

# A12 Chelmsford to A120 widening scheme

**TR010060**

## 7.9 Replacement Land Statement

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009

Volume 7

Infrastructure Planning

Planning Act 2008

**A12 Chelmsford to A120 widening scheme**

Development Consent Order 202[ ]

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**REPLACEMENT LAND STATEMENT**

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Version	Date	Status of Version
Rev 1	August 2022	DCO Application
<a href="#">Rev 2</a>	<a href="#">April-May 2023</a>	<a href="#">DCO Change Application</a>
<a href="#">Rev 3</a>	<a href="#">June 2023</a>	<a href="#">Deadline 6</a>

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# 1 Introduction

## 1.1 Purpose of this document

- 1.1.1 The application for development consent for the A12 Chelmsford to A120 Widening Scheme (the ~~p~~Proposed ~~S~~scheme) by National Highways Limited (the Applicant or National Highways) 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.
- 1.1.2 This document considers the Open Space Land located within the Order Limits in respect of the proposed scheme, and the associated identification appraisal process for its replacement, as required by the Planning Act 2008 (PA 2008).
- 1.1.3 The purpose of this report is to:
- Outline the reasons why Replacement Land will be required for the Proposed Scheme.
  - Bring together baseline information on the status of the land areas expected to be affected by the proposed scheme.
  - Identify which of these land areas would give rise to the need to provide Replacement Land as a necessary part of the DCO process.
  - Identify the locations proposed to provide such Replacement Land and provide suitable access to it.
  - Appraise the suitability of such Replacement Land for the Proposed Scheme, including any additional works that may be needed.
  - Establish that the relevant statutory tests for the certification by the Secretary of State pursuant to section 131 and section 132 of the PA 2008 in relation to the acquisition of Open Space Land and new rights over Open Space Land have been met.

1.1.4 This document is being updated as a result of:  
~~- changes in the ownership of some of the plots required to carry out the DCO works;~~  
~~as a result of~~  
~~- further engagement with local authorities; and~~  
~~- changes to the proposed scheme design.~~  
~~The changes are limited to areas within Witham and at Marks Tey.~~

1.1.5 The Special Category Land Plans and General Arrangements within Volume 2 have been updated and are contained in the Change Application Map Books 3 and 6. An updated revision to Volume 2 Map Books, including the Special Category Land Plans and General Arrangements will be submitted into the examination should the Change Application be accepted. This will replace the Change Application Map Books 3 and 6[TR010060/EXAM/10.7, TR010060/EXAM/10.10, and TR010060/EXAM/10.11].

1.1.6 The proposed changes in relation to the land in replacement land replacing special category land required for the scheme ~~change either individually or cumulatively are considered negligible from an environmental perspective in potential impacts from the changes to replacement land are considered negligible,~~ as they would only result in minor amendments to the landscape design. The change in impacts would not be on a scale or magnitude to change the significant effects reported in the Environmental Statement submitted in the DCO application. No new or different mitigation measures would be required.

1.1.41.1.7 This report is structured as follows:

- The rest of Section 1 provides context for the Open Space land needed for the proposed scheme and the proposed Replacement Land and briefly describes the highways context.
- Section 2 provides a summary of the required Open Space Land.
- Section 3 sets out the legal basis from which the requirement for Replacement Land arises, along with associated guidance.
- Section 4 provides a summary of the appraisal of these locations and the Replacement Land proposal and a conclusion on the statutory tests.
- Section 5 considers the proposed locations where such Replacement Land would be provided.
- Section 6 provides a summary and conclusions.
- Section 7 Grounds relied on by the Secretary of State pursuant to the relevant provisions of Section 131 and 132 of the PA 2008, by reference to Appendix A of this document.

## 1.2 The proposed scheme

1.2.1 This section provides only a brief overview of the proposed scheme, to provide context, along with more detailed explanation of the aspects that influence access to the existing and proposed areas of public open space and relevant changes proposed to the PRoW network.

1.2.2 The proposed scheme comprises improvements to the A12 between junction 19 (Boreham interchange) and junction 25 (Marks Tey interchange), a distance of approximately 24km, or 15 miles. The proposed scheme involves widening the A12 to three lanes throughout (where it is not already three lanes) with a bypass between junctions 22 and 23 and a second bypass between junctions 24 and 25. It also includes safety improvements, including closing off existing private and local direct accesses onto the main carriageway, and providing alternative provision for walkers, cyclists and horse riders (WCH) to existing routes along the A12, which would be removed. The existing highway arrangement and conditions and the highways proposals are described in detail in the Scheme Description Chapter 2 of the Environmental Statement

(~~Examination DCO document~~ reference [~~APP-068 to APP-248~~TR010060/APP/6.1]).

- 1.2.3 The highways proposals are illustrated on the Works Plans ~~and General Arrangement drawings~~ included within the DCO application (~~Examination reference DCO document reference AS-025~~)TR010060/APP/2.2 and ~~General Arrangements Change Application Map Books 3 and 6~~ [TR010060/EXAM/10.7, TR010060/EXAM/10.10, and TR010060/EXAM/10.11].~~APP-020, AS-010 to AS-013~~TR010060/APP/2.9) respectively.
- 1.2.4 The proposed scheme will also require the diversion and alteration of utilities, including apparatus for electricity, communications, water and gas.

## 1.3 Existing Road Network

- 1.3.1 The A12 is particularly important as an economic route providing access for HGVs to Felixstowe, Harwich and the other Haven ports and the commuter route between Chelmsford and Colchester.
- 1.3.2 The section of the A12 to be altered is located wholly within the administrative area of Essex County Council (which is the local highway authority for roads not forming part of the SRN in Essex). The settlements of Boreham, Hatfield Peverel, Witham, Rivenhall End, Kelvedon, Feering and Marks Tey are along the route. The A12 runs parallel and to the south of the Great Eastern Main Line (GEML) railway (which connects London with Colchester, Ipswich and Norwich) for most of its length between junctions 19 and 25.
- 1.3.3 Major connecting roads include the A130 which joins the A12 at junction 19 and the A120 which joins the A12 at junction 25. The B1137 links Boreham to junction 19 and Hatfield Peverel, the B1018 and the B1019 links Maldon to Witham and Hatfield Peverel respectively. The B1023 (Inworth Road) links Kelvedon to Tiptree and Braxted Park Road connect Tiptree to Rivenhall End. These are the main local roads that connect directly to the A12 and therefore will be subject to some associated development to integrate the proposed scheme with the local traffic network.

## 1.4 Summary of proposed scheme – Highways

- 1.4.1 The proposed scheme's main components are:
- Widening of A12 junction 19 Boreham Interchange bridge from two to three lanes in each direction and associated roundabouts to increase capacity and to enable the A12 widened to three lanes at the junction (to tie in with the current three lane section between Boreham and Hatfield Peverel (junction 20a);
  - two new three-lane dual carriageway sections, between the existing junction 22 and 23 and between junctions 24 and 25;
  - The remaining sections of the existing A12 to be altered will be widened online;
  - Three new all movement junctions (dumbbell layout) at junctions 21, 22 and 24 which replace junction 20a, 20b and 23. Junction 21 and 22 will be



above ground level with a bridge over the A12 to connect both roundabouts. Junction 24 will be built in cut, with the A12 at ground level and an underpass to connect both roundabouts; and

- Junction 25 will be improved with the South roundabout replaced by a signalised junction with a new local road connection (London Road) where the new section of A12 joins the existing mainline.

1.4.2 The majority of the Replacement Land which will be used for open space lies adjacent to the existing alignment of the A12.

1.4.3 The following areas of replacement open space are not adjacent to the A12:

- the river Chelmer (Open Space Area 1), which is required for permanent new rights of drainage in to the River Chelmer;
- that part of the Blackwater Rail Trail south of Blue Mills Hill (Open Space Area 5); which is required for new rights for diversion of a high-pressure gas main;
- land at Maldon Road, Witham which is required for new rights for utilities diversions (Open Space Area 7); and
- land at Station Road, Marks Tey (Open Space Area 12) which is required for minor highway widening.

## 1.5 Special Category, Open Space and Replacement Land

### Special Category Land

1.5.1 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.

1.5.2 Open Space is defined as "any land laid out as a public garden, or used for the purposes of public recreation..."

1.5.3 The areas of special category land required for the proposed scheme can be seen on the Special Category Land Plans [within Change Application Map Books 3 and 6](#) [TR010060/EXAM/10.7, TR010060/EXAM/10.10, and TR010060/EXAM/10.11] [APP-015TR010060/APP/2.5] and are summarised in Table 2.1 below.

### 1.6 Open Space Land

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

- 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 (section 131(4)); or
- 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

- The Open Space required does not exceed 200m<sup>2</sup> 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 (section 131(5)).

1.6.2 If possession of Open Space land is required temporarily SPP will not be triggered as acquisition does not occur. (In any event, if it were to be regarded that temporary possession amounts to acquisition, section 131(4B) or section 132(4B) would allow the Secretary of State to consider that the relevant land is being acquired only for a temporary purpose).

1.6.3 Section 132 uses the same definition of Open Space as section 131. Section 132 applies where rights are sought to be acquired compulsorily over special category land.

1.6.4 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.”*

## 1.7 Replacement Land

1.7.1 The requirements for Replacement Land in exchange for that lost are set out sections 131(12) and 132(12).

1.7.2 Section 131(12) (in respect of compulsory acquisition of land) states:

*“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”*

1.7.3 Section 132 (12) (in respect of compulsory acquisition of rights over land) states:

*“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,*

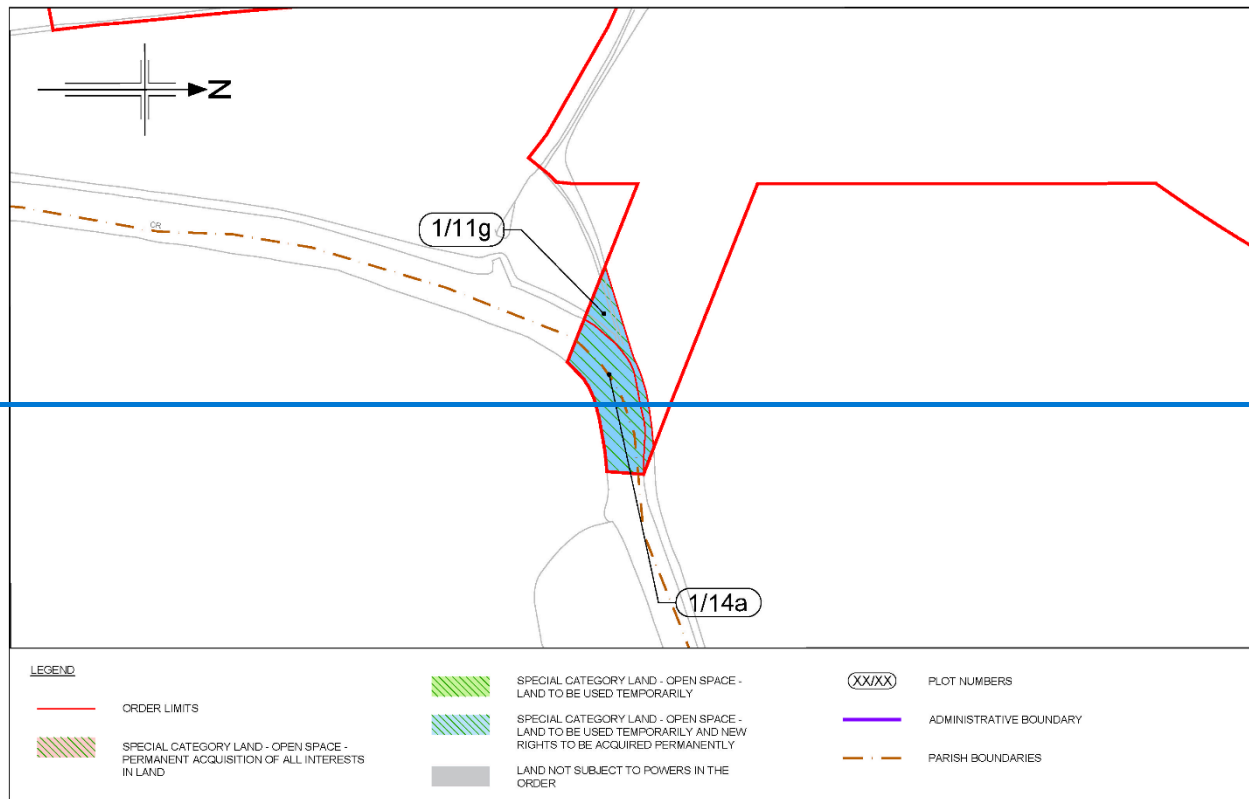
*the persons, if any, entitled to rights of common or other rights over the order land, and*

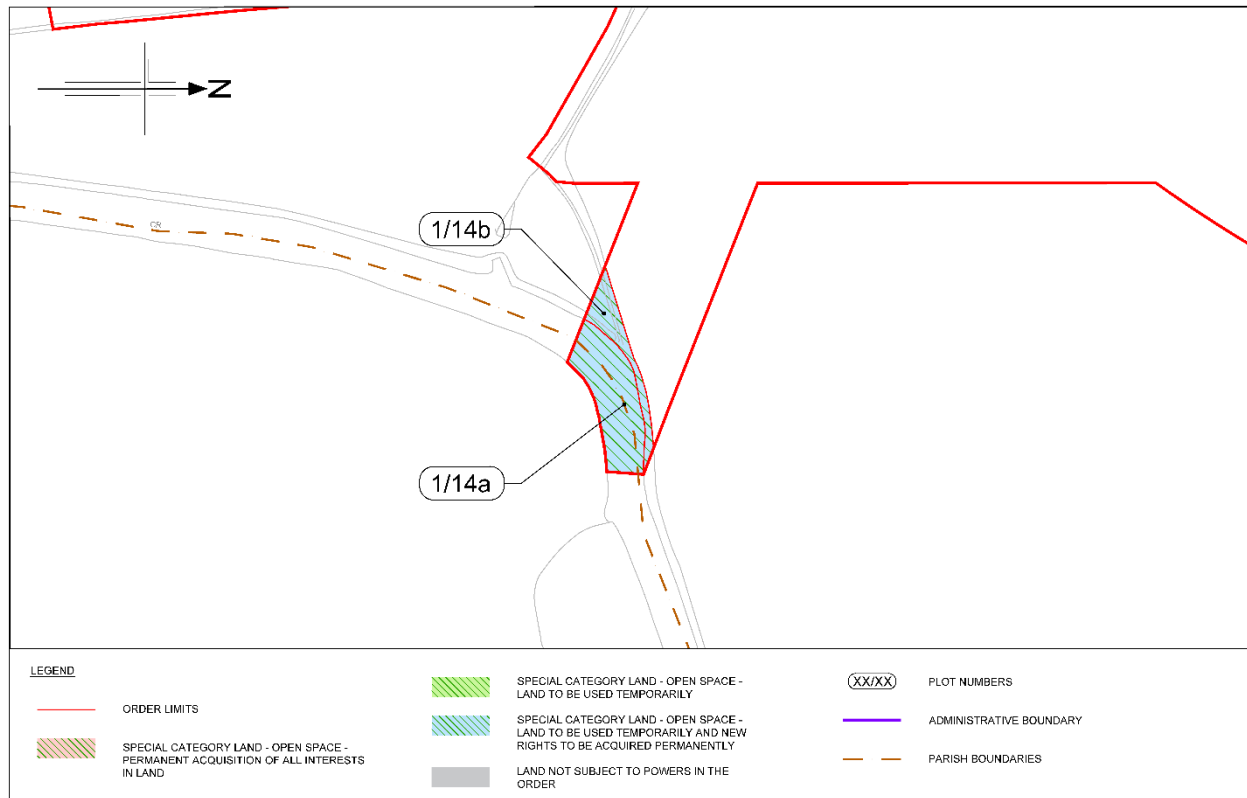
*the public.*

## 2 Summary of required Open Space Land

- 2.1.1 Table 2.1 at the end of this section summarises the type of Open Space Land required, details the relevant plot numbers, considers the type of land take proposed, and provides a summary as to whether Replacement Land is required. Each of the areas of Open Space are described in detail in Section 5 below but are summarised in the following paragraphs. The relevant areas of land can be seen in the Special Category Land Plans [within Change Application Map Books 3 and 6](#) [TR010060/EXAM/10.7, TR010060/EXAM/10.10, and TR010060/EXAM/10.11] (~~APP-15TR010060/APP/2.5~~) Section 2 and 5 will also have plates identifying the plots and areas of each plot.
- 2.1.2 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 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. This section sets out all open space needed, permanently and temporarily, even when there is no need to provide replacement.
- 2.1.3 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 within land where the utility is already present 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.
- 2.1.4 The following areas have been identified as Open Space defined as open space for the purposes of providing Replacement Land under section 131 and section 132 of the PA 2008:
- Open Space Area 1 - River Chelmer, Boreham (Land Plan Plots [1/11g](#), [1/14a](#), [1/14b](#))**
- 2.1.5 The River Chelmer is managed as a recreational waterway. The river is therefore being treated as Open Space, as is the associated tow path (which is also a public footpath).
- 2.1.6 New rights to install a drain and head wall into the River Chelmer are sought as part of the proposed scheme.
- ~~2.1.7 Plot 1/11g is currently owned by David Lawrence Bolton and Stephen John Bolton.~~
- ~~2.1.8~~ [2.1.7](#) Plots [1/14a](#) and [1/14b](#) [is](#)are currently owned by the Company of Proprietors of The Chelmer and Blackwater Navigation Limited.

**Plate 2.1 Open Space Area 1 \_ River Chelmer, Boreham**





**Open Space Areas 2 to 4 - Olivers Drive and Gershwin Boulevard, Witham (Land Plan Plots 7/16a, 7/16d, 7/16e, 7/16f, 7/16g, 7/17a, 7/17d, 7/19c, 7/19d, 7/19g, 7/19h, 8/11a, 8/11b, 8/11c, 8/11d, 8/11f, 8/11g, 8/11aj, 8/11al, 8/11am 8/12a, 8/12b, 8/12d, 8/13b, 8/14a)**

[2.4.92.1.8](#) Three areas form a contiguous area of open grassed landscaping and buffer area, parallel to the A12 in Witham. **Areas 2 and 3**, between the existing A12 and Gershwin Boulevard are defined as open space in the section 106 agreement dated 8<sup>th</sup> August 2000 (S106 agreement) made between the landowners (Patricia Jane Gooding and Josephine Alberta Ann Witten), developers (Taylor Wimpey) and Braintree District Council, **entered into the S106 agreement** in relation to the housing development adjacent to Gershwin Boulevard. Part of the land (Area 3) has been transferred to Braintree District Council. Part 2 remains with the previous owner but is subject to a commitment in the relevant S106 agreement for a transfer of the land to the District Council.

[2.4.102.1.9](#) As well as freehold acquisition, giving rise to the need to provide Replacement Land, plots fronting on to Gershwin Boulevard are subject to temporary powers for possession and use during construction of the proposed scheme.

[2.4.112.1.10](#) Between Areas 2 and 3 lies plots 7/17a and 7/17d, which is a small area of Open Space in the ownership of Essex County Council. Plot 7/17d is scheduled for freehold acquisition and Replacement Land is offered to Essex County

Council within the area of Replacement Land for the Blackwater Rail Trail (see Area 5).

