

COUNCIL – 14TH SEPTEMBER 2009

9.1 LOUGHBOROUGH EASTERN GATEWAY – ADDITIONAL LAND ACQUISITION

Notice has been given in accordance with Council Procedure Rule 2(h) by Councillors Bava, Harris, M.J.Hunt, Miah, Newton, Smith and Vincent.

Minute 31 of the Cabinet meeting held on 9th July 2009 is set out below and the report referred to in the minute is appended.

“A report of the Director of Loughborough Regeneration was submitted updating the Cabinet on progress with this project, seeking authority to take various actions and accept delegated authority from the County Council (Stopping Up Orders) and advising of a further report to the Cabinet in October 2009 (item 7 on the agenda filed with these minutes).

RESOLVED

1. that the Cabinet notes progress with the project;
2. that the Cabinet agrees to make a Compulsory Purchase Order (CPO) under Section 226 (1) (a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of the land or rights over the land shown shaded pink on the Plan submitted and described generally in the report, for the purpose of securing mixed use development as part of the Loughborough Eastern Gateway scheme including a link road, residential, office and commercial uses and car parking;
3. that the Director of Governance and Procurement be authorised to:
 - (i) prepare and settle the draft Order and supporting documents;
 - (ii) take all necessary steps to secure the making, confirmation and implementation of the CPO including the publication and service of all notices and the presentation of the Council’s case at any Public Inquiry;
 - (iii) acquire interests in land within the CPO either by agreement or compulsorily;
 - (iv) approve agreements with land owners setting out the terms for the withdrawal of objections to the Order, including where appropriate seeking exclusion of land from the Order and/or making arrangements for re-housing or relocation of occupants;

- (v) make any minor and consequential amendments to the draft Orders and supporting documents as may be required to ensure compliance with the necessary regulations and procedures;
4. that the Cabinet recommends to Council that, subject to Leicestershire County Council resolving to delegate powers under S125 Highway Act 1980 to the Borough Council of Charnwood for the purposes of stopping up Private Means of Access, it accepts that delegated authority;
 5. that, subject to Council accepting the relevant delegated powers referred to in 4. above, the Cabinet agrees to make requests to the Secretary of State for Transport for the Stopping Up of parts of Ratcliffe Road, Burder Street and Gordon Road as shown on the Plans submitted and described generally in the report, and to use such powers in order to stop up identified private means of access at Burder Street and Gordon Road and to then create new private means of access to the identified properties from the adopted highway.
 6. that in so far as it is necessary the Council uses its powers under S271 and S272 Town and Country Planning Act 1990 to secure the relocation of infrastructure from land in the ownership of the Council required to deliver the scheme;
 7. that the Director of Governance and Procurement be authorised to commence the publicity procedures for procurement of parts of Sidings Park as a turning head and for locating an electricity sub station under the terms of S232 Town and Country Planning Act 1990;
 8. that the Director of Governance and Procurement be further authorised to prepare and make a Compulsory Purchase Order and request stopping up powers in relation to land at Glebe Street in the event that negotiations to secure an appropriate solution to the provision of the southern end of Sidings Walk are unsuccessful;
 9. that a further report be brought to Cabinet in October 2009 with details of any objections received, an update of the likely need for a CPO Inquiry and the costs associated with that and an update on the overall costs of the project and its implications for funding and delivery.

Reasons

- I. In order that Cabinet is aware of progress with this important regeneration project.

2. To ensure that the land and rights over land required for the development can be acquired if agreement cannot be reached so that the development can go ahead.
3. To ensure that the necessary authority is in place to pursue compulsory purchase to its conclusion and to give authority to resolve matters by agreement if possible.
4. To ensure that the Council has the necessary authority to stop up and create private means of access.
5. To authorise the making of the necessary Orders to secure the stopping up of these roads following the construction of the link road.
6. To ensure that legal powers are available to relocate infrastructure located in positions that would prevent the implementation of the project.
7. To ensure that a small part of the land within Sidings Park can lawfully be used to form a turning head to permit the Stopping Up of Burder Street.
8. In order to allow design work to proceed and subsequent negotiations to take place to secure a solution to this matter before the use of Compulsory Purchase Powers.
9. In order that Cabinet is fully informed of all the costs of the project and the implications of any additional costs or procedural matters.”

