

Date: 3 November 2022
Our ref: STRE.GOOD.3008904.1
Your ref: TR010060
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By email only to: a12chelmsforda120@planninginspectorate.gov.uk

Dear Sirs

A12 Chelmsford to A120 widening scheme (the "Scheme")
Planning Inspectorate's Reference: TR010060
Relevant representation on behalf of The Honourable J. F. Strutt and Lord Rayleigh's Farms Ltd (Interested Party reference numbers 20032639 & 20032629)

1 Introduction

- 1.1 We act for The Honourable J. F. Strutt ("JFS") as landowner and Lord Rayleigh's Farms Ltd ("LRF") as landowner and occupier (the "**Landowners**") of land at Hatfield Peverel, Essex.
- 1.2 This is a relevant representation on their behalf further to the notices provided to them by National Highways pursuant to Section 56 of the Planning Act 2008. **The Landowners object to powers of compulsory purchase over their land and interests set out in the proposed DCO for the Scheme as more particularly specified in this representation.** This representation also sets out matters to which the Landowners, subject to appropriate agreements negotiated by way of private treaty in the usual manner, do not object.
- 1.3 By way of background, since moving from Chelmsford in 1720, the Strutt family, of which JFS and LRF are part, have worked hard to build up their agricultural business in the area, the present extent of which in the vicinity of the National Highways Scheme is depicted in **Figure 1** coloured light green (the land coloured pink being farmed under a joint farming arrangement with neighbours). The Strutt family have owned and farmed the land around Hatfield Peverel for 150 years since its purchase in 1876. The Landowners therefore take that 150 year connection and long term stewardship of the property and farmland very seriously. This is particularly the case where there is risk (as is the case here) that lack of appropriate thought and resourcing by a body such as National Highways will give rise to long term strategic detriment of the land in part and in whole, as more particularly set out in this representation.
- 1.4 National Highways is proposing to acquire land and rights permanently and take powers of temporary possession in its DCO for the scheme over certain plots owned by the Landowners. **Figure 2** is the Landowners' attempt to piece various ownership maps into one single map. The Landownership of the parties is outlined with a thick red line for ease of reference.

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1.5 The land to which the proposed powers relates is good Grade 1 and Grade 2 high yielding agricultural land used for growing wheat, potatoes, oil seed rape and barley crops. Its future development potential in general terms is for residential and commercial property abutting Witham and Hatfield Peverel. We note that Woodend Farm (Witham) received planning permission for 400 homes in November 2021, which is situated at the north eastern boundary of the land, shown in yellow on Page 1 of **Figure 2**.

1.6 Attached to this representation are a number of plans. In the following text "Plot" numbers refer to the numbering of parcels of land within the attached DCO plans in Figure 2 Page 1 and "Area" numbers relate to parcels of land highlighted by the Landowners on the attached plans at Figure 2 Pages 2-7.

2 **Matters to which the Landowners do not object**

2.1 The Landowners would, of course, prefer for none of their land to be taken but, acting reasonably and pragmatically, they **do not object** to the principle of the Scheme. The Landowners are willing to negotiate, by way of private treaty, for National Highways to acquire, on reasonable terms and to the mutual satisfaction of the parties the interests to which this paragraph 2.1 refers. Where the Landowners propose in this representation that any matter be negotiated by way of private treaty this is always subject to contract:

- (a) The permanent acquisition of c.34.0 acres of **freehold** plots required for the road and road infrastructure (shown as Areas 1, 2, 3 & 4 on attached plans), namely:
 - (i) Plot 6/12b (majority of – as shown as Area 1 on attached plans) – described as being used for the new junction 21 and its associated trunk roads and ecological mitigation works (29.1 acres).
 - (ii) Plot 5/12c (part of – as shown as Area 2 on the attached plans) – described as being used for an attenuation pond, access track and ecological mitigation (4.0 acres).
 - (iii) Plot 5/12e (Area 3) – described as being taken to accommodate the widening of the road in the cutting (0.9 acres).
 - (iv) Plot 5/12h (Area 4) – Plot near the river Ter, described as being required for drainage infrastructure.
 - (v) Plots 5/12b & 5/12a (Area 4) – various plots near the River Ter described as being required for the widening of the A12
- (b) The acquisition of **permanent access rights** on plots that will require long term access (shown as Areas 5, 6 & 7 on attached plans), namely:
 - (i) Plot 6/12c (Area 5) – described as being for a temporary road, and for the diversion of utilities.
 - (ii) Plot 6/12g (Area 6) – which is for the installation of electrical services.
 - (iii) Plot 5/12d (Area 7) – which is for a maintenance access to the attenuation pond and diversion of a sewer.

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- (c) The **temporary** possession of c.52.0 acres of plots required during the construction phase (shown as Areas 8, 9, 10, 11 & 12 on the attached plans), namely:
- (i) Plot 6/12e (Area 8) – we understand that this is set as temporary so that the Landowners will retain the long-term ownership of land to access the A12 from the current bridge across the railway line. This links the rest of the farmland to the A12 (1.42 acres). We also understand that this land would be too close to the boundary to take material from, and so is not required for Borrow Pit E.
 - (ii) Plot 6/12f (Area 9) – for soil storage during the construction of the junction 21 (2.83 acres).
 - (iii) Plots 6/12a, 6/12h & 5/12g (Area 10) – various large plots described as being used as a site compound and lay-down area, diversion of a public right of way and more soil storage locations, as well as temporary station car park during the time that Station Road bridge is removed to accommodate the widening works. (42.32 acres).
 - (iv) Plot 5/17a (Area 11) – the remainder of Slip Road Field described as being used as a site compound (1.14 acres).
 - (v) Plot 5/36b (Area 12) – area for the construction of bridges that will replace the 3 bridges in the Hatfield Peverel cutting (5.33 acres).

2.2 This totals over **86 acres** of temporary possession and permanent acquisition in respect of which the Landowners are willing to negotiate terms and are **not objecting**.

3 **Matters to which the Landowners object**

3.1 The Landowners' concerns about the powers sought in the proposed DCO relate to inadequate engagement, accesses, island sites, sewerage pump connectivity, the taking of land and rights permanently when temporary possession is more appropriate and failure to provide reasonable and adequate justification for the extent of the land take in particular plots.

3.2 As a generality, in the context of the background set out in paragraph 1 above, the excessive and unsubstantiated extent of land for which permanent acquisition is proposed has caused significant distress from a sentimental as well as a business perspective, in addition to concern caused by how strategically it will sever the business's ability to access the A12 from the Landowners' retained land around Termitts Farm.

