

**THE NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE TRACK ACCESS)
ORDER 202[]**

ADDITIONAL OBJECTION ON BEHALF OF BELLAVIEW PROPERTIES LIMITED

Introduction

1. We refer to Bellaview Properties Limited (**BPL**)’s original objection made on 5 June 2023 (Inquiry Document **OBJ-08.2**) (**BPL’s Original Objection**). BPL’s Original Objection was submitted in response to Network Rail (**NR**)’s application dated 17 April 2023 under section 6 of the Transport and Works Act 1992 (the **1992 Act**) to the Secretary of State for Transport (the **SoS**) for an order under sections 1 and 5 of the of the 1992 Act (the **Original TWAO Application**).
2. Pursuant to the Original TWAO Application, NR sought powers via the draft Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[] (the **Original Draft Order**) to “*acquire compulsorily rights over land and to use land temporarily, as well as to undertake certain ancillary works, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline.*”¹ In parallel to the Original TWAO Application, NR also sought to acquire by private treaty land registered at the Land Registry under Title Number AGL51330 from the Crown Estate (the **Triangle Site**). The Triangle Site is marked as Plot 1 on the Revised Draft Order Land Plan (see Figure 2 below).
3. Following NR’s Original TWAO Application and the opening of the Inquiry on 14 November 2023, on 19 December 2023 NR submitted for public consultation a series of new and/or revised documents which amend NR’s Original TWAO Application (the **Additional Consultation Pack**). The Additional Consultation Pack includes:
 - a. A revised draft Order (the **Revised Draft Order**);
 - b. An amended Land Plan accompanying the Revised Draft Order (the **Revised Draft Order Land Plan**);
 - c. A redline plan submitted in relation to NR’s application for deemed planning permission (the **Redline Plan**); and
 - d. Site Sharing Scenario 1 – Land Plan 9 and Site Sharing Scenario 2 – Land Plan 10 (the **Site Sharing Plans**).

¹ See the Explanatory Note to the Original Draft Order (Inquiry Document **CD 01**).

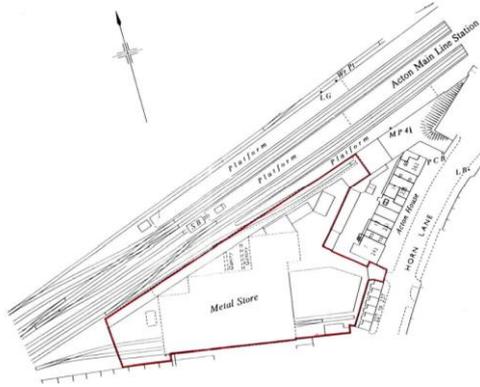
4. Since the submission of the Additional Consultation Pack, NR (via Addleshaw Goddard) have shared with BPL on 25 January 2024 an updated Revised Draft Order Land Plan as well as revised Redline Plan and revised Site Sharing Plans (as well as additional plans numbered Land Plan 11 and Land Plan 12) (see **Attachments 1-6** to this objection).
5. Pursuant to NR's revised TWAO Application (the **Revised TWAO Application**), NR seeks powers via the Revised Draft Order to "*acquire compulsorily rights over land to use land temporarily, as well as to use the land within the Order limits as a construction compound, including provision of a temporary ramp, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline.*"²
6. BPL continues to be the freeholder of land affected by the Revised Draft Order and maintains its objection to the Revised TWAO Application for reasons set out in its evidence before the Inquiry and for the grounds set out below in this additional objection (**BPL's Additional Objection**). BPL is an objector within the scope of s.11(4) of the 1992 Act.
7. BPL's Additional Objection does not purport to represent BPL's full submissions in relation to the Revised TWAO Application. BPL intends to present its full submissions as appropriate at the roundtable discussion scheduled for 1 February 2024 and at closing submissions on 9 February 2024.

BPL's interest in the land affected by the Revised Draft Order

8. As set out in BPL's Original Objection, BPL is the freehold owner of land known as 239 Horn Lane, London W3 9ED and registered at the Land Registry under Title Number AGL22605 (the **Property**) (see Figure 1 below). The Property is located on the western side of Horn Lane in Acton, within the London Borough of Ealing (**Ealing**). We refer to paragraphs 5-7 of BPL's Original Objection for a more detailed description of the Property.

Figure 1

² See the Explanatory Note to the Revised Draft Order.



Extract from Title Number AGL22605

9. Following BPL's and Builder Depot Limited's (**BDL**) (a company related to BPL) submission of an application for full planning permission to Ealing (reference 225069FUL) to redevelop the Property, as well as other land within BPL's ownership, on the following terms: *"Construction of a building ranging in height from 6 to 15 storeys, to provide builders merchants (Use Class Sui Generis) at ground floor level, and 185 self-contained residential units (Use Class C3) and associated amenity space at first floor level and above; hard and soft landscaping works; provision of car and cycle parking; works to provide means of access for both pedestrians and vehicles from Horn Lane and all other works incidental to the development. (Following demolition of existing builders merchants)"* (**BPL's Scheme**), on 29 December 2023 Ealing granted planning approval for BPL's Scheme.

10. The areas of the Property which are subject to the Revised Draft Order are identified as Plots 2, 3 and 4 on the Revised Draft Order Land Plan³ (see extract below at Figure 2).

Figure 2

³ Please note that the extract is taken from the Revised Draft Order Land Plan shared with BPL on 25 January 2024 – see **Attachment 1**.



*Revised Draft Order Land Plan (Drawing reference NR_OOC_LP_1250 (Version 1.0))⁴ shared with BPL on 25 January 2024 (see **Attachment 1**)*

Powers under the Revised Draft Order affecting the Property

11. Compared to the Original Draft Order, NR is no longer seeking compulsory purchase powers in relation to the warehouse, meaning that there has been an approximate 70% reduction of land take now required by NR. NR first introduced this change on Day 1 of the Inquiry on 14 November 2023. Despite this change, BPL maintains its position that the powers sought by NR under the Revised Draft Order are excessive.

12. NR seeks the following specific powers pursuant to the Revised Draft Order:

- a. Article 3 grants NR powers to use and execute temporary powers on land within the Order limits as a temporary construction compound, including provision of a temporary ramp, for the purposes of the construction of the “associated development”. The “associated development” is defined as: (i) a temporary road rail vehicle access via a road rail access point (**RRAP**) onto the Great Western Mainline (**GWML**) to enable delivery of the high speed and conventional stations at Old Oak Common (**OOC**); and (ii) a permanent road rail vehicle access via a RRAP onto the GWML from its southern side. “Associated development” also includes any works and operations incidental or ancillary as permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (including Part 18 of the Schedule 2) or The High Speed Rail (London – West Midlands) Act 2017 (the **2017 Act**). The “development” means the use and temporary works authorised by Article 3.

⁴ We note that the same drawing reference was used in the Land Plan accompanying the Original Draft Order. We understand that this is a mistake and requires correction to provide a revision number, so as to ensure there is no confusion as to which is the original, and which is the revised plan.

- b. Under Article 7(1)⁵ NR may acquire compulsorily such rights of access over land in respect of Plot 3 (forming part of the Property) for “permanent maintenance access for road rail vehicles onto the Great Western Mainline”. This power is not to take effect until NR has acquired such an interest in Plot 1 as necessary for this purpose to be achieved (see Article 7(2)).
- c. By Article 8⁶ NR may in connection with the development and the associated development:
 - i. Enter upon and take temporary possession of Plots 2, 3 and 4 (all forming part of the Property). The identified purpose for which temporary possession may be taken is “Temporary construction compound, including provision of a temporary ramp” (see Schedule 2);
 - ii. Remove vegetation from that land; and
 - iii. Construct temporary works (including the provision of means of access) on that land.

Article 8(3) specifies that NR may not, without the agreement of the owners of the land, remain in possession of any land under Article 8 after 31 January 2030.

13. BPL maintains its objection to the Revised Draft Order including on the grounds set out below. BPL has provided comments on the previous version(s) of the draft Order on several occasions to the Inspector and/ or NR (including on 11, 14 and 15 December 2023,) and our comments on the Revised Draft Order itself will follow.

The Revised Draft Order Land Plan and the Redline Plan

14. The revised Redline Plan and the Revised Draft Order Land Plan are objected to. The following comments are made.
- a. Due to the thickness of the redlines on all plans, there appears to be an encroachment into the boundary of the existing warehouse, around the north-eastern corner of the existing 227 to 237 Horn Lane, and into the boundary of the proposed development pursuant to 225069FUL, indicating that NR require the walls of these existing properties, and of the proposed development. See below extracts at Figures 3-5⁷:

⁵ Please note that in the word version of the Revised Draft Order shared with us this reference is to Article 6.

⁶ Please note that in the word version of the Revised Draft Order shared with us this reference is to Article 7.

⁷ Please note that these extracts are taken from the latest versions of the plans NR shared with BPL on 25 January 2024 (see **Attachments 1 and 4**).