[2.1.122.1.11](#) The land at Olivers Drive (Area 4) is connected to the Gershwin Boulevard Open Space and forms part of the overall amenity space, being both grass and woodland. It is not subject to the S106 agreement that binds the Gershwin Boulevard open spaces. A small plot (8/14a) is in the freehold ownership of the owners of the private parties who hold Open Space at Gershwin Boulevard. The freehold acquisition of this plot is sought and Replacement Land for this small plot is proposed to be combined with the land provided as Replacement Land for Area 2.

[2.1.132.1.12](#) Freehold acquisition, new rights for diversion of existing utilities and temporary powers will be relied on during construction for this area of open space.

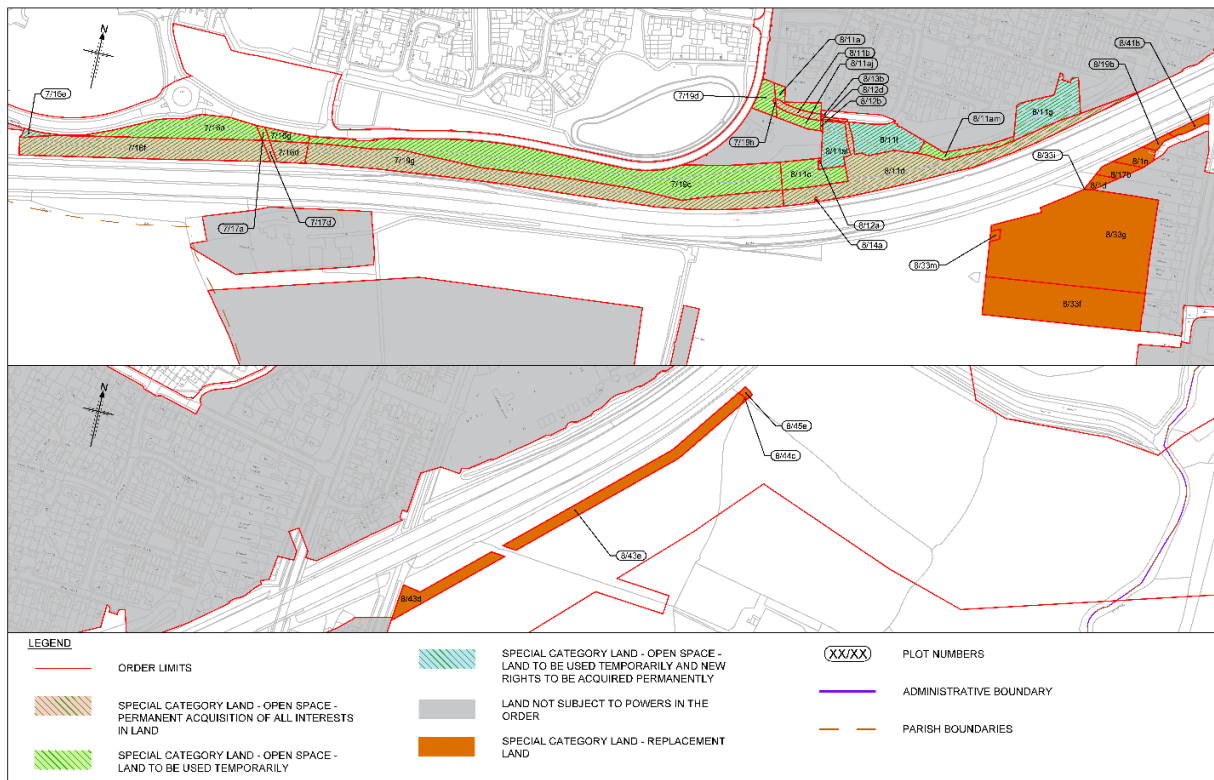
[2.1.142.1.13](#) In respect of Area [24](#), plots 7/16a, 7/16d, 7/16e, 7/16f, 7/16g these are currently owned by Patricia Jane Gooding and Josephine Alberta Ann Witten. Plots 7/17a, 7/17d are in Essex County Council's ownership.

[2.1.152.1.14](#) Area [23](#) comprising plots 7/19c, 7/19d, 7/19g, 7/19h, 8/11a, 8/11c is in Braintree District Council's ownership.

[2.1.162.1.15](#) For Area [43](#), plots 8/11b, 8/11d, 8/11f, 8/11g, 8/11aj, 8/11al, 8/11am are owned by Braintree District Council, plots 8/12a, 8/12b, 8/12d, 8/13b are in Taylor Wimpey UK Limited's ownership and plot 8/14a is in Patricia Jane Gooding and Josephine Alberta Ann Witten's ownership. Replacement Land is being provided immediately to the south of the A12 and will be connected via footpath 121 95 to the existing area of open space at Olivers Drive, together with a new connection south of and parallel to the A12, connecting to Maldon Road.



**Plate 2.2 Open Space Areas 2 to 4 - Olivers Drive and Gershwin Boulevard**



**Open Space Area 5 - the Blackwater Rail Trail (Land Plan Plots 8/3a, 8/6b, 8/6d, 8/6h, 8/6i, 8/6j, 8/6k, 8/6m)**

[2.1.172.1.16](#) The railway trackbed of the railway that ran between Witham and Maldon is an open space, where the A12 passes over the former railway at Witham. The A12 is carried over the Blackwater Rail Trail by a bridge known as Benton Bridge. The former trackbed below is known as the Blackwater Rail Trail.

[2.1.182.1.17](#) A small area of freehold acquisition of the trackbed is proposed, as well as air rights over the trackbed to widen the existing Benton Bridge carrying the A12. Temporary powers to use and take possession of the land during construction are also sought over the trackbed. Permanent new rights are sought for maintenance of the widened Benton Bridge and small lengths of utility diversions.

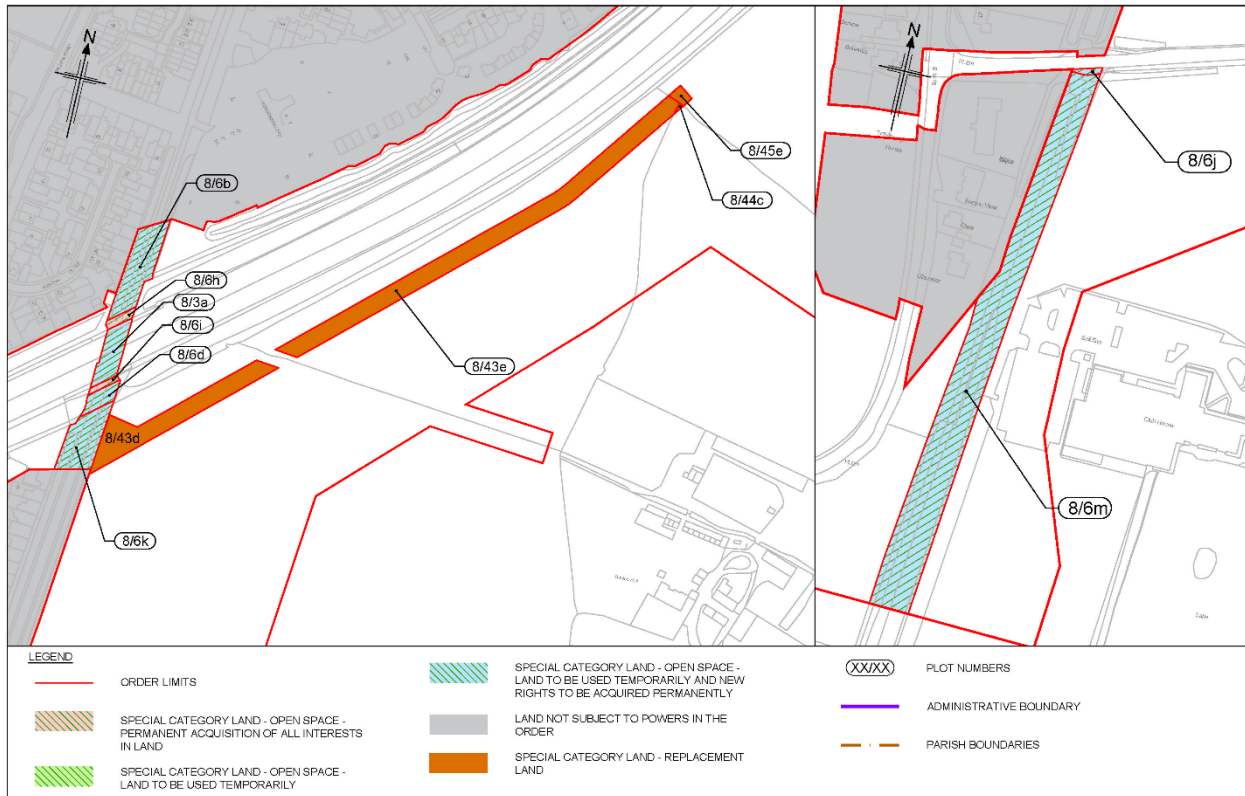
[2.1.192.1.18](#) Benton Bridge itself is owned by the Department for Transport (and is therefore Crown Land).

[2.1.202.1.19](#) South of Blue Mills Hill, the former railway is wooded. Permanent new rights to divert a gas pipeline are sought over this area of land. As the existing trees are to be removed, and restrictive covenants sought, Replacement Land is being proposed for this plot also.

[2.1.212.1.20](#) Both areas of the Blackwater Rail Trail are owned by Essex County Council and subject to Essex County Council's bylaws for country parks. Both areas of the former railway are therefore being treated as open space which requires

Replacement Land for the purposes of the PA 2008. Replacement Land is being provided ~~R~~ to the south of the A12 and east of the Blackwater Rail Trail. This will extend towards footpath 121\_101.

**Plate 2.3 Open Space Area 5 - Blackwater Rail Trail**

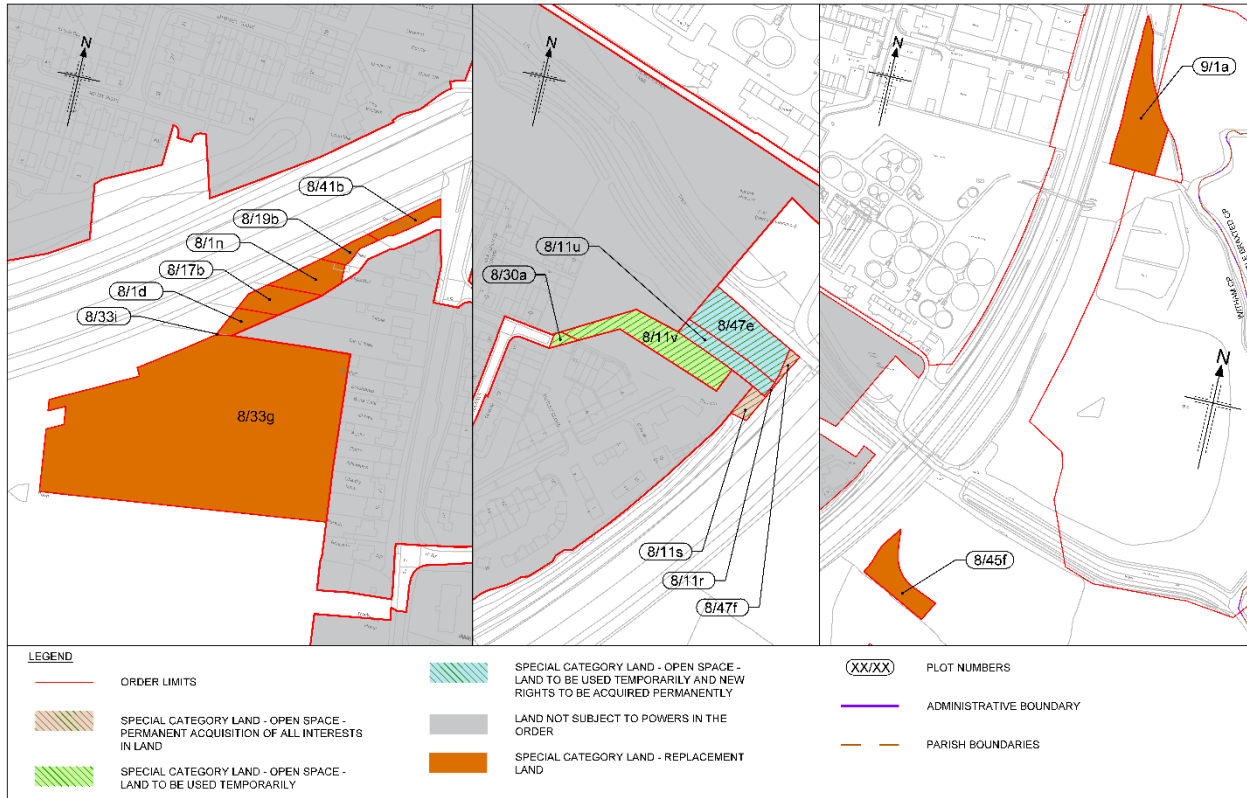


**Open Space Area 6 - Land North of Market Lane, Witham (Land Plan Plots 8/44e47e, 8/44q47f, 8/11r, 8/11s, 8/11u, 8/11v, 8/30a)**

2.1.222.1.21 The majority of this area ~~is was previously~~ owned by Braintree District Council, save for plot 8/30a (a temporary powers plot) which is currently owned by Bloor Homes Limited, Templar's Green Management Company Limited, and provides amenity land for the residents of the Market Lane area of Witham. It lies to the west of the A12 and south of the river Brain. Ownership of plots south of and adjacent to the River Brain are now owned by whereas transferred to Witham Town Council following recent changes to ownership. A small area of freehold acquisition (8/11s, 8/11r and 8/47f) is required for a new drainage pipe, as well as temporary access over the open space for the construction of the widened bridge carrying the A12 over the river Brain on neighbouring land. Replacement Land for these plots will be provided North of Whetmead LNR (9/1a) and land South of River Brain next to footpath 121\_101 (8/45f).

**Plate 2.4 Open Space Area 6 - Land north of Market Lane**

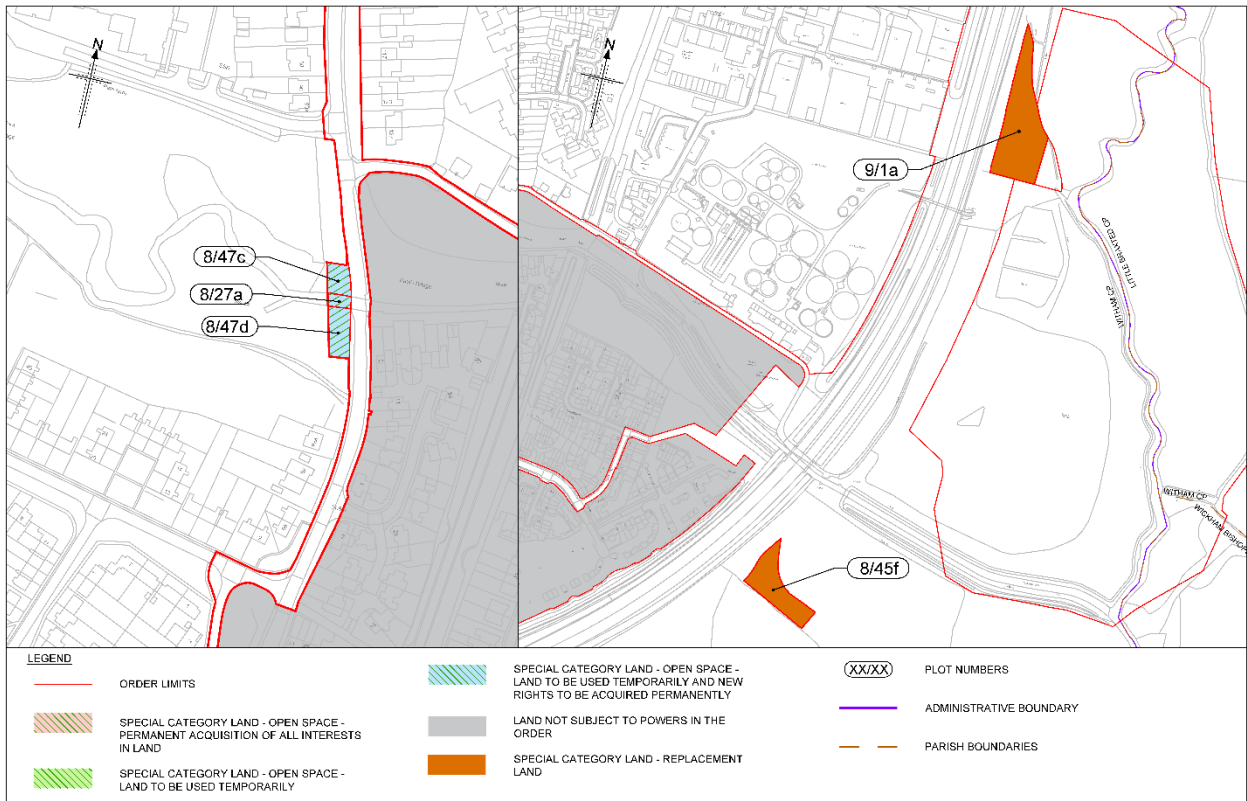




**Open Space Area 7 - Land at Maldon Road Crossing of River Brain, Witham (Land Plan Plots 8/44h47c, 8/44i47d and 8/27a)**

[2.1.232.1.22](#) Permanent new rights are required to install telecommunication cables under the river Brain at the north west side of the bridge where Maldon Road crosses the river Brain. The land on either side of Maldon Road and on either side of the river Brain forms part of an open space owned by ~~Braintree District Council~~ ~~Witham Town Council~~. The proposed scheme will provide ~~Replacement Land at Whetmead~~ ~~Replacement Land north of Whetmead LNR~~ and land ~~South of River Brain next to footpath 121\_101~~ as restrictive covenants are sought to protect the installed apparatus, as well as the permanent new rights for their installation.

