

**REPRESENTATIONS ON BEHALF OF DAVID AND STEPHEN  
BOLTON, GEARSTON LIMITED AND HAMMONDS ESTATES LLP IN  
RELATION TO THE PROPOSED COMPULSORY ACQUISITION OF  
LAND FOR THE PURPOSES OF THE A12 SCHEME**

**REFERENCE NUMBER'S: 20033105, 20033106 AND 20033107**

**1. THE PROPOSAL**

1.1 The proposal seeks to acquire land in title from our clients for the purposes of the A12 scheme, in particular for ecological mitigation and drainage matters. Land is proposed to be acquired in title rather than rights and the proposals have very extensive implications upon the operation of the land of our clients, in terms of area of land take, severance and injurious affection which are unjustified.

**2. OBJECTION**

2.1 Our clients object to the compulsory acquisition of land in terms of the extent of the land proposed, the interests taken and the purpose of acquisition.

2.2 Compulsory acquisition is a very draconian process and should not be undertaken other than in the most exceptional of circumstances. The burden of demonstrating the need to acquire land compulsorily is firmly upon the Acquiring Authority. In so doing it must demonstrate in accordance with case law and policy that there is a compelling case for compulsory acquisition and that the public interest in compulsory acquisition overrides the rights of individuals including their human rights. That compelling case must be decisively demonstrated.

### 3. OBJECTION TO COMPULSORY ACQUISITION OF LAND

3.1 It is for the Acquiring Authority to demonstrate that it has a compelling case for the compulsory acquisition of land. That compelling case must show that the acquisition of land is in the public interest and that the purposes of the acquisition justify interfering with the human rights of those whose land is affected. Whilst the scheme as a whole may be justified, it is equally necessary to justify each individual proposed parcel of acquisition. That involves, in amongst other matters, demonstrating how the land is proposed to be used, and if the acquisition is proposed to be permanent why that is necessary.

3.2 The test which the Acquiring Authority has to satisfy is a high one, whether it is necessary to compulsorily require land in the public interest. Lord Denning MR said the following in *Prest -v- The Secretary of State for Wales* [1982] 81LGR193.

*“It is clear that no minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it or should only grant it where it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced – for or against compulsory acquisition – the decision – by whomsoever it is made – should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will unless it is expressly authorised by Parliament and the public interest decisively so demands. If there is any reasonable doubt on the matter the balance must be resolved in favour of the citizen”.*

- 3.3 The gravity of the position was further emphasised by Lord Justice Slade in *R -v- The Secretary of State for Transport Ex Parte de Rothschild* [1989] 1 RE933 where he gave “a warning that, in cases where a compulsory purchase order is under challenge, the draconian nature of the order will itself render it more vulnerable to successful challenge”.
- 3.4 These high bars are not met in relation to the proposed compulsory acquisition. The evidence does not justify the acquisition in those terms.
- 3.5 It is our clients’ case that the:
- Need for the extent of the land take for drainage, ecological and landscape mitigation is not proved.
  - It is not proven that there are no other alternatives which would have less impact on the existing land uses.
  - The design fails to take account of the impacts of the proposals upon the existing land uses.
  - The proposals fail to make provision for adequate access now and in the future to the land from Junction 19 of the A12.
- 3.6 The proposals as drawn have the following direct effects.
- The access to the various activities on the land holdings is inadequate adversely impacting upon their ability to continue to trade, both during the construction and/or operational phases of the scheme.

- The extent of land lost and/or severed has a significant impact upon the accessibility of and utilisation of the farmland.
- The proposed land take directly adversely impacts upon the car boot sale by taking a significant part of the land which is utilised for that purpose. During the construction phase the car boot sale will be unable to operate.
- The extent of temporary land take and construction activities will have severe impacts upon the amenity of occupiers and users of the land holdings and the trading of existing activities over the 4 year construction period.
- The layout and land take proposed should take account of the need to allow a direct connection for the Hammonds LLP land to the south of Junction 19 to that Junction.