CABINET - 9TH JULY 2009

Report of the Director of Loughborough Regeneration

ITEM 7 LOUGHBOROUGH EASTERN GATEWAY – ADDITIONAL LAND ACQUISITION

Purpose of Report

To update Cabinet with progress with this project.

To seek authority to acquire compulsorily additional land or rights over land required to implement the construction of the Nottingham Road/Meadow Lane link road as part of the wider Loughborough Eastern Gateway scheme.

To seek authority to make the necessary requests from the Secretary of State to stop up roads to deliver the project.

To seek authority to use powers under the Town and Country Planning Act to relocate infrastructure from land belonging to Charnwood Borough Council

To seek authority to commence procedures to appropriate parts of Sidings Park to be used as a turning head for the stopping up of Burder Street and for the relocation of an electricity sub-station.

To agree to accept from the County Council delegated powers to make the necessary Traffic Regulation Orders under the Highways Act 1980 required to implement the link road scheme.

To advise Cabinet of the intention to bring a further report in October when the content of any objections to the CPO will be known and clearer advice can be given on costs and risks

Recommendations

1. That Cabinet notes progress with the project
2. That Cabinet agrees to make a Compulsory Purchase Order under Section 226 (1) (a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of the land or rights over the land shown shaded pink on the Plan attached and described generally in the report for the purpose of securing mixed use development as part of the Loughborough Eastern Gateway scheme including a link road, residential, office and commercial uses and car parking
3. That the draft Orders and supporting documents attached to the report be approved and that the Director of Governance and Procurement be authorised to:
 - a. Take all necessary steps to secure the making, confirmation and implementation of the CPO including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry

- b. Acquire interests in land within the CPO either by agreement or compulsorily;
 - c. Approve agreements with land owners setting out the terms for the withdrawal of objections to the Order, including where appropriate seeking exclusion of land from the Order and/or making arrangements for re-housing or relocation of occupants
 - d. Make any minor and consequential amendments to the draft Orders and supporting documents as may be required to ensure compliance with the necessary regulations and procedures
4. That Cabinet recommends to Council that, subject to Leicestershire County Council resolving to delegate powers under S125 Highway Act 1980 to the Borough Council of Charnwood for the purposes of stopping up Private Means of Access it accepts that delegated authority.
 5. That ,subject to Council accepting the relevant delegated powers referred to in 4 above, Cabinet agrees to make requests to the Secretary of State for Transport for the Stopping Up of parts of Ratcliffe Road, Burder Street and Gordon Road as shown on the Plans attached and described generally in the report and, and to use such powers in order to stop up identified private means of access at Burder Street and Gordon Road and to then create new private means of access to the identified properties from the adopted highway .
 6. That in so far as it is necessary that the Council uses its powers under S271 and S272 Town and Country Planning Act 1990 to secure the relocation of infrastructure from land in the ownership of the Council required to deliver the scheme.
 7. That the Director of Governance and Procurement be authorised to commence the publicity procedures for procurement of parts of Sidings Park as a turning head and for locating an electricity sub station under the terms of S232 Town and Country Planning Act 1990.
 8. That the Director of Governance and Procurement be further authorised to prepare and make a compulsory purchase order and request stopping up powers in relation to land at Glebe Street in the event that negotiations to secure an appropriate solution to the provision of the southern end of Sidings Walk are unsuccessful.
 9. That a further report be brought to Cabinet in October with details of any objections received, an update of the likely need for a CPO Inquiry and the costs associated with that and an update on the overall costs of the project and its implications for funding and delivery