3.3 **Inadequate engagement by National Highways**

3.3.1 The Landowners have made four representations to National Highways and participated in eleven in-person and virtual meetings which they have arranged with National Highways consultants since 2017. It was understood that detailed designs may not have been available during these meetings. Even so, the Landowners are surprised and disappointed at how few answers have been provided to the fundamental questions raised, and how little regard has been had to those representations and meeting discussions in the nature

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and extent of land take currently proposed in the proposed DCO, despite the Landowners substantial efforts to engage with the Scheme.

3.4 Temporary vs permanent powers

3.4.1 The Landowners are seeking adequate justification for why permanent acquisition is required by National Highways on the remaining c.57.6 acres of freehold plots not mentioned above, and as outlined in more detail below (shown as Areas 13, 14, 15, 16, 17 and 18 on the attached plans). There is no apparent reason why these cannot instead be temporarily possessed. They are not reasonably required beyond the Scheme construction period and National Highways have to date provided no evidence to the contrary.

- (a) Plot 6/12d (Areas 13 and 14) – described as Borrow Pit E for gravel and clay (52.7 acres). The justification provided for its permanent acquisition following construction of the A12 was partly provided in the “Borrow Pits Report” (document reference 7.8) comprised in the DCO application. Whilst National Highways have yet to work out the exact size and depth of the borrow pit, 6.1.12 of the report states the general fill material to be gained is modelled as 100,000m³. 2.3.6 of the report states that the current earthworks volume deficit does not support reinstating the borrow pit to its original ground level or land use, and 6.1.12 estimates the worst case depth being 4.5m. This depth is based on not being able to excavate the eastern half of the Borrow Pit E if it is found to be an area of paleolithic interest (6.1.28).
- (i) Areas 13 and 14 should be temporarily possessed, restored and returned as an agricultural field. Nothing in the “Borrow Pits Report” (document reference 7.8), including its modelled volume deficit and worst case depth estimate, alters the objective analysis that this is the appropriate approach and there is clear precedence for this:
- It is noted that The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 provided for temporary acquisition (plots 5/06a and 5/06b) for the construction and restoration of the borrow pits comprised in work nos. 63 and 68.
 - It is further noted that The M54 to M6 Link Road Development Consent Order 2022 provided for temporary acquisition (plot 5/25) for the construction and restoration of the borrow pit comprised in work no. 74.
- (ii) The top of Plots 6/12a, 5/12a & 5/12g to link up with track forming Plot 5/12f (Area 13) – The plans in the DCO application show a much more compact borrow pit, pulled away from the railway line, concrete track and boundary hedges. This is shown in 6.1.10 of the Borrow Pit Report (document reference 7.8), which states that the maximum extent of the Borrow Pit will be 25m from the GEML fence forming the northern boundary. The land will not be excavated, no volume deficit will exist, and thus there is no justification for permanent acquisition of this land. Furthermore, it is an important piece of farm infrastructure. At the very least Area 13 should only have powers of temporarily possession and coloured green on the plans.

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- (iii) Plot 6/12e (Eastern section of Area 13) – this area should be widened and straightened to allow smooth and uninterrupted farm traffic post completion. We understand this land will not be excavated, no volume deficit will exist, and thus there is no justification for permanent acquisition of this land. National Highways should only have powers of temporarily possession and it should be coloured green on the plans.
- (iv) Plots 6/12d (Area 14) – whilst National Highways have attempted to justify the permanent land take of Borrow Pit E due to the volume deficit and thus the inability to return it to original ground level or land use, there is no statutory or legislative reason why the area needs to be held by National Highways beyond the construction period, whether restored or unrestored. Even if National Highways returned the land with a 4.5m deep pit in it, this would still be preferable to the Landowners than permanent acquisition. There is no justification for permanent acquisition of this land and so National Highways should only have powers of temporary possession and it should be coloured green on the plans.
- (b) Plot 6/12b (part of) (Area 15) – this is a small finger of permanent acquisition in respect of which the Landowners have been provided with no justification and, should it be permanently acquired, would restrict access between the retained land following construction. It should be temporarily possessed.
- (c) Plot 5/12c (northern part) (Area 16) described as an Ecological Mitigation Area used to house terrestrial reptiles disrupted during the construction and use of the A12 and compounds (1.0 acres). Permanent acquisition of this area would sever the viaduct access under the railway line to the retained land east of the attenuation pond. furthermore it would leave a small isolated pocket of land immediately to the north east of this area as shown by the ownership plan. It should also be noted that this area forms part of the adjacent residential development and in 2021 the landowners agreed to allow the building of a sewage pumping station plus roadways on it. This has already been consented by Braintree District Council, and there appears to be no assessment of the detriment that would be caused to that development.
- (d) Plot 5/12c (northern part) (Areas 16 and 17) – Described as an Ecological Mitigation Area used to house terrestrial reptiles disrupted during the construction and use of the A12 and compounds. However, no justification has been given for why this area cannot be returned to the Landowners following its construction (total 1.8 acres).
- (e) Plot 5/36a (Area 18) – Described as an Ecological Mitigation Area used to house terrestrial reptiles disrupted during the construction and use of the A12 and compounds. However, no justification has been given for why this area cannot be returned to the Landowners following its construction. This will include the requirement for a permanent access right to the southern corner as indicated in **dark blue** in Plot 4/9c (3.1 acres).

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3.5 Impacts on accesses

3.5.1 East of Hatfield Peverel, the proposed A12 scheme plans to remove 3 direct accesses onto the A12 and 1 direct access to Junction 21 slip road, as indicated as yellow arrows into Plot 6/12b on Figure 2 Page 6. Whilst the Landowners do not object to these removals in and of themselves it is very important that new replacement accesses are created and their delivery secured.

- (a) The Landowners have engaged a Highways Consultant at Glanville Consultants Ltd, who consider that the current scheme could easily incorporate a 10m access off **both** trunk roads that could accommodate farm vehicles moving in opposite directions. The Landowners proposed locations of these, which it is understood has been accepted by National Highways are:
- Area 19 (on the attached plans) – replace the current farm access on Junction 21 Slip Road so that it connects into the new trunk road. This should be of sufficient width to accommodate 2 tractors passing alongside each other and this is estimated to be 10m.
 - Area 20 (on the attached plans) – replace the current direct A12 accesses with a single 10m access so that it connects into the new trunk road going back to Hatfield Peverel. This should be of sufficient width to accommodate 2 tractors passing alongside each other and this is estimated to be 10m.
- (b) Plots 6/12c & 6/12e (Area 13 and Area 19 on the attached plans) – The temporary possession and permanent acquisition of rights land should be straightened and widened as indicated in order to accommodate efficient traffic movement from north of the railway line, across the bridge and to the trunk road access.
- (c) Plot 5/12f – very little detail has been given by National Highways on what they intend to use this farm track for. We understand that the temporary possession is required to accommodate access to the station, emergency vehicles and act as a haul road during the construction of the site compound to its east. However, no detail has been given to the Landowners regarding management of the farm track and National Highways will need to guarantee that the Landowners' residential tenants will not be adversely affected and that the condition of the track will be returned in a similar or improved state. The track should have a schedule of condition taken before access.
- (d) Plot 5/12c (Area 16 on the attached plans) – the retained land between this area and the slip road is accessed via a road through the Bellway Development at Bury Farm as highlighted by the **orange** arrow on Figure 2 Page 6. The permanent acquisition of the land would sever the access to the field. Area 16 should therefore be removed from the Scheme.
- (e) Plot 5/1b – see Figure 3. The plans show the Bury Lane Slip Road (existing Junction 20a) being stopped up, and the existing access onto plot 5/17a is being moved further west. It is understood that a gate is being placed adjacent to the entrance to Bury Lane and that the Landowners will retain rights along the stopped up highway to get to the new access. We would request that this new western

