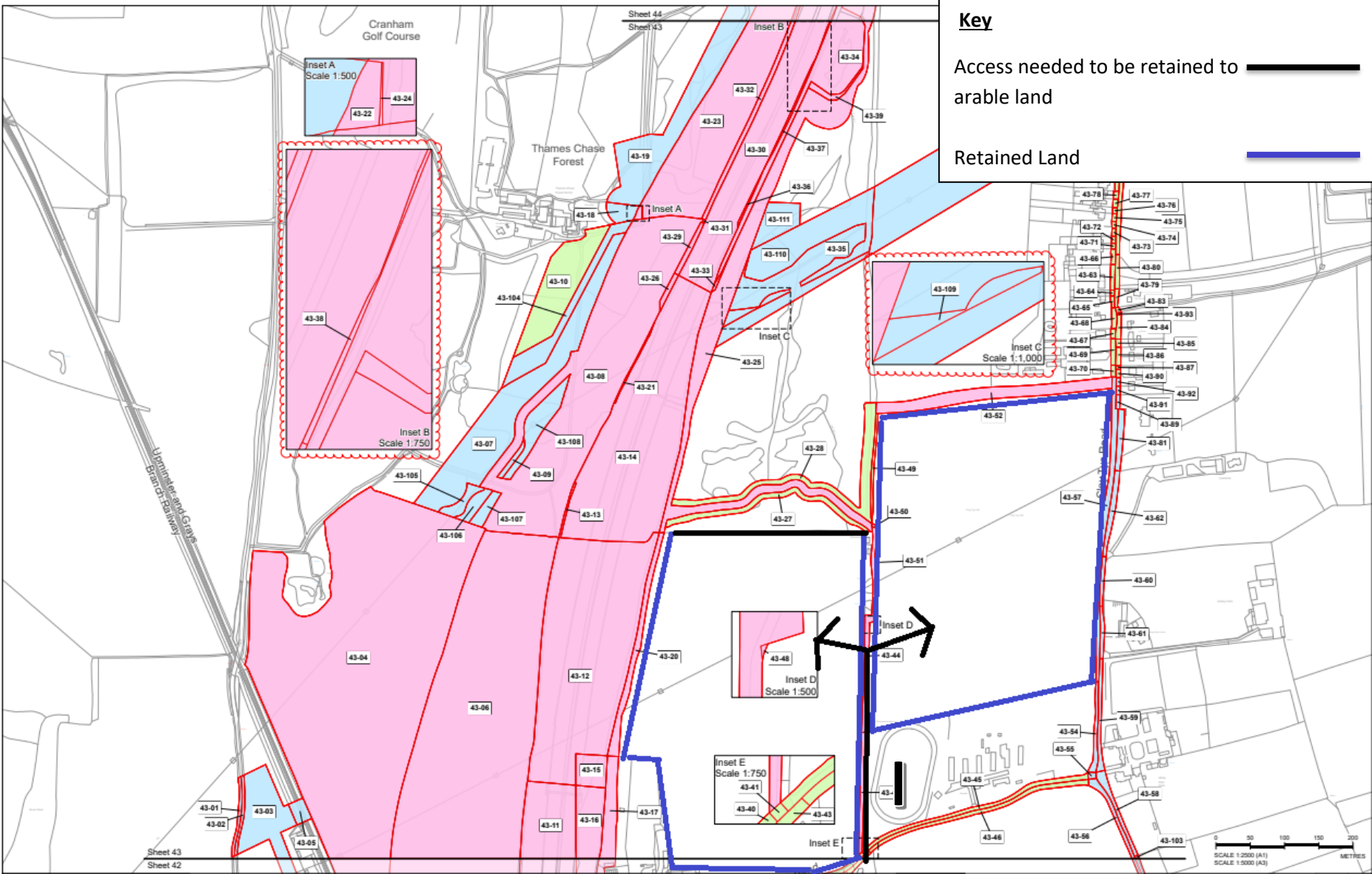
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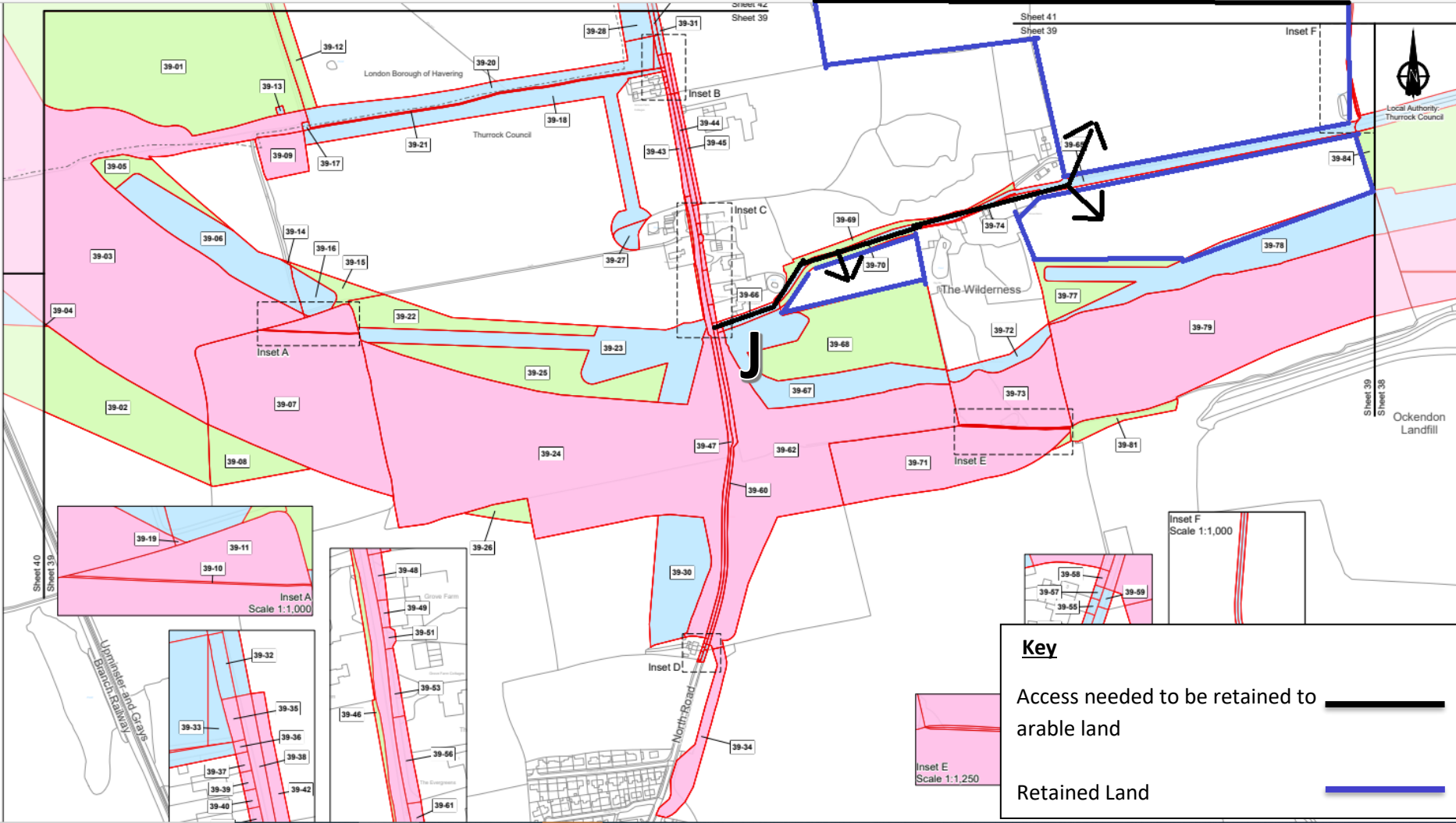
PLAN 8



