

## Justifying the need for land and rights: an overview

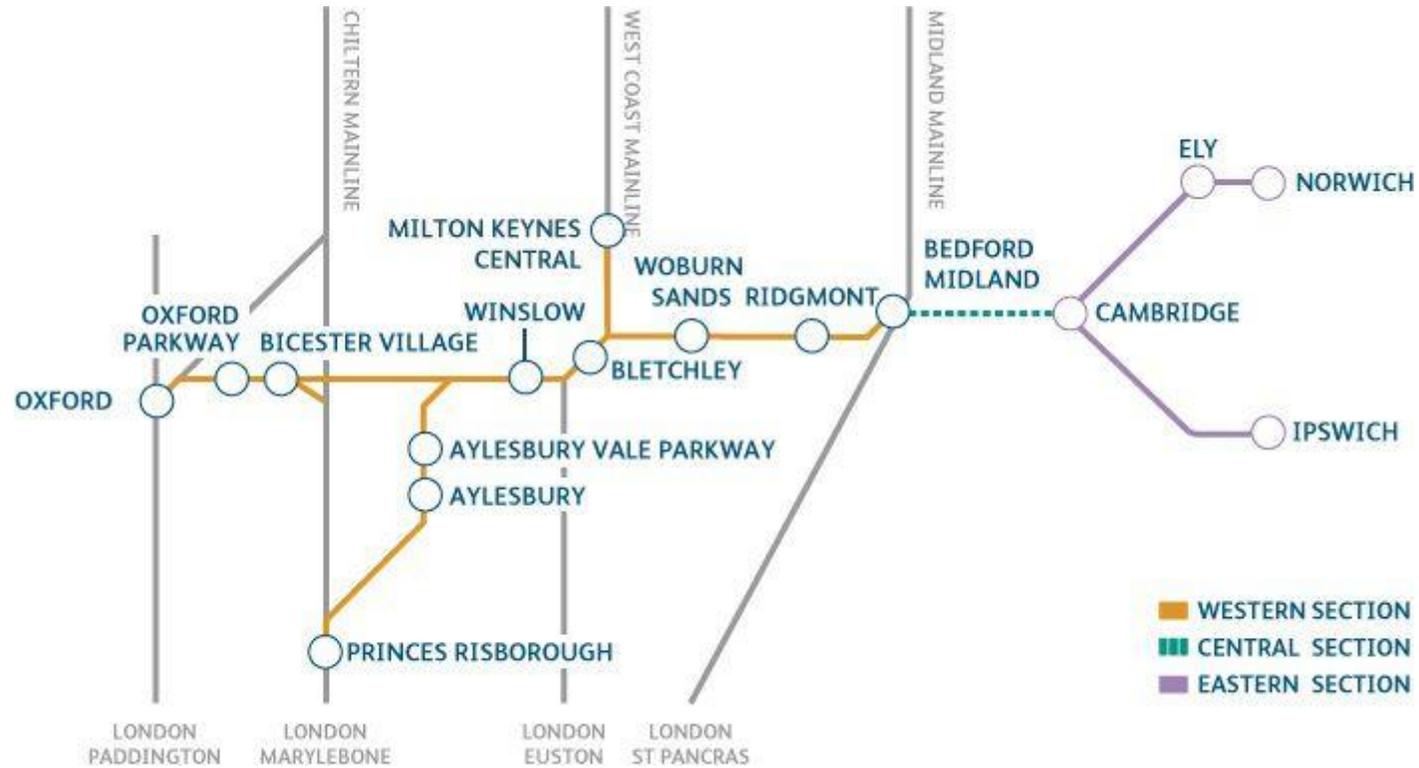


**Yaaser Vanderman**

## Topics

- Specificity
- Permanence
- Evidence
- Material Detriment

# Case Study – East West Rail 2



## Specificity

- Acquisition of Land Act 1981
  - Section 10(2): The compulsory purchase order shall be in the prescribed form and shall describe by reference to a map the land to which it applies.