3.7 In particular, there are deficiencies in relation to highways and transportation, evidence, and ecological evidence.

#### **4. IMPACTS**

4.1 David and Stephen Bolton own agricultural land to the east of the A12 just south of Boreham. As well as farming, other activities are carried out upon the land including:

- A 300+ pitch car boot sale between March and November which has been operating for 27 years every Sunday and Bank Holiday Monday.
- A game shoot for between 26 and 30 days per year.
- Fishing lakes.

- Agricultural buildings used for grain storage and drying and agricultural vehicle storage.
- A weigh bridge.
- 5000 sqft of commercial buildings used for B2 and B8 purposes.
- Lorry repairs and MOTs.
- Car repairs.
- Car storage.
- Catering unit.

4.2 All of these activities are directly accessed off the existing Junction 19 of the A12 and the proposals will directly impact upon the ability to carry out the activities and the access to them due to the configuration of the proposals, the extent of land taken by the proposals and the inadequate access proposals.

4.3 Hammonds Estates LLP owns and operates the land at Hammonds Farm to the immediate south and Gearston Limited (in the same controlling ownership as Hammonds Estates LLP) has an option to acquire. Hammonds Farm and the wider land area as a whole is under consideration in the August 2022 Chelmsford Local Plan Issues and Options Consultation document as a sustainable new large settlement/garden community for circa 4000 homes. It is therefore essential that the proposed alterations to the A12 provide not only for the current uses of the land but also for potential future development of the land as a sustainable urban extension to Chelmsford. To fail to do so would be to unreasonably neglect to future proof the proposals.

- 4.4 Plot 1/11a is a large irregularly shaped piece of land running north south along the A12 and extending significantly towards the east. The impact of it being taken in title and utilised for ecological mitigation is to entirely sever north south linkages across the farm. There is no justification for the severance proposed nor is there any justification as to why the ecological mitigation land needs to be taken in this location as opposed to in another location.
- 4.5 Plot 1/11e is proposed to be used temporarily. There is a north south link between it and Plot 1/11a which results in the severance during the construction period of a broadly rectangular shaped block of land to the immediate east of the A12. The purpose of the acquisition is unclear. Notwithstanding that, the north south linkage between Plot 1/11a and that area of land is wholly unjustified resulting as it does in the severance and prevention of access to adjacent land during the construction period. The activities identified at 1.1 above will be unable to be carried out during the construction phase. There is no reason or justification why, even if the acquisition of 1/11e was justified, which is not accepted, access to it cannot be gained within the corridor of land being compulsorily acquired along the A12.
- 4.6 The impacts upon our clients' land holdings are wholly unacceptable and unjustified. The proposals put forward have paid no attention as to how the land is utilised nor as to the activities carried out upon the land. In consequence the compulsory acquisition is not justified at all.
- 4.7 The impacts upon our clients' land holdings are wholly unjustified and wholly unacceptable.

## 5. ALTERNATIVES

5.1 As our clients' technical advisors, Stantech point out, there is no justification or explanation given in respect of the following points:

5.1.1 Why the location of the ecological mitigation area chosen.

5.1.2 The size of the mitigation area chosen.

5.1.3 The functionality of the mitigation area chosen.

5.1.4 The relationship of the mitigation area chosen to other areas within the wider surrounding landscape.

5.2 National Highways simply asserts that mitigation in these locations of this size is necessary, yet it wholly fails to discharge the burden upon it of demonstrating why that is so and in consequence fails to demonstrate a compelling case as to why the land should be compulsorily acquired for that purpose.

5.3 Our client and its technical advisors are firmly of the view that there is no justification whatsoever for the scale, extent and location of the ecological mitigation areas proposed. Further, the ecological mitigation areas proposed have enormously significance adverse impacts upon our clients' landholdings and operations. This is wholly unacceptable when alternatives are available. Our clients' technical advisors have identified alternative land which could be utilised for ecological mitigation purposes running along the brook that runs to the immediate northeast of the listed building. This connects into existing areas of ecological interest and builds upon a brook habitat which will beneficially aid ecological mitigation and biodiversity in a way that is not the case with the areas chosen by National Highways. This alternative proposal is shown hatched green on the plan attached to the Stantech note which forms

Appendix 1 to this document. In consequence of this alternative area that could be utilised for ecological mitigation purposes without having the same adverse effects as the chosen area, the areas shown cross hatched blue on the Stantech drawing would not be compulsorily acquired.