Reasons

1. In order that Cabinet is aware of progress with this important regeneration project.
2. To ensure that the land and rights over land required for the development can be acquired if agreement cannot be reached so that the development can go ahead
3. To ensure that the necessary authority is in place to pursue compulsory purchase to its conclusion and to give authority to resolve matters by agreement if possible

4. To ensure that the Council has the necessary authority to stop up and create private means of access.
5. To authorise the making of the necessary Orders to secure the stopping up of these roads following the construction of the link road and to ensure
6. To ensure that legal powers are available to relocate infrastructure located in positions that would prevent the implementation of the project.
7. To ensure that a small part of the land within Sidings Park can lawfully be used to form a turning head to permit the Stopping Up of Burder Street.
8. In order to allow design work to proceed and subsequent negotiations to take place to secure a solution to this matter before the use of Compulsory Purchase Powers.
9. In order that Cabinet is fully informed of all the costs of the project and the implications of any additional costs or procedural matters

Policy Context

The Loughborough Eastern Gateway scheme is the Council's priority regeneration project. The land is allocated in the adopted Charnwood Local Plan as a Regeneration Opportunity Site. It features in the Council's Corporate Plan as well as in the Sustainable Community Strategy. The scheme enjoys the backing of Leicestershire County Council, EMDA, The Homes and Communities Agency, The Leicester and Leicestershire New Growth Point Board, and The Leicester and Leicestershire Leadership Board

Background

The Loughborough Eastern Gateway scheme involves a major transformation of the area around Loughborough Station. The scheme comprises:

1. The Creation of a new link road between Nottingham Road and Meadow Lane
2. The construction of 120 new homes, 100 of them affordable
3. The closure of Ratcliffe Road and Burder Street to through traffic
4. The creation of a new access to Loughborough Station together with a more than doubling of the amount of car parking and improved access and interchange arrangements for buses, taxis, cyclists and pedestrians
5. The development of an area of land for commercial purposes including possible hotel, retail use and offices

Cabinet will recall it resolved on behalf of the Council to make a compulsory purchase order on 2nd October 2008. The Order was finally published in February 2009 when sufficient detail was known on the basis of detailed planning drawings.

Objections to that Order were received from Network Rail the freeholder and DB Schenker UK Ltd, the leaseholder of the former goods yard.

The new link road and housing were granted planning permission on 15th May 2009.

However a number of detailed highway issues were not resolved at the time that the first Order was made and it was clear from an early stage that a further Order might need to be made. Furthermore the legal authority in relation to the stopping up of highways was not necessarily available to the Borough Council but only available to the Secretary of State or Leicestershire County Council as Local Highway Authority. The location of key infrastructure on CBC land was also identified as an obstacle.

On legal advice the terms of the earlier resolution were not considered to give sufficient legal authority to make the subsequent orders and requests for stopping up and the detailed design work still needed to be completed before the form of a recommendation for a resolution could be brought to the Cabinet.

At the time of drafting the designs for the station improvements and commercial elements are now sufficiently well advanced to be able to identify all the relevant land for compulsory purchase and stopping up.

In relation to delivery, matters have become further clarified. The station improvements will be implemented by Network Rail and East Midlands Trains following the construction of the new road. The commercial development will be carried out by William Davis Ltd.

The construction of the road and the new housing will be funded by a unique combination of public funding from the Homes and Communities Agency, the East Midlands Development Agency (via the Leicester and Leicestershire Leadership Group), the New Growth Point Fund and Charnwood Borough Council. All of the funding is in place and a Capital Plan allocation has been made to carry out the necessary road construction and remediation works. The housing developer is Nottingham Community Housing Association and the contractor is William Davis Ltd. The road design and procurement is being carried out on behalf of the Council by Leicestershire County Council and Scott Wilson.

The road construction is being treated as a Major Highways scheme by the County Council and the appropriate project governance arrangements have been put in place.

The Land and Rights to be included in the Second Order.