# Specificity

- Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004

## SCHEDULE

Table 1

Number on map <i>(i)</i>	Extent, description and situation of the land <i>(j)</i>	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981—name and address <i>(k)</i> (3)			
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers
(1)	(2)				

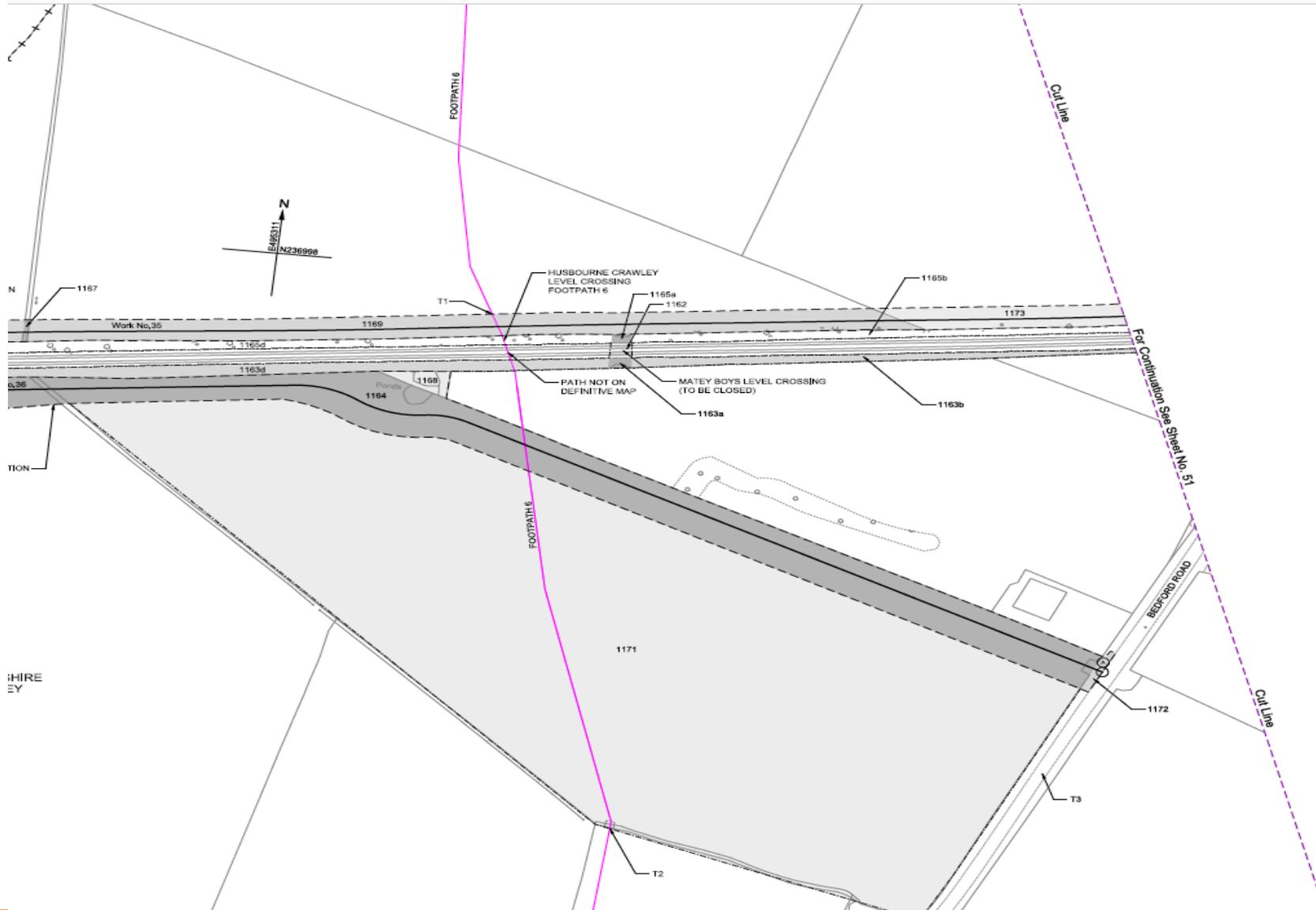
# Specificity

- Book of Reference
- Deposited Plans

# Specificity

Number on Plan (1)	Extent, description and situation of the land (2)
1171	60071 square metres, or thereabouts, of Agricultural land, woodland, hedgerow and Footpath 6 situated to the west and south of Matey Boys Level Crossing, in the parish of Husborne Crawley
1172	108 square metres, or thereabouts, of Land forming part of adopted highway known as Bedford Road situated to the south west of Matey Boys Level Crossing, in the parish of Husborne Crawley