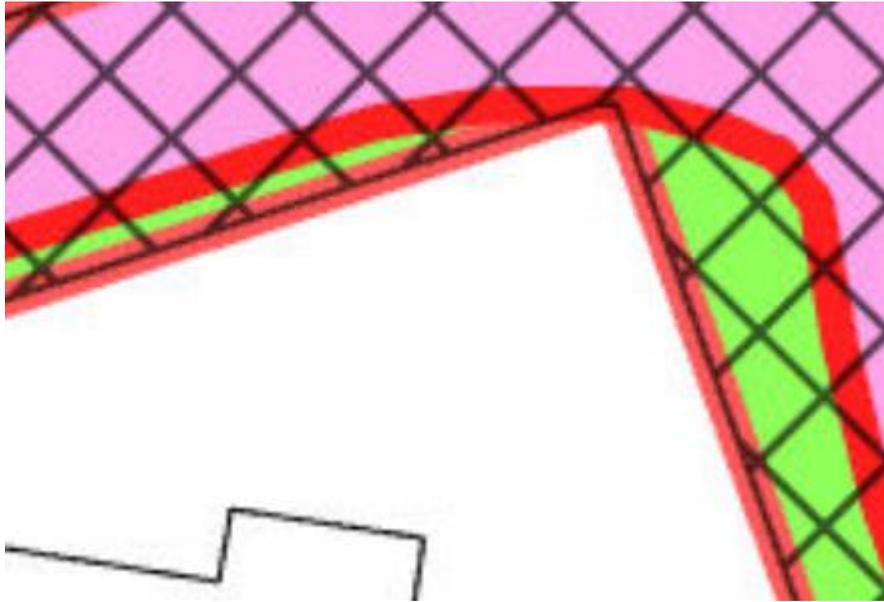


Figure 3: Extract from Site Sharing Scenario 2 – Land Plan 10 (see **Attachment 4**)

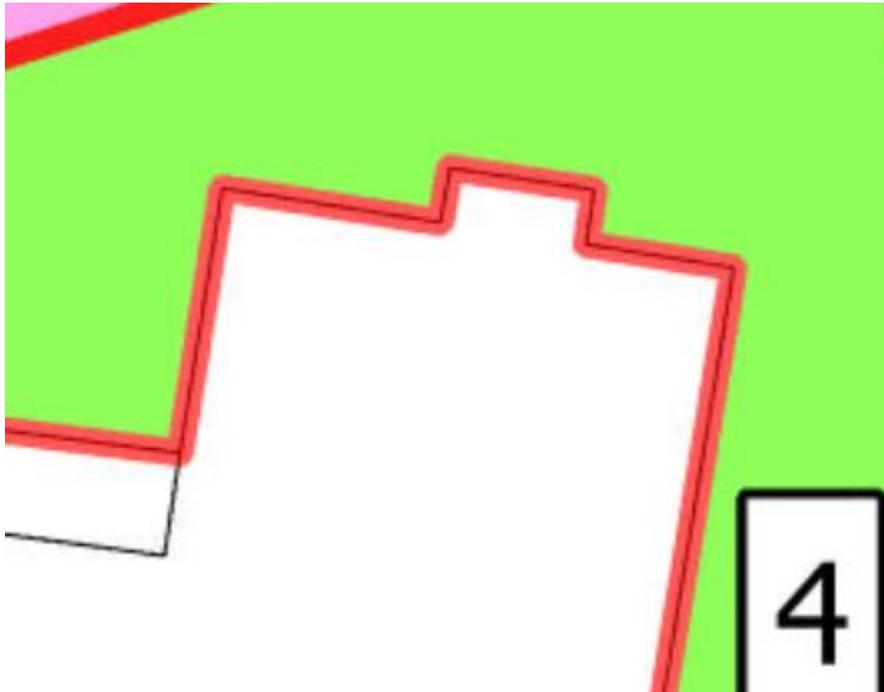


Figure 4: Extract from the Revised Draft Order Land Plan (see **Attachment 1**)

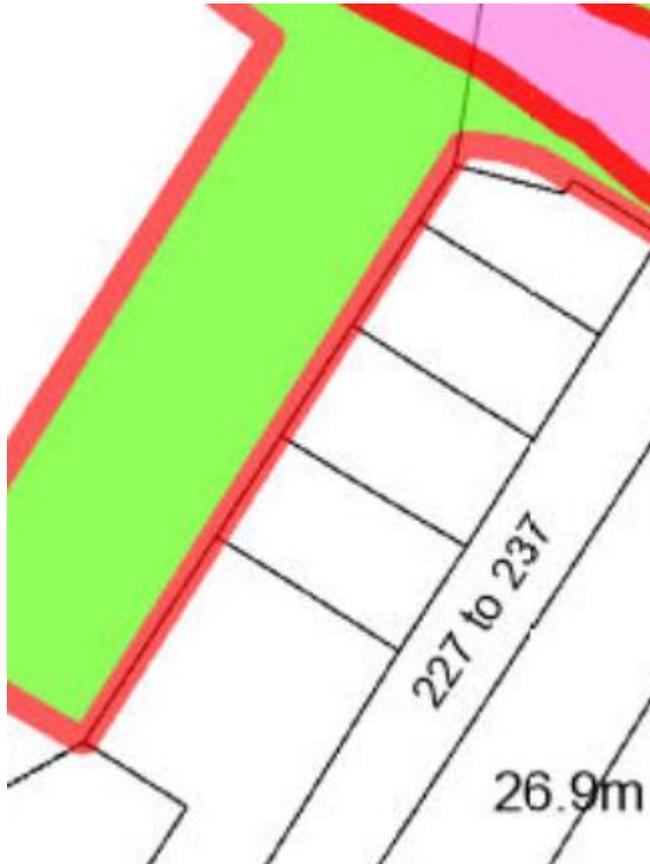


Figure 5: Extract from the Revised Draft Order Land Plan (see **Attachment 1**)

It is BPL's understanding that NR require neither any part of the existing warehouse, nor any part of BPL's existing property at 227-237 Horn Lane (Title Number NGL506157), nor the majority of BPL's proposed development. This is a comment that BPL have made to NR several times. BPL repeat that the redlines should be amended to fall outside the boundaries of the warehouse, 227-237 Horn Lane, and outside that part of the proposed development that they do not require.

- b. NR have indicated on Plan 9 (which covers Site Sharing Scenario 1, i.e. the existing builders' merchants being operational) that they require the area approximately circled green below (Figure 6):



Figure 6: Extract from Site Sharing Scenario 1 - Land Plan 9 (see **Attachment 3**)

NR have indicated on Plan 10 (which covers Site Sharing Scenario 2, i.e. BPL's Scheme being built out) that they do not require this same area (also approximately circled green below) (Figure 7):



Figure 7: Extract from Site Sharing Scenario 2 – Land Plan 10 (see **Attachment 4**)

There is therefore no compelling case in the public interest for NR to have temporary possession of the area. If they can undertake their works without this area, as demonstrated on Plan 10, then they can equally undertake their works without this area shown either on Plan 9 or on the Revised Draft Order Land Plan. Plan 9 and the Revised Draft Order Land Plan should be revised to remove this area. NR are being inconsistent in their approach to the Revised Draft Order and their separate negotiations with BPL.

- c. NR have indicated on Plan 9 that they require the area numbered “4” and approximately circled green below (Figure 8):



Figure 8: Site Sharing Scenario 1 – Land Plan 9 (see **Attachment 3**)

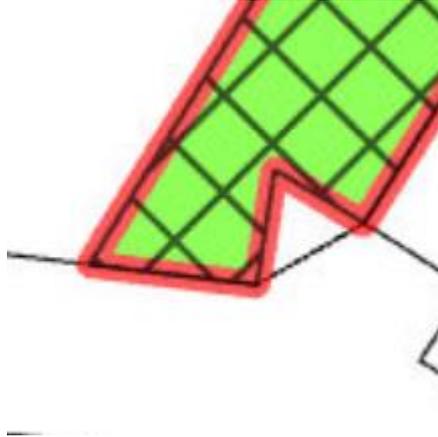
NR have indicated on Plan 10 that they require the area numbered “4” and approximately circled green below (Figure 9). This is inconsistent with the Revised Draft Order Land Plan:



Figure 9: Extract from Site Sharing Scenario 2 – Land Plan 10 (see **Attachment 4**)

There is no scenario presented by NR where they require both of the areas numbered “4” and approximately circled green. Yet both of these areas are included on the Revised Draft Order Land Plan. Therefore, NR must be acquiring more land than it needs, and therefore there is no compelling case in the public interest for the acquisition of either or both areas. This also demonstrates an inconsistency between NR’s evidence before the Inquiry and the position it is taking in site-sharing negotiations with BPL. NR stated at the Inquiry⁸ that NR only require some areas for minibus parking but according to the draft deed of undertaking NR require the area numbered “4” and approximately circled green on Plan 10 for the parking of 3 “Light Commercial Vehicles” which are defined as “a minibus, small van and flatbed and including but not limited to vehicles in the Iveco daily range”. No evidence has been put forward by NR at the Inquiry in relation to the need for parking for any small van and flatbed, or vehicles in the Iveco daily range, evidence has only been led in relation to minibus parking. The area numbered “4” and approximately circled green on Plan 10 is more than sufficient for the parking of 3 minibuses. The area is oversized for that purpose and there is therefore no compelling case for the acquisition of an area of the size proposed. In any event, it would not be possible to park a minibus in the area shown below due to the awkward shape (Figure 10):

⁸ See evidence given at the Inquiry by Mr Andrew Fleming (Evidence in Chief and cross-examination).



*Figure 10: Extract from Site Sharing Scenario 2 - Land Plan 10 (see **Attachment 4**)*

Therefore, there is no compelling case in the public interest for the acquisition of this area or at least the extent of acquisition sought by NR.

- d. The area numbered “4” and approximately circled green on Figure 9 is land that falls within BPL’s proposed development 225069FUL. The area has been overlaid on the approved Proposed Ground Floor Plan 1217_GA-100/P7⁹ (Figure 11):

⁹ See BPL’s Proposed Plan – Ground Level, Inquiry Document **SoC 2.2 Appendix 15**.