- 5.4 Further, the proposal seeks to acquire land in title for ecological mitigation purposes. There is no explanation or justification as to why land needs to be acquired in title. Rather, rights could be acquired to create necessary additional habitat within the new hatched green area suggested with ongoing right to manage and maintain that area. There is no explanation or justification whatsoever for the acquisition of title.

## 6. **CONCLUSION**

- 6.1 Our clients' objections to the compulsory purchase provisions of the development consent order are founded upon the abject failure of National Highways to demonstrate a compelling case for acquisition. The following key points are raised:

6.1.1 The land which is proposed to be acquired is not needed and therefore a compelling case to acquire it cannot be demonstrated because there is an alternative which brings about ecological mitigation in a different location of a better quality and better linked to the existing environment to the proposal put forward by National Highways.

6.1.2 The existing uses have particular value to our clients and the operation of their farm businesses and the harm which would be caused by the severance and injurious affection caused in addition to the land take proposed is wholly and



utterly unjustified. Those impacts are quite unacceptable, particularly in the context where an alternative proposal could be delivered for ecological mitigation which would not have those effects.

6.1.3 Insofar as the impacts are sought to be justified by reference to biodiversity net gain, it should be noted that there is no requirement for a 10% biodiversity net gain, either at policy or at law and in consequence that cannot found a basis for building a compelling case for compulsory acquisition.

6.1.4 The need to acquire land in title as opposed to creating rights to deliver, manage and maintain ecological mitigation areas is not demonstrated.

6.2 In all of the circumstances, the Acquiring Authority has wholly failed to demonstrate the decisive compelling requirement for compulsory acquisition and the DCO should be amended to remove the areas objected to and to provide the alternative put forward. That alternative can be created, managed, and maintained by the acquisition of rights by the creation of new rights rather than the acquisition of title. Equally, other areas of land running north south along the A12 are proposed to be acquired in title, yet there is no justification as to why title is required as opposed to temporary rights.

## **SUMMARY AND CONCLUSION**

6.3 We provide an alternative proposal that has less land taken and will deliver the same ecological and drainage benefits as the present proposals thereby completely demonstrating that the current proposals cannot demonstrate a compelling case in the public

interest. In all of the circumstances, the proposed Order is flawed and should not be confirmed in its present format.

**Andrew Piatt**  
**Unit Head/Partner**  
**Gateley Legal**  
**13 February 2023**

**APPENDIX**

**Report prepared by Stantec dated 13 February 2023**

# CONSULTATION REPRESENTATIONS

**Job Name:** Hammonds Farm, Chelmsford  
**Job No:** 332210660  
**Date:** 13 February 2023  
**Prepared By:** E Richmond, Environmental Director  
**Subject:** **A12 Ecological Mitigation Areas Advance Works Consultation Representations – Ecology**