# Specificity



<b>UNRESTRICTED POWERS TO ACQUIRE LAND</b>
No. on plan: 1160, 1161, 1163, 1163a, 1163b, 1163c, 1163d, 1164, 1165, 1165a, 1165b, 1165c, 1165d, 1167, 1168, 1169, 1171, 1172, 1173
<b>POWERS LIMITED TO TEMPORARY USE OF LAND</b>
No. on plan: None
<b>POWERS LIMITED TO TEMPORARY USE OF LAND AND ACQUISITION OF RIGHTS</b>
No. on plan: None
<b>POWERS LIMITED TO ACQUISITION OF RIGHTS</b>
No. on plan: None
<b>POWERS LIMITED TO EXTINGUISHMENT OF RIGHTS</b>
No. on plan: 1162, 1162a
<b>HIGHWAYS TO BE STOPPED UP TEMPORARILY</b>
Footpath 6 and path not on the definitive map between points T1 and T2 Bedford Road between points T3, T2 (on sheet 51) and T1 (on sheet 51)
<b>KEY</b>
————— CENTRE LINE OF WORK
- - - - - LIMIT OF DEVIATION
- - - - - LIMIT OF LAND TO BE ACQUIRED OR USED
..... COUNTY / BOROUGH / DISTRICT BOUNDARY
+ + + + + PARISH BOUNDARY
● COMMENCEMENT OF WORK
○ TERMINATION OF WORK
⊙ NEW / IMPROVED ACCESS
— EXISTING OR ALLEGED PUBLIC RIGHT OF WAY
— PUBLIC RIGHT OF WAY OR ALLEGED PUBLIC RIGHT OF WAY TO BE STOPPED UP

## Permanence

- Difference between CPOs and others (e.g. special/hybrid acts, TWAOs and DCOs (Infrastructure Planning (Model Provisions) (England and Wales) Order 2009))
- But see s18 of Neighbourhood Planning Act 2017

## Permanence

- DCLG – “Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land”
  - “The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire.” (para 9)

## Permanence

- *R (FCC Environment (UK) Ltd) v SSECC* [2015] EWCA Civ 55
  - Sullivan LJ (para 11):

11. The parties were also agreed that it was not, in fact, so difficult to conceive of circumstances where an examining Panel could conclude that there was no compelling case for compulsory acquisition despite an NPS having established an urgent need for development. Three examples were given in Mr. Blundell's Skeleton Argument:

“(1) The land proposed to be acquired compulsorily may, on proper analysis, be found to be excessive because the development proposals can be constructed without needing that land to be acquired (in which case, the section 122(2) test would also not be met);

(2) The acquisition of a right over the land, rather than its acquisition, might suffice; and

(3) The land may be necessary but, during the course of the Panel's consideration of the application, the owner may agree to sell it willingly rather than by compulsion (a common scenario in compulsory purchase inquiries).”

## Permanence

- Time-limited consent but permanent acquisition and extinguishment of land/rights?
  - *R (John Mars Jones) v SSBEIS* [2017] EWHC 1111 (Admin)
    - “65. [Article 18](#) of the Order provides for the undertaker to create and acquire compulsorily the rights, or impose restrictions over the Order land described in the book of reference and shown on the land plans. ...The panel explained in [section 8](#) of its report why the powers of compulsory acquisition of rights over land should not be time limited notwithstanding that the development consent itself expired after 30 years. In essence, there was a need to create such rights in order to implement the development consent. That could only be done by having a power to acquire rights or by granting temporary possession. The panel considered that the compulsory acquisition of rights was preferable as temporary possession would mean excluding persons from the land for 30 years, not merely granting rights over the land. Further, the rights would be linked to the use of the proposed development and would cease, in practice, to be used once the development consent expired. No challenge is made to that reasoning.”