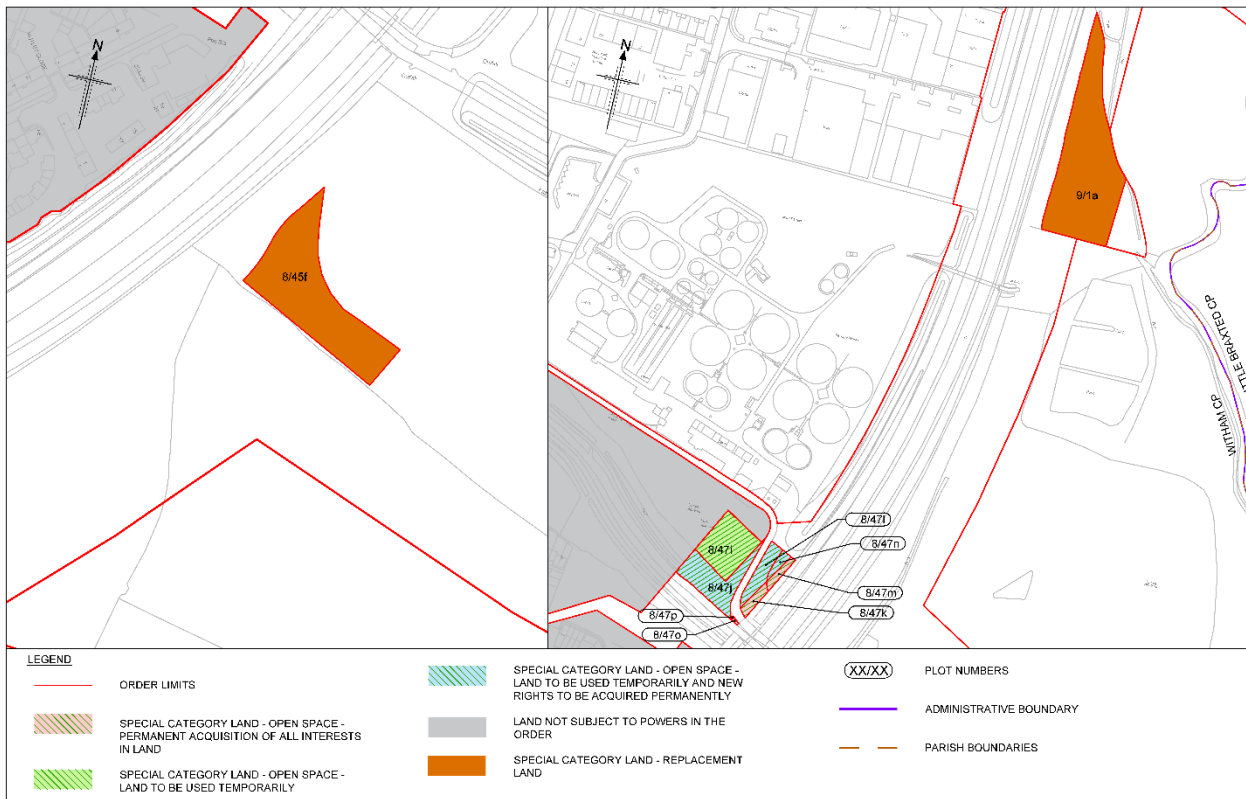
**Plate 2.5 Open Space Area 7 - Maldon Road and River Brain**



**Open Space Area 8 - River Brain, Witham (Land Plan Plots [8/11y\\_47i](#), [8/11z47j](#), [8/11aa47k](#), [8/11ab47l](#), [8/11ac47m](#), [8/11ad47n](#), [8/11af47o](#), [8/11ah47p](#))**

[2.1.242.1.23](#) Permanent new rights and temporary possession is required for utility diversions on the west side of the A12 where it crosses the River Brain and Blackwater Lane. This land forms part of ~~Braintree District~~ Witham Town Council's riverside walkway and open space at Witham, providing the principal entrance to the Whetmead Nature Reserve on the east side of the A12. The proposed scheme will provide Replacement Land north of at Whetmead LNR and land South of River Brain next to footpath 121\_101.

**Plate 2.6 Open Space Area 8 - River Brain**



**Open Space Areas 9 and 10 - Whetmead Local Nature Reserve (Land Plan Plots 8/47a, 8/47b, 9/10d, 9/10e, 9/11a, 9/11b)**

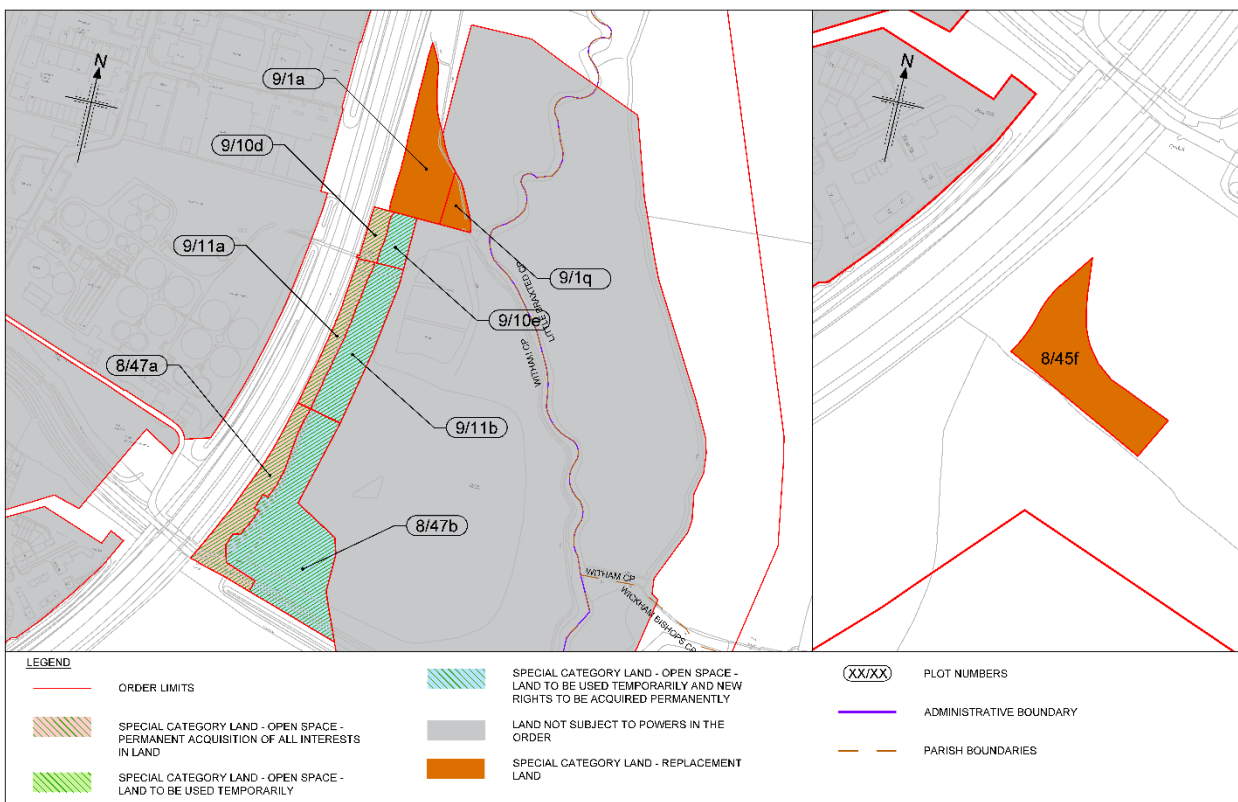
[2.1.252.1.24](#) On the eastern side of the existing A12, accessed via Blackwater Lane and the bridge carrying the A12 over the River Brain and Blackwater Lane is the Whetmead Local Nature Reserve (LNR). The freehold is owned by Braintree District Council and leased to Witham Town Council. The nature reserve is a former waste disposal site and has been landscaped. To the north of the land owned by Braintree District Council is part of the former sewage works that were severed by the A12 when the Witham bypass was constructed in the 1960s. These area comprising plots 9/10d and 9/10e are currently in Anglian Water Limited's ownership. It is now used as open space by the public on an informal basis.

[2.1.262.1.25](#) Freehold acquisition is proposed of 6639m<sup>2</sup> of land from Braintree District Council/Witham Town Council and 1048m<sup>2</sup> of land from Anglian Water Services Limited. Replacement Land will be provided at land North the LNR between the A12 and River Blackwater and just south of a willow plantation for Witham Town Council (plot 9/1a) and Anglian Water (plot 9/1q), this land is currently owned by National Highways. ~~A second and third parcel of Replacement Land for Witham Town Council (plot 9/1h, plot 9/1o) will be provided north of the Willow~~

plantation, close to Junction 22 and adjacent to Public Right of Way 121\_103. A third-second parcel of Replacement Land for Witham Town Council (plot 8/45f) will be provided south of the River Brain. The land now proposed is near to the existing Whetmead Local Nature Reserve. No additional land is required, however the purposes for which the land is being used has changed being initially proposed for landscaping and now repurposed as Replacement Land.

2.1.272.1.26 In addition new rights are sought over the Whetmead Nature Reserve to relocate existing services that are in the Whetmead Nature Reserve (plots 8/47b, 9/10e and 9/11b). As the services will be buried and replace existing service conduits, Replacement Land is not proposed.

**Plate 2.7 Open Space Areas 9 and 10 - Whetmead Local Nature Reserve**



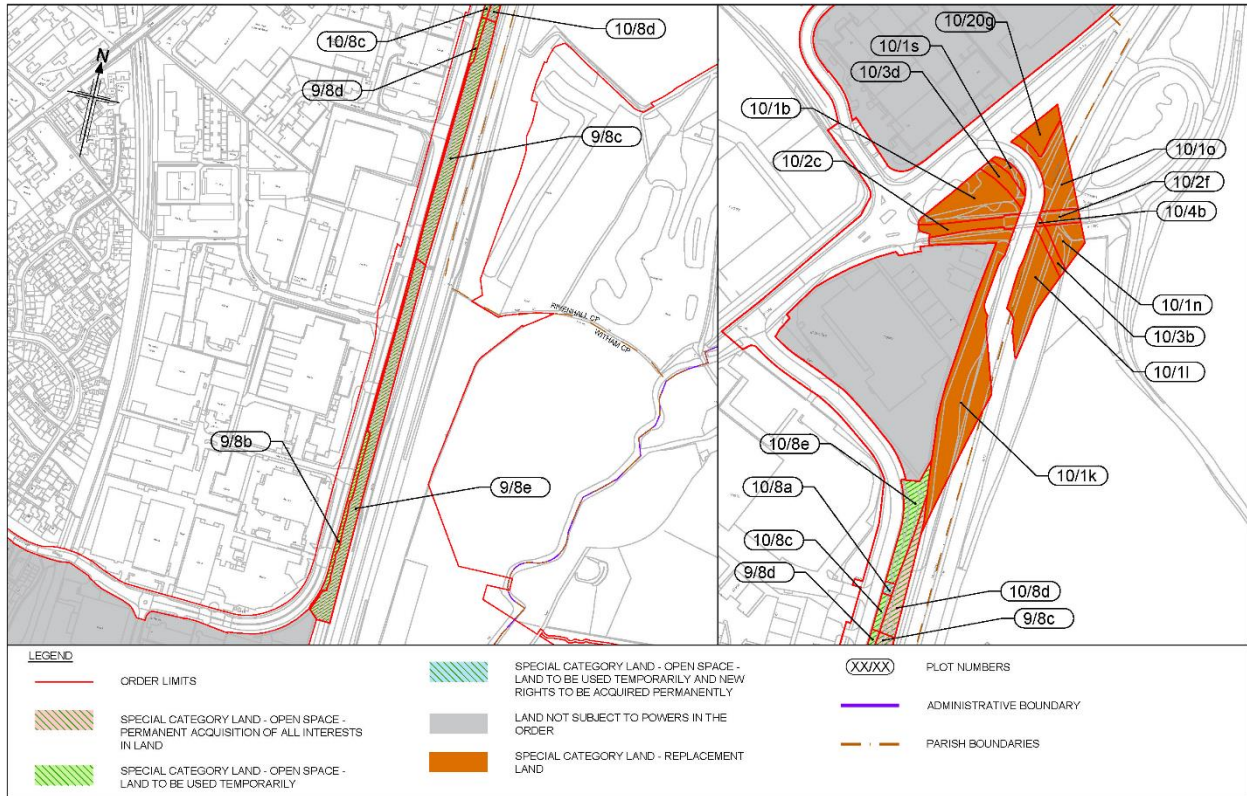
**Open Space Area 11 - Freebournes Road, Witham (Land Plan Plots 9/8b, 9/8c, 9/8d, 9/8e, 10/8a, 10/8c, 10/8d, 10/8e)**

2.1.282.1.27 On the east side of the existing A12, between the A12 and the parallel Freebournes Road is an area of landscaped land formed principally of grass land with some planting. This land is required in part for temporary access for construction purposes but also for the widening of the A12 at this location. Replacement Land will be provided to the owner of the open space (Braintree District Council) on land to the north of Freebournes Road, currently forming



part of the existing A12 in the vicinity of the existing Colemans Bridge (plots number 10/1b, 10/2c, 10/3b, 10/1s, 10/20g, 10/1o, 10/2f, 10/4b 10/1n, 10/3b, 10/1l and 10/1k). This part of the A12 will be closed and diverted at this location.

**Plate 2.8 Open Space Area 11 - Freebournes Road, Witham**

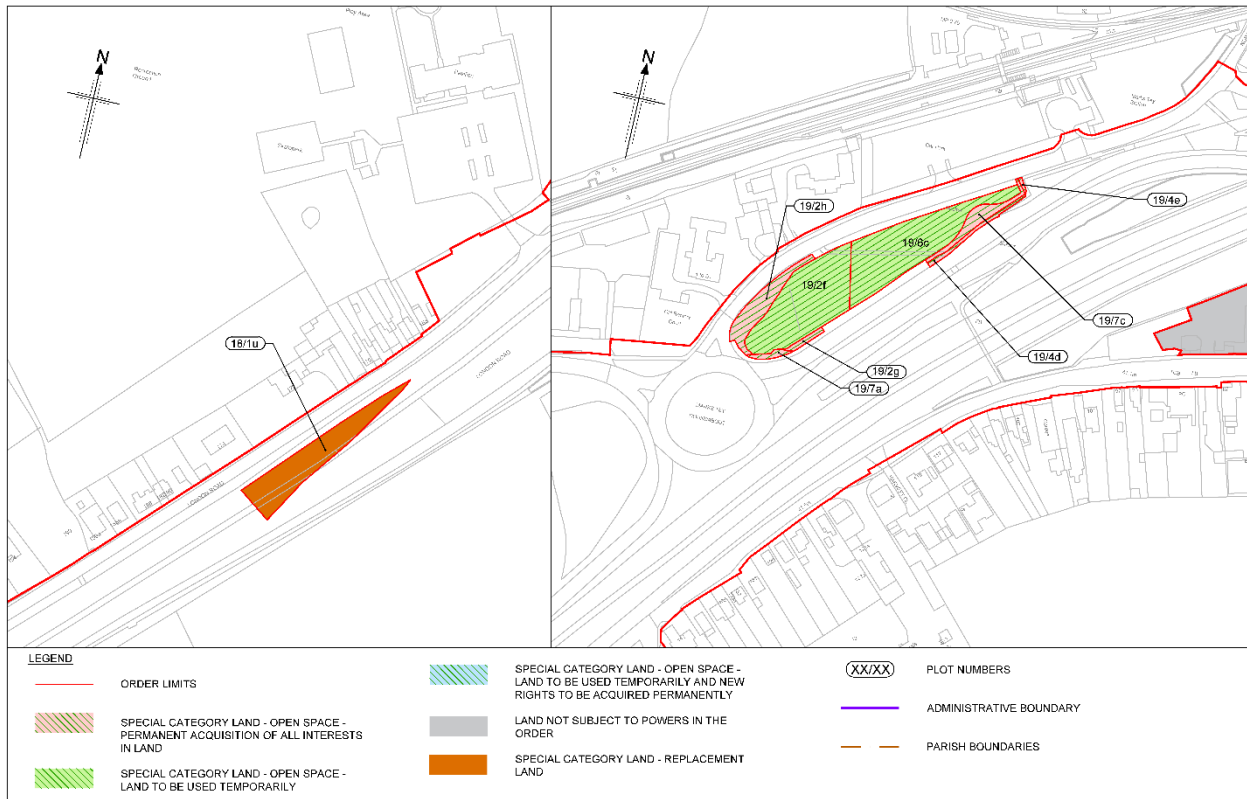


**Open Space Area 12 - Station Road, Marks Tey (Land Plan Plots 19/2f, 19/2g, 19/2h, 19/4d, 19/4e, 19/6c, 19/7a, 19/7c)**

[2.1.292.1.28](#) Land between Station Road, Marks Tey and the existing A120 forms part of a landscaped amenity area which functions as highway verge and is owned by National Highways, Essex County Council being the highway authority.

[2.1.302.1.29](#) Replacement Land will be provided at ~~two~~ ~~one~~ ~~locations~~ (plots number 18/1u, 18/1v and 19/1h) south of the existing location of the open space to be used for the proposed scheme.

**Plate 2.9 Open Space Area 12 - Station Road Marks Tey**

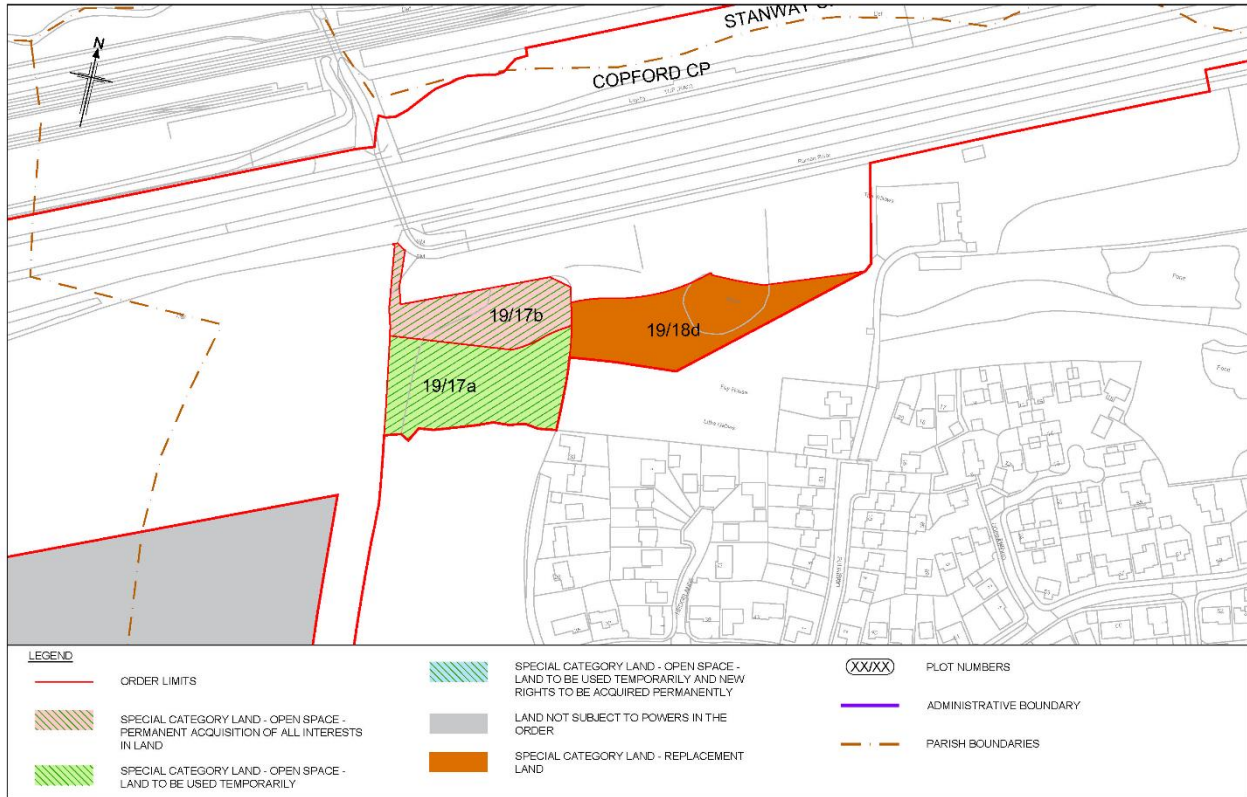


**Open Space Area 13 - Copford Recreation Ground (Queensbury Avenue Playground) (Land Plan Plot 19/17a, 19/17b)**

[2.1.312.1.30](#) Land to the north of the existing Copford Recreation Ground/Queensbury Avenue Playground open space, owned and managed by Copford Parish Council, is required for the diversion of the Roman River, which runs parallel to and to the south of the A12 at this location. Land immediately to the east of the council's land (plot number 19/18d) has been identified as suitable Replacement Land to be provided to the parish council. This area is in Copford with Easthorpe Parish Council's ownership.

[2.1.322.1.31](#) In addition temporary powers to access the land will be relied on during construction over an area of woodland owned by the parish council south of the Roman river for the installation of ecological mitigation measures such as bat boxes.