Figure 11: Extract from Velocity's overlay Drawing 23-163-T-052-A

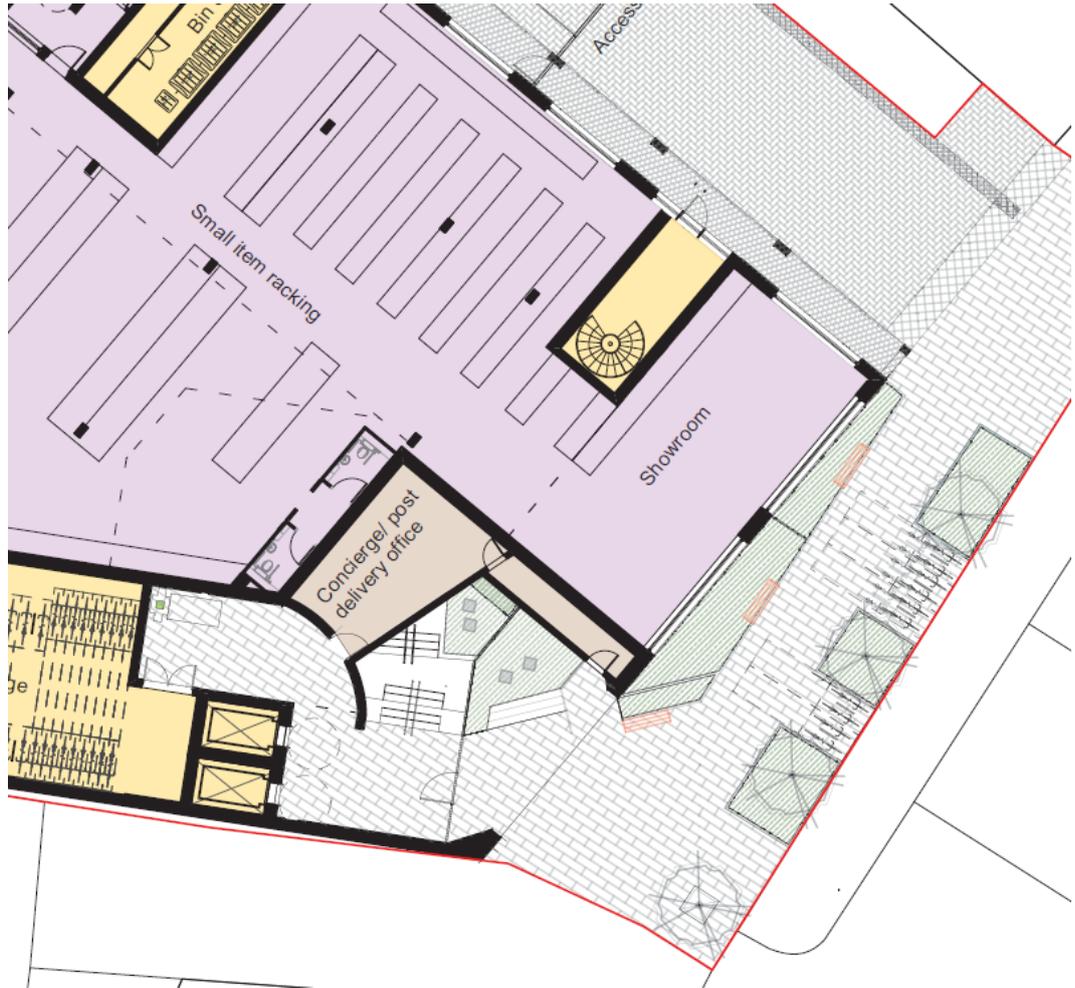


Figure 12: Extract from Proposed Ground Floor Plan 1217_GA-100/P7 (Inquiry Document **SoC 2.2 Appendix 15**)

As can be seen, the area numbered “4” and approximately circled green on Figure 9 is located on the following parts of the proposed development:

- Showroom
- Wall of the stair core to the north of the area identified as “Showroom”
- The entrance into the concierge / post delivery office
- The steps outside that entrance
- The walls and corridor of the concierge / post delivery office
- The entrance into the residential cycle store
- Part of the landscaping to the front of the store

NR gave evidence to the Inquiry that the construction of the proposed development could be accommodated as part of site sharing arrangements and that NR’s activities would not prevent (and would not have the effect of preventing) BPL’s Scheme. This evidence was incorrect. BPL advised NR on 18 January 2024 in relation to these concerns. The latest drafts of the plans circulated on 25 January 2024 (see **Attachments 1-6**) have failed to address these concerns. The residential development

cannot effectively operate without a concierge / post delivery office, nor a residential cycle store. The builders' merchants cannot effectively operate without a showroom. NR stated in evidence¹⁰ to the Inquiry that once workers are dropped off at the site by minibus that the drivers and minibuses will remain on site until the shift is complete, rather than going back to the North Pole Depot (Barlby Gardens RRAP) where they will have collected workers. It is no more than a 15 minutes' drive to Barlby Gardens. The Inquiry heard evidence that as a general rule the site would be used fortnightly for weekend overnight possessions. It will be a matter for the Secretary of State if it is considered proportionate, and there is a compelling case in the public interest to prevent:

- residents in 185 flats from having/accessing a cycle store,
- residents have access to sustainable travel choices by being able to use/keep a bicycle,
- a residential development from having a concierge / post delivery office for incoming mail and deliveries,
- the builders' merchant from having a showroom important to trade and business performance and
- an active regenerated frontage to Horn Lane

just so that minibus drivers can park and wait at the site once every fortnight rather than driving 15 minutes back to Barlby Gardens, or parking elsewhere close to the site.

- e. NR proposed to introduce gates which can be seen as a black line on Figures 6 and 7. These gates will prevent access and egress through the gates for non-NR related traffic and pedestrians during railway possessions. It is to be remembered that the draft conditions provide for 300 powered and 175 non-powered night of possessions, which could also include days. NR have provided information in relation to the proposed programme of possessions (see letter from Addleshaw Goddard to Norton Rose Fulbright 13 November 2023):

*“Week 39 2024-25 – 21 December 2024 -5d ALB
Week 39 2025-26 – 20 December 2025 – 52hr ALB
Week 39 2026-27 – 26 December 2026 – 11d ALB
Week 41 2026-27 – 09 January 2027 – 52hr Mains block
Week 43 2026-27 – 23 January 2027 – 52hr Mains block
Week 44 2026-27 – 30 January 2027 – 52hr Mains block
Week 45 2026-27 – 06 February 2027 – 52hr Mains block
Week 39 2027-28 – 25 December 2027 – 5d ALB
Week 39 2028-29 23 December 2028 – 18d ALB
Week 39 2029-30 – 22 December 2029 4d ALB*

The dates provided are the 'week commencing' dates and not necessarily reflective of the start of the possession as exact times are still to be confirmed.”

These dates can be expected to interfere with the operation of the builders' merchants, whether the existing or proposed store both during Christmas and January / February. The Christmas opening hours of one of the BDL stores from Christmas 2023 is as follows:

¹⁰ See evidence given by Mr Andrew Fleming at the Inquiry (Evidence in Chief and cross-examination).



The gates provide access to the rear of the warehouse (both existing and proposed where goods inwards is located), as well as customer parking for the proposed builders' merchant. Access to those areas is critical for the operation of the builders' merchant / BDL.

The closure of the gates will also hinder / prevent construction of the BPL's Scheme on the dates that access cannot be gained through the gates which co-inside with the construction hours of the BPL Scheme.¹¹

Once the residential scheme is occupied (which could occur before NR's temporary possession concludes), the gates will create other access issues:

- No emergency egress available from the residential units, this is unlikely to be acceptable from a fire safety perspective.
- No residential servicing (residential refuse collection is on the rear access road).
- Blue badge parking for residents cannot be accessed.

The Site Sharing Plans, Option Agreement and Unilateral Undertaking

15. In the Additional Consultation Pack, NR refers to the fact that NR and BPL have been in negotiations to agree site sharing arrangements to be documented in an agreement between the parties.

16. As part of these negotiations, BPL has provided comments on the original draft Option Agreement proposed by NR as well as on the draft Unilateral Undertaking. Discussions are ongoing between NR and BPL in relation to the unilateral undertaking. BPL and NR have also been in discussions in relation to the Site Sharing Plans¹² and we understand the updated versions have not been included in the Additional Consultation Pack in light of the ongoing discussions between BPL and NR.

¹¹ 7am to 6.15pm Monday to Friday inclusive and 7.15am to 1.15pm on Saturdays.

¹² The latest versions seen by BPL are from 25 January 2024 (see **Attachments 1-6**).