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access is unrestricted or that the slip road is stopped off west of the new accesses as shown by the location of a yellow arrow on Figure 2 Page 6.

- (f) Plot 4/9b (Area 21 on the attached plans) – The temporary possession on the southern boundary should be widened to 10m (as indicated in area 21 on the attached plans) in order to accommodate efficient traffic movement from the road access to the remainder of the field.

3.6 **Island sites**

3.6.1 The current Scheme will give rise to 6 island sites (as shown by Areas 22, 23, 24, 25, 26 & 27 on the attached plans);

- (a) Area 22 – this will be inaccessible whilst the surrounding land is being worked on for the A12, so this area should be temporarily possessed and reasonable compensation paid.
- (b) Area 23 – this will be inaccessible whilst the surrounding land is being worked on for the A12, so this area should be temporarily possessed and reasonable compensation paid.
- (c) Plots 6/12a, 6/12g & 6/12h (Area 24) – after construction, this permanent acquisition of rights could sever the field into two parts, depending on conditions imposed on working. This could unnecessarily infringe on the ability to farm the land and so services should be routed around the field boundary. Steps should be taken to ensure the field is returned and able to be farmed as one.
- (d) Plots 5/35a, b, c and d and 6/11 a and c (Area 25) – Whilst it is not within the Landowners' freehold ownership, LRF are protected agricultural tenants (in perpetuity) of this area. The Landowners have not been consulted on this and have not received plans of temporary or permanent acquisition, but it appears that under the current plans LRF will no longer have access to farm this field during construction and that in any case it will be economically unfeasible to continue to farm the land during construction works. This should be temporarily possessed, with compensation being split between the freehold owner and LRF. Also, after construction, this permanent acquisition of rights (Plots 5/35c & 6/11c) could sever the field into two parts, depending on conditions imposed on working. This could unnecessarily infringe on the ability to farm the land and so services should be routed around the field boundary.
- (e) Plot 5/16a (Area 26) – it is difficult to tell from the plan, but the proposed permanent acquisition will leave a small area of temporary possession as an island, bounded by the river on one side and 3 areas of permanent acquisition on the other 3. This should be permanently acquired.
- (f) Area 27 – the landowners will require access to the retained land during construction for willow maintenance and felling purposes. No temporary access route is currently shown.

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3.7 Sewerage Pump Connectivity

3.7.1 This is described in 3.4.1(c) above and shown under area 16. This area needs to be removed from the Scheme.

3.8 Inadequate justification for extent of land take

3.8.1 Inadequate justification for the powers sought over the land has been provided generally. In particular the Landowners consider that:

- (a) There has been no evidence provided to justify the size of the permanent acquisition for the Attenuation Pond (Plot 5/12c, Area 2 on attached plans). A detailed flood model is needed to show the required volume the pond could need to take and a justification for its subsequent size and location.
- (b) There has been no evidence provided to justify the size of the temporary possession for the site compounds and soil storage areas (Plots 6/12a, 6/12f, 5/17a & 5/36b; Areas 9, 10, 11 & 12 on attached plans). A detailed plan of what each area will be used for and why the specific land has been chosen for this plot of the A12 will need to be provided.
- (c) There has been inadequate evidence provided to justify the size of the permanent acquisition (or temporary possession) for the Borrow Pit E (Plot 6/12d; Area 14 on the attached plans). Finalised survey results for the amount of material able to be extracted and final estimates for the amounts of required materials for Junction 21 will need to be provided. The entire site can be temporarily possessed and returned to the Landowners whether restored or unrestored. Survey results will need to justify the extent to which the land is returned unrestored to its original ground level and land use.
- (d) There has been no evidence provided to justify the size of the permanent acquisition (or temporary possession) of the Ecological Mitigation Areas (Plots 5/12c & 4/9a; Areas 16, 17 and 18 on the attached plans). Survey results and density requirements for the estimated number of reptiles will need to be provided.
- (e) There has been little evidence provided to justify the use of Station Road Farm Track (Plot 5/12f) as a haul road. The Landowners previously suggested a route that took vehicles from the new Junction 21 to the north of the railway line and connected into the existing road network, but National Highways have rejected this, asserting that detailed costings have been conducted. Despite being promised it during the consultation, these detailed costings have never been provided. Likewise no management plan for the Station Road Farm Track has been given to the Landowners to review.

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3.9 **Summary table of Plots in respect of which the Landowners object**

Plot	Summary
1	Creation of an island plot; impacts on accesses
2	Inadequate justification for extent of land take
4	Creation of an island plot
9	Inadequate justification for extent of land take
10	Inadequate justification for extent of land take
11	Inadequate justification for extent of land take
12	Inadequate justification for extent of land take
13/14	Inadequate justification for permanent powers; impacts on accesses; inadequate justification for extent of land take.
15	Inadequate justification for permanent powers; impacts on access to temporary possessed land; inadequate justification for land take
16/17	Inadequate justification for permanent powers; impacts on accesses from Bury Lane Development; inadequate justification for extent of land take; sewerage pumping station issues
18	Inadequate justification for permanent powers; impacts on accesses; inadequate justification for extent of land take
19	As per Plot 1

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Plot	Summary
20	As per Plot 1
Plot 5/12f	Inadequate justification for temporary powers; impacts on access to Plot 8 and the Landowners residential tenants; inadequate management plan.
21	As per Plot 18
22	As per Plot 1
23	As per Plot 1
24	Inadequate justification for creation of permanent rights; creation of an Island Site
25	Inadequate justification for creation of permanent rights; creation of an Island Site
26	Creation of an Island Site
27	Creation of an Island Site