**Plate 2.10 Open Space Area 13 - Copford Recreation Ground**



[2.1.332.1.32](#) Table 2.1 summarises each plot of land characteristics, powers sought and existing ownership:

**Table 2.1 Special Category Land required for the proposed scheme**

Special Category Land - Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
<a href="#">River Chelmer, Boreham (Area 1)</a>	<a href="#">David Lawrence Bolton and Stephen John Bolton</a>	<a href="#">New rights (Temporary powers for construction)</a>	<a href="#">1/11g</a>	<a href="#">326</a>	<a href="#">0.03</a>
<a href="#">River Chelmer, Boreham (Area 1)</a>	Company of Proprietors of The Chelmer and Blackwater Navigation Limited	New rights (temporary powers for construction)	<a href="#">1/14a, 1/14b</a>	<a href="#">8391165</a>	<a href="#">0.0812</a>

## Replacement Land Statement

Special Category Land - Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Gershwin Boulevard, Witham (1) <b>(Area 2)</b>	Patricia Jane Gooding and Josephine Alberta Ann Witten	Freehold  New rights (temporary powers for construction)  Temporary possession during construction	7/16a, 7/16d, 7/16e, 7/16f, 7/16g,	10073	1.01
	Essex County Council	Freehold  Temporary possession during construction	7/17a, 7/17d	277	0.03
Gershwin Boulevard, Witham (2) <b>(Area 3)</b>	Braintree District Council	Freehold  Temporary possession during construction	7/19c, 7/19d, 7/19g, 7/19h, 8/11a, 8/11c	22039	2.20
Olivers Drive, Witham <b>(Area 4)</b>	Braintree District Council	Freehold  New Rights (Temporary powers during construction)  Temporary possession	8/11b, 8/11d, 8/11f, 8/11g, 8/11aj, 8/11al, 8/11am,	14044	1.40
	Taylor Wimpey UK Limited	Freehold  Temporary possession during construction	8/12a, 8/12b, 8/12d, 8/13b	121	0.01
	Patricia Jane Gooding and Josephine Alberta Ann Witten	Freehold	8/14a	12	0.001
Blackwater Rail Trail, Witham	Essex County Council	Freehold	8/3a, 8/6b,	7255	0.73



Replacement Land Statement

Special Category Land - Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
<b>(Area 5)</b>		New rights (Temporary powers for construction)	8/6d, 8/6h, 8/6i, 8/6j, 8/6k, 8/6m,		
Land north of Market Lane, Witham <b>(Area 6)</b>	Braintree District Council	Freehold New rights (temporary powers for construction)  Temporary possession during construction	<del>8/11o,</del> <del>8/11q,</del> 8/11r, 8/11s, 8/11u, 8/11v	<a href="#">37042225</a>	0.37
	<a href="#">Witham Town Council</a>	<a href="#">Freehold</a> <a href="#">New rights</a> <a href="#">(temporary powers for construction)</a>	<a href="#">8/47e, 8/47f</a>	<a href="#">2,0281479</a>	<a href="#">0.2</a>
	Bloor Homes Limited, Templar's Green Management Company Limited	Temporary possession during construction	8/30a	81	0.01
Land at Maldon Road crossing of River Brain, Witham <b>(Area 7)</b>	<del>Braintree District Council</del> <a href="#">Witham Town Council</a>	New Rights (Temporary powers for construction)	<del>8/11h, 8/11i,</del> 8/27a, <a href="#">8/47c, 8/47d</a>	<a href="#">524464</a>	0.05
River Brain, Witham <b>(Area 8)</b>	<del>Braintree District Council</del> <a href="#">Witham Town Council</a>	Freehold New Rights (temporary powers during construction)  Temporary possession during construction	<del>8/11y,</del> <del>8/11z,</del> <del>8/11aa,</del> <del>8/11ab,</del> <del>8/11ac,</del> <del>8/11ad,</del> <del>8/11af,</del> <del>8/11ah</del> <a href="#">8/47i,</a> <a href="#">8/47j, 8/47k,</a> <a href="#">8/47l,</a> <a href="#">8/47m,</a>	3728	0.37

Replacement Land Statement

Special Category Land - Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
			<a href="#">8/47n</a> , <a href="#">8/47o</a> , <a href="#">8/47p</a>		
Whetmead Nature Reserve, Witham <b>(Area 9)</b>	Braintree District Council /Witham Town Council	Freehold	8/47a, 8/47b, 9/11a, 9/11b	24361	2.44
Whetmead Nature Reserve, Witham <b>(Area 10)</b>	Anglian Water Limited	Freehold	9/10d, 9/10e	2449	0.24
Land at Freebournes Road, Witham <b>(Area 11)</b>	Braintree District Council	Freehold New Rights (temporary powers during construction)  Temporary possession during construction	9/8b, 9/8c, 9/8d, 9/8e, 10/8a, 10/8c, 10/8d, 10/8e	16414	1.64
Land at Station Road Marks Tey <b>(Area 12)</b>	National Highways/ Essex County Council (as highway authority)	Freehold Temporary possession during construction	19/2f, 19/2g, 19/2h, 19/4d, 19/4e, 19/6c, 19/7a, 19/7c	1026	0.10
Copford Recreation Ground <b>(Area 13)</b>	Copford with Easthorpe Parish Council	Freehold Temporary powers for installation of Bat Boxes	19/17a, 19/17b	6051	0.61

### 3 The Legal Requirement for Replacement Land

#### 3.1 Introduction

3.1.1 The Proposed Scheme comprises a NSIP for alteration to the A12, together with a second NSIP being a diversion of a high-pressure gas main. This means consent is required to be sought by an application for a Development Consent Order (DCO) under the powers of the PA 2008. The legal requirements and associated guidance for projects that requires acquisition of public open space

are set out below. Under the PA 2008 process, land provided in replacement of the special category land is called Replacement Land.

## 3.2 Planning Act 2008

3.2.1 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.

3.2.2 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.

3.2.3 The compulsory acquisition of land is covered in sections 122-131 of the PA 2008. Section 122 sets out the general compulsory acquisition tests and section 131 covers compulsory acquisition of the freehold of special category land. Section 132 covers compulsory acquisition of rights over special category land. Section 122 has been amended by the Localism Act 2011 and Sections 131 and 132 have been amended by the Growth and Infrastructure Act 2013; the extracts from the PA 2008 provided below are as amended by these later Acts.

3.2.4 The general power of compulsory acquisition is in section 122 of PA 2008:

***“122. Purpose for which compulsory acquisition may be authorised***

*An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*

*The condition is that the land—*

*is required for the development to which the development consent relates,*

*is required to facilitate or is incidental to that development, or*

*is Replacement Land which is to be given in exchange for the order land under section 131 or 132.*

*The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.”*

3.2.5 For freehold acquisition of common land, open spaces or relevant allotments, section 131 of the PA 2008 applies:

***131. Commons, open spaces etc: compulsory acquisition of land***

*This section applies to any land forming part of a common, open space or fuel or field garden allotment.*

*This section does not apply in a case to which section 132 applies.*

*An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, unless—*

*the Secretary of State is satisfied that one of subsections (4) to (5) applies, and*

*that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.*

*This subsection applies if—*

*Replacement Land has been or will be given in exchange for the order land, and*

*the Replacement Land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.*

*This subsection applies if—*

- (i) the order land is, or forms part of, an open space,*
- (ii) none of the order land is of any of the other descriptions in subsection (1),*

*(iii) either—*

*there is no suitable land available to be given in exchange for the order land, or*

*any suitable land available to be given in exchange is available only at prohibitive cost, and*

*it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure.*

*This subsection applies if—*

- (a) (a) order land is, or forms part of, an open space,*
- (b) none of the order land is of any of the other descriptions in subsection (1), and*
- (c) the order land is being acquired for a temporary (although possibly long- lived) purpose.*

*This subsection applies if—*

*the order land 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.*

*[subsections 6-10 deleted by s.24(2)(c) of the Growth and Infrastructure Act 2013]*

- (11) If an order granting development consent authorises the compulsory acquisition of land to which this section applies, it may include provision—*

- (a) *for vesting Replacement Land given in exchange as mentioned in subsection (4)(a) in the prospective seller and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and*
- (b) *for discharging the order land from all rights, trusts and incidents to which it is subject.*

(12) *In this section —*

*“common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);*

*“the order land” means the land authorised to be compulsorily acquired;*

*“the prospective seller” means the person or persons in whom the order land is vested;*

*“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.”*

3.2.6 For acquisition of new rights over common land, open spaces or relevant allotments, S132 of the PA 2008 applies:

**132. Commons, open spaces etc: compulsory acquisition of rights over land**

- (1) *This section applies to any land forming part of a common, open space or fuel or field garden allotment.*
- (2) *order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, unless—*
  - (a) *the Secretary of State is satisfied that one of subsections (3) to (5) applies, and*
  - (b) *that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.*
- (3) *This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—*
  - (a) *the persons in whom it is vested,*
  - (b) *other persons, if any, entitled to rights of common or other rights, and*
  - (c) *the public.*
- (4) *This subsection applies if—*
  - (a) *Replacement Land has been or will be given in exchange for the order right, and*

- (b) *the Replacement Land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).*

*This subsection applies if—*

- (a) *the order land is, or forms part of, an open space,*
- (b) *none of the order land is of any of the other descriptions in subsection (1),*
- (c) *either—*
- (i) *there is no suitable land available to be given in exchange for the order right, or*
- (ii) *any suitable land available to be given in exchange is available only at prohibitive cost, and*
- (d) *it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure.*

*This subsection applies if—*

*the order land is, or forms part of, an open space,*

*none of the order land is of any of the other descriptions in subsection (1), and*

*the order right is being acquired for a temporary (although possibly long-lived) purpose.*

- (5) *This subsection applies if—*

- (a) *the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and*
- (b) *the giving of other land in exchange for the order right 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.*

*[subsections 6-10 deleted by s.24(3)(c) of the Growth and Infrastructure Act 2013]*

*If an order granting development consent authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, it may include provision—*

*If an order granting development consent authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, it may include provision—*

*for vesting Replacement Land given in exchange as mentioned in*



*subsection (4)(a) in the persons in whom the order land is vested and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and*

*for discharging the order land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the order right.*

*In this section —*

*“common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);*

*“the order land” means the land to which this section applies over which the order right is to be exercisable;*

*“the order right” means the right authorised to be compulsorily acquired;*

*“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—*

*D.6 the persons in whom the order land is vested,*

*D.7 the persons, if any, entitled to rights of common or other rights over the order land, and*

*D.8 the public.”*

3.2.7 The meanings in the 1981 Act referred to in the first bullet of subsection 12 of both Sections 131 and 132 are:

*“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green,*

*“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act,*

*“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.”*

### **3.3 National Networks National Policy Statement (NNNPS)**

3.3.1 The NNNPS addresses the PA 2008 by requiring an assessment of Open space loss and confirming with the local planning authority that the land is needed. Paragraphs 5.166 and 5.167 set out the assessment and required replacement for open space:

- *“5.166 - Existing open space, sports and recreational buildings and land should not be developed unless the land is surplus to requirements or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. Applicants considering proposals which would involve developing such land should have regard to any local authority’s assessment of need for such types of land and buildings.*

- *5.167 - During any pre-application discussions with the applicant, the local planning authority should identify any concerns it has about the impacts of the application on land-use, having regard to the development plan and relevant applications, and including, where relevant, whether it agrees with any independent assessment that the land is surplus to requirements. These are also matters that local authorities may wish to include in their Local Impact Report which can be submitted after an application for development consent has been accepted.”*

- 3.3.2 The Paragraph 5.174 of the NNNPS states : *“The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land, including playing fields, unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements, or the Secretary of State determines that the benefits of the project (including need) outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities.”*
- 3.3.3 Paragraph 5.175 of the NNNPS states: *“Where networks of green infrastructure have been identified in development plans, they should normally be protected from development, and, where possible, strengthened by or integrated within it. The value of linear infrastructure and its footprint in supporting biodiversity and ecosystems should also be taken into account when assessing the impact on green infrastructure.”*
- 3.3.4 Paragraph 5.180 of the NNNPS states: *“Where green infrastructure is affected, applicants should aim to ensure the functionality and connectivity of the green infrastructure network is maintained and any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space, including appropriate access to new coastal access routes, National Trails and other public rights of way”.*
- 3.3.5 The NNNPS sets out in the paragraphs listed above how section 131 and 132 of the PA 2008 should assess, discuss and mitigate the impacts that a road scheme can have on Open Spaces. The proposed scheme does impact open space and on section 3.2 of this document the Applicant sets out how it identified the open spaces, the engagement with the respective authorities about the nature and use of these open spaces, an assessment of the benefits of the proposed scheme, including need, outweighing the potential loss of open space and finally the area of land the applicant proposes to replace the loss of open space.
- 3.3.6 This document does not include the relevant Local Authority's own assessment or an independent assessment of the Open Space to be a surplus. The proposed scheme took a precautionary approach and considers that the need for the scheme outweigh the potential loss of Open Space and in accordance with section 131 of the PA 2008 and is proposing to provide Replacement Land that is no less advantageous in nature and area than the Open Space lost.



### 3.4 Guidance on Compulsory Acquisition Process – DCLG 2013

Further detail is provided by the Department for Communities and Local Government (DCLG) in ‘Guidance related to procedures for the compulsory acquisition of land’ September 2013, in which the requirements regarding special category land are brought together in Annex A.

#### **“Annex A: Special categories of land**

1. *Certain special categories of land are subject to additional provisions in the Planning Act where it is proposed that they should be compulsorily acquired. This includes the possibility of any compulsory acquisition provision in the development consent order being subject to special parliamentary procedure.*
2. *Special parliamentary procedure requires those elements of a development consent order covering the compulsory acquisition of special land to be subject to further scrutiny by Parliament before it can come into effect.*
3. *Following the amendments to the Planning Act made by the Growth and Infrastructure Act 2013 the compulsory acquisition of the following types of land may, in certain cases, be subject to special parliamentary procedure:*
  - *[...];*
  - *Land forming part of a common (including a town or village green), open space, or fuel or field garden allotment (sections 131 and 132).*

*For applications for development consent made after the commencement of the Growth and Infrastructure Act, special parliamentary procedure will no longer apply where the land being acquired is held by a local authority or a statutory undertaker. Special parliamentary procedure will still apply, however, to land held by a local authority or statutory undertaker if that land is common land, open space, or fuel or field garden allotments and protected by sections 131 and 132.*

#### **National Trust Land**

*[.....]*

#### **Commons (including town or village greens), open space, or fuel or field garden allotments**

*Sections 131 and 132 of the Planning Act make provision for special parliamentary procedure to apply where a development consent order authorises the compulsory acquisition of land, or rights over land, forming part of a common, open space, or fuel or field garden allotment.*

*Special p Special parliamentary procedure will apply in such cases unless the Secretary of State is satisfied that one of the following circumstances applies:*

- *Replacement Land has been, or will be, given in exchange for land being compulsorily acquired (sections 131(4) or 132(4));*
- *the land being compulsorily acquired does not exceed 200 square metres in extent or is required for specified highway works, and the provision of land in exchange is unnecessary in the interests of people entitled to certain rights or the public (sections 131(5) or 132(5));*
- *for open space only, that Replacement Land in exchange for open space land being compulsorily acquired is not available, or is available only at a prohibitive cost, and it is strongly in the public interest for the development to proceed sooner than would be likely if special parliamentary procedure were to apply (sections 131(4A) or 132(4A));*
- *for open space only, if the land, or right over land, is being compulsorily acquired for a temporary purpose (sections 131(4B) or 132(4B)).*

*The last two of these circumstances were added by the Growth and Infrastructure Act. This Act also removed the separate procedural requirements for issuing a certificate where the Secretary of State is of the view that one of the circumstances described above applies. Instead, these matters will be considered and determined as part of the development consent order application process and recommendations provided to enable the Secretary of State to reach a view.*

## **Replacement Land**

*Where either section 131(4) or 132(4) of the Planning Act applies, the Secretary of State will have regard to such matters as relative size and proximity of the Replacement Land when compared with the land it is proposed to compulsorily acquire through the development consent order.*

*Land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as Replacement Land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases where a current use of proposed Replacement Land is temporary (e.g. pending development). In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future.*

## **Other provisions**

*Where either section 131(5) or 132(5) of the Planning Act applies, the Secretary of State will need to be satisfied that both criteria are met:*

- *the order land (in total) 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.*

*In coming to a view as to whether the criteria are met, the Secretary of State will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, the Secretary of State may be reluctant to be satisfied in terms of section 131(5) or 132(5)."*

### 3.5 Clarifications from the Planning Inspectorate

3.5.1 The Planning Inspectorate has provided clarification letters on some of these points.

3.5.2 The letter of 24 October 2014 from the Planning Inspectorate to the Department for Communities and Local Government clarifies the arrangements for applications proposing compulsory acquisition of open space and/or rights in open space, taking account of the amendments made by the Growth and Infrastructure Act 2013. This includes the following:-

#### **“Approach to applications which engages s.131 and s.132 in relation to open space”**

##### **Pre-application**

*Applications which include a request for compulsory acquisition and where the land includes Special Category Land (such as open space) must be accompanied by (amongst other things) the following prescribed documents:*

- *Statement of reasons – justifying compulsory acquisition;*
- *Book of Reference – part 5 of which must specify the Special Category Land, land which could be subject to SPP and Replacement Land and the area in square metres of those plots;*
- *Funding statement indicating how compulsory acquisition will be funded; and*
- *Land plan – which must identify the Special Category Land and Replacement Land.*

We are advising applicants to provide information in the statement of reasons which will enable the Examining Authority to address the matters under sections 131 and 132 and provide a recommendation to the Secretary of State about whether the matters are satisfied.

##### **Examination**

Matters relating to sections 131 and 132 will be considered as part of the DCO examination through questions, compulsory acquisition (or other) hearings (whether or not held solely for sections 131 or 132 matters) and site inspections under the procedures established by the PA 2008 and Infrastructure Planning (Examination Procedure) Rules 2010 (as amended).

## Reporting

The Examining Authority's findings and conclusions in relation to the matters in subsections (4) to (5) of sections 131 (and subsections (3) to (5) of section 132) will be set out in the report made to the (relevant) Secretary of State. As noted above, this will be the Secretary of State with responsibility for making the decision on the infrastructure.

## Decision

In the event that the Secretary of State decides that the DCO should be made and is satisfied (having considered the Examining Authority's report) that one of the conditions applies, the DCO should record that fact."

## 3.6 Timing of provision of Replacement Land

3.6.1 In practice, the Replacement Land is made available for use by the public when the special category land is taken for the project or as soon as is practicable after that, allowing for whatever clearance, path construction, fencing, planting, etc may be required to make the land suitable for such access. A summary of the requirements for when the Replacement Land should be available for use by the public and others with rights in it can be found in Article 45 in the draft DCO:

### **"Special category land**

*(1) On the exercise by the undertaker of the relevant Order powers, the special category land identified in Part 1 of Schedule 8 is not to vest in the undertaker, and the undertaker may not acquire any rights over the special category (rights) land identified in Part 2 of Schedule 8 until the undertaker has acquired the Replacement Land identified in Part 4 of Schedule 8 and the Secretary of State (in consultation with the relevant planning authority) has certified that a scheme for the provision of the Replacement Land as open space and a timetable for the implementation of the scheme has been received from the undertaker.."*

3.6.2 This means that the Replacement Land needs to have been acquired but is not necessarily available (or all available) for public access straight away, as long as a scheme for achieving this access has been prepared and provided to the appropriate Secretary of State, to ensure the necessary certification of or consent for the land acquisition process.