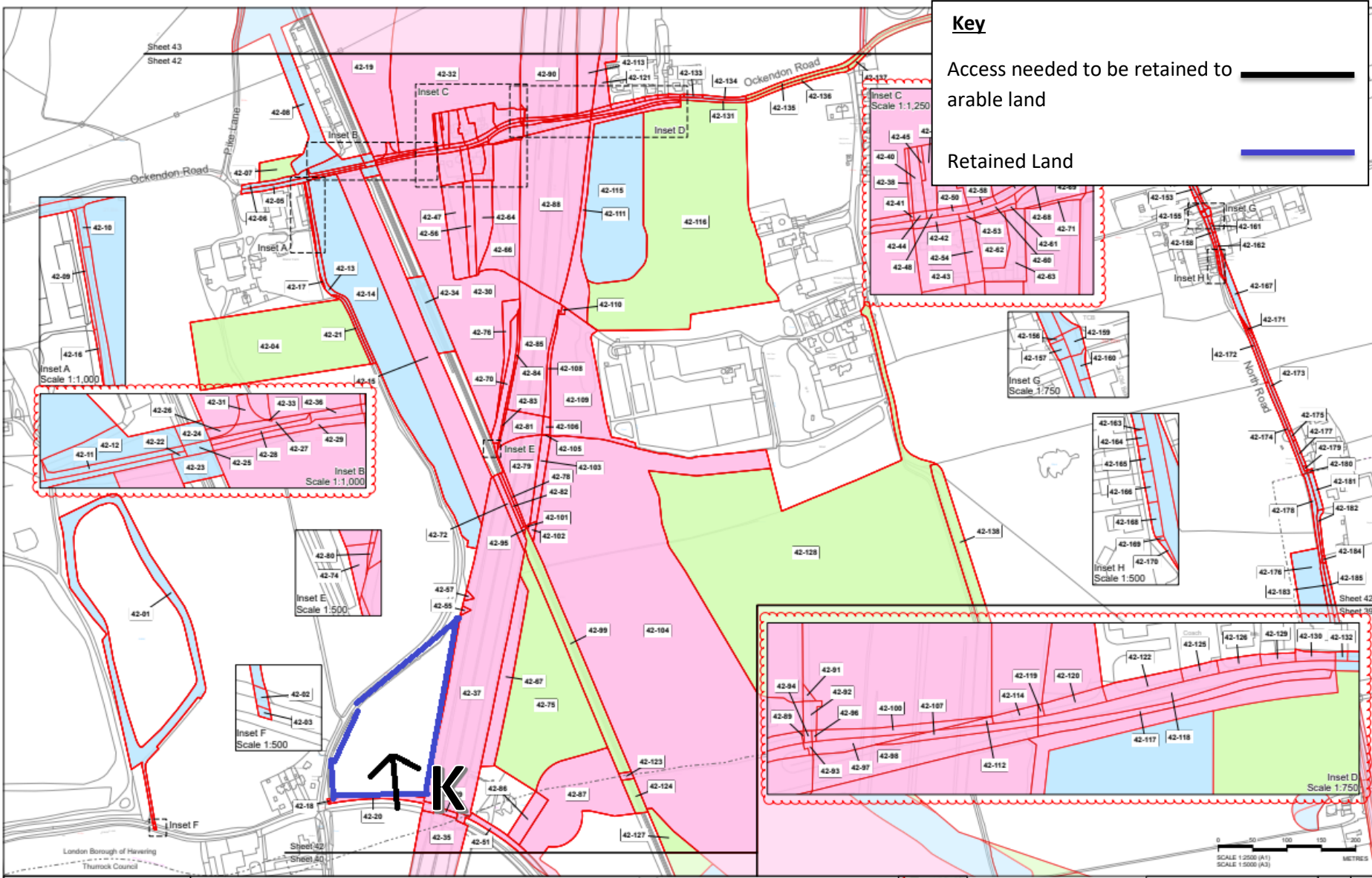
PLAN 9



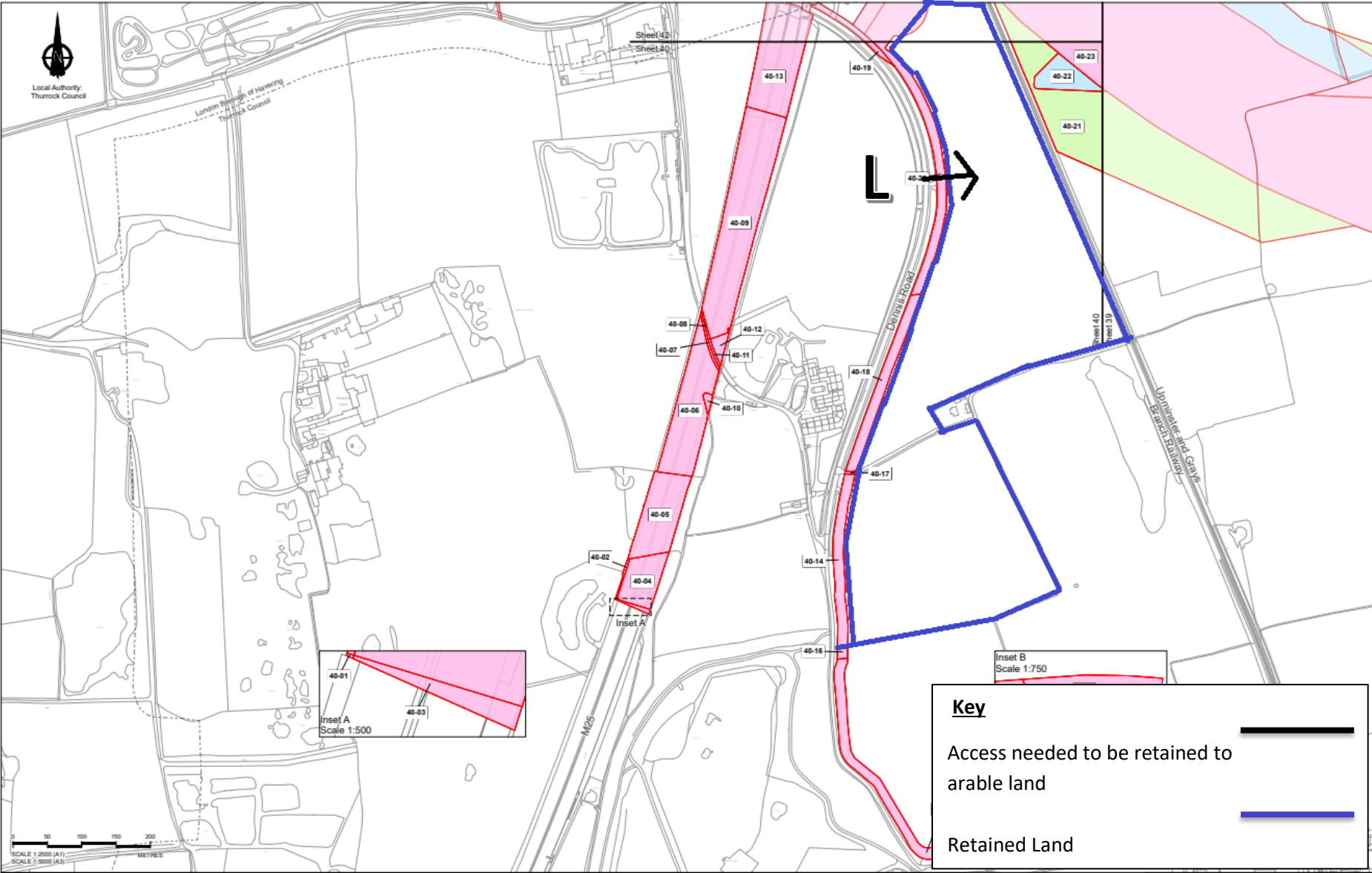
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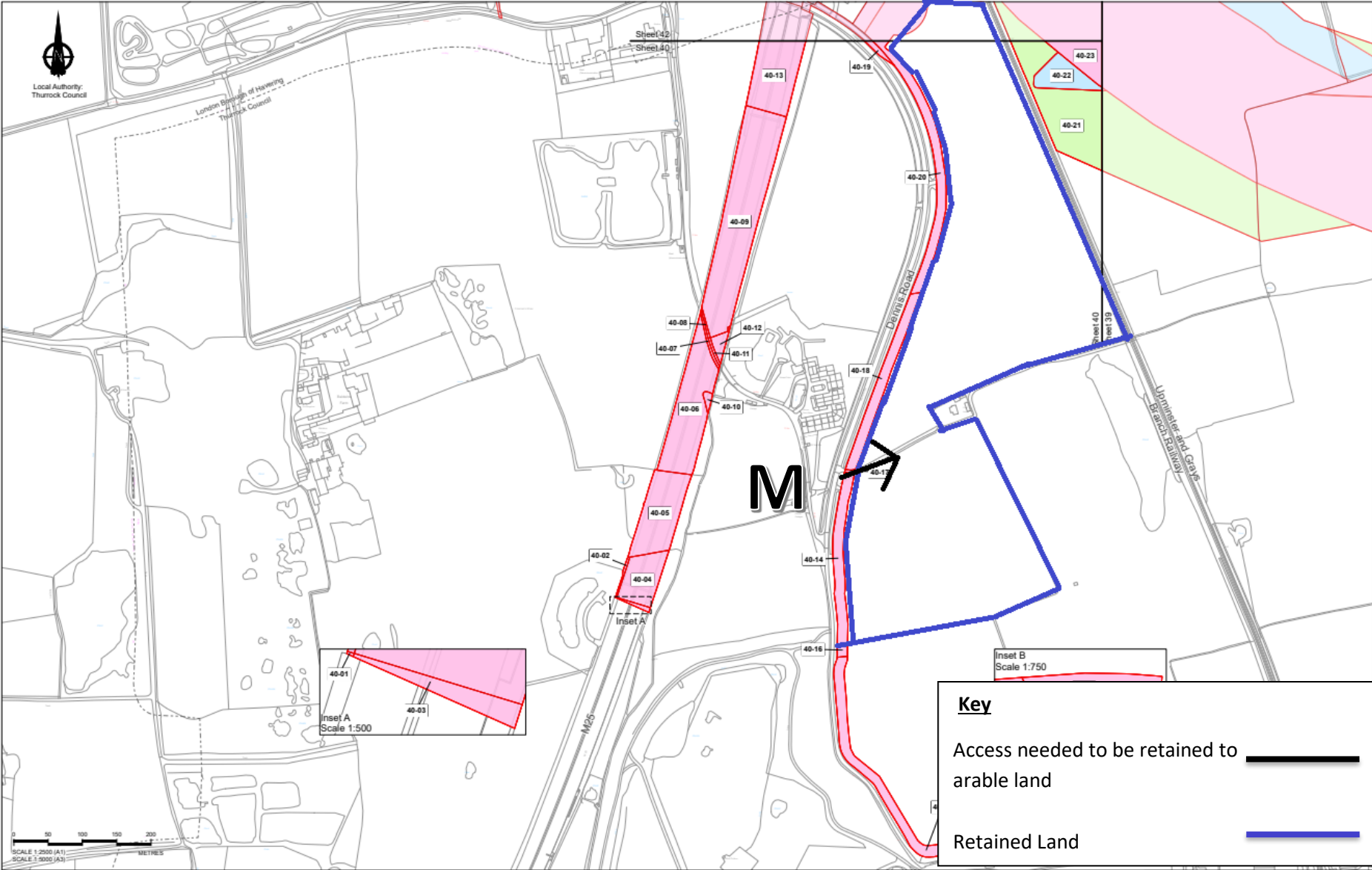