GROUNDS OF OBJECTION

Ground 1 (Absence of a compelling case in the public interest)

17. As stated in BPL's Original Objection¹³, a compelling case in the public interest is required to be demonstrated before any acquisition or material interference with property rights can be justified, including through the exercise of powers of compulsory acquisition in order to ensure protection of BPL's rights under Article 1, Protocol 1 of the European Convention on Human Rights and the Government's Guidance on the Compulsory Purchase Process.
18. Since NR's submission of the Original TWAO Application and prior to the Additional Consultation Pack, as part of the Inquiry, NR submitted a Statement of Case (4 August 2023), Proofs of Evidence (16 October 2023), Rebuttal Proofs of Evidence (3 November 2023) and, like BPL, participated at the 5-day Inquiry in November 2023. BPL's position remains that NR has failed to show a compelling case in the public interest for the compulsory acquisition of rights over the Property to the extent sought through the Revised Draft Order. It also remains BPL's position that there is no such compelling case.
19. Article 8 of the Revised Draft Order seeks to give NR exclusive temporary possession over Plots 2, 3 and 4. At the same time, however, NR accepts that certain areas within Plots 2, 3 and 4 can be shared with BPL (see the Site Sharing Plans, including latest versions shared by NR on 25 January 2024) and has proposed that an agreement/undertaking is in place between NR and BPL to address such site sharing arrangements. It is clear, therefore, that the Revised Draft Order seeks to give NR powers which go beyond NR's actual requirements.
20. It is BPL's position that, in light of this, the SoS cannot reasonably conclude that there is a compelling case in the public interest for the Revised Draft Order to make provision for rights to be taken over a wider site other than those identified for shared use in the Site Sharing Plans or Plot 3. BPL sees no reason why the Revised Draft Order itself cannot make provision for site sharing even if this may constitute a departure from the Model Clauses set out in The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (the **Model Clauses Order**). As previously stated, the Model Clauses are templates to be used for Transport and Works Act Orders and legislation makes clear that the Model Clauses are not mandatory (see, e.g., the Transport and Works Act 1992, section 8(3)). The explanatory note to the Model

¹³ See BPL's Original Objection, Inquiry Document **OBJ-08.2**, paragraphs 16 – 21.

Clauses Order provides that *“the use of the prescribed clauses is not mandatory: they may be omitted entirely from orders if not appropriate or may be adapted to meet special requirements”*.

21. Furthermore, we refer to our comments above at paragraph 14. It is clear from the above that there is no compelling case in the public interest for the exercise of compulsory acquisition powers by NR over such extended land as provided under NR’s plans.
22. The fact that NR is seeking to obtain powers under the Revised Draft Order beyond its own requirements is also borne out by NR’s own evidence before the Inquiry. For example, NR has confirmed that it envisages that the majority of NR workers will reach the temporary RRAP at the Property via minibuses. Materials and RRVs will be stored at the logistics compound at the North Pole Depot¹⁴. It remains BPL’s position that NR has not provided a reasonable justification for requiring car parking spaces at the Property given that the Property benefits from good transport links (both bus and rail).
23. It is also noted that when NR submitted the Revised Draft Order on 19 December 2023, it failed to submit an updated Explanatory Memorandum accompanying the Revised Draft Order (cf., the original Explanatory Memorandum which was submitted as part of NR’s Original TWAO Application¹⁵). The purpose of an Explanatory Memorandum is to set out the purpose and effect of each article and schedule contained in a draft order (see Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006). An updated Statement of Aims is also missing. NR has therefore failed to provide a justification for the extensive powers that they are seeking pursuant to the Revised Draft Order.
24. In addition, BPL contends that there are reasonable alternative means by which NR can secure access to the GWML and land for a temporary construction compound in connection with its project.
25. Most notably, as already submitted in evidence before the Inquiry, the North Pole Depot represents a more suitable location for a temporary construction compound as well as a temporary and permanent RRAP. Notably, the North Pole Depot (situated on land owned by the SoS) is already used for railways purposes and it is in close proximity to the OOC Station. NR has already acknowledged¹⁶ that parts of the North Pole Depot are to be used as a main logistics compound for the OOC Station works. In light of this, BPL submits that the North Pole

¹⁴ See evidence presented by Mr Andrew Fleming during cross-examination.

¹⁵ See Statement of Aims, Inquiry Core Document **CD 02**.

¹⁶ See Mr Chris Ford Rebuttal Evidence, Inquiry Document **W2.4**, page 7 and Mr Andrew Fleming Rebuttal Evidence, Inquiry Document **W1.4**, pages 2-3.

Depot allows NR the opportunity to introduce new RRAP(s) within the North Pole Depot and use the existing RRAP at Barlby Road.

26. The Triangle Site – which sits adjacent to the GWML railway – also represents an additional site suitable for NR’s temporary construction compound and temporary RRAP, especially in light of NR’s reduced land size requirements. Although the Triangle Site’s suitability in part depends on the completion of certain isolation works on the railway overhead lines, it is NR’s evidence that such works are to take place in any event. The Triangle Site could also be used for storage or parking (subject to clearing some vegetation) with a RRAP elsewhere, which would reduce NR’s requirements for these uses on the Property.
27. Furthermore, BPL maintains its position that NR has failed to provide material evidence that no other land adjacent to or within the vicinity of the GWML railway is suitable. To the contrary, BPL considers that the little evidence that NR has in fact introduced before the Inquiry points to the fact that alternative sites are available and suitable, mainly the North Pole Depot. For instance, we refer to the risk assessments produced by NR (the **Risk Assessments**) which are now in evidence before the Inquiry, together with BPL’s note on these submitted on 5 January 2024 and NR’s note of response dated 10 January 2024. As identified in BPL’s note, the comparative exercise of site suitability undertaken in the Risk Assessments shows that access via the North Pole Depot has both more pros numerically, and more compelling pros, and fewer cons compared to the access via the Property. Many of NR’s concerns in relation to access from OOC Lane are misplaced when assessed in more detail and with the benefit of the site visit undertaken on 23 November 2023. Furthermore, NR’s stated benefit of access via the Property being a one year saving on the construction programme is arguably misplaced, as the likelihood of the programme’s schedule being met is very low in any event.
28. We also refer to the email dated 25 January 2021 submitted in evidence by NR relating to the use of the Hitachi North Pole Depot as an alternative site (the **DfT Email**¹⁷). In the DfT Email, Mr James Slater (on behalf of DfT) stated in relation to the Hitachi North Pole Depot that “*the area is occupied by Agility who have a long term lease. Therefore we cannot consent without involving Agility*”. BPL does not consider that the explanation provided by the DfT is sufficient to justify disregarding that site as a suitable alternative. Section 25 of the 1992 Act provides that a private interest in Crown Land can be acquired provided that the “appropriate authority” agrees. In this case the “appropriate authority” would be the SoST.
29. In summary, BPL maintains its position that NR have failed to show that there is a compelling case in the public interest for the compulsory acquisition proposed pursuant to the Revised Draft Order.

¹⁷ See Inquiry Document **INQ-04**.

Ground 2 (Implications for BPL)

30. Although NR is now seeking to exercise compulsory purchase powers over a reduced land take compared to the land take under NR's Original TWAO Application, BPL's position remains that NR's proposed acquisition of rights from BPL will have profound and onerous consequences on BPL and BDL. Reference is made to Mr Michael Aaronson's Evidence in Chief at the Inquiry.
31. BPL is still facing a serious prospect of needing to relocate BDL from its West Hampstead site located at 14 Blackburn Road, London NW6 1RZ¹⁸ (**14BR**), owned by Hampstead Asset Management Limited (another company related to BPL and within a family-owned group of businesses). This relocation is likely to include BDL's employees currently working from the West Hampstead site. As previously referred to, 14BR has been included within the application redline for the O2 Masterplan, an urban regeneration scheme promoted by Land Securities. The O2 Masterplan, which does not provide replacement floorspace for BDL, secured planning permission from the London Borough of Camden (**Camden**) on 20 December 2023. Therefore, BDL will need to permanently relocate if the O2 Masterplan proceeds. Should the associated compulsory purchase order be made and 14BR is compulsorily acquired by Camden, BDL will need to relocate its operations and the Property has been identified as the relocation option.
32. As set out in Mr Aaronson's Statutory Declaration¹⁹ and in Mr Aaronson's Evidence in Chief, BDL sells a variety of tools and materials, in particular to tradesmen, and BDL's four store locations across London, as well as its Ecommerce division are crucial to its business. The outside storage space at each store is of vital importance to be able to stock external building materials of sufficient range and quantity to attract customers who are then more likely to buy internal building materials within the warehouse. BPL is deeply concerned about the proposed area of external space to be taken temporarily by NR during its period of occupation, as this will severely reduce the amount of outdoor storage and customer parking. If customers cannot pick up the materials they want or cannot park they will simply go elsewhere. Outdoor space is a significant revenue driver. This model lies at the very heart of the way BDL does business and services its customers. Ultimately, NR's occupation of BPL's yard space will have a detrimental impact on turnover as the reduced ability to provide and stock materials on site, and reduced parking will result in a severely compromised operation. These will be the direct consequences of NR's occupation. This equally applies to Jewson's operations as they currently benefit from the Property's external storage and parking spaces. These concerns apply both to the current builders' merchant on site, and the proposed one that forms part of the BPL Scheme.

¹⁸ See BPL's Original Objection, Inquiry Document **OBJ-08.2**, paragraph 23.

¹⁹ See Mr Michael Aaronson's Statutory Declaration, Inquiry Document **OBJ-08.7.1**, paragraphs 1.3-1.6.

33. NR's occupation will also have a negative impact on BDL's brand and reputation, which are based on BDL's ability to provide a broad range of products and secure just-in-time deliveries. BDL's reduced storage and parking areas due to NR's occupation will therefore affect BDL's core business model and attractiveness compared to its competitors as fewer products will be available to customers for purchase and a reduced number of parking spaces will be available for use.
34. Further, the risk of NR delays / overruns / rail safety issues / rail emergencies also cannot be ruled out (this is specifically referred to in the draft deed of undertaking which makes clear that NR have the ability to prevent access through their gates in those circumstances) which would prevent all access to the rear of the warehouse. This has the following consequences:
- Inability to service the warehouse (goods inwards is at the rear of the warehouse in both the existing and proposed scenarios)
 - No emergency egress available from the residential units, this is unlikely to be acceptable from a fire safety perspective
 - No customer parking to the rear of the warehouse
 - No residential servicing (residential refuse collection is on the rear access road)
 - Blue badge parking for residents cannot be accessed

A residential development cannot effectively operate with risks relating to the inaccessibility of emergency egress routes, nor risks that refuse collection cannot take place. The builders' merchants cannot effectively operate with risks relating to an inability to bring in goods and provide customer parking.