The additional land and rights required to deliver the scheme comprises the following:-

- a) Such land north west of the existing CPO up to a point within 15 metres of the active trackside. This is required to ensure that the housing and road have sufficient depth of land to be delivered in accordance with the approved scheme.
- b) Rights to erect an acoustic fence as required by condition on the planning permission between the land identified above and the station buildings.
- c) The acquisition of the leasehold interest of DB Schenker in the remaining part of the goods yard adjoining the station in order that the temporary works to provide access and carparking can be delivered.
- d) Rights to construct and maintain a retaining wall adjoining Nottingham Road within the current station car park.
- e) The acquisition of such land as lies within Burder Street, Nottingham Road and Gordon Road as is necessary to enable the implementation of the road proposals and in particular the stopping up.
- f) The acquisition of land in unknown ownership at the north end of Glebe Street.

- g) The acquisition of any outstanding rights affecting land currently owned by the Borough Council of Charnwood
- h) Powers to ensure that statutory undertakers remove equipment from land currently in the ownership of Charnwood and to be transferred to NCHA.

These areas are shown on the Plans attached to this item (To follow)

Delegation of Powers from Leicestershire County Council

When a highway is Stopped Up this prevents the public at large from using the highway. However it does not prevent those who have a private right because their property adjoins the highway from still obtaining access. Therefore S125 Highway Act 1980 provides a means of stopping up those private rights.

In the case of the scheme this is essential to be used in conjunction with the purchase of the land underneath the highway, which would allow Charnwood to redirect the private means of access.

However the Borough Council of Charnwood is not able to use the powers under S125 as it is not a highway authority, unless such powers are delegated to it by Leicestershire County Council, the Local Highway Authority. The Cabinet of Leicestershire County Council is being recommended to make such a resolution on 30th July 2009 and the Cabinet will therefore need to recommend to Council that it accepts those powers. Cabinet needs to resolve to use them, if offered and accepted by the Council, in order to deliver this element of the scheme.

The parts of Gordon Road, Ratcliffe Road and Burder Street which are the subject of the stopping up orders are shown on the attached Plans.

Sidings Park Turning Head and Electricity Sub Station

The stopping up of Burder Street will require the provision of a turning head at the end of the stopped up area. The only possible location for this is within Sidings Park. Similarly, the electricity sub station on land to the north east of Glebe Street needs to be relocated as part of the implementation of the approved design and a suitable location has been identified within Sidings Park

Whilst the Sidings Park land was acquired for this specific purpose S232 Town and Country Planning Act 1990 does permit the appropriation of land from one purpose to another. However there are requirements to publicise the intention and to consider any objections. Therefore the Director of Governance and Procurement needs authorisation to commence the publicity procedures for procurement of parts of Sidings Park as a turning head and locating an electricity sub station under the terms of S232 Town and Country Planning Act 1990.

The areas affected by these two items are shown on the attached Plan.

Sidings Walk and Glebe Street.

The southern end of the proposed Sidings Walk is adopted highway but is extensively used for car parking by station users. Once the new scheme is implemented this may come within an area of local resident parking and the surface

of the highway could be altered using highway powers. It also provides vehicular access to the adjoining property which is used as an office and will need to be taken into account in any detailed design.

The detailed design of Sidings Walk including this area is a matter to be submitted as required by planning condition. Until the design has been prepared and consulted on it would be premature for the Council to determine that it is essential that either Glebe Road would need to be stopped up in this area or that the Council required to compulsory purchase the adjoining land. Therefore reserve powers are being requested in this respect.

Other approvals beyond the control of Charnwood Borough Council

Discussions with Network Rail have identified that there are two different procedures necessary to deliver the scheme. Firstly the temporary accommodation works around the Station require what is called "Station Change Approval" by the local users. Discussions are underway with Network Rail and East Midlands Trains in order to resolve this and the Compulsory Purchase of the leasehold interest of DB Schenker UK Ltd in the vicinity of the Station will provide sufficient flexibility to accommodate the needs of both parties.