## 4 Special Category Land - Locations Appraisal and search for Replacement Land

### 4.1 Approach

4.1.1 This part of the report sets out the available baseline information on the existing status of the land areas that the proposed scheme is expected to affect, to identify which land parcels would be classed as 'special category land' under the PA 2008.

4.1.2 This information is of relevance to the following documents:

Environmental Statement (ES) ([Examination reference APP-068 to APP-248](#)~~DCO doc reference TR010060/APP/6.1~~)

[Environmental Statement Addendum \[TR010060/EXAM/10.12\]](#)

Statement of Reasons (SoR) ([Examination reference APP-042](#)~~DCO doc reference TR010060/APP/4.1~~)

[Update to Annex C – Statement of Reasons \[TR010060/EXAM/9.63\]](#)

Case for the Scheme ([Examination reference application document reference APP-249](#)~~[TR010060/APP/7.1]~~)

[Change Application Summary Report \[TR010060/EXAM/10.2\]](#)

The status of the land acquired is relevant to some of the environmental assessment topics and as the extent of proposed Replacement Land is relevant to the overall land acquisitions for the Proposed Scheme and associated changes to side roads and NMU facilities, the proposed scheme also needs to comply with the NNNPS.

4.1.3 National Highways' licence from the Department for Transport (April 2015) includes requirements to minimise environmental impacts and to protect and enhance the quality of the surrounding environment. The need for and location of Replacement Land are, therefore, of relevance both to the environmental impacts identified and to the environmental enhancements that can be delivered.

4.1.4 Although the need for and inclusion of suitable Replacement Land stems directly from the process of compulsory acquisition under the powers of the PA 2008, it can also contribute towards the wider aims of the Government's Road Investment Strategy 2 (RIS2) for the 2020 - 2025 Road Period, which include:

- *To make an extensive and effective use of environmentally and visually sensitive 'green infrastructure', modern materials and careful planting, including trees. Together, these minimise and mitigate the air, light, noise, visual, and water quality impacts of the SRN on those living or working near to it, and sustain habitats and enhanced biodiversity.*
- *Enhancements to the network create roads that fit with their surroundings, and which keep negative consequences to a minimum. In particular they have employed high standards of design, responding to place-specific issues and in keeping with the natural, built and historic environment.*
- *Accommodate the needs of motorised users, recognising that these are the vast majority of users overall.*
- *Make targeted improvements at problem locations, for example at junctions or other locations where there is a need to address safety issues, or where nonmotorized users are required to use the SRN for short distances to access rights of way on either side of the road.*



- *Secure positive environmental impacts from RIS2, and where negative impacts cannot be avoided that they should be mitigated as far as possible.*
- *Achieve No Net Loss of biodiversity over the whole Highways England soft estate by the end of RP2. No net loss of biodiversity from National Highways 's activities, both from new schemes and its operational estate*

4.1.5 The National Highways Delivery Plan 2020-2025 includes a wide range of performance intentions and indicators to reduce adverse environmental effects of the strategic highway network and improve the ability of all users to make safe use of the network and cross the network safely, including vulnerable users and cyclists.

4.1.6 The provision of Replacement Land and any enhancement work that may be required to make it suitable also align with the Design Manual for Roads and Bridges (DMRB), which provides guidance on the assessment and design for new and existing roads. Volume 10 Section 1 states the objective to “...respect the landscape character and quality of an area when designing new roads or improving existing roads. We will seek to enhance the integration of our network into rural areas using a combination of sensitive road alignment, earthworks, the use of appropriate materials and planting to minimise the adverse effects of trunk road traffic on the countryside.”

4.1.6 DMRB Volume 10 Section 2 Improving Existing Roads gives guidance on the environmental design of road improvement schemes, including junction improvements. General design principles include:

- Creating new views for road users.
- New planting to mitigate visual impact or enhance landscape structure.
- Managing existing vegetation to ensure health, growth and development.

## 4.2 Methodology to identify and assess Open Space and Replacement Land

4.2.1 The proposed scheme used variety of methods to identify open spaces affected by the proposed scheme. These included:

- review of adopted and emerging local plans allocations
- review of approved planning applications which include amenity land
- Consult LPA's GIS systems
- consult MAGIC map (<https://magic.defra.gov.uk/magicmap.aspx>)
- Review of Google Maps imagery in accordance with open space definition on Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- Site visits by members of the team

- Liaise with Local Authorities and Parishes to provide location of Open Spaces, Allotments and Common Land.

- 4.2.2 The early stages of this assessment was carried out by reviewing the local plans and committed applications, this method identified the area around Queensbury Playground in Copford (Area 13). Consulting MAGIC and GIS systems identified the Local Nature Reserve at Whetmead (Areas 9 and 10). The areas of Gershwin Boulevard/Olivers Drive, Market Lane Areas 2-4, River Brain (Areas 5-8) and River Chelmer (Area 1) were identified later on the preliminary design with utilities diversions being drawn and maturity of the design in drainage and ancillary structures.
- 4.2.3 Finally, the areas around Marks Tey Station Road (Area 12), Freebournes Road (Area 11) and Gershwin Boulevard/Olivers Drive (Areas 2-4) were identified on a precautionary basis as these are mainly highway verges, amenity land (buffer areas) or landscaped areas which are accessible to the public. Areas 2 and 3 are defined as open space in S106 Town and Country Planning Act 1990 planning agreements. Area 4 appears to be used as open space by the public and area 11 is accessible from Freebournes Road along its length and could be used for recreational purposes. The local authorities have not confirmed that these areas are open space so these are included in the Replacement Land assessment.
- 4.2.4 For each of the open space areas being lost to the proposed scheme, Replacement Land is being offered which meets the requirements of section 131 of the Planning Act 2008 and for which the Secretary of State can determine that the benefits of the proposed scheme (including need) outweighs the potential loss of open space, given the proposed provision of Replacement Land by the Applicant.

### 4.3 Identifying Replacement Land

- 4.3.1 The identification of possible Replacement Land for the areas of Open Space loss due to the proposed scheme were identified using the accumulated knowledge of the area by the applicant, applying the requirements of section 131 of the PA 2008 (no less advantageous). The Applicant considered the following the 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.
- 4.3.2 The Applicant considered the use of current National Highways land which is not required for the existing A12 or the proposed scheme, or where it was

acquiring via agreement partial parcels of land where the existing use of the land was unlikely to remain viable. These principles enabled the Applicant to find proposed Replacement Land that delivered like for like open space in nearby areas which simultaneously improves access to countryside and connectivity between communities.

4.3.3 Those undertaking the exercise carefully considered the requirements for Replacement Land as defined through section 131 of the Act.

4.3.4 The review was largely guided by:

- consideration of land that was likely to be acquired as part of the proposed scheme, which offered the potential to provide suitable Replacement Land;
- minimising impacts on existing landowners and land use, whilst still achieving the requirements of section 131 and (where relevant) section 132 PA 2008;
- locating Replacement Land as close as possible to the Open Space land to be acquired; and
- appropriate access for the owner of the Open Space and for the public.

4.3.5 The locations were initially identified from local knowledge and desktop study as being potentially suitable, due to their location, proximity to the existing Open Space land and their condition. Site visits to locations and discussions with landowners provided additional information.

## 4.4 The Open Space Land – General Considerations

4.4.1 The following sections discuss the general considerations applied to the proposals for the acquisition of (new rights over) the Open Space Land. Section 5 below deals with each of the identified areas of open space.

4.4.2 Consideration is also given to temporary powers being used over the identified Open Space land where relevant.

### Open Space - Permanent Acquisition

4.4.3 For the majority of the open space subject to powers of freehold acquisition, National Highways relies on section 131(4)(i) and (ii). National Highways believes that special parliamentary procedure will not be required because the Secretary of State will be able to satisfy that Replacement Land has been or will be given in exchange for the order land and that the Replacement Land will be vested in the prospective seller subject to the same rights trusts and incidents as attached to the area of open space being acquired.

4.4.4 National Highways will also rely on section 131(11) to discharge from the order land all trusts rights and incidents applying to the area of open space.

4.4.5 The Replacement Land in each case being offered will be no less in area than the order land which is being acquired by National Highways, it will be no less advantageous to the persons entitled to any rights over the land and to the public, on the basis that either the land will be contiguous to the area of open



space of which part is being acquired, or that access (both on foot and vehicular) will be provided to the Replacement Land.

- 4.4.6 The Replacement Land has in each case been proposed as close as possible to the open space being lost.

### **Open Space – Temporary Acquisition with rights to be acquired Permanently**

- 4.4.7 The Open Space land to be used with rights to be acquired permanently includes land required for drainage and/or utility diversions. Each of the areas of land where new rights are to be acquired is outlined in more detail in Section 5 of this report below.

- 4.4.8 For the instances where new rights are required, and section 132(4) being relied on, namely:

- Market Lane, Witham;

- the area of Blackwater Rail Trail south of Blue Mills Hill; and
- the crossing of the River Brain at Maldon Road, Braintree

- 4.4.9 Replacement Land is being provided that will be adequate to compensate the m for the disadvantages which result from the compulsory acquisition of the order right.

- 4.4.10 The land comprising part of the Blackwater Rail Trail south of Blue Mills Hill, Witham, Replacement Land will be provided to Essex County Council as a result of the need for restrictive covenants to also be imposed. Parallel to the Maldon Road, Witham where the Maldon Road crosses the River Brain, Replacement Land is proposed for the new rights sought in plots 8/41i47d and 8/41h47c. In those instances, section 132(4) will be relied upon.

- 4.4.11 For each of the other areas of open space where permanent new rights are sought, National Highways relies on section 132(3), on the basis that the order land, when burdened with the order right will be no less advantageous than it was before to the owners, those entitled to rights over it and to the public. The specific explanation for reliance on section 132(3) or 132(4), in respect of each relevant area of Open Space Land, is provided in Section 5 below.

### **Open Space – Temporary Possession**

- 4.4.12 The land required temporarily includes land that will be used during construction only to carry out construction works in relation to plots 7/16a, 7/16g, 7/17a, 7/19c, 7/19d, 8/11a, 8/11c, 8/11v, 8/41y47i, 8/11aj, 8/11am, 8/12a, 8/12b, 8/30a, 9/8b, 9/8d, 10/8c, 10/8e and 19/17a.
- 4.4.13 Following construction activities, possession will revert to the current landowner(s).
- 4.4.14 In each case the land required temporarily only is not being acquired. (Each plot would meet 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 secured for a temporary purpose).

- 4.4.15 All Open Space plots sought may be subject to temporary possession, whether also subject to proposed freehold acquisition, proposed acquisition of new rights or where powers are sought temporarily only.

## 5 Detailed analysis of Open Space Land Required for the Proposed Scheme

- 5.1.1 The plots of Open Space Land as listed in the Book of Reference [[Examination reference APP-0444TR010060/APP/4.3](#)] are summarised in this section of this report.
- 5.1.2 In addition each area is described in detail below, together with the reasons for its being included in Order land, and, where appropriate, its proposed Replacement Land.
- 5.1.3 The proposed scheme design has sought to minimise the extent of special category land required or affected, whilst ensuring that delivery of the proposed scheme is still practicable. Save for:
- the River Chelmer (Open Space Area 1) which is required for new rights of drainage in to the River Chelmer);
  - that part of the Blackwater Rail Trail south of Blue Mills Hill (Open Space Area 5); which is required for new rights for utilities diversion;
  - land at Maldon Road, Witham which is required for new rights for utilities diversion (Open Space Area 7); and
  - land at Station Road, Marks Tey (Open Space Area 12) which is required for minor highway widening
- 5.1.4 the Open Space Land is required for widening the existing carriageway of the A12. As the majority of the areas of Open Space affected by the proposed scheme lie adjacent to the existing A12 it has proved impossible to avoid affecting the Open Space Land whilst still achieving the objectives of the proposed scheme. For most areas it would appear that the Open Space has become established since the A12 was improved in the 1960s to form the existing A12 trunk road.

### Open Space land required for the proposed scheme

- 5.1.5 The following sections provide the analysis of each proposed acquisition of Open Space Land and the reason why in each case SPP is not required. This in each case by reference to a table setting out the area of the open space, the powers sought and the works to which they relate. Each relevant plot is identified by reference to the plot number given in National Highways' Book of Reference ([Examination reference DCO doc reference TR010060/APP/4.3APP-044](#)) and Land Plan ([Examination reference DCO doc reference TR010060/APP/2.7AS-009](#)). The relevant statutory tests are then applied to each of the areas.

The given the shape and extent of some of the plots proposed as Replacement Land these, in some cases, include replacement of land across different areas and are repeated in more than one section. The tables included in Appendix A consolidate this information.

## 5.2 Open Space Area 1 - River Chelmer

**Table 5.1 Open Space Area 1 - River Chelmer, Boreham**

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
<a href="#">River Chelmer, Boreham and tow path</a>	<a href="#">David Lawrence Bolton and Stephen John Bolton</a>	<a href="#">New Rights (temporary powers for construction)</a>	<a href="#">1/11g</a>	326	0.03
<a href="#">River Chelmer, Boreham and tow path</a>	Company of Proprietors of The Chelmer and Blackwater Navigation Limited	New Rights (temporary powers for construction)	<a href="#">1/14a, 1/14b</a>	<a href="#">8391165</a>	<a href="#">0.0812</a>
Replacement land proposed	Not applicable	none	-	-	-

### Why are the new rights required?

**5.2.2** The plots are required for a new surface water drain in to the River Chelmer from an attenuation pond to be provided as part of the proposed scheme.

### What Replacement Land is proposed?

**5.2.3** As only new rights are being sought and the land will not be materially altered or affected following their installation, no Replacement Land is proposed. Temporary powers to use and take possession of the land will be relied on during construction.

### Applying the Statutory Tests

**5.2.4** The Applicant is relying on section 132(3) of the PA 2008. The Applicant believes that *the land, when burdened with the right, will be no less advantageous than it was before to the current owner or the public because the*

use of the tow path and the River helmer will not be materially affected by the installation of the proposed works or the imposition of the new rights to use and maintain the new drain which will be installed under the existing tow path.

### No less advantageous to the public

- 5.2.5 In considering whether the proposed installation of new drain will not make the use or enjoyment of the land any less advantageous. The tow path and river will be capable of being used as they were before the proposed drain was installed.

### Condition and use

- 5.2.6 The land is currently part of the River Chelmer and its adjacent tow path.

### Designations

- 5.2.7 The land is and will remain in the Chelmer and Blackwater Navigation Conservation Area.

## 5.3 Open Space Areas 2 - 4 - Gershwin Boulevard and Olivers Drive, Witham

**Table 5.2 Open Space Areas 2 - 4 - Gershwin Boulevard and Olivers Drive, Witham**

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
<b>(Area 2)</b> Gershwin Boulevard, Witham (1)  <b>and (Area 4)</b> Olivers Drive, Witham	Patricia Jane Gooding and Josephine Alberta Ann Witten	Freehold	7/16d, 7/16f 8/14a	6421	0.64
Replacement land proposed	Andrew Ferguson Wood	Freehold	8/33f	6678	0.67
<b>(Area 2)</b> Gershwin Boulevard, Witham (1)	Essex County Council	Freehold	7/17d	158	0.02
Replacement land proposed	Robert Alexander Buchanan, Harry Christopher Buchanan and Elizabeth	Freehold	8/43d, 8/43e, 8/44c, 8/45e  (as part of land provided for Open	4915	0.49

Replacement Land Statement

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
	Anne Buchanan		Space Area 5)		
<b>(Area 3)</b> Gershwin Boulevard, Witham (2)	Braintree District Council	Freehold	7/19g, 7/19h,	8295	0.83
<b>(Area 4)</b> Olivers Drive, Witham	Braintree District Council	Freehold	8/11b, 8/11d	7250	0.73
Replacement land proposed	National Highways, Robert George Ward, Janet Beryl Whittle, Victoria Lyas and Stephen Lyas, Julian Graham Whittle and Danielle Whittle, Andrew Ferguson Wood, Stephen Peter Butcher and Karen Anne Butcher	Freehold	8/1d, 8/17b, 8/18b, 8/19b, 8/33g, 8/33i, 8/41b	16365	1.6
<b>(Area 4)</b> Olivers Drive, Witham	Taylor Wimpey UK Limited	Freehold	8/12d, 8/13b	91	0.01
Replacement land proposed	Andrew Ferguson Wood	Freehold	8/33m	101	0.01

**Plots for which Replacement Land is not to be provided:**

- 5.3.2 In addition new rights are sought over plots 7/16e, 8/11a1, 8/11f and 8/11g. No Replacement Land is proposed in relation to the acquisition of those new rights.
- 5.3.3 Temporary possession powers are sought over each the plots listed above. In addition, only temporary powers are sought over the following plots: 7/16a,

7/16g, 7/17a, 7/19c, 7/19d, 8/11a, 8/11/aj, 8/11am, , 8/11c, 8/12a and 8/12b. Each of Areas 2-4 form landscaping, amenity and grassed areas between Gershwin Boulevard/Olivers Drive and the A12 Witham Bypass. A small wooded area of more established trees is south of Olivers Drive. The areas do not have any facilities for public recreation but can be used for dog walking.

- 5.3.4 Public footpath 121\_95 crosses Area 4 south of Olivers Drive but is not readily discernible on the ground. This route will be stopped up and diverted on to a new surfaced route to connect Olivers Drive and the proposed Gershwin Bridge over the A12 which will significantly improve the conditions for using footpath 121\_95 to access the countryside south of the A12. The improved route will also provide public access to the replacement open space south of the A12.

### **Why is it required?**

- 5.3.5 The Open Space to be acquired permanently is needed for the widening of the existing A12 at Witham, adjoining Open Space Areas 2, 3 and 4. Without the open space in these areas being secured, the A12 cannot be widened to three lanes northbound.
- 5.3.6 For the land at Olivers Drive (Area 4) freehold acquisition is required for the diversion of public right of way 121\_95, a public footpath that extends from Olivers Drive north of the A12 south to the B1018 Maldon Road south of the A12. The diverted footpath will cross the A12 by a new bridge to be constructed as part of the proposed scheme. The footpath will also be extended to provide a link to the existing footway on the east side of Gershwin Boulevard.
- 5.3.7 Within Area 4 diversion of existing underground utility apparatus is also proposed. As the apparatus are already in the Order Land it is considered the land will be no less advantageous than before, following the creation of the new rights sought.
- 5.3.8 In addition to the proposed freehold acquisition in Areas 2-4, temporary access and working space is sought over the areas of open space between the highways of Gershwin Boulevard and Olivers Drive and the A12.

### **What Replacement Land is proposed?**

- 5.3.9 Replacement Land has been identified on the south side of the A12, which will be connected to the existing open space via the new bridge to be constructed south of Olivers Drive.
- 5.3.10 The land identified will lie immediately to the south of the A12 and be connected via footpath 121\_95 to the existing area of open space at Olivers Drive, together with a new connection south of and parallel to the A12, connecting to Maldon Road.
- 5.3.11 Maintenance access will be provided by a new maintenance track being provided as part of the A12 drainage and attenuation works, connecting to Maldon Road south of the A12.
- 5.3.12 The Replacement Land is currently shown as being split into two parcels to reflect the split in ownership between Braintree District Council and the current owners of Area 2 of the Open Space (as well as a small area of land to replace the land held by Taylor Wimpey UK Limited at Olivers Drive).