35. Furthermore, there is a real prospect that NR's occupation will coincide with BPL's plans to redevelop the Property pursuant to BPL's Scheme (see our comments above at paragraph 14(d)). Not only would NR's occupation have a significant impact on the retail and storage space of the new warehouse, but it would also severely restrict the attractiveness of BPL's Scheme to potential future residential purchasers and/or occupiers. Who would want to buy a flat with a prospect of NR undertaking overnight working every other weekend? This may also affect mortgage offers. In addition, making allowances for NR's occupation during BPL's redevelopment of the Property will also make constructing BPL's Scheme much more challenging. It is considered that the pool of contractors who may wish to tender for the build contract will be more limited, it will take longer to build, and will cost more as a consequence. The risk of NR delays / overruns / rail safety issues / rail emergencies also cannot be ruled out (this is specifically referred to in the draft deed of undertaking which makes clear that NR have the ability to close down construction immediately in those circumstances) which would have further cost consequences. If a contractor was found who would be prepared to shoulder this

level of risk then it would require specific clauses to be negotiated into construction contracts, again adding to the costs of securing a contractor.

36. In light of the above, it remains BPL's position that the powers sought by NR – even with a reduced land take pursuant to the Revised Draft Order and Revised Draft Order Land Plan – will give rise to onerous and disproportionate effects on BPL. This is exacerbated by the fact that there are alternative sites reasonably available to NR. Whilst there might be inconvenience to Hitachi, the North Pole Depot is a site in active rail use and which is in fact going to be providing RRAP access to HS2 for the “brownfield” works, and it does not have residential occupiers as close as those who will live at the Property. There is no evidence that any inconvenience to be caused to Hitachi is any greater than the disruption, cost, and severe compromise that will be caused to BPL, its tenant BDL, and future residential occupiers.

Ground 3 (Inadequate assessment)

37. It remains BPL's position²⁰ that NR has failed to assess the planning and wider environmental effects of the use of the Property, as proposed via the Revised Draft Order and the direction under section 90(2A) of the Town and Country Planning Act 1990 (the **S90 Direction**).
38. It is acknowledged that, since NR's Original TWAO Application, NR has submitted a Transport Statement dated 13 October 2023 prepared by AECOM to accompany its application for deemed planning permission (see **Appendix JD1** to Mr Jeremy Douch's Proof of Evidence, Inquiry Document **W4.2**). However, it is notable that the Transport Statement does not address NR's Revised TWAO Application as it pre-dates NR's decision to reduce the land take (now excluding the warehouse). It therefore does not assess the cumulative impacts of an operational warehouse together with NR's occupation and activities, or an operational residential scheme, or a development under construction. Since the draft deed of undertaking caters for site sharing scenarios where (1) the existing warehouse is operational and (2) BPL's Scheme is under construction it can be assumed that NR accept that these scenarios may transpire which makes it all the more strange, and unsatisfactory, that NR have not considered the cumulative effects of these site sharing scenarios with their works. The Transport Statement also fails to address at a high level the likely impacts of night work and night-time deliveries (including, e.g., noise, air quality and artificial lighting)²¹. Nor have NR undertaken any other assessments of these effects either in isolation or cumulatively.
39. NR's failure to carry out an assessment of the effects of its proposed use of the external areas of the Property is particularly concerning in light of the fact that such areas are adjacent to residential properties (e.g., Acton House). It is also concerning given that it is expected that NR

²⁰ See BPL's Original Objection, Inquiry Document **OBJ-08.2**, paragraphs 25-27.

²¹ See Mr Chris Gent Rebuttal Evidence, Inquiry Document **OBJ-08.3.4**, paragraphs 5.3-5.4 and paragraph 6.2.

will use these areas at night during weekends and for extended periods during bank holidays as well as overnight during weekdays when residents might be entitled to expect relaxation and a lack of disruption. Therefore, BPL maintains its position that due to the lack of information available, the application for deemed planning permission should be refused.

40. NR has also failed to carry out a comprehensive assessment of the use of the local highway network and amenity impacts that will result from its proposed use of Plots 2, 3 and 4. During the Inquiry, BPL raised questions in relation to weight and time restrictions on the local highways network to be used by NR to reach the Property (including for the transportation of materials, RRVs and workers via minibuses). In his evidence, Mr Jeremy Douch confirmed that NR had not carried out any assessments on this issue. In NR's note submitted into evidence following the adjournment of the Inquiry (on 5 January 2024), NR acknowledged that NR's suppliers may need to use access routes covered by the London Lorry Control Scheme (the **LLCS**) but that they would have the required permits to do so. In BPL's note of response submitted on 19 January 2024, it is stated that, although it is common ground that NR would be able to secure the required permissions to use these routes during LLCS restricted times, the key issue for the Inspector (and ultimately for the SoST) to consider is whether it is reasonable to impose significant night-time, weekend and public holiday disruption to local residents at precisely the times that the LLCS is designed to cover, and provide protection to residents for. BPL submits that it is not.
41. Moreover, BPL also maintains its position²² that the works proposed by NR are inconsistent with the site allocation which concerns the Property within the Ealing Site Allocations DPD (Policy ACT6 – see **Appendix 21** to BPL's Statement of Case, Inquiry Document **SoC 2.2**). In contrast, BPL's Scheme – which BPL is in a position to deliver – is in line with development plan policies.
42. Whilst BPL objects to the grant of the Revised Draft Order and deemed planning permission, BPL has already submitted detailed comments and proposed amendments to the planning conditions both during the Inquiry as well via correspondence on 11 and 17 December 2023.

Conclusion

43. For the reasons set out above the Revised Draft Order should not be made and NR's Revised TWAO Application be rejected.
44. BPL will make full submissions in relation to its objection to NR's Revised TWAO Application at the roundtable discussion on 1 February 2024 and closing submissions on 9 February 2024.

²² See BPL's Original Objection, Inquiry Document **OBJ-08.2**, paragraph 26.

Administration

45. All correspondence relating to BPL's Additional Objection should be addressed as follows:

Norton Rose Fulbright LLP
3 More London Riverside
London
SE1 2AQ

46. And marked for the attention of Sarah Fitzpatrick. BPL are happy to receive documents and correspondence electronically, which should be sent to: sarah.fitzpatrick@nortonrosefulbright.com and copied to carina.wentzel@nortonrosefulbright.com and giulia.barbone@nortonrosefulbright.com.

Norton Rose Fulbright LLP
30 January 2024

ATTACHMENT 1: ORDER LAND PLAN

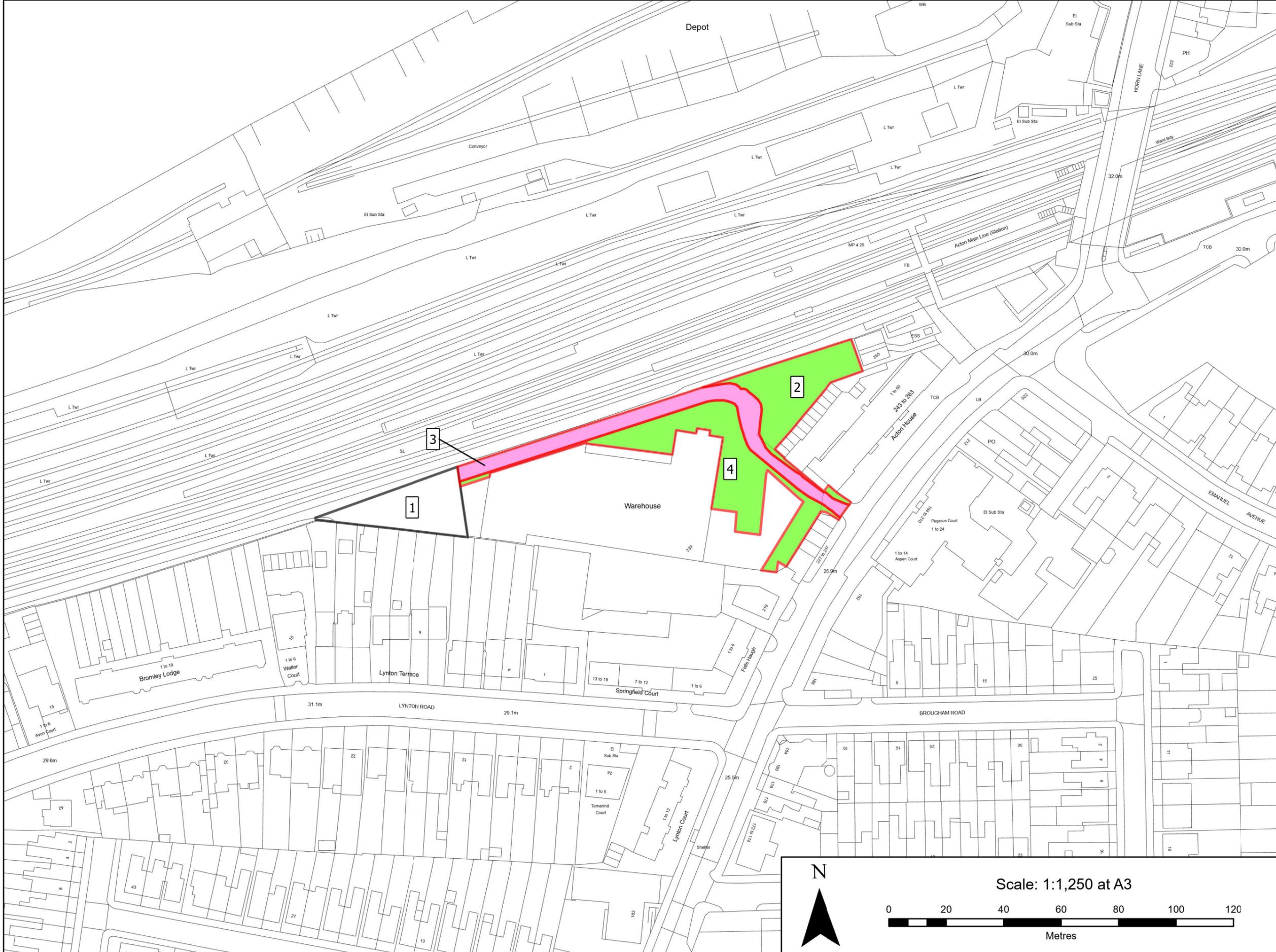
Transport and Works Act 1992

The Network Rail (Old Oak Common Great Western Mainline Track Access) Order

London Borough of Ealing

Order Land Plan

Sheet 1 of 1



Key:

Crown Land to be acquired outside of the Order

Number on Plan

1

Land to be Temporarily Used

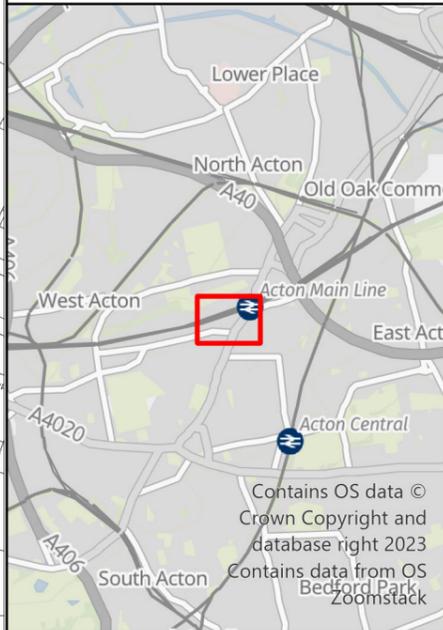
Number on Plan

2, 4

Land to be Temporarily Used and Permanent Rights of Access

Number on Plan

3



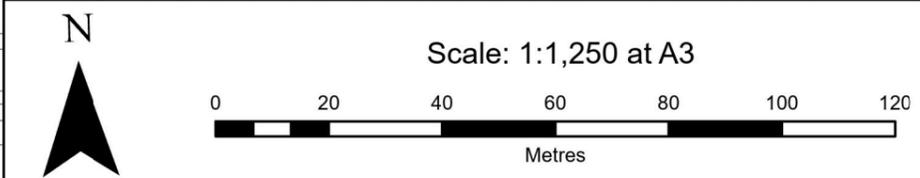
DRW No: NR_OOC_LP_1250

Location: Old Oak Common, Acton
Map Centre: 520215, 181137

Version: 1.0 **Date:** 12/04/2023

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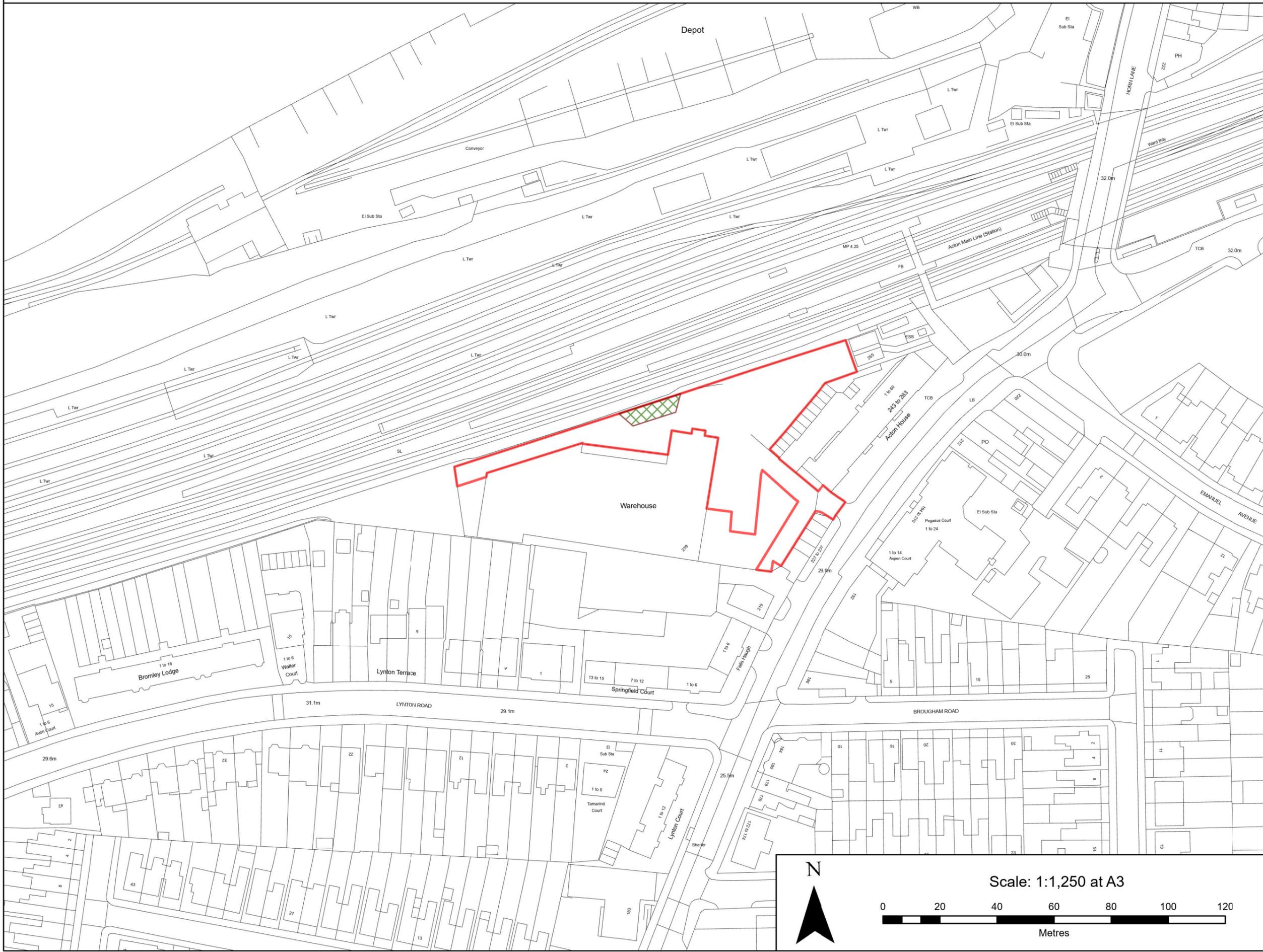


ATTACHMENT 2: REDLINE PLAN

ACTON MAIN LINE HORN LANE, LONDON, W3 9ED LAND REQUIREMENTS

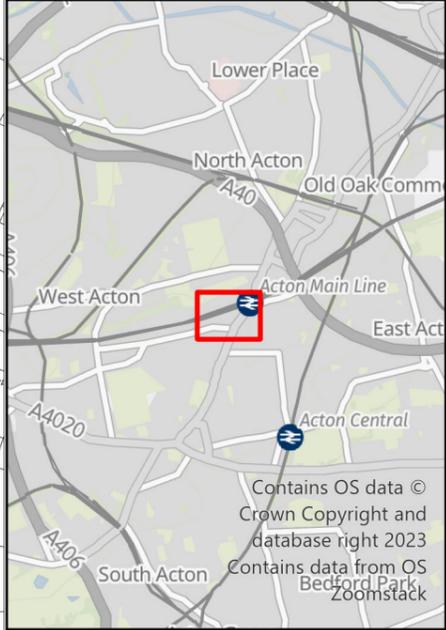
Land Plan

Sheet 1 of 1



Key:

- Limits of Land Required for Network Rail
- Ramp to Road Rail Access Point (RRAP)
- Limits
- Ram



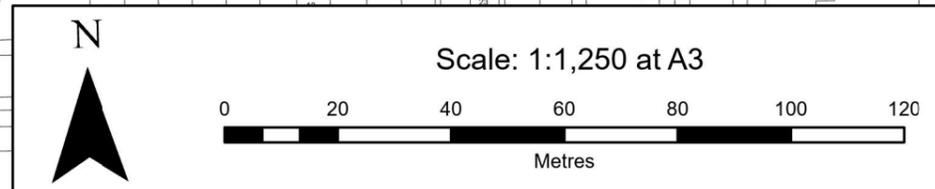
DRW No: 0388965

Location: Old Oak Common, Acton
Map Centre: 520215, 181137

Version: 1.0 Date: 18/12/2023

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ATTACHMENT 3: LAND PLAN 9

Transport and Works Act 1992 The Network Rail (Old Oak Common Great Western Mainline Track Access) Order London Borough of Ealing