4 **CONCLUSION**

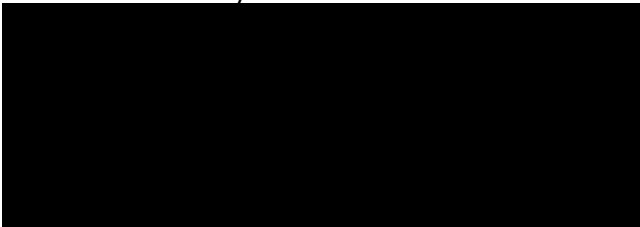
- 4.1 There has been inadequate engagement by National Highways with the Landowners to date.
- 4.2 Applicants for a DCO should seek to acquire land by negotiation wherever practicable. Authority to acquire land compulsorily should only be sought as part of DCO if attempts to acquire by agreement fail. The Landowners are willing to negotiate, by way of private treaty, for National Highways to acquire, on reasonable terms and to the mutual satisfaction of the parties the land and rights specified in paragraph 2 of this representation. And yet National Highways has not yet progressed any such agreement.
- 4.3 The powers sought in the proposed DCO in relation to the land and rights in paragraph 3 of this representation cause needless detriment without mitigation to accesses and sewerage pump connectivity. They needlessly create island sites. Such land and rights are proposed to be taken permanently when temporary possession is more appropriate and there has

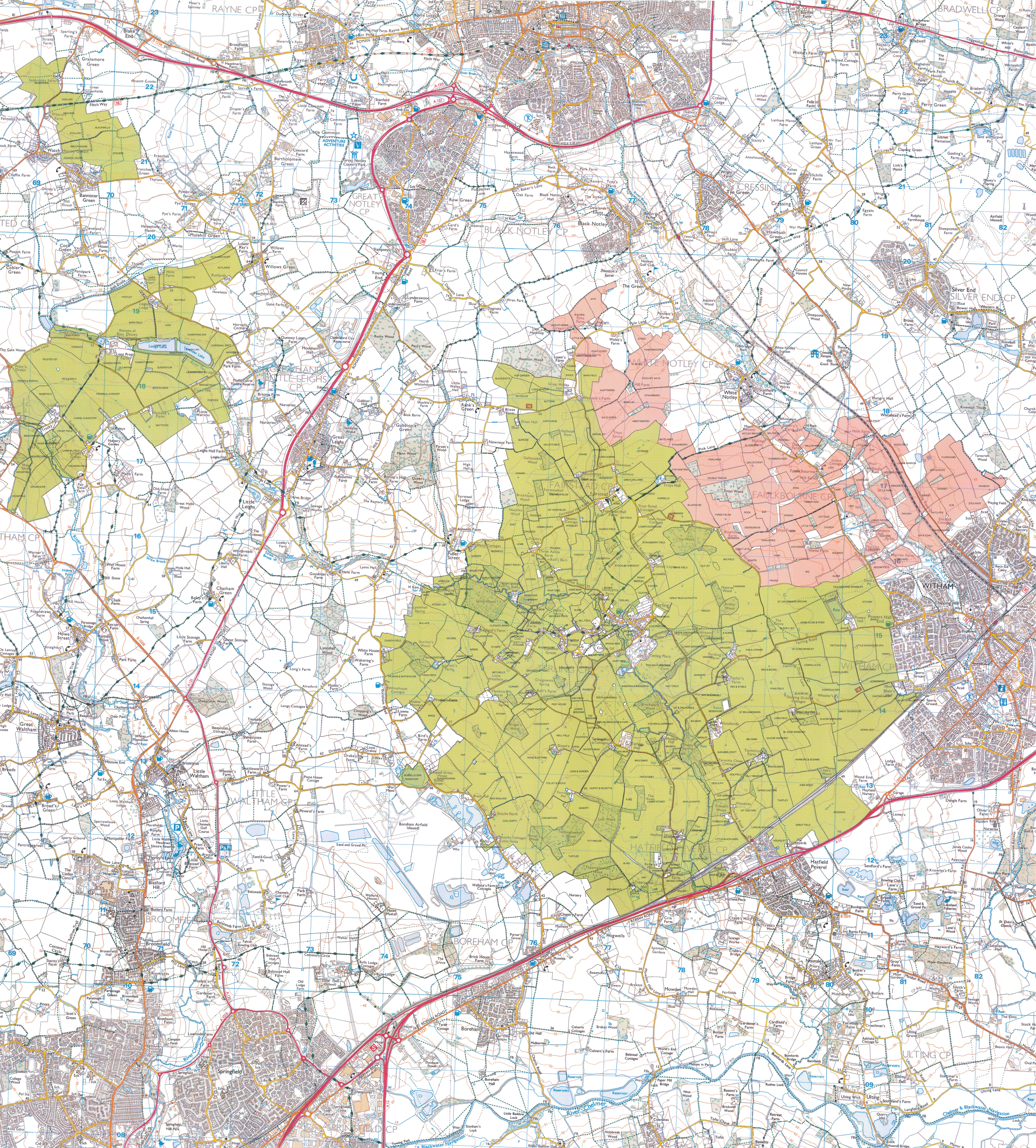
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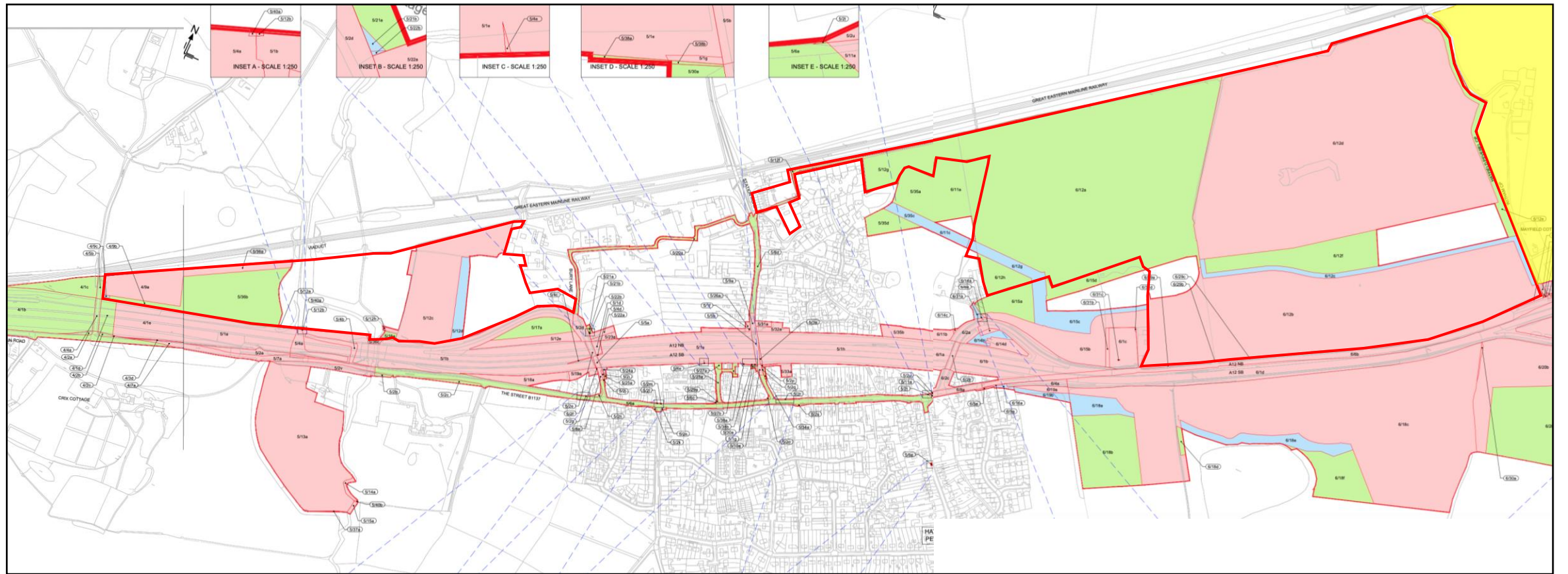
been a total failure to provide reasonable and adequate justification for the extent of the land take in particular plots.