- 5.3.13 Negotiations will continue with the Owners and local planning authority regarding fulfilling the purposes of the section S106 agreement relating the proposed transfer to Braintree District Council of open space that forms Area 2.

### Applying the Statutory Tests

- 5.3.14 The Applicant is relying on section 131(4) of the PA 2008. This provides that, if Replacement Land has been given or will be given in exchange for the Order Land and will be vested in the prospective seller and subject to same rights trust and incidents attached to order land, then special parliamentary procedure is not required. The Replacement Land will be consolidated with other areas of land sought as Replacement Land to form a single large open space area for the benefit of the public.
- 5.3.15 There is a clear need for the acquisition of the open space to effect the widening of the A12 at this location. The combination of the benefits of the proposed scheme, in the widening of the A12 to provide a more efficient and safer strategic road, as well as the provision of Replacement Land no less in area, justifies the acquisition of the freehold parcels in Areas 2-4.
- 5.3.16 In respect of the new rights plots in Area 4 – plots 8/11a/ 8/11f and 8/11g, the services being relocated are already in the Order Land it is considered the land will be no less advantageous than before, following the creation of the new rights sought by the Applicant. Accordingly section 132(3) of the PA 2008 will apply.

### Not less in area than the order land

- 5.3.17 The existing freehold open space being acquired compulsorily is:
- Area 2 (plots 7/16d, 7/16f, 7/17d) – 6,567m<sup>2</sup>
  - Area 3 (plots 7/19g and 17/19h) – 8,295m<sup>2</sup>
  - Area 4 (plots 8/11b, 8/11d, 8/12d and 8/13b-) – 7,250m<sup>2</sup>
- 5.3.18 The Replacement Land south of the A12 measures:
- Area 2 (which also includes Replacement Land for 12m<sup>2</sup> for plot 8/14a in Area 4 and Replacement Land for 4,730m<sup>2</sup> for plots 8/6h,86i, 8/6j and 8/6m in Area 5) - 11,593m<sup>2</sup>
  - Areas 3 and 4 (save for plot 8/14a factored in above) – (which also includes Replacement Land in Areas 6, 7 and 8 for 1,099m<sup>2</sup> in relation to plots 8/44q47f, 8/11r, 8/11s [291m<sup>2</sup>](Area 6), 8/44h47c, 8/44i47d, 8/27a (Area 7), 8/44aa47k, 8/44ac47m, 8/44af-8/47o and 8/44ah-47p (Area 8)) 23,150 m<sup>2</sup>
- 5.3.19 On this basis it is clear the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

### No less advantageous to the public

- 5.3.20 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed.
- 5.3.21 The Replacement Land provides a rectangular space which will permit a more flexible use of the land for public recreation and sporting activities.
- 5.3.22 Access for the public on foot will be available by way of the diverted public footpath 121\_95 and via a new link parallel to the A12 on its south side, connecting to Maldon Road.

### Access arrangements

- 5.3.23 Access for the public on foot will be available by way of the diverted public footpath 121\_95 and via a new link parallel to the A12 on its south side, connecting to Maldon Road.
- 5.3.24 Maintenance access will also be available via Maldon Road.

### Condition and use

- 5.3.25 The Replacement Land is currently in agricultural use.

### Designations

- 5.3.26 Areas 2 and 3 are subject to the S106 (see comments in Section 2 above) containing obligations on the landowners in to create and then transfer to Braintree District Council the land as open space. The land is further defined as being either informal open space or structural landscaping.
- 5.3.27 Areas 2 and 3 are defined as structural landscaping in the Braintree District Council emerging Local Plan, and the part of the open space between Gershwin Boulevard and Olivers Drive is allocated for informal recreation. Area 4 is allocated as visually important space.
- 5.3.28 The Replacement Land is not currently affected by any formal designation.

## 5.4 Open Space Area 5 - the Blackwater Rail Trail

Table 5.3 Open Space Area 5 - the Blackwater Rail Trail

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Blackwater Rail Trail, Witham (for which Replacement Land is proposed)	Essex County Council	Freehold	8/6h, 8/6i,	172	0.02
New rights over Blackwater Rail Trail, Witham (for which		New rights (temporary powers	8/6j and 8/6m	4558	0.46

## Replacement Land Statement

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Replacement Land is proposed)		during construction)			
Replacement land proposed	Robert Alexander Buchanan, Harry Christopher Buchanan and Elizabeth Anne Buchanan	Freehold	8/43d, 8/43e	4810	0.49
	Eileen Elizabeth Buchanan	Freehold	8/44c	12	0.001
	Beth Johanna Paterson, Ruth Harriet Wheaton, Jack Henry Wheaton and George Edward Wheaton	Freehold	8/45e	93	0.01
Blackwater Rail Trail, Witham (no Replacement Land proposed)	Essex County Council	New rights (temporary power during construction)	8/3a, 8/6b, 8/6d, 8/6k,	2525	0.25
Replacement Land	Not applicable	none	-	-	-

### Why is it required?

- 5.4.2 Intervention in the Blackwater Rail Trail is required for works to the existing Benton Bridge which crosses (but does not form part of) the Blackwater Rail Trail. Minor works may be required to the existing walls forming the approaches and supports to Benton Bridge, whilst airspace over the Blackwater Rail Trail is required for the widening of Benton Bridge. These areas form plots 8/6h and 8/6i. Without the open space being acquired the A12 cannot be widened to three lanes in each direction across Benton Bridge.

- 5.4.3 In addition, new rights are required over plots 8/3a, 8/6b, 8/6d and 8/6k for the installation of diverted services. As these are for diverting services already within the existing Blackwater Rail Trail, Replacement Land is not proposed for these plots.
- 5.4.4 Temporary powers to use and take possession of the land during construction are sought over the new rights plots to enable construction of the proposed scheme.
- 5.4.5 For the area south of Blue Mills Hill (plots 8/6j and 8/6m), the impact on the existing Open Space by the installation of the diverted high pressure gas main means that, despite this being a rights acquisition, Replacement Land is proposed due to the undertaker's requirements for future management of the Open Space land so affected by the installation of the diverted gas main (work number U69) within this part of the Blackwater Rail Trail. Replacement Land is proposed for an area equal to the area of plots 8/6j and 8/6m. There is a clear need for the acquisition of the open space and the proposed Replacement Land will be adequate to compensate for the disadvantages which result from the compulsory acquisition of the order right.

### **What Replacement Land is proposed?**

- 5.4.6 The Applicant proposes Replacement Land to the south of the A12 and east of the Blackwater Rail Trail. This will extend towards the right of way network parallel to the A12 and providing a connection (on foot) to the LNR. Like Blackwater Rail Trail, the Replacement Land forms a linear strip. It will be accessed by Essex County Council from the Blackwater Rail Trail and via a new access track being provided for maintenance purposes from Blue Mills Hill, Witham.

### **Applying the Statutory Tests**

- 5.4.7 The Applicant is relying on section 131(4) of the PA 2008 for the freehold acquisition plots at Benton Bridge Plots 8/6h and 8/6i. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and incidents attached to Order Land, then special parliamentary procedure is not required.
- 5.4.8 The Applicant is relying on section 132(3) of the PA 2008 for plots 8/3a, 8/6b, 8/6d and 8/6k where new rights are required for the installation of diverted services. As these are diverted services within the existing Blackwater Rail Trail, Replacement Land is not proposed for these plots. The Applicant believes that the land, when burdened with the right, will be no less advantageous than it was before to the current owner or the public because the use of the land for utility apparatus is already established.
- 5.4.9 In respect of the land south of Blue Mills Hill (Plots 8/6j and 8/6m) section 132(4) is relied upon. This means that special parliamentary procedure is not required if Replacement Land is given in exchange for the order right, which is adequate to compensate for the disadvantages which result from the compulsory acquisition of the order right. Whilst the impact of the proposed scheme on plots 8/6h and 8/6i means that Replacement Land is justified. Essex

County Council will retain the freehold and beneficial ownership of those plots but will in addition have Replacement Land to also use as open space, and thus Essex County Council and the public will be adequately compensated for the imposition of the new rights on the plots. Not less in area than the order land

5.4.10 The existing open space being acquired compulsorily and is to be replaced is:

- Plot 8/6h and 8/6i - 172m<sup>2</sup>

5.4.11 The existing Open Space for which new rights will be required but where there is a need to provide Replacement Land is:

- Plot 8/6j and 8/6m - 4558m<sup>2</sup>

5.4.12 The Replacement Land is:

- Plot 8/43d and 8/43e 4810m<sup>2</sup>
- Plot 8/44c 12m<sup>2</sup>
- Plot 8/45e 93m<sup>2</sup>

5.4.13 On this basis the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

### **No less advantageous to the public**

5.4.14 In considering whether the Replacement Land is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed.

5.4.15 The current Blackwater Rail Trail is a linear path with mature tree lining each side of the former railway track bed. The Rail Trail will remain as a through route in the vicinity of Benton Bridge and the proposed scheme will have limited impact on the existing open space.

5.4.16 For the Replacement Land identified to replace the freehold land lost, (plots 8/6h and 8/6i), The Replacement Land is a linear strip running south-east of and parallel to the A12. It connects at its south-eastern end with the Existing Blackwater Rail Trail. It is similar in character to the order land giving rise to the need for the provision of Replacement Land. It adjoins the Replacement Land identified to replace plots 8/6i and 8/6m.

5.4.17 Plots 8/6j and 8/6m - Replacement Land adequate to compensate the owner and the public for the disadvantages which result from the compulsory acquisition of the order right.

5.4.18 For the land south of New Mills Lane, the imposition of restrictive covenants to restrict building or planting over the land means that it cannot be argued that the relevant land will be no less advantageous to Essex County Council if the rights sought are imposed. The Replacement Land is a linear strip running south-east of and parallel to the A12. It connects at its south-eastern end with the Existing Blackwater Rail Trail. It is similar in character to the order land giving rise to the need for the provision of Replacement Land.

Replacement Land Statement

- 5.4.19 Access for the public on foot will be available by way of the diverted public footpath 121\_95
- 5.4.20 Plots 8/3a, 8/6b, 8/6d, 8/6k – the land, when burdened with the right, will be no less advantageous than it was before
- 5.4.21 In considering whether the rights land where Replacement Land is not proposed it is submitted that the relocation of existing apparatus within the relevant plots will not make the use and enjoyment of the Backwater Rail Trail any less disadvantageous for persons interested in the land or the public.

**Access arrangements**

- 5.4.22 As well as access for the public on foot by way of the diverted public footpath 121\_95, the Replacement Land will be capable of being accessed via the Blackwater Rail Trail immediately south of Benton Bridge. The Applicant will discuss with Essex County Council whether provision of a permissive path for public access can be provided as part of the Applicant's overall works for the A12 scheme.
- 5.4.23 Maintenance access will be available to Essex County Council to the Replacement Land via the Applicant's proposed access track connecting to Blue Mills Hill.

**Condition and use**

- 5.4.24 The Replacement Land is currently in agricultural use.

**Designations**

- 5.4.25 The Blackwater Rail Trail is a Country Park managed by Essex County Council. In the Braintree District Council emerging local plan it is allocated for foot and cycle access and as a disused railway [save for the land south of Blue Mills Hill] The whole of Area 5 is allocated for informal recreation.
- 5.4.26 The Replacement Land is not currently affected by any formal designation.

**5.5 Open Space Area 6 - Land North of Market Lane, Witham**

**Table 5.4 Open Space Area 6 - Land North of Market Lane, Witham**

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Land North of Market Lane, Witham	Braintree District Council	Freehold	8/11q, 8/11r, 8/11s,	294203	0.023
	<del>Witham Town Council</del>	<del>Freehold</del>	<del>8/11q47f</del>	<del>88</del>	<del>0.01</del>



Replacement Land Statement

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Replacement land proposed	National Highways, Robert George Ward, <del>Janet Beryl Whittle, Victoria Lyas and Stephen Lyas,</del> Julian Graham Whittle and Danielle Whittle, Andrew Ferguson Wood, Stephen Peter Butcher and Karen Anne Butcher	Freehold	8/1d, <del>8/1n,</del> 8/17b, <del>8/18b,</del> 8/19b, 8/33g, 8/33i, 8/41b	16365	1.64
<u>Land North of Market Lane, Witham</u>	<u>Witham Town Council</u>	<u>Freehold</u>	<u>8/47f</u>	<u>88</u>	<u>0.01</u>
<u>Replacement Land proposed</u>	<u>National Highways, Beth Johanna Paterson, Ruth Harriet Wheaton, Jack Henry Wheaton, George Edward Wheaton</u>	<u>Freehold</u>	<u>9/1a, 8/45f</u>	<u>8459</u>	<u>0.85</u>

Replacement Land Statement

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Land North of Market Lane, Witham	Braintree District Council	New rights (temporary power during construction)	<del>8/11o,</del> 8/11u, <del>8/11v</del>	<del>2028637</del> <u>2022</u>	0.2
<u>Replacement Land proposed</u>	<u>Not applicable</u>	<u>None</u>	=	=	=
<u>Land North of Market Lane, Witham</u>	<u>Witham Town Council</u>	<u>New rights (temporary power during construction)</u>	<del>8/47f,</del> <u>8/47e</u>	<u>13914791391</u>	<u>0.14</u>
Replacement Land	Not applicable	none	-	-	-

**Why is it required?**

- 5.5.2 The open space land forming plots 8/11r, 8/11s and, ~~8/11aa47fk, 8/11ad 47n and 8/11af 47e~~ to be acquired permanently is needed for the widening of the existing A12 at Witham, and the provision of new drainage from the A12 in to the River Brain. Without the open space being acquired the A12 cannot be widened to three lanes northbound at this location.;
- 5.5.3 For plots ~~8/11o 47e~~ and 8/11u permanent new rights are required for diverting existing services already within the Order land.
- 5.5.4 In addition, temporary access and working space is sought over the areas of Open Space forming plots 8/11v together with neighbouring plot 8/30a for temporary working space and access during construction of the proposed scheme.

**What Replacement Land is proposed?**

- 5.5.5 Replacement Land has been identified on the south side of the A12, which will be connected to the existing open space via the footpath that passes under the A12 parallel to the River Brain.
- 5.5.6 The land identified will lie immediately to the south of the A12 and be accessed via public footpath 121\_101.
- 5.5.7 Maintenance access will be provided by maintenance track (8/d, 8/e and 8/f on the Streets Rights of Way and Access Plans (Examination reference AS-007 and AS-008dec. Ref (TR010060/APP/2.6)) that will serve National Highways' attenuation pond for maintenance. Footpath121\_95 which forms the boundary with the Replacement Land.

## Applying the Statutory Tests

- 5.5.8 The Applicant is relying on section 131(4) of the PA 2008 for plots 8/~~44e~~47f, 8/11r and 8/11s. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and instances attached to order land, then special parliamentary procedure is not required. There is a clear need for the acquisition of the open space to effect the widening of the A12 at this location. The Secretary of State can be satisfied that that the benefits of the proposed scheme outweigh the loss of open space, when considering that Replacement Land of an equivalent area is being provided for the open space being lost.
- 5.5.9 The Applicant is relying on section 132(3) of the PA 2008 for plots 8/~~44e~~47e and 8/11u, where new rights are required for the installation of diverted services. As these are diverted services within the existing Open Space land, Replacement Land is not proposed for these plots. The Applicant believes that the land, when burdened with the right, will be no less advantageous than it was before to the current owner or the public because the use of the land for utility apparatus is already established.

### Not less in area than the order land

- 5.5.10 The existing open space being acquired compulsorily is 291m<sup>2</sup>.
- 5.5.11 The Replacement Land is to be amalgamated with the other areas of Open Space (Area 3, 4, 7 and 8) Replacement Land to be provided to Braintree District Council and Witham Town Council, forming a total of 16365m<sup>2</sup>.
- 5.5.12 The Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

### No less advantageous to the public

- 5.5.13 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed. The open space land that is being lost is adjoining the A12 and is very small in area. It has no recreational facilities and appears little used. It will be replaced by land forming part of a larger and more consequently more advantageous open space.
- 5.5.14 Access for the public on foot will be available by way of public footpath 121\_101.

### Access arrangements

- 5.5.15 Access for the public on foot will be available by way of public footpath 121\_101 which passes under the bridge carrying the A12 over the River Brain.

### Condition and use

- 5.5.16 The Replacement Land is currently in agricultural use.

## Designations

- 5.5.17 The land to be acquired is allocated for informal recreation in Braintree District Council's emerging local plan.
- 5.5.18 The Replacement Land is not currently affected by any formal designation.

## 5.6 Open Space Area 7 - Land at Maldon Road Crossing of River Brain, Witham

**Table 5.5 Open Space Area 7 - Land at Maldon Road Crossing of River Brain, Witham**

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Land at Maldon Road crossing of River Brain, Witham	<a href="#">Braintree District Witham Town Council</a>	New rights (temporary powers during construction)	<a href="#">8/11h, 8/11i, 8/27a, 8/47c, 8/47d</a>	<a href="#">464524</a>	0.05
Replacement land proposed	National Highways, <a href="#">Beth Johanna Paterson, Ruth Harriet Wheaton, Jack Henry Wheaton, George Edward Wheaton</a>	Freehold	<del><a href="#">9/1a, 9/1a, 8/45f, 9/1h, 9/1e</a></del>	<del><a href="#">8389845985776</a></del> <sup>†</sup>	<del>0.838558</del>

### Why is it required?

- 5.6.2 The Open Space land forming plots [8/11h, 8/11i and 8/27a, 8/47c and 8/47d](#) to be subject to permanent new rights for the diversion of services (communications apparatus) that are needed to be diverted for the widening of

<sup>†</sup> ~~These Replacement Land plots also include replacement for permanent acquisition of freehold of area 9.~~

the existing A12 at Witham. Without the diversions being carried out the works to widen the A12 at Witham cannot be progressed.

- 5.6.3 Temporary access and working space is sought over the area of open space forming each of the plots for temporary working space and access during installation of the diverted utilities which will be laid underground parallel to the bridge over the River Brain.

### **What Replacement Land is proposed?**

- 5.6.4 Replacement Land has been identified on the south side of the A12, which will be connected to the existing open space via the footpath that passes under the A12 parallel to the River Brain.
- 5.6.5 The land identified will lie immediately to the south of the A12 and be connected via public footpath 121\_101.
- 5.6.6 Maintenance access will be **provided** via rights provided for the benefit of ~~Braintree District~~Witham Town Council over the pond access track.

### **Applying the Statutory Tests**

- 5.6.7 The Applicant is relying on section 132(4) of the PA 2008 for each of the plots where freehold is permanently acquired and on section 132(11) for the plots where new rights are permanently acquired. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and incidents attached to order land, then special parliamentary procedure is not required. The Replacement Land will be of an equivalent area to the land being burdened so fulfils the definition of Replacement Land in section 132(12) in being adequate to compensate the owner and the public for the disadvantages which result from the compulsory acquisition of the order right.
- 5.6.8 The Secretary of State can be satisfied that that the benefits of the proposed scheme outweighs the imposition of the new rights on the required area of open space, when considering that Replacement Land of an equivalent area is being provided for the open space being burdened with the new rights.