**Site Sharing Scenario 1
Land Plan 9
Sheet 1 of 1**



Key:
 Land to be Temporarily Used

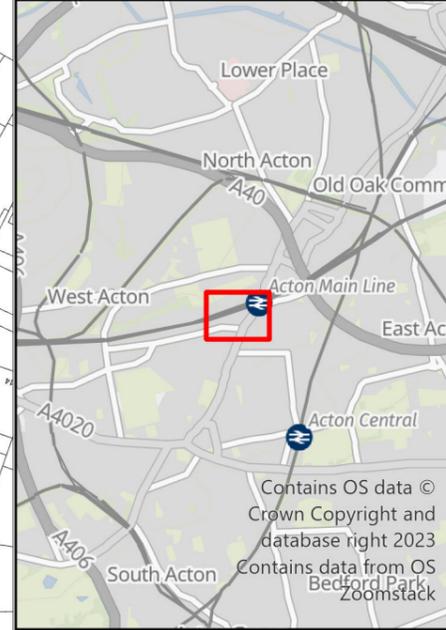
Number on Plan
2, 4

Land to be Temporarily Used and Permanent Rights of Access

Number on Plan
3

Shared Use Area

Proposed Gate Location (Not Surveyed)



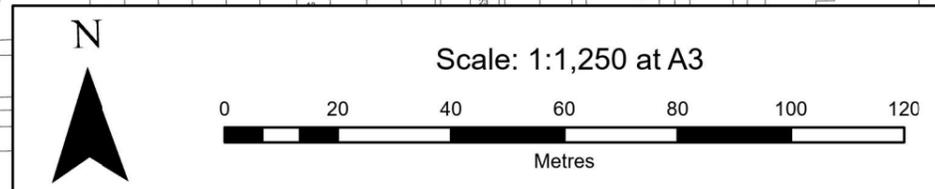
DRW No: NR_OOC_LP9_1250

Location: Old Oak Common, Acton
 Map Centre: 520215, 181137

Version: 1.0 Date: 12/04/2023

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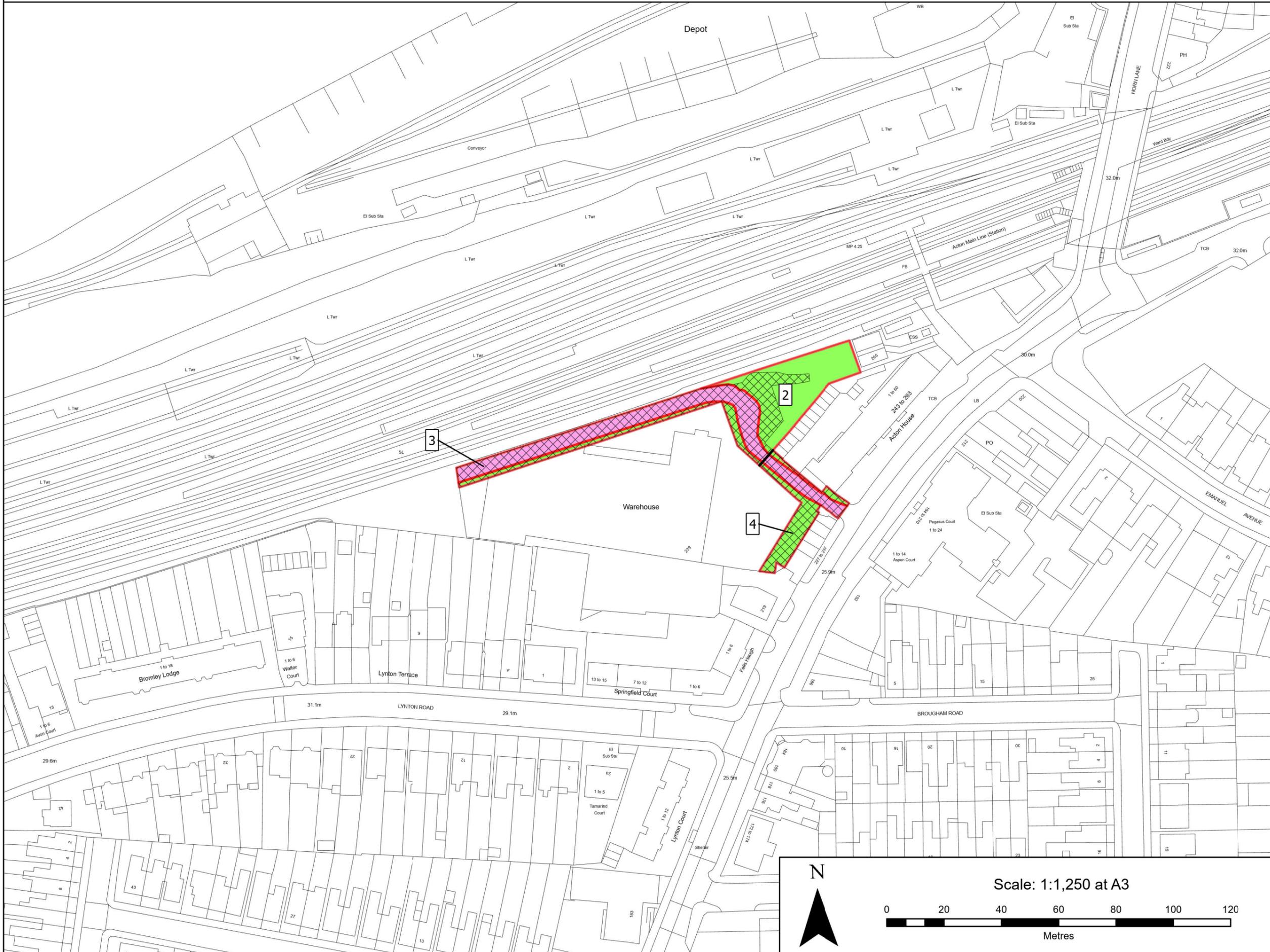
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ATTACHMENT 4: LAND PLAN 10

Transport and Works Act 1992 The Network Rail (Old Oak Common Great Western Mainline Track Access) Order London Borough of Ealing

Site Sharing Scenario 2
Land Plan 10
Sheet 1 of 1



Key:
 Land to be Temporarily Used

Number on Plan
2, 4

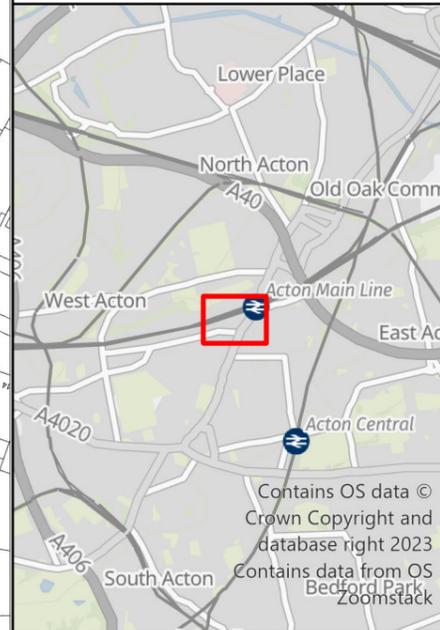
Land to be Temporarily Used and Permanent Rights of Access

Number on Plan
3

Easement of 5m Height clearance required
Easement to cater for maximum axle weights in the Road Vehicles (Authorised Weight) Regulations 1998

Shared Use Area

Proposed Gate Location (Not Surveyed)