## Permanence

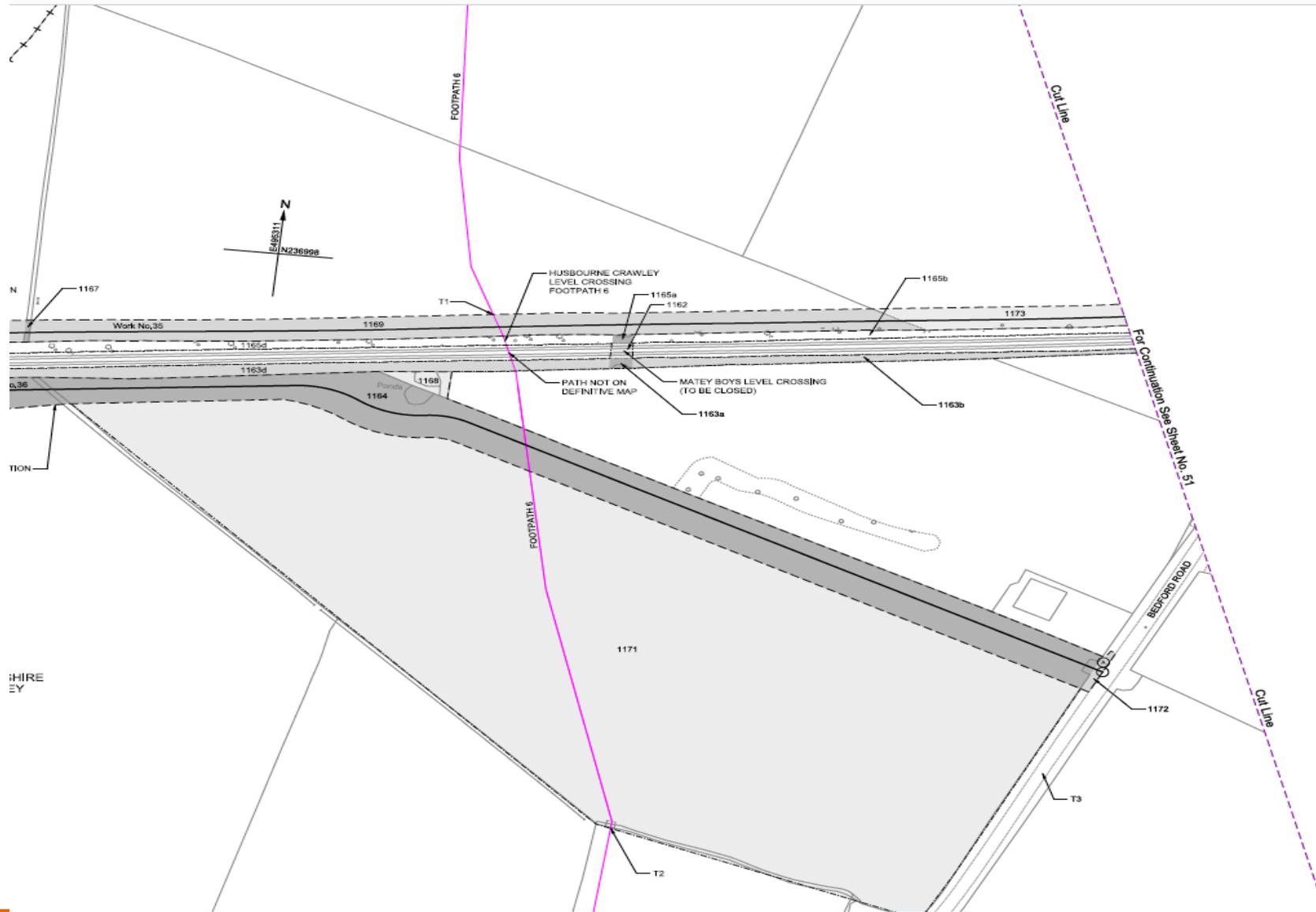
– *R (John Mars Jones) v SSBEIS* [2017] EWHC 1111 (Admin)