PLAN 11



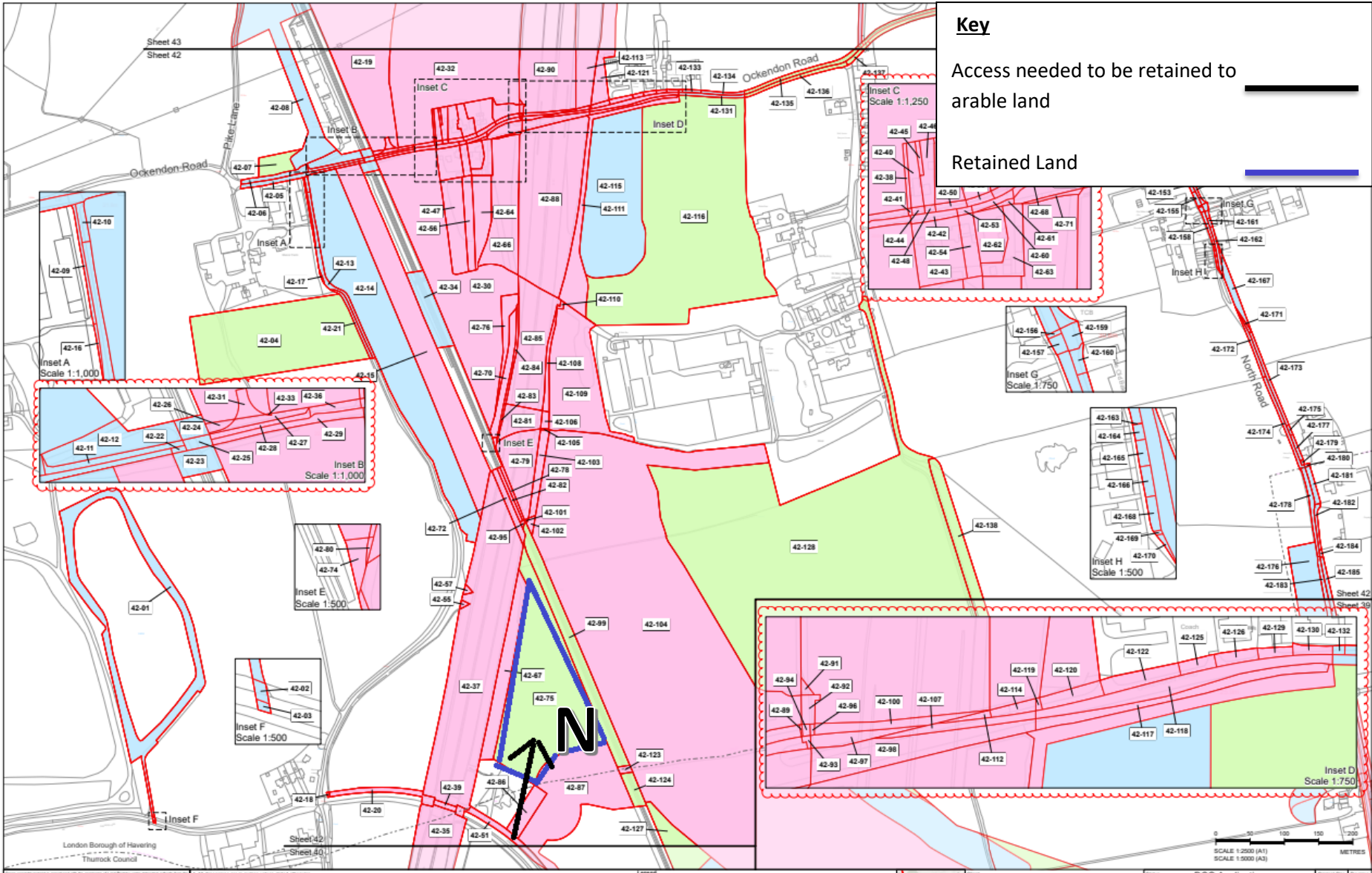
PLAN 12



PLAN 13



PLAN 14



Proposed Requirement for Access

Temporary prohibition or restriction of use of Ockendon Road and access to fields

[] .—(1) The undertaker shall provide vehicular access on no less than 48 hours' notice from Mr Stuart Mee, his employees and field workers (including pedestrians) and vehicles going to and/or from his any or all of his fields that will be affected by the temporary alteration, diversion, prohibition or restriction of a street or public right of way under this article if there would otherwise be no such access.