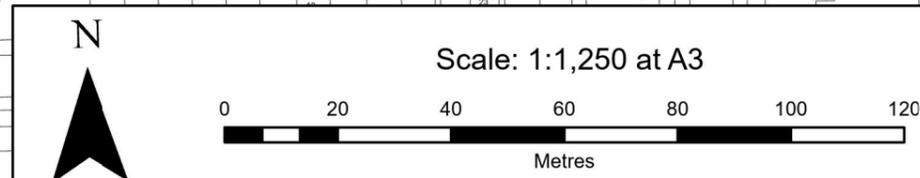
DRW No: NR_OOC_LP10_1250

Location: Old Oak Common, Acton
Map Centre: 520215, 181137

Version: 1.0 Date: 12/04/2023

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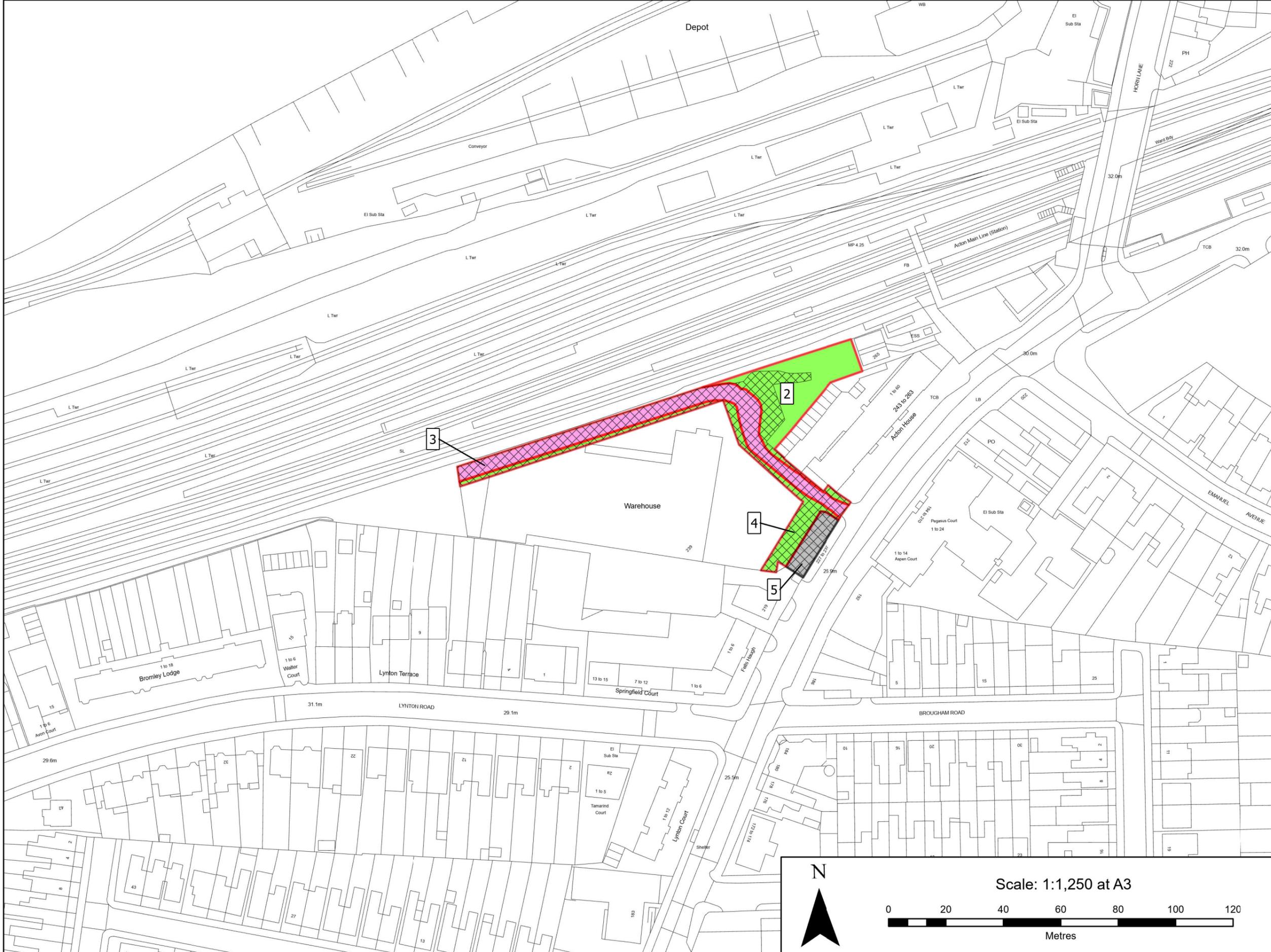
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ATTACHMENT 5: LAND PLAN 11

Transport and Works Act 1992 The Network Rail (Old Oak Common Great Western Mainline Track Access) Order London Borough of Ealing

**Site Sharing Scenario 3
Land Plan 11
Sheet 1 of 1**



Key:
 Land to be Temporarily Used

Number on Plan
2, 4

Land to be Temporarily Used and Permanent Rights of Access

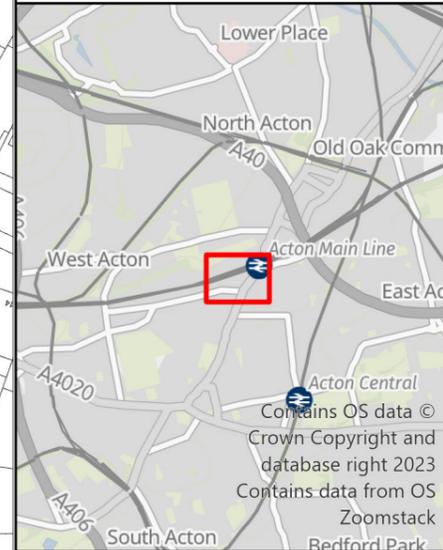
Number on Plan
3

5m Height clearance required
Easement to cater for maximum axle weights in the Road Vehicles (Authorised Weight) Regulations 1998

Temporary Occupation Option B

Number on Plan
5

Shared Use Area



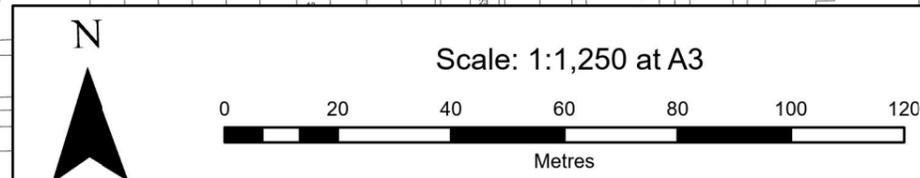
DRW No: NR_OOC_LP11_1250

Location: Old Oak Common, Acton
Map Centre: 520215, 181137

Version: 1.0 Date: 12/04/2023

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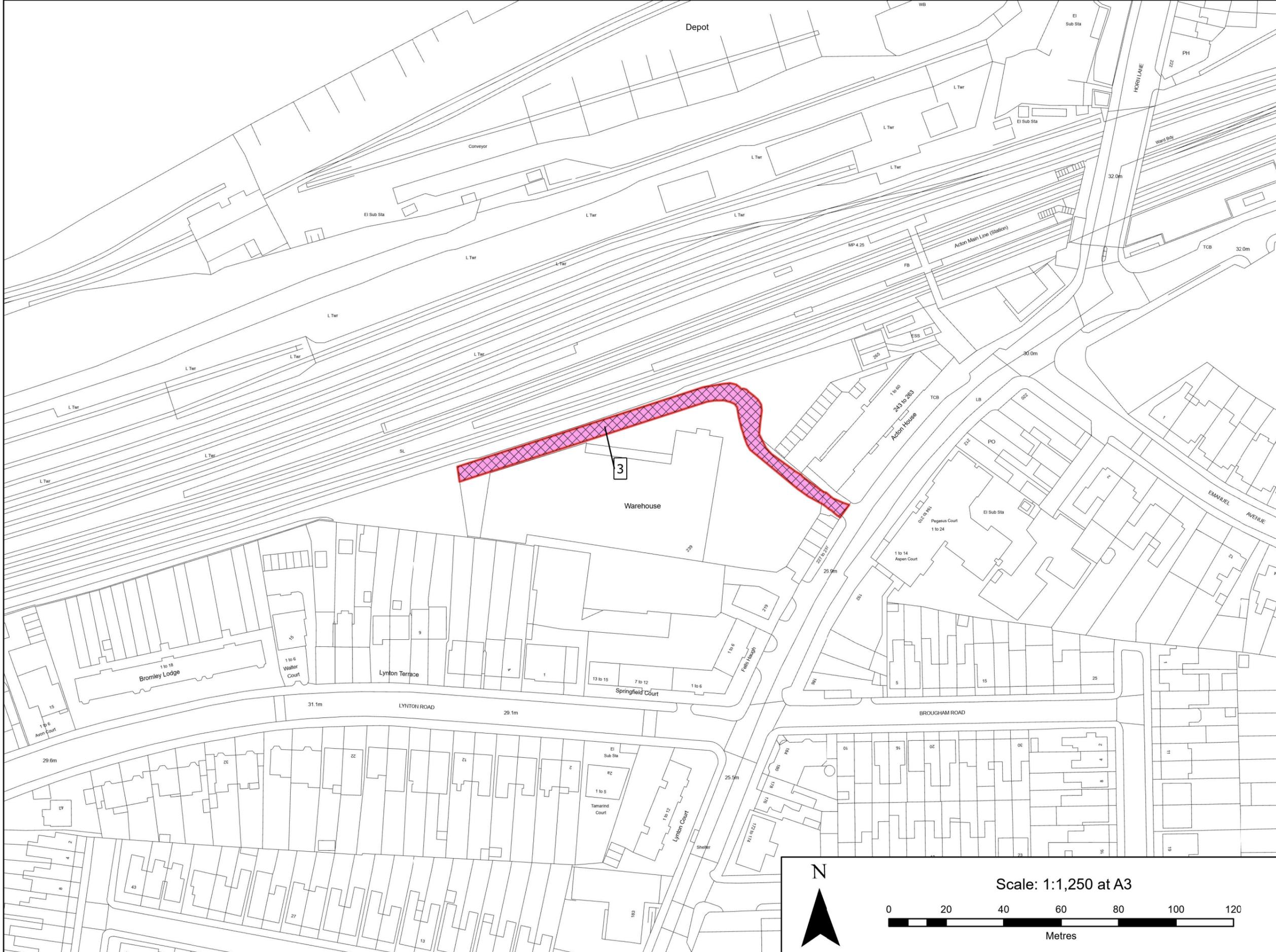
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ATTACHMENT 6: LAND PLAN 12

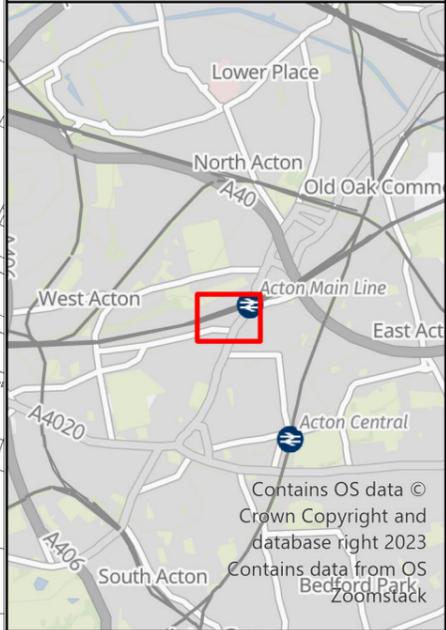
Transport and Works Act 1992 The Network Rail (Old Oak Common Great Western Mainline Track Access) Order London Borough of Ealing

**Permanent Easement
Land Plan 12
Sheet 1 of 1**



Key:
 Land to be Temporarily Used and Permanent Rights of Access

Number on Plan
3



DRW No: NR_OOC_LP12_1250

Location: Old Oak Common, Acton
Map Centre: 520215, 181137

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