- “66. [Article 23](#) of the Order relates to private rights and restrictive covenants over land which is subject to the compulsory creation and acquisition of rights or the impositions of restrictions under the Order (that is, in particular, land in respect of which rights and restrictions may be imposed under [Article 18](#) of the Order). Such rights are suspended and unenforceable or, subject to the giving of notice by the statutory undertaker, extinguished ‘in so far as in either case their continuance would be inconsistent with the exercise of the right created and acquired or the burden of the restriction imposed’.

68...The fact that the power provides for the permanent extinction of private rights whereas the development consent itself will expire in 30 years does not of itself render the inclusion of [Article 23](#) in the Order unlawful or necessarily disproportionate. It is possible to envisage situations in which the permanent extinguishment of a right, consequent upon the compulsory acquisition of another right (as in the example given above) is necessary.

69...As a matter of principle, therefore, the inclusion of the powers of extinguishment set out in [Article 23](#) is capable of being lawful and within the powers conferred by the 2008 Act to make such an order.”

# Permanence – EWR2



<b>UNRESTRICTED POWERS TO ACQUIRE LAND</b>	
No. on plan:	1160, 1161, 1163, 1163a, 1163b, 1163c, 1163d, 1164, 1165, 1165a, 1165b, 1165c, 1165d, 1167, 1168, 1169, 1171, 1172, 1173
<b>POWERS LIMITED TO TEMPORARY USE OF LAND</b>	
No. on plan:	None
<b>POWERS LIMITED TO TEMPORARY USE OF LAND AND ACQUISITION OF RIGHTS</b>	
No. on plan:	None
<b>POWERS LIMITED TO ACQUISITION OF RIGHTS</b>	
No. on plan:	None
<b>POWERS LIMITED TO EXTINGUISHMENT OF RIGHTS</b>	
No. on plan:	1162, 1162a
<b>HIGHWAYS TO BE STOPPED UP TEMPORARILY</b>	
Footpath 6 and path not on the definitive map between points T1 and T2	
Bedford Road between points T3, T2 (on sheet 51) and T1 (on sheet 51)	
<b>KEY</b>	
—————	CENTRE LINE OF WORK
- - - - -	LIMIT OF DEVIATION
- · - · - ·	LIMIT OF LAND TO BE ACQUIRED OR USED
· · · · ·	COUNTY / BOROUGH / DISTRICT BOUNDARY
+ + + + +	PARISH BOUNDARY
●	COMMENCEMENT OF WORK
○	TERMINATION OF WORK
⊙	NEW / IMPROVED ACCESS
— (pink)	EXISTING OR ALLEGED PUBLIC RIGHT OF WAY
— (green)	PUBLIC RIGHT OF WAY OR ALLEGED PUBLIC RIGHT OF WAY TO BE STOPPED UP

## Evidence

- Demonstrating why each plot (and each part of the plot) is necessary
- Expert evidence



Environmental Statement – Appendix 9.13



- 2.3.11 ECS B9 is location north of the unnamed tributary of the Claydon Brook. It is immediately north of an ecological compensation site for a housing development project to the east of Furze Lane. ECS B9 will extend this existing ecological compensation site and benefit the protected and/or notable species that the existing ecological compensation site supports.

### B10 Land East of Great Horwood Road, Winslow

- 2.3.12 It has not been possible to secure ECS B10 prior to the TWAO so far therefore it has only been subject to high level ecological design.