More fundamental are the approval arrangements for disposal of the land. In the last report to Cabinet authority was sought to seek approval for compulsory purchase from the Secretary of State for Transport. These procedures now happen automatically through the lodging of an objection to the CPO and the procedure is now handled by the Office of the Rail Regulator under the terms of what is referred to as Condition 26, approval for disposal of railway land.

It is understood that Network Rail is empowered to undertake a consultation with the other potential users and if any object to the disposal then the matter is settled by the Rail Regulator. Network Rail have indicated that such approval will not take place until September 2009 at the earliest and that if the Rail Regulator maintains an objection to the disposal on behalf of one of the operators then the matter would proceed to public inquiry with the Rail Industry opposing the scheme and it would be up to the Secretary of States to make a final decision.

The issues surrounding land acquisition and road construction costs will become firmed up in the coming months and it is intended to bring a full update report to Cabinet in October in order that the implications can be considered.

Financial Implications

A figure for land acquisition was included in the financial appraisal of the scheme. The additional areas of land required are relatively small and it is not anticipated that they will add any value to the figure already agreed by the District Valuer.

The financial appraisal also included a sum of £20,000 to cover the costs of legal fees. However, no element was included for the costs associated with preparing for compulsory acquisition. The October 2008 item estimated these costs at just over £31,000 although no specific provision was made. It was considered that this issue could be revisited once the outcome of other costs was known. So far the legal fees associated with the Compulsory Purchase have been £20,000, though there is further work in progress of £16,000 associated with the complexities of preparing both the second Compulsory Purchase Order, the resolution of the highway issues and the preparation of the Councils Statement of Case for the Inquiry. There are

likely to be further legal fees involved in finalising all the relevant papers and involvement in negotiations with potential objectors and a provision of £10,000 should cover this. Underspends on other fee elements in the original appraisal and contingency elements should allow the additional legal costs to be accommodated within the original budget.

It is now clear that preparation will need to take place for a Public Inquiry because the Office of Rail Regulation will not be making a decision for some time. The costs associated with a Public Inquiry into compulsory purchase are always uncertain because the aim of any Acquiring Authority is always to negotiate away any objections before the Inquiry starts. Given the objection of DB Schenker UK Ltd to CPO 1, the complexities associated with CPO 2 and the other highway procedures that Charnwood is dealing with this now seems to be unlikely. Therefore a budget for preparation and holding a Public Inquiry including the retention of Counsel is considered to be in the order of £50k.

Once CPO 2 and the Stopping Up objection period is over and more details are known in relation to objections the costs of preparation will be better calculated and a more informed estimate can be prepared.

Detailed work continues on the design of the road and we will shortly be in a position to advise Cabinet of the full costs of the road and the other associated works. In the proposed October report Cabinet will be given a full cost update, an estimate of the timetable and the views of all our funding partners.

Risk Management

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below.

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
That it will not be possible to acquire the necessary land by agreement	MEDIUM	HIGH	Every effort is being made to reach agreement with Network Rail. A Compulsory Purchase Order has been made but the scheme would be delayed if it had to proceed to Inquiry
That the costs of the scheme will exceed those shown in the financial appraisal on which funding bids were based	MEDIUM	MEDIUM	So far the costs of site survey and investigation have been within budget. The road costs are being evaluated currently but will not be known accurately until tenders are received. Full information will be presented to Cabinet in October when the likelihood of a CPO Inquiry will be clearer and the views of the funding partners will be presented
That external funding will be at risk if the scheme is delayed	MEDIUM	HIGH	Close contact is being maintained with funding partners to keep them apprised of the situation

