

A12 Chelmsford to A120 widening scheme

TR010060

9.63 Updated Annex C – Statement of Reasons

APFP Regulation 5(2)(q)

Planning Act 2008

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Updated Annex C - Statement of Reasons

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Annex C Compulsory Acquisition of Open Space and Replacement Land

C.1 Purpose of this document

- C.1.0 The A12 Chelmsford to A120 Widening DCO includes provision for the compulsory acquisition of land, which is identified as forming part of Open Space land, and therefore falling within the definition of ‘special category land’ in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Definitions of those types of land are provided at C.1.3 below.
- C.1.1 This Annex considers the special category land located within the Order Limits in respect of the proposed scheme, and the associated option identification and appraisal process pertinent to its replacement, as required by the Planning Act 2008 (PA 2008).
- C.1.2 This Annex is to be read in conjunction with:
- C.1.3 Special Category Land Plans as contained in the Map Books submitted with the Change Application [TR010060/EXAM/10.7, TR010060/EXAM/10.10 and TR010060/EXAM/10.11];
- C.1.4 Section 7.2 of this Statement of Reasons; and
- C.1.5 The Replacement Land Statement [TR010060/APP/7.9] as submitted with the Change Application.
- C.1.6 The proposed scheme involves undertaking works on Open Space Land. This land is detailed further in Section 7 and Appendix A to the Replacement Land Statement [TR010060/APP/7.9] as submitted as part of the Change Application and is shown on the Special Category Land Plans as contained in the Map Books submitted with the Change Application [TR010060/EXAM/10.7, TR010060/EXAM/10.10 and TR010060/EXAM/10.11].
- C.1.7 C.1.5 Table C1 below summarises the Open Space land required, details the relevant plot numbers, sets out the nature of the proposed acquisition, and indicates whether replacement land is required.

C.2 Planning Act 2008

- C.2.0 The PA 2008 enables an applicant to include the compulsory acquisition of land and rights including over any special category land required for the construction, operation and mitigation of a project as part of the application for development consent.
- C.2.1 Any compulsory acquisition of land or rights over special category land may be subject to special parliamentary procedure (**SPP**) unless the tests in sections 131 and 132 of the PA 2008 are met. The tests are different depending on the

type of special category land and whether it is the land or rights which are being acquired.

C.3 Special Category Land

- C.3.0 As described by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, ‘special category’ land means land identified as forming part of a common, open space, National Trust land or fuel or field garden allotment.
- C.3.1 Open Space is defined as “any land laid out as a public garden, or used for the purposes of public recreation...”
- C.3.2 The areas of special category land required for the proposed scheme can be seen on the Special Category Land Plans and are summarised in Table 1 below, together, where applicable, with the plot numbers for the proposed replacement land.

Table C.1 Special Category Land required for the proposed scheme

Existing Owner	Open Space Land	Land Plan Plot Nos.
David Bolton and Stephen Bolton	River Chelmer, Boreham (Area 1)	1/11g
Company of Proprietors of The Chelmer and Blackwater Navigation Limited	River Chelmer, Boreham (Area 1)	1/14a
Patricia Jane Gooding and Josephine Alberta Ann Witten	Gershwin Boulevard, Witham (1) (Area 2)	7/16a, 7/16d, 7/16e, 7/16f, 7/16g
	Olivers Drive, Witham (Area 4)	8/14a
Essex County Council	Gershwin Boulevard, Witham (1) (Area 2)	7/17a, 7/17d
	Blackwater Rail Trail, Witham (Area 5)	8/3a, 8/6b, 8/6d, 8/6h, 8/6i, 8/6j, 8/6k, 8/6m
	Land at Station Road Marks Tey (Area 12)	19/2f, 19/2g, 19/2h, 19/4d, 19/4e, 19/6c, 19/7a, 19/7c
Braintree District Council	Gershwin Boulevard, Witham (2) (Area 3)	7/19c, 7/19d, 7/19g, 7/19h, 8/11a, 8/11c
	Olivers Drive, Witham (Area 4)	8/11b, 8/11d, 8/11f, 8/11g, 8/11aj, 8/11al, 8/11am
	Land North of Market Lane, Witham (Area 6)	8/11r, 8/11s, 8/11u, 8/11v