### **Not less in area than the order land**

- 5.6.9 The existing open space being acquired compulsorily is 524m<sup>2</sup>.
- 5.6.10 The Replacement Land is to be amalgamated with the other areas of open space Replacement Land to be provided to ~~Braintree District~~Witham Town Council, forming a total of 8,~~4598~~389m<sup>2</sup>.
- 5.6.11 The Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.
- 5.6.12 Adequate to compensate the owner and the public for the disadvantages which result from the compulsory acquisition of the order right
- 5.6.13 In considering whether this option is adequate to compensate the owner and the public, the key criteria of access, condition and use, and designations have been reviewed.



- 5.6.14 The Replacement Land will be of an equivalent area to that to be burdened by the new rights.
- 5.6.15 Access for the public on foot will be available by way of public footpath 121\_101.

### Access arrangements

- 5.6.16 Maintenance access will be ~~provided by~~ via rights provided for the benefit of ~~Braintree District~~ Witham Town Council over the pond access track.
- 5.6.17 Access for the public on foot will be available by way of public footpath 121\_101.

### Condition and use

- 5.6.18 The Replacement Land is currently in agricultural use.

### Designations

- 5.6.19 The land over which the new rights are to be acquired is allocated for informal recreation in Braintree District Council's emerging local plan.
- 5.6.20 The replacement and is not currently affected by any formal designation.

## 5.7 Open Space Area 8 - River Brain, Witham

Table 5.6 Open Space Area 8 - River Brain, Witham

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
River Brain, Witham	<del>Braintree District</del> <u>Witham Town</u> Council	Freehold	<del>8/11aa, 8/11ac, 8/11af, 8/11ah</del> 8/47k, 8/47m, 8/47o, 8/47p	371	0.04
Replacement land proposed	National Highways, <del>Beth Johanna Paterson, Ruth Harriet Wheaton, Jack Henry Wheaton, George Edward Wheaton</del>	Freehold	<del>8/1d, 8/1n, 8/17b, 8/18b, 8/19b, 8/33g, 8/33i, 8/41b</del> 9/1a, 8/45f	<del>163658459</del>	<del>4.640.85</del>

## Replacement Land Statement

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
	<del>, Robert George Ward, Janet Beryl Whittle, Victoria Lyas and Stephen Lyas, Julian Graham Whittle and Danielle Whittle, Andrew Ferguson Wood, Stephen Peter Butcher and Karen Anne Butcher</del>				
<u>River Brain, Witham</u>	<u>Braintree District Witham Town Council</u>	<u>Permanent new rights</u> <u>Temporary possession during construction</u>	<u>8/11z,</u> <u>8/11ab,</u> <u>8/11ad</u> <u>8/47i, 8/47j,</u> <u>8/47l, 8/47n</u>	1926	0.2
Replacement Land	Not applicable	none	-	-	

### Why is it required?

- 5.7.2 The Open Space land forming plots 8/11aa47k, 8/11ac47m, 8/11af47o and 8/11ah47p to be acquired permanently is needed for the widening of the existing A12 at Witham. Without the Open Space being acquired, the A12 cannot be widened to three lanes northbound at this location.
- 5.7.3 For plots 8/11z47j, 8/11ab47l and 8/11ad47n permanent new rights are required for diverting existing services. Replacement Land is not proposed for these plots.
- 5.7.4 In addition, temporary access and working space only are sought over the areas of open space forming plot 8/11y47i for temporary working space and access during construction of the proposed scheme.

## What Replacement Land is proposed?

- 5.7.5 Replacement Land has been identified on the south side of the A12 within plots ~~8/1d, 8/1n, 8/17b, 8/18b, 8/19b, 8/33g, 8/33i, 8/41b, 9/1a and 8/45f.~~
- 5.7.6 The land identified will be connected via public footpath 121\_101.
- 5.7.7 Maintenance access will be ~~provided by~~ via rights provided for the benefit of ~~Braintree District~~ Witham Town Council over the pond access track.

## Applying the Statutory Tests

- 5.7.8 The Applicant is relying on section 131(4) of the PA 2008 for each of the plots where freehold is permanently acquired. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and instances attached to order land, then special parliamentary procedure is not required.
- 5.7.9 There is a clear need for the acquisition of the open space to effect the widening of the A12 at this location. The proposed Replacement Land will be adequate to compensate for the disadvantages which result from the compulsory acquisition of the open space land.
- 5.7.10 The Applicant is relying on section 132(3) of the PA 2008 for plots ~~8/44z47j, 8/44ab-47l and 8/44ad47n,~~ where new rights are required for the installation of diverted services. As these are diverted services within the existing Open Space land, Replacement Land is not proposed for these plots. The Applicant believes that the land, when burdened with the right, will be no less advantageous than it was before to the current owner or the public because the use of the land for utility apparatus is already established.

## Not less in area than the order land

- 5.7.11 The existing open space being acquired compulsorily is 371m<sup>2</sup>.
- 5.7.12 The Replacement Land to be provided to replace the 371m<sup>2</sup> to Witham Town Council is to be amalgamated with plot 8/457f and the other areas of Open Space Replacement Land ~~to be provided to Braintree District Council,~~ forming a total of 845916,365m<sup>2</sup>.
- 5.7.13 On this basis the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

## No less advantageous to the public

- 5.7.14 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed. The current open space land forms informal open space and a landscaped areas separating the neighbouring development from the A12, as well as a wooded area forming part of the River Brain open space. It has no formal recreational facilities and is used mainly for dog walking.
- 5.7.15 The Replacement Land provides the potential for connections to the surrounding countryside via the footpath network and will also be located close to the River Brain and on the opposite side of the River Brain to the Whetmead

Nature Reserve. Access for the public on foot will be available by way of public footpath 121\_101.

**Access arrangements**

5.7.16 Maintenance access will be ~~provided by~~ via rights provided for the benefit of ~~Braintree District~~Witham Town Council over the pond access track.

5.7.17 Access for the public on foot will be available by way of public footpath 121\_101.

**Condition and use**

5.7.18 The Replacement Land is currently in agricultural use.

**Designations**

5.7.19 The land south is allocated for informal recreation in Braintree District Council's emerging local plan.

5.7.20 The Replacement Land is not currently affected by any formal designation.

**5.8 Open Space Area 9 - Whetmead Nature Reserve**

**Table 5.7 Open Space Area 9 - Whetmead Nature Reserve**

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Whetmead Nature Reserve, Witham	<del>Braintree District Council</del> Witham Town Council	Freehold	8/47a, 9/11a	6639	0.66
Replacement land proposed	National Highways, <u>Beth Johanna Paterson, Ruth Harriet Wheaton, Jack Henry Wheaton, George Edward Wheaton</u>	Freehold	9/1a, <u>8/45f</u> <del>9/4h</del> 9/4e	<del>845983895</del> <u>76376</u>	<del>0.85</del> <u>0.35</u>
<del>Replacement land proposed</del>	<del>Beth Johanna</del>	<del>Freehold</del>	<del>8/45f</del>	<del>2695</del>	<del>0.27</del>

Replacement Land Statement

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
	<del>Paterson, Ruth Harriet Wheaton, Jack Henry Wheaton, George Edward Wheaton</del>				
Whetmead Nature Reserve, Witham	Witham Town Council	permanent new rights Temporary possession during construction	8/47b, 9/11b	17722	1.77
Replacement land proposed	Not Applicable	<u>N</u> one	-	-	-

**Why is it required?**

- 5.8.2 The open space land forming plots 8/47a and 9/11a to be acquired permanently is needed for the widening of the existing A12 at Witham. Without the Open Space being secured the A12 cannot be widened to three lanes southbound at this location.
- 5.8.3 For plots 8/47b and 9/11b permanent new rights are required for diverting existing services that are already installed within the nature reserve.

**What Replacement Land is proposed?**

- 5.8.4 Replacement Land has been identified immediately north of the area that functions as part of the LNR (see Area 10 below).
- 5.8.5 The land identified will be connected to the existing Nature Reserve through Area 10.

**Applying the Statutory Tests**

- 5.8.6 The Applicant is relying on section 131(4) of the PA 2008 for plots 8/47a and 9/11a. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and instances attached to order land, then special parliamentary procedure is not required.



- 5.8.7 There is a clear need for the acquisition of the open space to effect the widening of the A12 at this location. The proposed Replacement Land will be adequate to compensate for the disadvantages which result from the compulsory acquisition of the Open Space land.
- 5.8.8 The Applicant is relying on section 132(3) of the PA 2008 for plots 8/47b and 9/11b where new rights are required for the installation of diverted services. As these are diverted services within the existing open space land, Replacement Land is not proposed for these plots. The Applicant believes that the land, when burdened with the right, will be no less advantageous than it was before to the current owner or the public because the use of the land for utility apparatus is already established.

### **Not less in area than the order land**

- 5.8.9 The existing open space being acquired compulsorily is 6639m<sup>2</sup>.
- 5.8.10 The Replacement Land isto be provided to Witham Town Council forms a total of 8459m<sup>2</sup>.:- 8389m<sup>2</sup>84585776m<sup>2</sup>.
- 5.8.11 On this basis the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

### **No less advantageous to the public**

- 5.8.12 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed. The existing Open Space land is a wooded area adjacent to the A12 and not easily accessed in parts due to vegetation growth. The Replacement Land will be similar in condition and location, being located immediately north of Area 10, and will in effect form an extension of the existing Whetmead Nature reserve between the A12 and tributary of the River Blackwater.
- 5.8.13 Access for the public on foot will be available through the LNR and Area 10.

### **Access arrangements**

- 5.8.14 Access for the public on foot will be available through the LNR and Area 10.

### **Condition and use of the Replacement Land**

- 5.8.15 The Replacement Land is currently part of National Highways' estate, having been acquired for the Witham Bypass. It is unused.

### **Designations**

- 5.8.16 The land to be acquired is designated as a nature reserve in Braintree District Council's emerging local plan.
- 5.8.17 The Replacement Land is not currently affected by any formal designation.

## 5.9 Open Space Area 10 - Whetmead Nature Reserve

Table 5.8 Open Space Area 10 - Whetmead Nature Reserve

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Whetmead Nature Reserve, Witham	Anglian Water Services Limited	Freehold	9/10d	1048	0.10
Replacement land proposed	National Highways	Freehold	9/1q	1063	0.11
Whetmead Nature Reserve, Witham	Anglian Water Services Limited	permanent new rights Temporary possession during construction	9/10e	1401	0.14
Replacement land proposed	Not Applicable	none	-	-	-

### Why is it required?

- 5.9.2 The open space land forming plot 9/10d to be acquired permanently is needed for the widening of the existing A12 at Witham. Without the Open Space being secured, the A12 cannot be widened to three lanes southbound at this location.
- 5.9.3 For plot 9/10e permanent new rights are required for diverting existing services that are already installed within the nature reserve.

### What Replacement Land is proposed?

- 5.9.4 Replacement Land has been identified on National Highways Land to the North East of the exiting Whetmead Nature Reserve.

### Applying the Statutory Tests

- 5.9.5 The Applicant is relying on section 131(4) of the PA 2008 for plot 9/10d. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and instances attached to order land, then special parliamentary procedure is not required.
- 5.9.6 There is a clear need for the acquisition of the open space to effect the widening of the A12 at this location. The proposed Replacement Land will be adequate to compensate for the disadvantages which result from the compulsory acquisition of the open space land.

- 5.9.7 The Applicant is relying on section 132(3) of the PA 2008 for plot 9/10e where new rights are required for the installation of diverted services. As these are diverted services within the existing open space land, Replacement Land is not proposed for these plots. The Applicant believes that the land, when burdened with the right, will be no less advantageous than it was before to the current owner or the public because the use of the land for utility apparatus is already established.

### **Not less in area than the order land**

- 5.9.8 The existing open space being acquired compulsorily is 1048m<sup>2</sup>.
- 5.9.9 The Replacement Land (plot 9/1q) is 1063m<sup>2</sup>.
- 5.9.10 On this basis the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

### **No less advantageous to the public**

- 5.9.11 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed. The existing Open Space land is a wooded area adjacent to the A12 and not easily accessed in parts due to vegetation growth. The Replacement Land will be similar in condition and location, being located immediately north of Area 10, and will in effect form an extension of the existing LNR between the A12 and tributary of the River Blackwater.
- 5.9.12 Access for the public on foot will be available from the existing Whetmead Nature Reserve.

### **Access arrangements**

- 5.9.13 Access for the public will be available from the existing Whetmead Nature Reserve. Access for the owner will be provided on a new track to be built by National Highways on adjacent land that will be under the ownership and control of National Highways.

### **Condition and use**

- 5.9.14 The Replacement Land is currently part of National Highways' estate, having been acquired for the Witham Bypass. It is unused.

### **Designations**

- 5.9.15 The land south is allocated as a local nature reserve in Braintree District Council's emerging local plan.
- 5.9.16 The Replacement Land is not currently affected by any formal designation, save being in flood risk area 2.

## 5.10 Open Space Area 11 - Freebournes Road-, Witham

**Table 5.9 Open Space Area 11 - Freebournes Road, Witham**

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Land at Freebournes Road, Witham	Braintree District Council	Freehold	9/8c, 9/8e, 10/8d	12792	1.28
Replacement land proposed	National Highways, Simon Robert Brice	Freehold	10/1b, 10/1k, 10/1l, 10/1n, 10/1o, 10/1s, 10/2c, 10/2f, 10/3b, 10/3d, 10/4b, 10/20g	13320	1.33
Land at Freebournes Road, Witham		permanent new rights Temporary possession during construction	10/8a	76	0.01
Replacement land proposed	Not Applicable	none	-	-	-

### Why is it required?

- 5.10.2 The open space land forming plots 9/8c, 9/8e and 10/8d to be acquired permanently is needed for the widening of the existing A12 at Witham. Without the Open Space being secured, the A12 cannot be widened to three lanes northbound at this location.
- 5.10.3 In addition, temporary access and working space is sought over the areas of open space forming plot part of plot 9/6b and 9/8b for temporary working space and access during construction of the proposed scheme.

### What Replacement Land is proposed?

- 5.10.4 Replacement Land has been identified on land that currently forms part of the existing A12 carriageway but which will be stopped up when the altered A12 is provided on a new alignment south of the existing A12.

- 5.10.5 The land identified will be connected via a new public right of way which will connect from Colchester Road, across the altered A12 on a new bridge, south to Little Braxted Lane.
- 5.10.6 Maintenance access will be provided via rights to be provided for the benefit of Braintree District Council from the adjacent highway network.

### **Applying the Statutory Tests**

- 5.10.7 The Applicant is relying on section 131(4) of the PA 2008 for plots 9/8c, 9/8e and 10/8d. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and instances attached to order land, then special parliamentary procedure is not required.
- 5.10.8 The Applicant is relying on section 132(3) of the PA 2008 for plot 10/8a where new rights are required for the laying out of cables needed to connect to the UKPN power supply on the other side of Freebournes Rd in order to power the Applicant's network.
- 5.10.9 There is a clear need for the acquisition of the Open Space to effect the widening of the A12 at this location. The proposed Replacement Land will be adequate to compensate for the disadvantages which result from the compulsory acquisition of the Open Space land.

### **Not less in area than the order land**

- 5.10.10 The existing open space being acquired compulsorily is 12792m<sup>2</sup>.
- 5.10.11 The Replacement Land is 13320m<sup>2</sup>.
- 5.10.12 On this basis the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

### **No less advantageous to the public**

- 5.10.13 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed.
- 5.10.14 Access for the public on foot will be available by way of the new public right of way between Colchester Road and Little Braxted Lane.

### **Access arrangements**

- 5.10.15 The land identified will be connected via a new public right of way which will connect from Colchester Road, across the altered A12 on a new bridge, south to Little Braxted Lane.
- 5.10.16 Maintenance access will be provided by via rights to be provided for the benefit of Braintree District Council from the adjacent highway network.

### **Condition and use**

- 5.10.17 The Replacement Land is currently part of National Highways' estate, and forms part of the carriageway of the A12.

## Designations

- 5.10.18 The land south is allocated for employment use in Braintree District Council's emerging local plan.
- 5.10.19 The Rreplacement Land is not currently affected by any formal designation.

## 5.11 Open Space Area 12 - Station Road, Marks Tey

Table 5.10 Open Space Area 12 - Station Road, Marks Tey

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Land at Station Road Marks Tey	National Highways/ Essex County Council (as highway authority)	Freehold	19/2g, 19/2h, 19/4d, 19/4e, 19/7a, 19/7c	1026	0.10
Replacement land proposed	National Highways	Freehold	18/1u, <del>18/1v,</del> <del>19/4h,</del> <del>19/4i</del>	<del>4250</del> <u>1049</u>	0.1 <u>03</u>
<u>Land at Station Road Marks Tey</u>	<u>National Highways/ Essex County Council (as highway authority)</u>	<u>Temporary possession during construction</u>	<u>19/2f, 19/6c</u>	<u>3634</u>	<u>0.36</u>
<u>Replacement land proposed</u>	<u>Not Applicable</u>	<u>none</u>	<u>=</u>	<u>=</u>	<u>=</u>

### Why is it required?

- 5.11.2 The open space land forming plots 19/2g, 19/2h, 19/4d, 19/4e, 19/7a, 19/7c, to be acquired permanently, is needed for works to the existing junction of the A120 and Station Road, Marks Tey. Without it being secured, the required junction improvement works to facilitate the changed approach from the A12 to the A120 cannot be provided.
- 5.11.3 Plots 19/2f and 19/6c are required temporarily during construction only.



## What Replacement Land is proposed?

- 5.11.4 Replacement Land has been identified on land that currently forms part of the existing A12 carriageway but which will be stopped up when the altered A12 is provided on a new alignment south of the existing A12.
- 5.11.5 The land identified will be accessed from the adjoining public highway, as will access for maintenance.

## Applying the Statutory Tests

- 5.11.6 The Applicant is relying on section 131(4) of the PA 2008 for plots 19/2g, 19/2h, 19/4d, 19/4e, 19/7a, 19/7c. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and incidents attached to order land, then special parliamentary procedure is not required.
- 5.11.7 There is a clear need for the acquisition of the open space to improve the junction of A120 with Station Road as a result to changes to the highway network in this location required for the proposed scheme. The proposed Replacement Land will be adequate to compensate for the disadvantages which result from the compulsory acquisition of the open space land.

## Not less in area than the order land

- 5.11.8 The existing open space being acquired compulsorily is 1026m<sup>2</sup> in area.
- 5.11.9 The Replacement Land is 1250m<sup>2</sup> 1049m<sup>2</sup> in area.
- 5.11.10 On this basis the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

## No less advantageous to the public

- 5.11.11 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed. The existing land forms part of a large area of highway verge and adjoins the existing carriageways of the A120 or Station Road. The Replacement Land will be similarly located, adjoining Old London Road, or the junction between the A120 and the slip road from the A12 giving access to Marks Tey from the south.

## Access arrangements

- 5.11.12 Access for the public on foot will be available from the adjoining public highway.

## Condition and use

- 5.11.13 The Replacement Land is currently highway verge.

## Designations

- 5.11.14 Neither the open space land or the Replacement Land are currently affected by any formal planning or other relevant designation.

## 5.12 Open Space Area 13 - Copford Recreation Ground (Queensbury Avenue Playground)

## Replacement Land Statement

Open Space Land	Existing Owner	Nature of powers sought	Land Plan Plot Nos.	Area Required by the scheme	
				m <sup>2</sup>	ha
Copford Recreation Ground	Copford with Easthorpe Parish Council	Freehold	19/17b	2340	0.23
Replacement land proposed	Michael Andrew Shelley	Freehold	19/18d	3571	0.36

### Why is it required?

- 5.12.1 The open space land forming plot 19/17a to be acquired permanently is needed divert the Roman river where it passes under the A12 at Copford. Without the open space being acquired the A12 cannot be widened to three lanes southbound at this location.
- 5.12.2 Plot 19/17a is required temporarily during construction only.