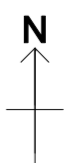
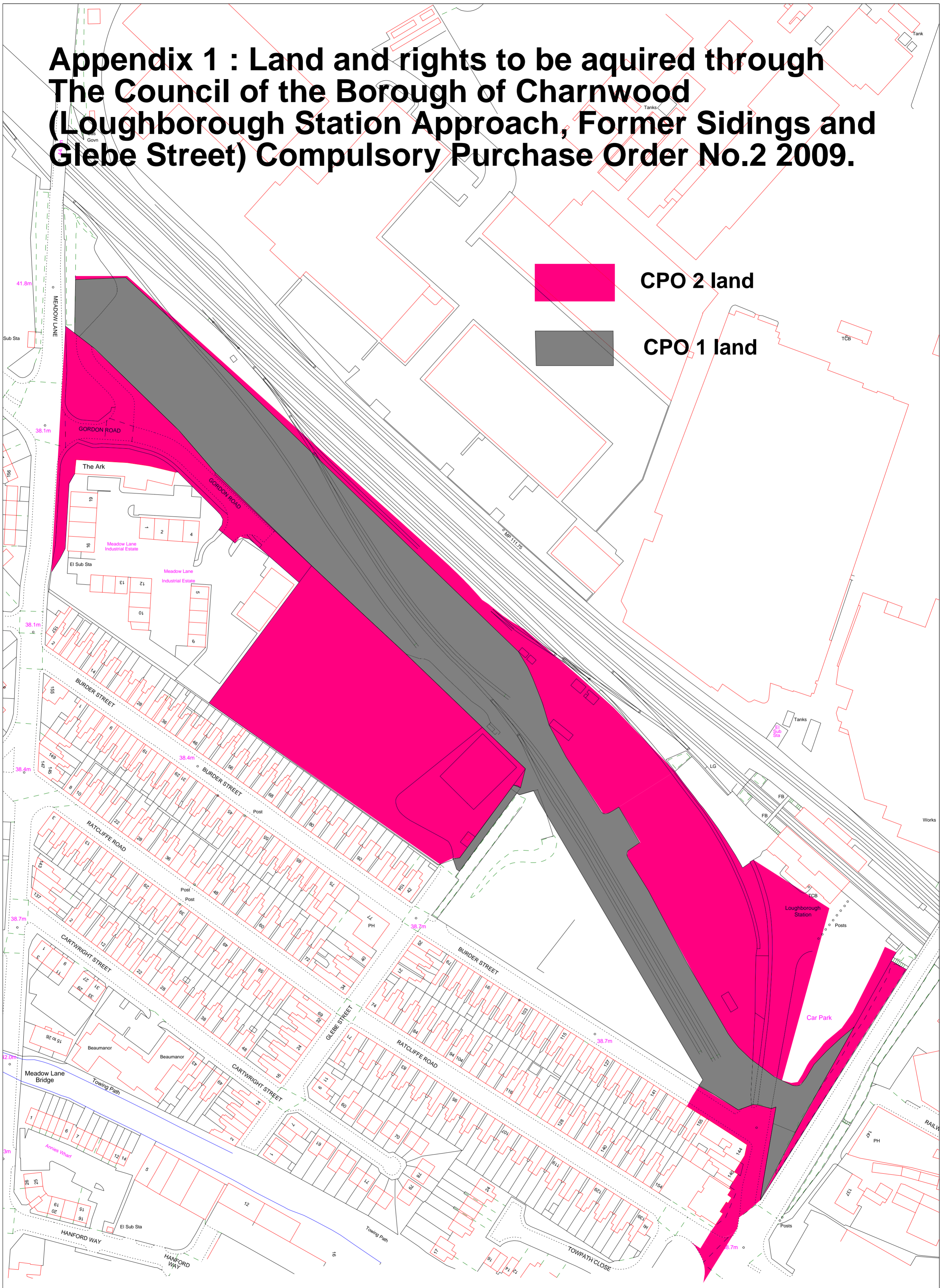
Key Decision: Yes