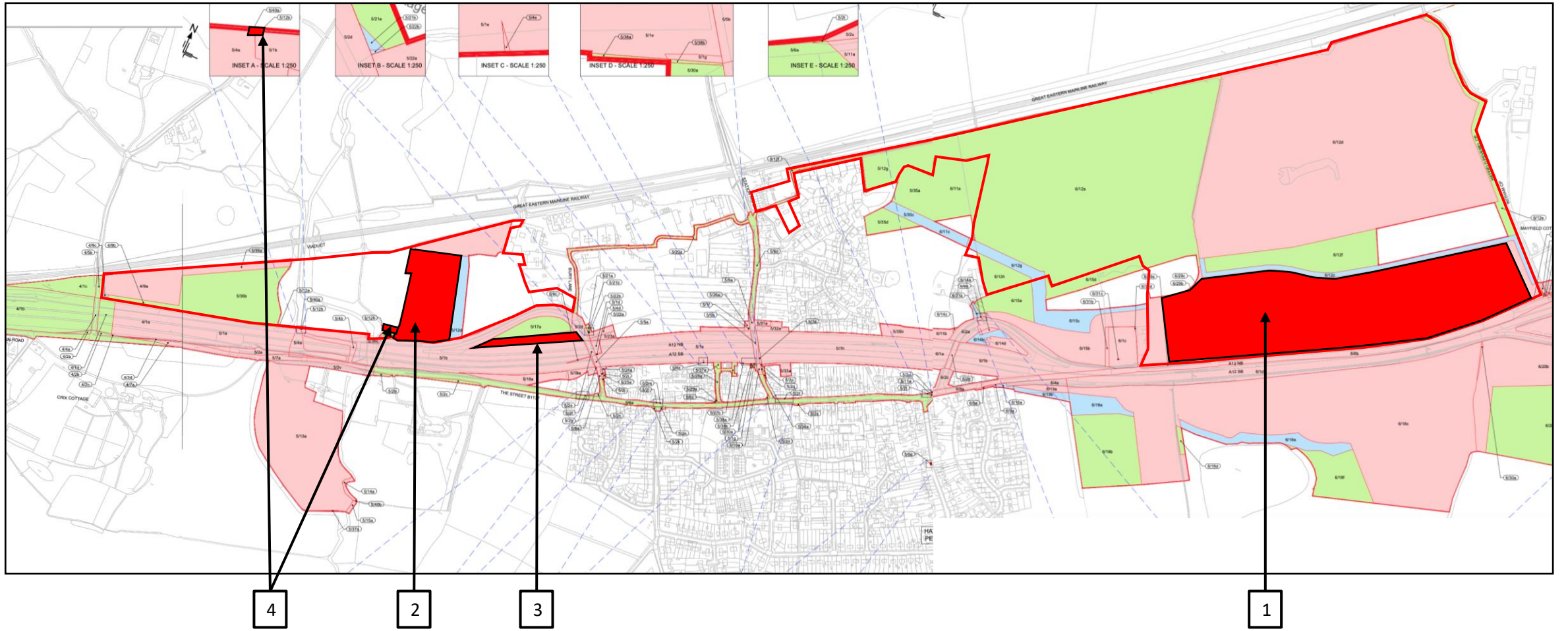
- 4.4 The Landowners have attempted to engage with National Highways and their Agents to resolve these matters, with very limited success to date.
- 4.5 For these reasons, all the powers over land and rights sought in the proposed DCO over the Landowners' land should be excluded from the DCO once made:
- 4.5.1 National Highways has failed to demonstrate that all of the land is required for the development to which the DCO relates. It is patently more than is reasonably required for the purposes of the development where set out in this representation.
- 4.5.2 National Highways has failed to demonstrate that there is a compelling case in the public interest for all such compulsory acquisition. The public benefits that would be derived from the compulsory acquisition of particular plots will not outweigh the private loss that would be suffered by the Landowners.
- 4.5.3 National Highways has failed to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.
- 4.5.4 National Highways has failed to demonstrate that the purposes for which it is seeking all powers of compulsory acquisition are sufficient to justify interfering with the human rights of the Landowners.
- 4.6 The Landowners have therefore been left in a position where they must vigorously object to the DCO and continue making representations in writing and at Examination hearings where the case of National Highways to compulsorily acquire land and rights over plots owned by the Landowners must be interrogated with rigour. This is not a good use of private and public time and money, and is a matter of distress to the Landowners for the reasons set out in this representation. National Highways is urged to amend the powers it is seeking as more particularly described in paragraph 3 of this representation and to enter into meaningful negotiations in respect of the land and rights described in paragraph 2 of this representation.