**Table 2.11: Ecological compensation site details for ECS B10**

<b>Ecological Compensation Site:</b> B10	<b>Area:</b> 1.8 ha
<b>Specific IEFs for compensation:</b> Great crested newts, designated sites, terrestrial habitats, aquatic habitat and species, otters, water vole, birds, terrestrial invertebrates, bats, badgers	
<b>Existing habitats to be lost:</b> Improved grassland (pasture)	
<b>Proposed habitats to be gained:</b> Ponds and marginal planting (HPI), lowland mixed deciduous woodland (HPI) lowland meadow (HPI), hedgerows (HPI), open mosaic habitat (HPI), scrub, reptile embankments, hibernacula, log piles	

- 2.3.13 ECS B10 is close to an area where pond habitat supporting great crested newts would be lost. ECS B10 will be used for the translocation of great crested newts (under a Natural England licence). ECS B10 will also be used for the translocation of reptiles ECS B10 will include creation of ponds and marginal planting, lowland mixed deciduous woodland, open mosaic habitat, lowland meadow, native species-rich hedgerows with trees, scrub, south-facing reptile embankment, hibernacula and log piles. The provision of these habitats, once established, will support great crested newts, reptiles, birds, badgers, bats and terrestrial invertebrates such as black, brown and white-letter hairstreak butterflies.
- 2.3.14 ECS B10 is situated immediately east of Old Quarry, Winslow BNS and 90 m north of Wood Copse off Magpie Way LWS and ancient woodland. Once the habitats within ECS B10 have established and are under adaptive management, this will connect up the BNS with the LWS and ancient woodland, consequently extending the habitat within each of these designated sites and enabling the ranges of the protected and/or notable species these support to expand.

### B13 Land East of Winslow Road, Winslow

- 2.3.15 It has been possible to secure ECS B13 prior to the TWAO and therefore it has been subject to detailed design.

**Table 2.12: Ecological compensation site details for ECS B13**

<b>Ecological Compensation Site:</b>	<b>Area:</b>
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## Evidence – EWR2

“This is a significant over-simplification of the situation. Network Rail has developed a comprehensive strategy for the mitigation and compensation of impacts on great crested newts as a result of EWR2. This involves the replacement of lost habitat, both terrestrial and aquatic along the length of the Scheme in order to address impacts on each metapopulation of newts affected. New ponds are proposed in areas suitable for pond creation (in terms of their proximity to newt metapopulations, their physical characteristics, such as underlying geology, slope or aspect, and their location close to the railway corridor). Not every location for the creation of proposed ponds will be within 500m of a lost pond; instead the new ponds form part of a route-wide solution based on great crested newt metapopulation ecology.”

## Material Detriment

- Valuation Office Agency's Land Compensation Manual, Section 15, Part 1
  - “15.1 Authorities exercising compulsory powers to buy land frequently find that only part of a property is required for the scheme and include that part in the compulsory purchase order and notice to treat. However some protection (other than the entitlement to compensation for injurious affection and severance) is afforded to the property owner as many of the Acts conferring the power to take land compulsorily incorporate ‘material detriment’ provisions, whereby the owner, upon receipt of the notice to treat, can challenge the demand by the authority to take part of the property, and if the challenge is successful, compel the authority to purchase the whole of the property.”

## Material Detriment

- MHCLG “*Guidance on Compulsory purchase process and The Crichel Down Rules*” (2018)

- **“282. What happens where an owner objects to the division of land because it would cause material detriment to their retained land?”**

Where an acquiring authority proposes to acquire only part of a house (or park or garden belonging to a house), building or factory, the owner can serve a counter-notice on the acquiring authority requesting that it purchases the entire property.