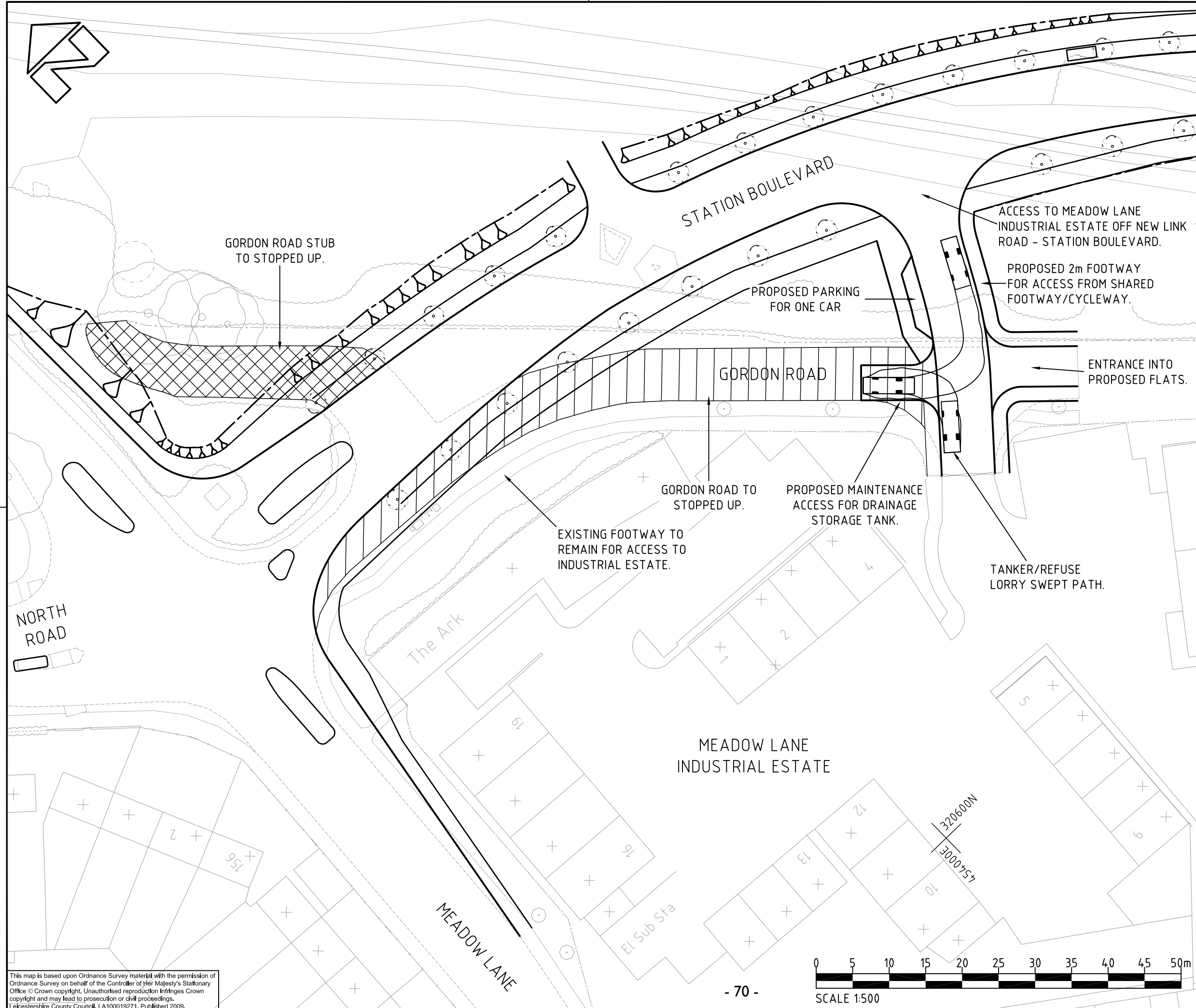
Background Papers: None

Officer(s) to contact:

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Appendix 1 : Land and rights to be aquired through The Council of the Borough of Charnwood (Loughborough Station Approach, Former Sidings and Glebe Street) Compulsory Purchase Order No.2 2009.