Existing Owner	Open Space Land	Land Plan Plot Nos.
	Land at Freebournes Road, Witham (Area 11)	9/8b, 9/8c, 9/8d, 9/8e, 10/8a, 10/8c, 10/8d, 10/8e
Taylor Wimpey UK Limited	Olivers Drive, Witham (Area 4)	8/12a, 8/12b, 8/12d, 8/13b
Bloor Homes Limited	Land North of Market Lane, Witham (Area 6)	8/30a
Witham Town Council	Whetmead Nature Reserve, Witham (Area 9)	8/47a, 8/47b, 9/11a, 9/11b
	River Brain, Witham (Area 8)	8/47i, 8/47j, 8/47k, 8/47l, 8/47m, 8/47n, 8/47o, 8/47p
	Land at Maldon Road crossing of River Brain, Witham (Area 7)	8/47c, 8/47d, 8/27a
	Land North of Market Lane, Witham (Area 6)	8/47e, 8/47f
Anglian Water Services Limited	Whetmead Nature Reserve, Witham (Area 10)	9/10d, 9/10e
Copford with Easthorpe Parish Council	Copford Recreation Ground (Area 13)	19/17a, 19/17b

Table C.2 Open Space freehold land, for which replacement land will be provided

Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m ²	ha		m ²	ha
Gershwin Boulevard, Witham (1) (Area 2) and Olivers Drive, Witham (Area 4)	Patricia Jane Gooding and Josephine Alberta Ann Witten	7/16d, 7/16f, 8/14a	6421	0.64	8/33f	6678	0.67
Gershwin Boulevard,		7/17d	158	0.02			

Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m ²	ha		m ²	ha
Witham (1) (Area 2)	Essex County Council				8/43d, 8/43e, 8/44c, 8/45e	4915 ¹	0.5
Blackwater Rail Trail, Witham (Area 5)		8/6h, 8/6i	172	0.02			
Gershwin Boulevard, Witham (2) (Area 3)	Braintree District Council	7/19g, 7/19h,	8295	0.83	8/1d, 8/17b, 8/1n, 8/19b, 8/33g, 8/33i, 8/41b	16365	1.6
Olivers Drive, Witham (Area 4)		8/11b, 8/11d	7155	0.73			
Land North of Market Lane, Witham (Area 6)		8/11r, 8/11s	203	0.02			
Olivers Drive, Witham (Area 4)	Taylor Wimpey UK Limited	8/12d, 8/13b	83	0.01	8/33m	106	0.01
Land North of Market Lane, Witham (Area 6)	Witham Town Council	8/47f	88	0.01	9/1a, 8/45f		0.84
River Brain, Witham		8/47k, 8/47m,	371	0.04			

¹ The remainder of the plot area will replace acquisition of new rights in Area 5, see Table C.4

Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m ²	ha		m ²	ha
(Area 8)		8/47o, 8/47p				8,459 ²	
Whetmead Nature Reserve, Witham (Area 9)	Braintree District Council /Witham Town Council	8/47a, 9/11a	6,639	0.66			
Whetmead Nature Reserve, Witham (Area 10)	Anglian Water Services Limited	9/10d	1048	0.1	9/1q	1063	0.1
Land at Freebournes Road, Witham (Area 11)	Braintree District Council	9/8c, 9/8e, 10/8d	12,792	1.28	10/1b, 10/1k, 10/1l, 10/1n, 10/1o, 10/1s, 10/2c, 10/2f, 10/3b, 10/3d, 10/4b, 10/20g	13,320	1.33
Land at Station Road Marks Tey (Area 12)	National Highways/ Essex County Council (as highway authority)	19/2g, 19/2h, 19/4d, 19/4e, 19/7a, 19/7c	1026	0.1	18/1u	1049	0.13
Copford Recreation Ground (Area 13)	Copford with Easthorpe Parish Council	19/17b	2340	0.23	19/18d	3571	0.36

² The remainder of the plot area will replace acquisition of new rights in Area 7, see Table C.4

Table C.3 Open Space land subject to acquisition of New Rights, for which no replacement land is to be provided

(1) Open Space Land	(2) Nature of powers sought	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
			m ²	ha
River Chelmer, Boreham (Area 1)	permanent new rights Temporary possession during construction	1/11g, 1/14a	1165	0.12
Gershwin Boulevard, Witham (1) (Area 2)	permanent new rights Temporary possession during construction	7/16e	176	0.02
Olivers Drive, Witham (Area 4)	permanent new rights Temporary possession during construction	8/11f, 8/11g, 8/11al	5684	0.57
Blackwater Rail Trail, Witham (Area 5)	permanent new rights Temporary possession during construction	8/3a 8/6b, 8/6d, 8/6k	2,525	0.25
Land North of Market Lane, Witham (Area 6)	permanent new rights Temporary possession during construction	8/47e, 8/11u	2,028	0.2
River Brain (Area 8)	permanent new rights Temporary possession during construction	8/47j 8/47l 8/47n	1,926	0.2
Whetmead Nature Reserve (Area 9)	permanent new rights	8/47b, 9/11b	17,722	1.77

(1) Open Space Land	(2) Nature of powers sought	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
			m ²	ha
	Temporary possession during construction			
Whetmead Nature Reserve (Area 10)	permanent new rights Temporary possession during construction	9/10e	1,401	0.14
Freebournes Road, Witham (Area 11)	permanent new rights Temporary possession during construction	10/8a	76	0.01