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## 1. Overview

- 1.1. In August 2021, Representations were prepared by Stantec UK Ltd (Stantec) on behalf of Hammonds Estates LLP and the Bolton Family in response to the Phase 2 Consultation for the A12 Junctions 19 – 25 Widening scheme (the Scheme). Both parties own land to the east of the A12 between Junctions 18 and 19. The full DCO Application and associated documents was accepted for examination by the Planning Inspectorate in September 2022 (ref TRO10060).
- 1.2. In October 2022, Stantec prepared an updated Representation, on our clients' behalf, in relation to the improvements proposed at Junction 19 and the potential impact on our clients' land, specifically in relation to land parcel 1/11a which is identified as being required for essential ecological mitigation associated with the Scheme.
- 1.3. In December 2022, National Highways submitted an application for 'Proposed Ecological Mitigation Areas 1 and 2 at land east of the A12, north of the river Chelmer and south of Boreham House', to Chelmsford City Council, under the Town and Country Planning Act 1990, in order to enable the creation of ecological habitats in advance of the A12 construction. This planning application (from here on referred to as the Advanced Works Application) provides the detailed design of the nature and scale of the ecological mitigation areas, including how they would be constructed, operated, and maintained. This note provides an updated Representation on our client's behalf, specifically in relation to Ecological Mitigation Area 1, which is located within our client's land (identified in the General Arrangements Map Books for the DCO Application as land parcel 1/11a)
- 1.4. Engagement has been ongoing with Highways England (now National Highways) since 2019, with a specific focus on understanding the rationale behind the scale of ecological mitigation and why the specific location of land parcel 1/11a has been chosen over others.

## 2. Land for ecological mitigation

- 2.1. The General Arrangements Map Books (TR010060-000470-2.9), submitted with the DCO application identify the use of extensive areas of land adjacent or within close proximity to the Scheme for the delivery of compensation, mitigation and enhancement, with a total of 46ha. This land currently includes land parcel 1/11a within land owned by the Bolton Family; identified as Ecological Mitigation Area 1 in the Advance Works Application. Further detail of the design is provided on the Proposed Site Plans submitted with the Advance Works Application (see Sheets 1 and 2, ref HE551497).
- 2.2. Having reviewed the information in relation to Biodiversity associated with the DCO application (Chapter 9 of the Environmental Statement (TR010060-000179-6.1), and Figure 2.1 Environmental Masterplan (TRO10060/App/6.2: Sheet 1), it appears that the mitigation identified within land owned by the Bolton Family forms part of the proposed ecological mitigation provision for the DCO Scheme, rather than being directly linked to effects of the Scheme in the local vicinity. The habitat creation proposed is extensive, confirmed in this planning application to comprise: 720m of ditches; 10 ponds; and a mix of grassland creation, tree and shrub planting. There remains no justification within the Advance Works Application (nor in the ES) that habitats to be created or enhanced must be positioned within a certain location; nor a justification for the extent of habitats proposed.

## CONSULTATION REPRESENTATIONS

- 2.3. Chapter 3 of the ES: Assessment of Alternatives (TR010060-000137-6.1) confirms that following a meeting with the landowner, the size of the mitigation area was reduced. Whilst this is welcomed, the land take is still substantial and the rationale for the mitigation area to be located in land owned by the Bolton Family, has still not been provided.
- 2.4. Given the above, our client has identified an alternative location for the proposed ecological mitigation area, within the landholding of the Bolton family, for consideration by National Highways. An indicative location is illustrated in green on Drawing 332210660\_5501\_SK001. This is located within arable fields to the east of Boreham House and identifies a greater area, thus providing a flexibility on how the equivalent extent of land identified for Ecological Mitigation Area 1 can be provided in this alternative location. As is the case for Ecological Mitigation Area 1, the proposed area (Option 1) is also bounded by a ditch, and this feature is contiguous until reaching the A12 (it connects all the way under Boreham Road and the A12 to the Beaulieu Park development), therefore providing essential connectivity for the ecological mitigation. The baseline habitat is also the same as for Area 1 i.e. an arable field. It is therefore anticipated that the same increase in Biodiversity Net Gain could be achieved, as identified in the Biodiversity Statement and Mitigation Plan (National Highways, December 2022), through the mix of grassland creation, tree and shrub planting proposed. The new pond creation, hibernacula and network of ditches (for great crested newts, reptiles, and water voles respectively) required could also be accommodated. In addition, there is a small copse and linear wooded area directly adjacent to the proposed new ecological area that provides additional ecological functionality, which would be expected to 'add value' to the new habitats created; there is no such existing habitat in the vicinity of National Highways' Ecological Mitigation Area 1. Furthermore, this is in a more convenient location for our client, as it does not restrict the potential for future development of their land.
- 2.5. It is also important to note that there is no legal or policy requirement for Biodiversity Net Gain provision for the proposed Scheme. Nevertheless, the applicant has sought to maximise biodiversity delivery, as reported in Appendix 9.14 of the Environmental Statement (TRO10060/APP/6.3). This demonstrates that based on the design and Order limits from April 2022, the current biodiversity unit forecast for area based habitat is estimated to be 25.01% gain in units, as compared to the baseline. This is substantially greater than the provision for the anticipated mandatory requirement to provide a 10% BNG, associated with the recent Environment Act. The Advance Works Application includes a Biodiversity Net Gain Assessment, which suggests a 250% increase in biodiversity units for Mitigation Areas 1 and 2; the metric which supports this calculation has not been submitted with the DCO or this current Advance Works Application.