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NOTES:

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DEPARTMENT OF HIGHWAYS
TRANSPORTATION AND
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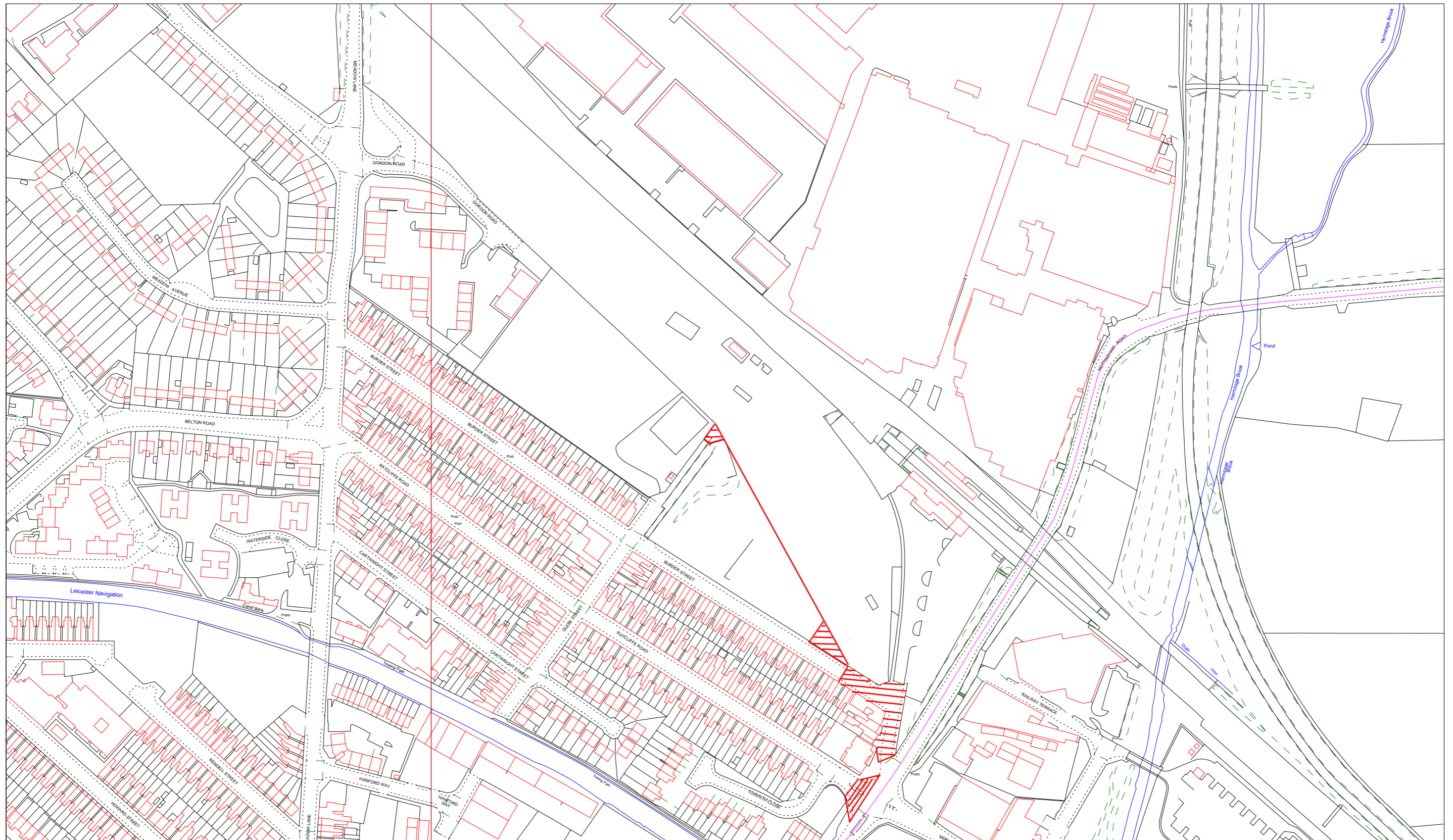
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LOUGHBOROUGH EASTERN GATEWAY

GORDON ROAD STOPPING UP

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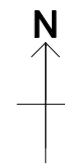
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