Table C.4 Open Space land subject to acquisition of New Rights, for which replacement land is to be provided

(1) Open Space Land	Existing Owner	(4) Land Plan Plot Nos.	(5) Area Required by the scheme		(6) Replacement land plots nos.	(7) Replacement land	
			m ²	ha		m ²	ha
Blackwater Rail Trail, Witham (Area 5)	Essex County Council	8/6j, 8/6m,	4,558	0.46	8/43d, 8/43e, 8/44c, 8/45e	4,915	0.49
Land at Maldon Road crossing of River Brain, Witham (Area 7)	Braintree District Council	8/47c, 8/47d, 8/27a	464	0.05	9/1a, 8/45f	8,459 ³	0.88

³ These plots are also allocated to replace Areas 6, 8 and 9.

In addition the following open space land comprises open space, over which powers of temporary possession are sought during construction of the proposed scheme:

Table C.5 Open Space land subject to powers of temporary possession

(1) Open Space Land	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
		m ²	ha
Gershwin Boulevard, Witham (Area 2)	7/16a 7/16g 7/17a	3,607	0.36
Gershwin Boulevard, Witham (Area 3)	7/19c 7/19d 8/11a 8/11c	13,744	1.37
Olivers Drive, Witham (Area 4)	8/11aj, 8/11am, 8/12a, 8/12b	1,243	0.12
Land North of Market Lane, Witham (Area 6)	8/30a, 8/11v	1,466	0.15
River Brain, Witham (Area 8)	8/47i	1,431	0.14
Freebournes Road, Witham (Area 11)	9/8b, 9/8d, 10/8c, 10/8e	3,546	0.35
Land at Station Road Marks Tey (Area 12)	19/2f, 19/6c	3,634	0.36
Copford Recreation Ground (Area 13)	19/17a	3,711	0.37

C.3.3 In each case the Applicant is satisfied that no alternative to the acquisition of the special category land (or rights over it) exist. This is principally because in many of the above locations the open space is immediately adjacent to the existing A12 that is required to be widened. In all other instances the powers over the relevant land are required for installation of diverted utility apparatus or new drainage required for the proposed scheme.

C.3.4 The following sections of this Annex briefly summarise the provisions that need to be met and in order to avoid SPP on the various types of special category land.

C.3.5 Acquisition of Open Space or Interests in Open Space

C.3.6 If land is solely Open Space and freehold required permanently, then under section 131 of the PA 2008 any of the following must apply in order to avoid SPP:

C.3.7 Replacement land must be provided and vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land (s131(4)); or

C.3.8 Where there is no suitable land available to be given in exchange, or where any suitable land available to be given in exchange is available only at prohibitive cost, it must be strongly in the public interest for the project to be begun sooner than is likely to be possible if the order were to be subject (to any extent) to SPP (s131(4A)); or

C.3.9 The Open Space land required does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public (s131(5)).

C.3.10 For all open space plots in the Order land where permanent freehold acquisition is required the Applicant is relying on S131(4) and is proposing replacement land.

C.3.11 If possession of Open Space land is required temporarily this is not acquisition of the open space land as a power of temporary possession only is taken and title remains with the owner. In any event the land required temporarily meets the test in section 131(4B) of the PA 2008 because the land is, or forms part of, an open space, meets none of the other descriptions in subsection (1), and is being acquired for a temporary (although possibly long-lived) purpose.

C.3.12 Section 132 of the PA 2008 applies to the permanent acquisition of new rights to be acquired compulsorily over special category land. It uses the same definition of Open Space as section 131.

C.3.13 The same tests apply in respect of rights to be acquired but with one addition set out in section 132(3) that, “The land, when burdened with the right, will be no less advantageous than it was before to:

- the persons in whom it is vested;
- other persons, if any, entitled to rights of common or other rights; and

- the public.”

C.3.14 When replacement land is proposed to be provided under S132(4), because the nature of the new rights sought over the open space means that S132(3) does not apply, the Secretary of State can allow the Order to be made without recourse to special parliamentary procedure if suitable replacement land is to be provided. S132(12) defines replacement land for open space land to be subject to the acquisition of new rights as land “*which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—*

the persons in whom the order land is vested,

the persons, if any, entitled to rights of common or other rights over the order land, and

the public.”

C.3.15 For plots where the Applicant seeks new rights over open space the Applicant is relying on either S132(3) or S132(4). The specific reliance is stated in each case in Table C.1 above.

C.3.16 Special Category Land Required

C.3.17 Table C.1 summarises the type of Open Space land required, details the relevant plot numbers, considers the type of land take proposed, and indicates whether replacement land is required. Each of the areas of Open Space are described in detail in Section 5 of the Replacement Land Statement [TR010060/APP/7.9]. The relevant areas of land can be seen in the Special Category Land Plans as contained in the Map Books submitted with the Change Application [TR010060/EXAM/10.7, TR010060/EXAM/10.10 and TR010060/EXAM/10.11].