### 3. Lack of justification from National Highways

- 3.1. The following points were raised in 2021, which have not been responded to, in relation to including land parcel 1/11a (Ecological Mitigation Area 1) within the Order Limits, which are also relevant considerations for CCC when determining the Ecological Mitigation Advance Works Planning Application for Areas 1 and 2:
- National Highways has failed to provide detail as to why land owned by the Bolton Family has been selected, the rationale behind the size of the area proposed, and whether consideration of alternative locations for biodiversity compensation, mitigation and enhancement has been made;
  - National Highways has failed to provide detailed information to justify why other apparently suitable land has been discounted, including the suggestion put forward by our client of Option 1 which would provide a 'like for like' alternative; and
  - National Highways has failed to consider whether there is a strategic mitigation solution that could be utilised instead - i.e. financial contributions into a strategic landscape scale habitat creation scheme.

# CONSULTATION REPRESENTATIONS

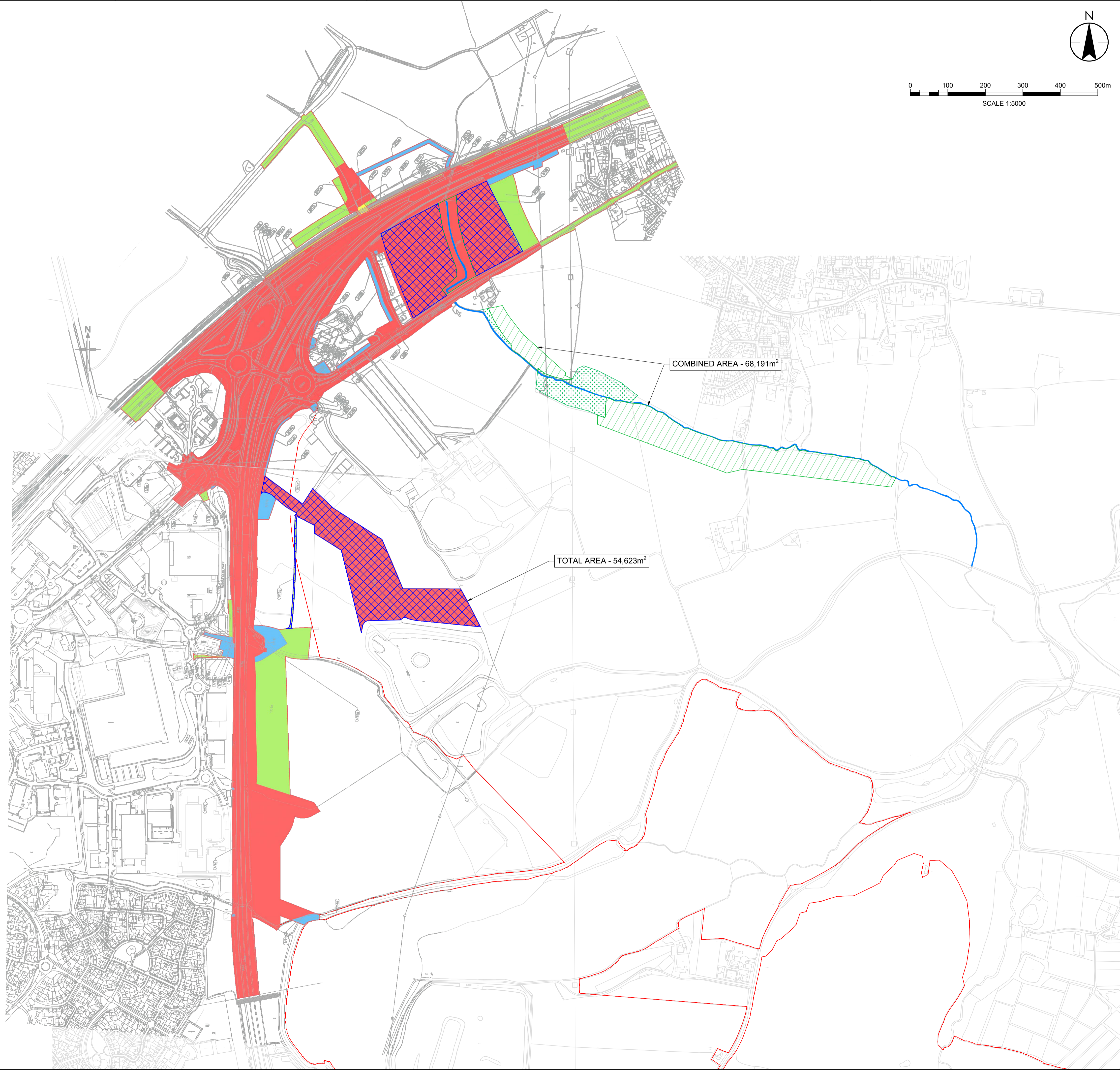


## DOCUMENT ISSUE RECORD

Technical Note No	Rev	Date	Prepared	Checked	Reviewed (Discipline Lead)	Approved (Project Director)
332210660/5501/N02	O1	Feb 2023	ER	DM	DM	RSH