### What Replacement Land is proposed?

- 5.12.3 Replacement Land has been identified immediately to the east of the open space land.

### Applying the Statutory Tests

- 5.12.4 The Applicant is relying on section 131(4) of the PA 2008 for plot 19/17b. This provides that, if Replacement Land has been given or will be given in exchange for the order land and will be vested in the prospective seller and subject to same rights trust and instances attached to order land, then special parliamentary procedure is not required.
- 5.12.5 There is a clear need for the acquisition of the open space to effect the widening of the A12 and reposition of the Roman River at this location. The proposed Replacement Land will be adequate to compensate for the disadvantages which result from the compulsory acquisition of the open space land.

### Not less in area than the order land

- 5.12.6 The existing open space being acquired compulsorily is: 2340m<sup>2</sup>
- 5.12.7 The Replacement Land is: 3571m<sup>2</sup>
- 5.12.8 On this basis the Applicant is providing an area equivalent to the area being taken permanently for the proposed scheme.

### **No less advantageous to the public**

- 5.12.9 In considering whether this option is no less advantageous to the public, the key criteria of access, condition and use, and designations have been reviewed. The Replacement Land adjoins the existing Copford Open Space and wooded dog walking area. It is similar in condition and appearance but is fenced off from that part of the wood that is publicly accessible.
- 5.12.10 It is no less in area than the open space land being acquired.

### **Access arrangements**

- 5.12.11 The Replacement Land adjoins the existing Copford Open Space and will be accessed from it.

### **Condition and use**

- 5.12.12 The Replacement Land is currently private woodland.

### **Designations**

- 5.12.13 Neither the open space land or the Replacement Land are currently affected by any formal planning or other relevant designation.

## **6 Summary and Conclusions**

- 6.1.1 The following section of this report summarises the individual conclusions in relation to grounds on which the Secretary of State may be satisfied that SPP is not required. It analyses the grounds under each of sections 131(4) and 131(4B) as well as sections 132(3) and 132(4). The conclusions are prepared by reference to the table specifying the individual plots to which each ground applies, which is set out in Appendix A.

### **6.2 Compliance with sections 131 and 132 of the Planning Act 2008**

- 6.2.1 Section 5 provides a summary of all the plots of Open Space land included in the draft Order for permanent acquisition, permanent acquisition of rights and temporary possession, along with the Replacement Land plots.

#### *Planning Act 2008 section 131*

- 6.2.2 In relation to the areas of special category land subject to permanent acquisition the requirements of section 131(4) of PA 2008 are satisfied such that the Secretary of State may certify accordingly under section 131(3)(b).

- 6.2.3 Section 131(4) provides as follows:

- (4) *This subsection applies if—*
- (a) *Replacement Land has been or will be given in exchange for the order land, and*
  - (b) *the Replacement Land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.”*

- National Highways has considered the application of section 131 on a parcel-by-parcel basis.
- 6.2.4 As to section 131(4)(a), the draft Order authorises National Highways to acquire the Replacement Land for the purposes of providing it as Replacement Land in relation to the Open Space land identified above that is to be acquired permanently for the proposed scheme.
- 6.2.5 Article 45 of the draft Order provides that National Highways cannot acquire the Open Space land until it has acquired the Replacement Land and a scheme for the provision of the Replacement Land, including a timetable for its provision, has been certified by the Secretary of State, as having been received from National Highways.
- 6.2.6 As to section 131(4)(b), article 45(4) of the draft Order provides that as soon as the Replacement Land has been acquired by National Highways and a scheme certified by the Secretary of State as having been received from National Highways, the Replacement Land will vest in the owners of the special category subject to the same rights, trusts and incidents as attach to the special category land.
- 6.2.7 Replacement Land has been secured by the draft Order sufficient to allow the Secretary of State certifying under section 131(4)(b) that the requirements of section 131 have been complied with, so that special parliamentary procedure is not required under section 131 of the 2008 Act.
- 6.2.8 In terms of the NNNPS, paragraph 5.174, in each case the Secretary of State can be satisfied having regard to the Statement or Reasons, Case for the Scheme and this statement, that the benefits of the proposed scheme (including need) outweigh the potential loss of open space required for the proposed scheme, taking into account the proposals made by the applicant to provide Replacement Land.
- 6.2.9 The relevant plots are listed in Table A.1 in the Appendix A to this report.  
*Planning Act 2008 section 132*
- 6.2.10 In relation to the areas of Open Space land subject to permanent acquisition of rights over land, the requirements of sections 132(3) of the PA 2008 are satisfied such that the Secretary of State may certify accordingly under section 132(2)(b).
- 6.2.11 Section 132(3) PA 2008 provides as follows:
- (3) This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—
- the persons in whom it is vested,*
- other persons, if any, entitled to rights of common or other rights, and*
- the public.”*
- 6.2.12 The proposed scheme requires the acquisition of permanent rights in land that is special category land for the following purposes, which are more fully described in Schedule 8 to the draft Order.

- Works to implement the highway elements of the proposed scheme (including culverts, drainage works and earthworks and other highway structures).
- Access to land for the purposes of maintenance of utilities or National Highways' own apparatus
- Access to land for the purpose of land maintenance.
- General environmental mitigation works.

6.2.13 National Highways considers that permanent rights in land are the most appropriate power for such activities where a greater level of control over land is not required. This is because there is not a justification in the public interest to acquire the freehold of such land permanently, but equally considers that temporary possession powers would not be sufficient to ensure that the objectives of the proposed scheme could be achieved for the long-term, particularly in relation to environmental improvements.

6.2.14 National Highways considers that the affected Open Space land, when subject to the acquisition of rights as provided for in the draft Order, will be no less advantageous to each of the persons described in section 132(3) of the PA 2008. This is because the rights described are being taken for the benefit of the land to enhance it and improve its ecological and/or amenity status. The nature of the rights taken mean that access to the land for members of the public will not be restricted or impeded to any greater extent than occurs at present. The relevant plots are listed in Table A.2 in Appendix A to this report.

6.2.15 The proposed scheme includes the widening of the A12. The permanent rights to be acquired under the draft DCO are required in connection with the widening of the A12 on the basis that they are required:

- To ensure that highway elements of the proposed scheme can continue to be maintained by National Highways
- To provide necessary rights of access and maintenance to National Highways, utility apparatus owners and owners of private residences.

6.2.16 In relation to the areas of Open Space land subject to permanent acquisition of new rights over land the requirements of sections 132(4) of the PA 2008, on the basis that Replacement Land is being provided. If satisfied of this the Secretary of State may certify accordingly under section 132(2)(b). The relevant plots are listed in Table A.3 in Appendix A to this report. Section 132 (4) reads:

*This subsection applies if—*

*Replacement Land has been or will be given in exchange for the order right, and*

*the Replacement Land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).*

- 6.2.17 In summary regarding the compulsory acquisition of new rights over Open Space Land, the conditions specified in sections 132 of PA 2008 are satisfied with the effect that there is no impediment to the Secretary of State certifying under section 132(2)(b) that the requirements of section 132 have been complied with, such that the draft Order should not be subject to special parliamentary procedure on this account.
- 6.2.18 In terms of the NNNPS, paragraph 5.174, in each case the Secretary of State can be satisfied having regard to the Statement or Reasons, Case for the Scheme and this statement, that the benefits of the proposed scheme (including need) outweigh the potential burdening of the affected land with the new rights required for the proposed scheme. This includes, for the plots to which S132(3) taking into account the proposals made by the applicant to provide Replacement Land that is adequate to compensate the relevant persons and the public for the disadvantages which result from the compulsory acquisition of the order right over the open space land.

### **Land required temporarily**

- 6.2.19 Land required temporarily only is not being acquired so is not subject to either section 131 or section 132. To the extent that it is relevant, section 131(4B) or section 132(4B) could apply in relation to the temporary plots listed in Part 5 of the appendix to this document. Whilst none of the relevant plots are to be acquired but instead are to be used under the statutory licence provided by article 40 of the order, special parliamentary procedure may be avoided as SPP is not required for land forming part of an open space, where none of the order land is of any of the other descriptions in sub-section 1 of section 131 or section 132 and the order land is being acquired for a temporary (although possibly long-lived) purpose.
- 6.2.20 For each of the plots listed in Part 4 of Appendix A, none of the order land is of a special category other than Open Space.
- 6.2.21 Once construction of the proposed scheme has been completed, all temporary works associated with the engineering construction will be cleared from Open Space land and these areas of temporary possession restored sufficiently to be handed back to their owners. This could be between 2.5 and 4 years after the start of construction, depending on the degree of reinstatement and revegetation required. This will also apply to the areas of engineering works over which permanent rights that are considered to be a burden have been acquired.
- 6.2.22 On this basis it is submitted that the Secretary of State may certify that, if he considers the exercise of temporary powers to trigger section 131 or section 132 of PA 2008, that section 131(4B) or section 132(4B) means that SPP is not required.

## **6.3 Overall Conclusions**

- 6.3.1 National Highways is satisfied that relevant statutory tests and policy tests are met in sections 131 and 132 of the PA 2008 (as amended), as well as Annex A of the 2013 DCLG Guidance on Compulsory Acquisition and the NNNPS for the



Secretary of State to be satisfied Special Parliamentary Procedure is not required for the proposed scheme if the Order is to be made..

- 6.3.2 The requirements and solution for the Replacement Land proposals included in the Scheme are summarised in Part 1-4 of Appendix A below.
- 6.3.3 The basis on which each ground in section 131 or section 132 is relied on is set out in the appendix to this document, based on the compelling case for acquisition explained in the applicant's Statement of Reasons (DCO doc reference **TR010060/APP/4.1**) and in the preceding sections of this statement. In each case National Highways has fully considered the compelling case both for the acquisition of the relevant Open Space Land and for its replacement and is satisfied that in each case:
- the Section 122 conditions are satisfied in that all of the plots referred to in this statement are required for the proposed scheme or required as Replacement Land;
  - there is in any event a compelling case in the public interest for the acquisition of all of the Open Space land and its Replacement Land;
  - National Highways has a clear idea of why it requires the Open Space land and its replacement, and how those lands will be use;
  - where Replacement Land is to be provided it will be no less advantageous to the owner of the Open Space land and the public; and
  - in all other circumstances the compulsory acquisition powers sought over the Open Space land and Replacement Land are justified in the public interest.
- 6.3.4 On this basis National Highways outlines in the Appendix below that the Secretary of State can be satisfied SPP is not required.

## **7 Grounds relied on for the Secretary of State to confirm SPP is not required**

- 7.1.1 National Highways hereby requests confirmation from the Secretary of State on the basis set out in the appendix to this statement, relying on the provisions of sections 131 and 132 of the PA 2008 as described in the appendix to this statement.
- 7.1.2 It is considered that the Secretary of State can be satisfied that the provisions of sections 131 and 132 of the PA 2008 have been met and that the Order, should they adopt this approach, and the Order should not be subject to Special Parliamentary Procedure.

## Appendix A

### Table of plots to which ss 131 and 132 PA 2008 Apply

#### A.1 Plots to which S131(4) applies:

##### A.1.1 S131(4) PA 2008 states:

*This subsection applies if—*

*Replacement Land has been or will be given in exchange for the order land, and*

*the Replacement Land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.*

A.1.2 The Applicant requests the Secretary of State certify that Special Parliamentary Procedure is not required for the plots listed in column 4 of Table A.1 below, on the basis that S131 (4) of the PA 2008 applies:

**Table A.1 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 <sup>2</sup>	ha		m <sup>2</sup>	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, Witham (1) (Area 2)	Essex County Council	7/17d	158	0.02	8/43d, 8/43e, 8/44c, 8/45e	4915 <sup>2</sup>	0.5
Blackwater Rail Trail, Witham (Area 5)		8/6h, 8/6i	172	0.02			

<sup>2</sup> The remainder of the plot area will replace acquisition of new rights in Area 5, see Table A.3.

## Replacement Land Statement

Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m <sup>2</sup>	ha		m <sup>2</sup>	ha
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, <del>9/1h,</del> <del>9/1e</del> 8/45f	8,389,459 <sup>3</sup>	0.84
River Brain, Witham (Area 8)		8/47k, 8/47m, 8/47o, 8/47p	371	0.04			
Whetmead Nature Reserve, Witham (Area 9)	Braintree District Council /Witham Town Council	8/47a, 9/11a	6,639	0.66			

<sup>3</sup> The remainder of the plot area will replace acquisition of new rights in Area 7, see Table A.3.

Replacement Land Statement

Open Space Land	Existing Owner	Land Plan Plot Nos.	Area Required by the scheme		Replacement Land Plot Nos.	Replacement Land Area	
			m <sup>2</sup>	ha		m <sup>2</sup>	ha
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, <del>18/1v,</del> <del>19/1h,</del> 19/1i	<del>12501049</del>	0.13
Copford Recreation Ground (Area 13)	Copford with Easthorpe Parish Council	19/17b	2340	0.23	19/18d	3571	0.36

A.1.3 For each of the plots listed above, Replacement Land has been or will be given in exchange for the order land, and the Replacement Land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.

**A.2 Plots to which S132(3) applies:**

A.2.1 Section 132(3) PA 2008 states:

(3) *This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—*

*the persons in whom it is vested,  
other persons, if any, entitled to rights of common or other rights, and  
the public.*

**Table A.2 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 <sup>2</sup>	ha
River Chelmer, Boreham (Area 1)	permanent new rights Temporary possession during construction	<del>4/11g, 1/14a, 1/14b</del>	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

Replacement Land Statement

(1) Open Space Land	(2) Nature of powers sought	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
			m <sup>2</sup>	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

- A.2.2 for each of the above listed plots, the order land, when burdened with the order right, will be no less advantageous than it was before to the
- the persons in whom it is vested,
  - other persons, if any, entitled to rights of common or other rights, and
  - the public.

**A.3 Plots to which S132(4) applies:**

A.3.1 Section 132 PA 2008 states:

*This subsection applies if—*

*Replacement Land has been or will be given in exchange for the order right, and*

*the Replacement Land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).*

**Table A.3 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	(5) Area Required by the scheme	(6) Replacement land plots nos.	(7) Replacement land



Replacement Land Statement

		Plot Nos.					
			m <sup>2</sup>	ha		m <sup>2</sup>	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, <del>9/1h,</del> <del>9/1e</del> 8/45f	8,459 <del>389</del> <sup>4</sup>	0.88

A.3.2 For each of the plots listed above, Replacement Land will be given in exchange for the order right, and the Replacement Land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent). The Replacement Land will be adequate to compensate the relevant persons and the public for the disadvantages which result from the compulsory acquisition of the order right.

#### A.4 List of Open Space Land Plots required for temporary purposes only:

A.4.1 The following plots are open space land over which temporary powers only are sought. No acquisition of land and/or new rights is proposed.

**Table A.4**

(1) Open Space Land	(4) Land Plan Plot Nos.	(5) Area Required by the scheme	
		m <sup>2</sup>	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 8/11e	13,744	1.37

<sup>4</sup> These plots are also allocated to replace Areas 6, 8 and 9.

## Replacement Land Statement

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

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

<a href="#">Land at Station Road Marks Tey (Area 12)</a>	<a href="#">19/2f, 19/6c</a>	<a href="#">3,634</a>	<a href="#">0.36</a>
<a href="#">Copford Recreation Ground (Area 13)</a>	<a href="#">19/17a</a>	<a href="#">3,711</a>	<a href="#">0.37</a>

- A.4.2 For each of the above listed plots none is within any of the other descriptions in subsection (1) of section 131.
- A.4.3 Temporary powers are sought only for a temporary (although possibly long-lived) purpose. The purpose in each case is for working space and access during the works to implement the proposed scheme, save for plot 19/17a, for which temporary powers are sought for the installation of bat boxes.
- A.4.4 To the extent that the Secretary of State believes that temporary possession is an acquisition for the purposes of section 131 and/or 132 of the 2008 Act, SPP is not required in any event. This is because section 131 (4B) states:
- A.4.5 *This subsection applies if—*
- A.4.6 *order land is, or forms part of, an open space,*
- A.4.7 *none of the order land is of any of the other descriptions in subsection (1), and*
- A.4.8 *the order land is being acquired for a temporary (although possibly long-lived) purpose.*
- A.4.9 *This subsection applies if—*
- A.4.10 *the order land 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*
- A.4.11 *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.*
- A.4.12 On this basis the Secretary of State can be satisfied that special parliamentary procedure is not engaged for the use by the proposed scheme of the plots required only on a temporary basis that form part of an open space.
- A.4.13 Temporary powers over Freehold and New Rights Plots forming part of an open space that are included in Order Lands**
- A.4.14 Powers of temporary possession are sought for all plots that are listed in tables A1, A2 and A3 above for the period of time, if any, that temporary powers are relied on by the Applicant before vesting, permanent possession or other acquisition of the freehold or new rights occurs.

## Acronyms

Abbreviation	Term
AOD	Above Ordnance Datum (a consistent version of above sea level, in effect)
DCLG	Department of Communities and Local Government (Now Department of Levelling Up Housing and Communities)
DCO	Development Consent Order
ha	hectare (10,000m <sup>2</sup> or approximately 2.47 acres)
km	kilometre (1,000m)
LNR	Local Nature Reserve
m	metre
m <sup>2</sup>	square metre
NH	National Highways Limited
NMU	Non-Motorised User – pedestrian, cyclist, equestrian
NSIP	Nationally Significant Infrastructure Project
OS	Ordnance Survey
PA 2008	Planning Act 2008
PCF	Project Control Framework (NH's project management system)
PRA	Preferred Route Announcement
PRoW	Public Right of Way (public byway, bridleway or footpath)
RIP	Regional Investment Programme
RIS	Road Investment Strategy
SAR	Scheme Assessment Report
SNCI	Site of Nature Conservation Importance (district level)
SPP	Special Parliamentary Procedure
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest (national level)

## Glossary

Term	Definition
Book of reference	Detailed listing of all land parcels and rights required for the Proposed Scheme, explaining why they are required and showing all existing and proposed interests in the land.
Development Consent Order (DCO)	An order that authorises NSIPs under the PA 2008
National Highways	National Highways Limited - the overseeing organisation for the Proposed Scheme; a Government company charged with modernising, maintaining and running the SRN in England.
Open Space	This is defined in sections 131 and 132 PA 2008, by reference to section 19 of the Acquisition of Land Act 1981, as “ <i>any land laid out as a public garden or used for the purposes of public recreation</i> ”.
Order Land	land included within, and proposed to be subject to, the powers of land acquisition and of temporary use in the DCO.
Order Limits	The extent of land that is the subject of compulsory acquisition or use powers in the DCO or other Order.
Preferred Route	The design that that the Secretary of State for Transport published as the basis for the subsequent public consultation process prior to the preparation and submission of the DCO application.
Proposed Scheme	The proposals for the widening of the A12 between Chelmsford and the A120 for which the A12 Chelmsford to A120 Widening Development Consent Order is sought
Replacement Land	Land provided in exchange for special category land that is subject to compulsory acquisition or compulsory acquisition of rights, under the powers of the DCO, and which is provided in accordance with sections 131 and 132 of the PA 2008.
Special Category Land	Land falling within a range of uses, as defined under the PA 2008The most frequently encountered such land uses are common land and open space.