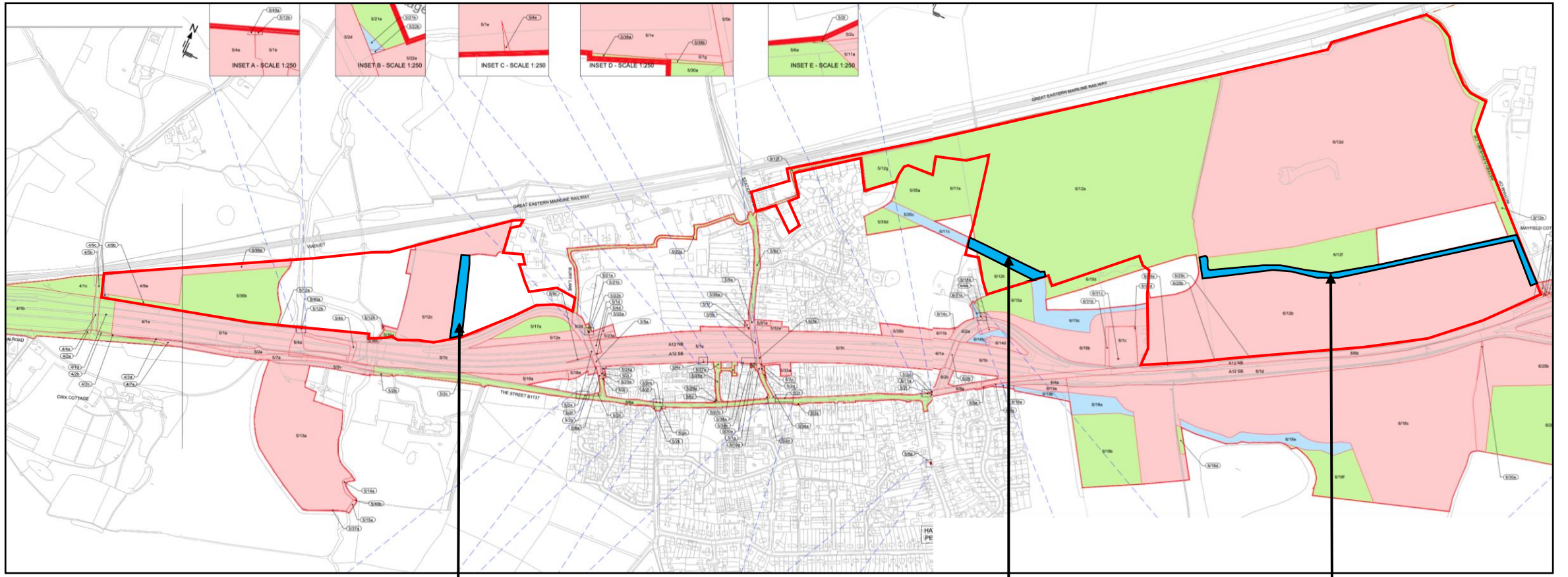
Yours faithfully







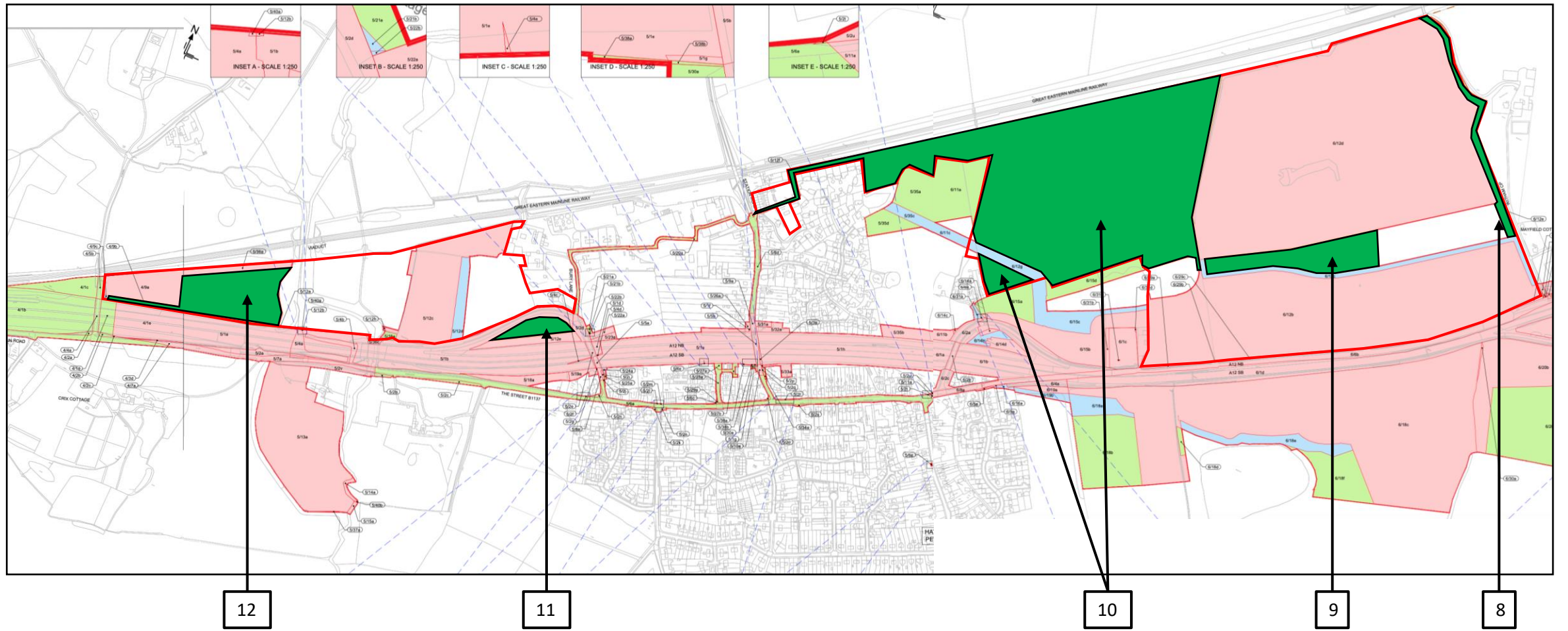


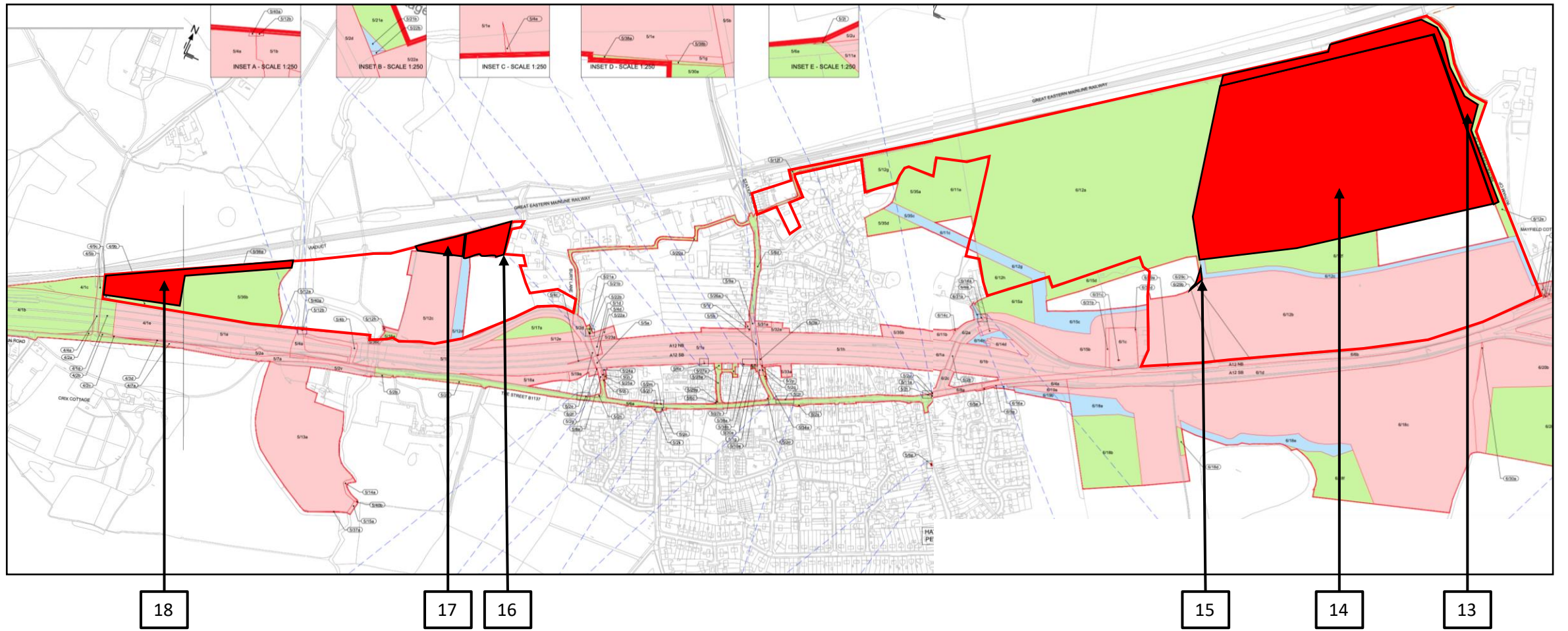


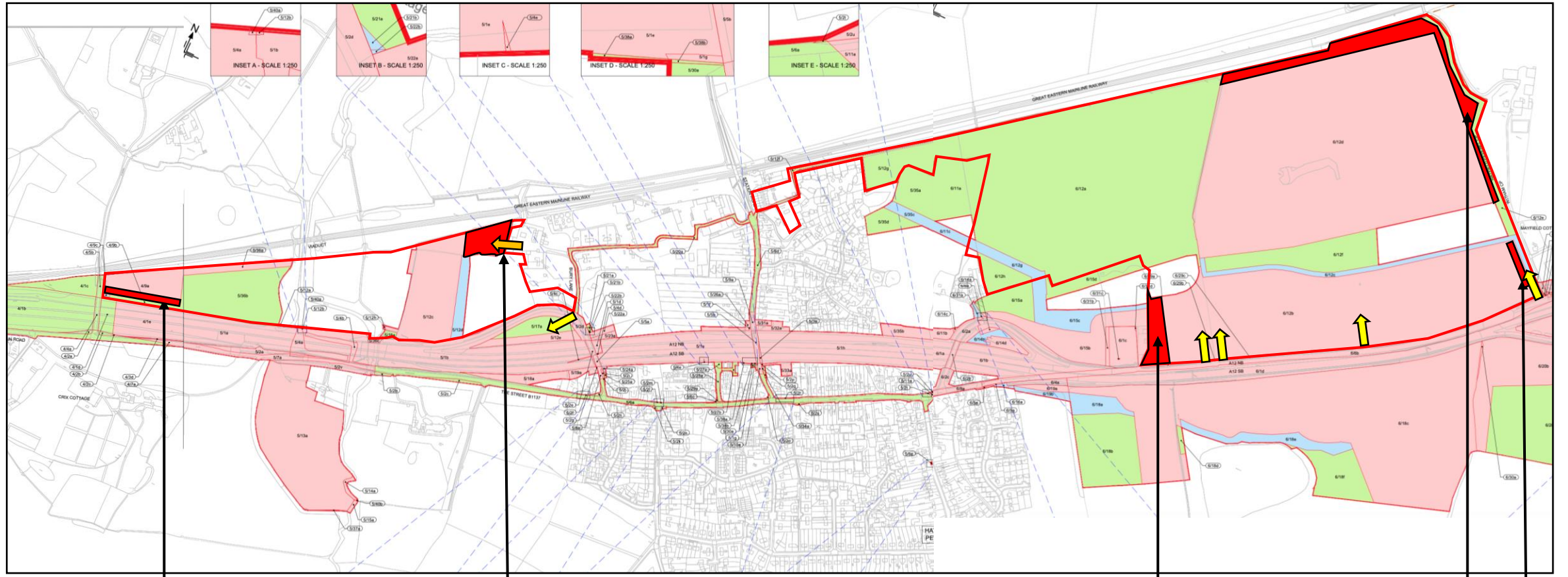
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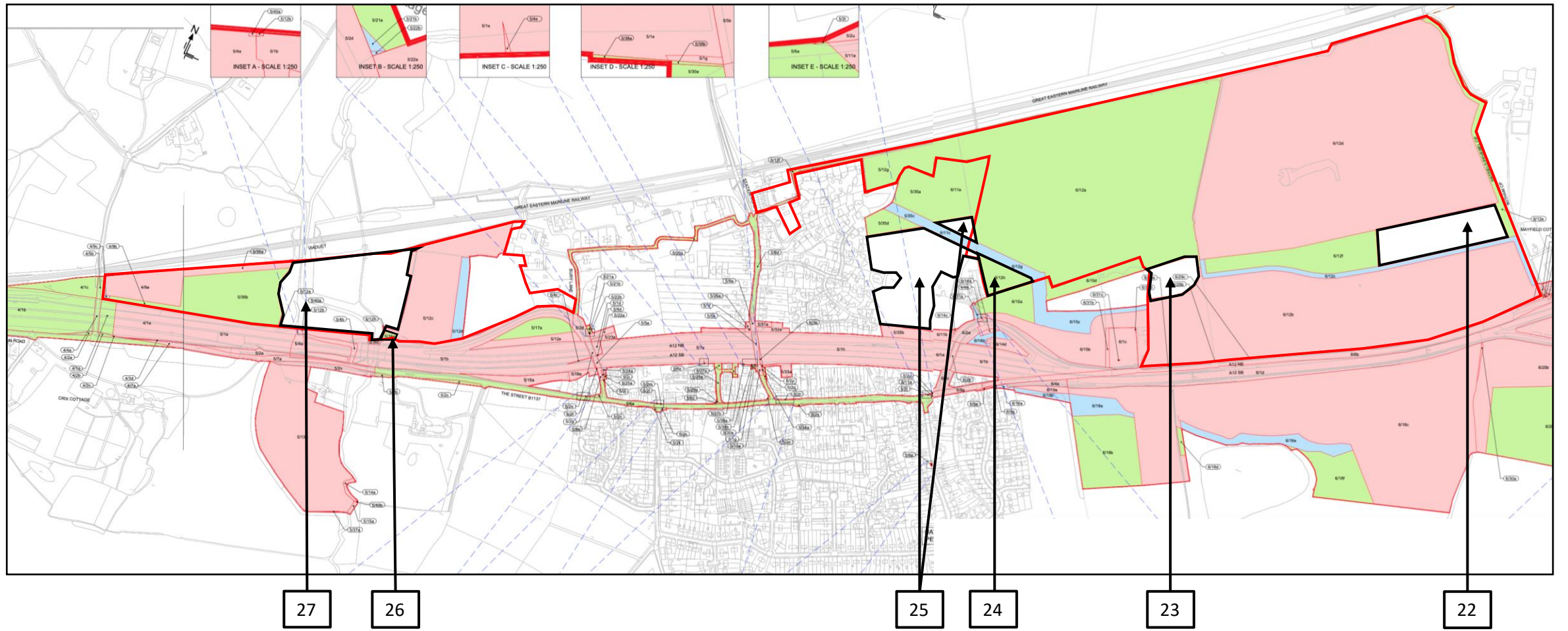
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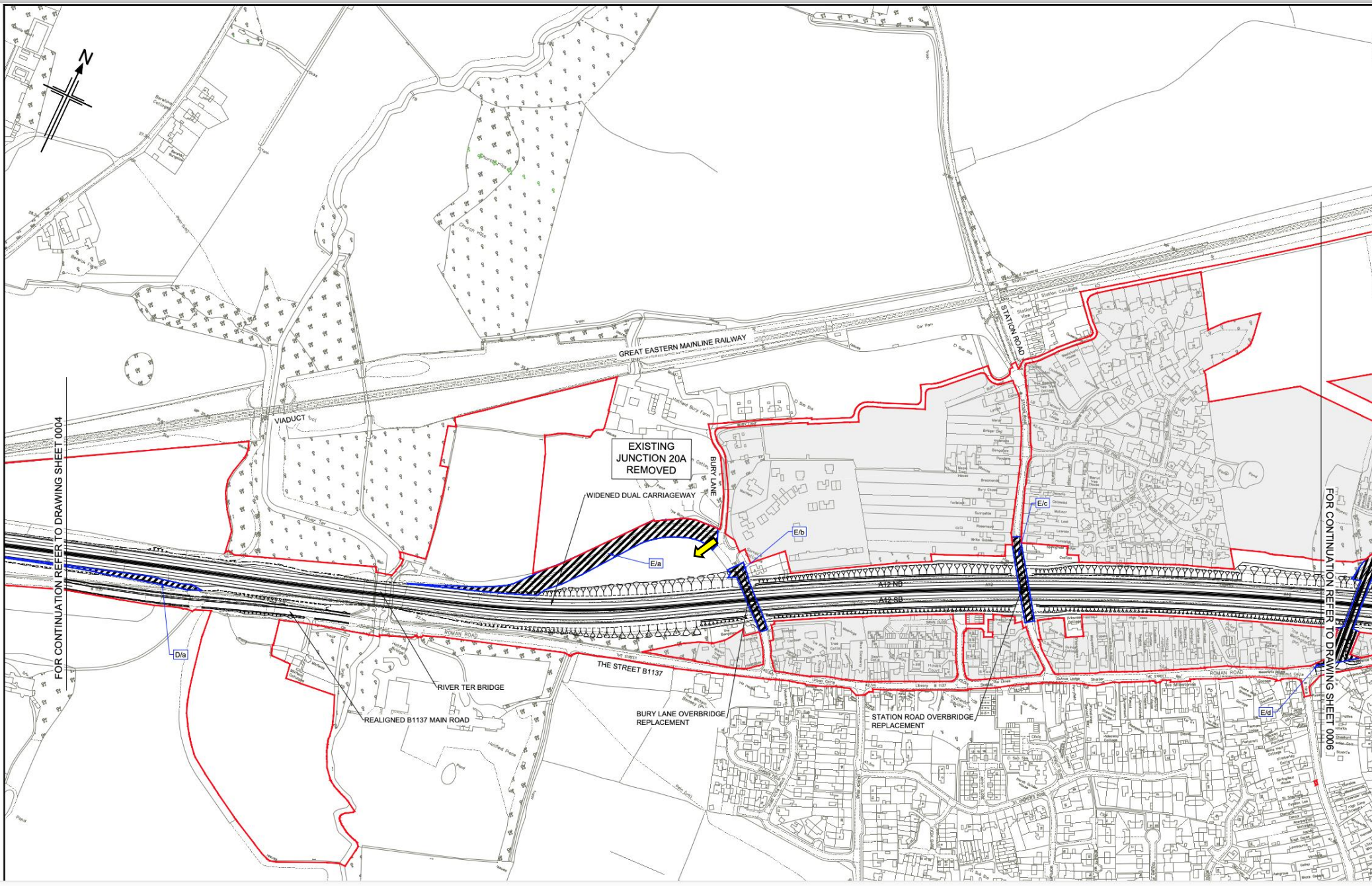