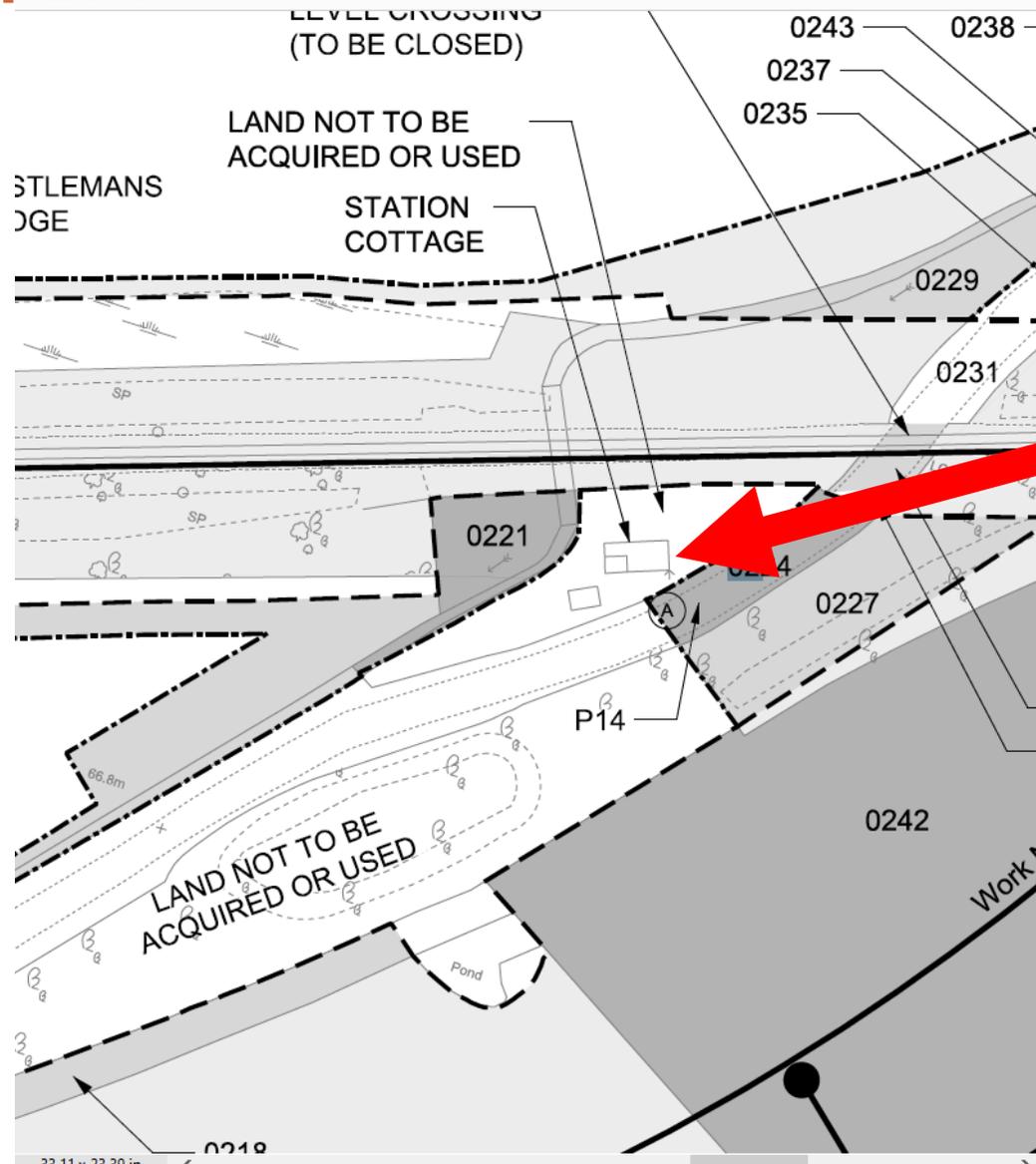
On receipt of a counter-notice, the acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

The Upper Tribunal will determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory, cause material detriment to the house, building or factory (**ie cause it to be less useful or less valuable to some significant degree**), or in the case of a park or garden, **seriously affect the amenity or convenience of the house to which the park or garden belongs.**”

## Material Detriment

- Section 8(1) of the Compulsory Purchase Act 1965 for CPOs under the Acquisition of Land Act 1981
- Section 166 of the Town and Country Planning Act 1990
- Para 7, Schedule 19 to the Highways Act 1980
- Para 8, Schedule 3 to the Gas Act 1986
- Schedule 3 to the Electricity Act 1989
  
- Schedule 13 to The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020

# Material Detriment



# Thank you for listening

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