This report has been prepared by Stantec UK Limited ('Stantec') on behalf of its client to whom this report is addressed ('Client') in connection with the project described in this report and takes into account the Client's particular instructions and requirements. This report was prepared in accordance with the professional services appointment under which Stantec was appointed by its Client. This report is not intended for and should not be relied on by any third party (i.e. parties other than the Client). Stantec accepts no duty or responsibility (including in negligence) to any party other than the Client and disclaims all liability of any nature whatsoever to any such party in respect of this report.

## Appendix 1



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- LEGEND:
- █ PERMANENT ACQUISITION OF LAND (NATIONAL HIGHWAYS)
  - █ TEMPORARY POSSESSION OF LAND (NATIONAL HIGHWAYS)
  - █ TEMPORARY POSSESSION OF LAND AND PERMANENT ACQUISITION OF RIGHTS (NATIONAL HIGHWAYS)
  - █ NO CHANGE PROPOSED
  - █ AREA TO BE REMOVED
  - ▨ PROPOSED NEW HABITAT AREA OPTION 1
  - ▨ EXISTING WATERCOURSE AND ECOLOGICAL CONNECTIVITY
  - ▨ CONNECTED SUPPORTING HABITATS

N.B. NATIONAL HIGHWAY PDFS USED TO SHOW THE LAND USES, THE TWO PDFS USED ARE: 'A12\_LAND\_PLANS-R9\_30052022-S1.pdf' AND 'A12\_LAND\_PLANS-R9\_30052022-S2.pdf'

P01	First Issue	BS	RSH	2023.02.10
	Issued/Revision	By	Appd	YYYY.MM.DD
		BS	KS	2023.02.13
		Dwn.	Dsgn.	Chkd.

Issue Status

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**STEPHEN JOHN BOLTON AND DAVID LAWRENCE BOLTON & HAMMONDS ESTATES**  
 HAMMONDS FARM

CHELMSFORD, UNITED KINGDOM

Title  
**ALTERNATIVE ECOLOGICAL MITIGATION SITE**

Project No.	332210660	Scale	1:5000
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