C.3.18 Land assembly powers for the proposed scheme includes all land subject to compulsory acquisition and temporary possession powers that is considered to constitute (or may constitute) open space as defined in the Acquisition of Land Act 1981, as well as the areas to replace that open space where replacement land is required by the PA 2008. Land to be used temporarily only does not require replacement open space as the open space land will be used for a short lived purpose before possession is returned to the owner.

C.3.19 For land over which the proposed scheme seeks permanent new rights, in most of the required areas the new rights are sought to relocate utilities that are already within the open space. In these instances, the proposed scheme considers that utilities diversion would not result in less advantageous conditions for the landowner or the public. Accordingly, no replacement land is included in the order lands for those areas. Where new rights are sought over open space for a new utility route where there is not currently installed apparatus in the affected open space, replacement land is proposed.

C.3.20 Replacement Land

C.3.21 The requirements for replacement Open Space or Common Land in exchange for that lost are set out sections 131(12) and 132(12) as follows:

C.3.22 Section 131 (in respect of compulsory acquisition of land) states:

C.3.23 “replacement land” means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public”

C.3.24 Section 132(12) (in respect of compulsory acquisition of rights over land) states:

C.3.25 “replacement land” means land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—

- the persons in whom the order land is vested,
- the persons, if any, entitled to rights of common or other rights over the order land, and
- the public.

C.3.26 The Applicant has, in assessing what would be adequate to compensate the owner for the disadvantages of the imposition of the new rights looked to provide an area of replacement land no less that the area that will become burdened by the new rights.

C.3.27 Section 3 of the Replacement Land Statement [TR010060/APP/7.9] as submitted as part of Change Application sets out the legal and policy requirements for replacement land.

C.3.28 A review of the land required for the proposed scheme and nearby land has been considered by relevant specialists to help consider options for replacement land. Details are set out in section 4 of the Replacement Land Statement. In summary the Applicant considered the following principles:

- proximity of the proposed Replacement Land to the area of Open Space loss or the communities it serves;
- characteristics of the land in relation to the Open Space it intends to replace (grassland, woodland, scrubland);
- accessibility of the identified parcel and ability to facilitate the access for the public including connections to the location by way of the network of PRow and accessibility by the communities it intended to serve;
- the Replacement Land plot could not be proposed to be used for essential mitigation or have parts of the proposed scheme within it.

- C.3.29 The search was informed by work undertaken by the National Highways team, as well as inputs and suggestions from stakeholders through the public consultation and stakeholder engagement process.
- C.3.30 The Applicant carefully considered the requirements for replacement land as defined through sections 131 and 132 of the PA 2008.
- C.3.31 Further consideration of each replacement land option is provided in Chapter 5 of the Replacement Land Statement with reference to the key criteria required by the Planning Act 2008.
- C.3.32 Open Space – Temporary Powers**
- C.3.33 All of the Open Space land to be to be acquired permanently and those plots over which permanent new rights are sought may also be subject to powers of temporary possession under Article 40 of the Draft DCO.
- C.3.34 Additional areas of open space land may be subject only to powers of temporary possession and are listed in Schedule 7 of the Draft DCO.
- C.3.35 The land required temporarily will be handed back to the current landowner(s) following construction activities.
- C.3.36 The land required temporarily is not being acquired by the Applicant. On that basis special parliamentary procedure is not considered relevant but in any event the temporary use of the land meets the test in section 131(4B) of the PA 2008 because the land is, or forms part of, an open space, meets none of the other descriptions in subsection (1), and is being acquired for a temporary (although possibly long-lived) purpose.
- C.3.37 Conclusions regarding Open Space and requests for Certificates from the Secretary of State
- C.3.38 It is considered that the Secretary of State can be satisfied that the provisions of section 131(4), 132(3) and 132(4) of the PA 2008 have been met and that the Draft DCO, should they adopt this approach, and the proposed scheme should not be subject to SPP.
- C.3.39 The proposed scheme has taken an appropriate and precautionary approach to taking open space and providing replacement land. The Applicant considers that the need for the proposed scheme outweighs the potential loss of Open Space, in compliance with paragraph 5.174 of the NNNPS. In accordance with sections 131 and 132 of the PA 2008 provided Replacement Land proposed is no less advantageous to the owners of the open space land and to the public.
- C.3.40 The Applicant therefore submits the Secretary of State may decide that the Draft DCO need not be subject to Special Parliamentary Procedure. Specific requests for the Secretary to so resolve are to be found in Section 7 and Appendix A to the Replacement Land Statement [TR010060/APP/7.9] as submitted as part of Change Application.