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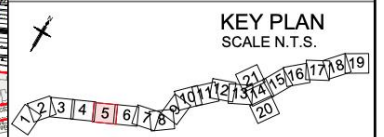


FOR CONTINUATION REFER TO DRAWING SHEET 0004

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- NOTES**
1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
 2. THE BASE MAPPING IS BASED ON ORDNANCE SURVEY (O/S) DATA.
 3. THIS PLAN SHOULD BE READ IN CONJUNCTION WITH OTHER APPLICATION DOCUMENTS.

-  HIGHWAY TO BE DE-TRUNKED
-  PARISH BOUNDARY
-  ORDER LIMITS
-  ADMINISTRATIVE BOUNDARY
-  LAND NOT INCLUDED WITHIN ORDER LIMITS
-  HIGHWAY TO BE STOPPED UP
-  HIGHWAY TO BE DE-TRUNKED - REFERENCE LABEL
-  HIGHWAY TO BE STOPPED UP - REFERENCE LABEL



Rev	Rev. Date	Purpose of revision	Drawn	Check	Rev't	Apprv'd
P01	01/08/22	DCO APPLICATION	ES	CA	CA	DT
Development Consent Order Number: TR010060			Development Consent Order Drawing Number: TR010060/APP/2.10			

Client: 

Project: