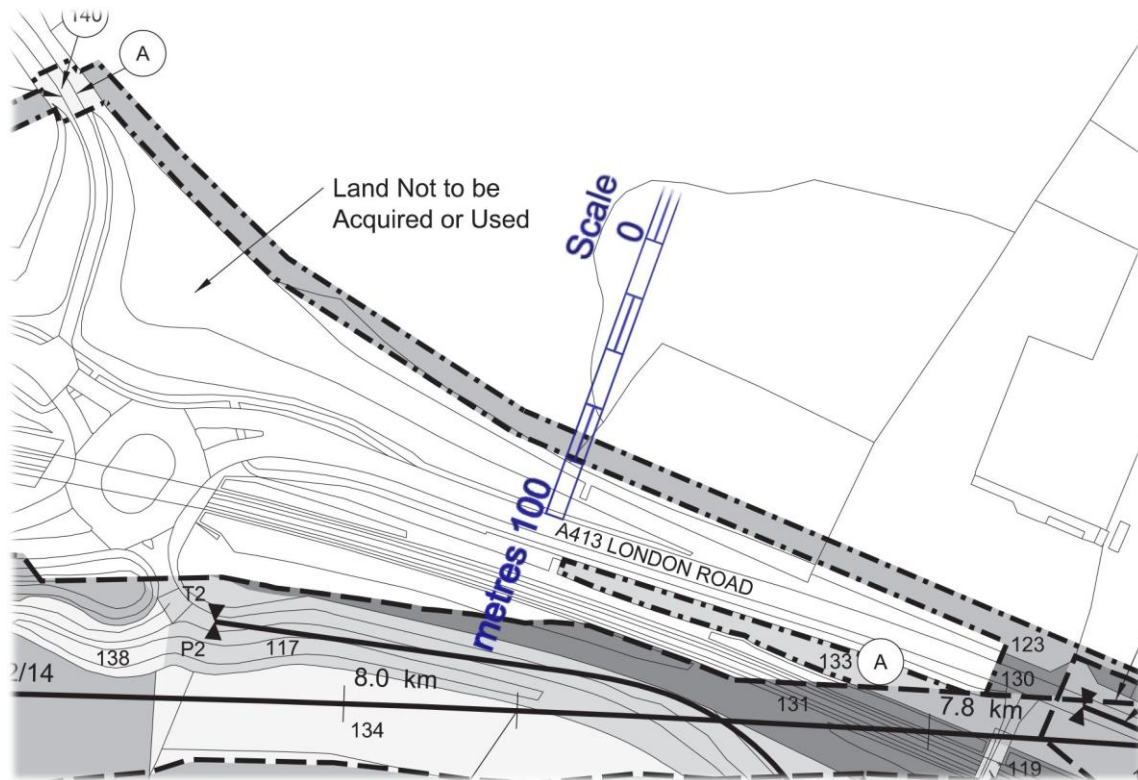


Act Limits



Plans Vol 2.1, Sheet 2-30

As can be seen from the plan, at the point opposite the north end of land 133, there is a gap of 20m between the edge of the A413 carriageway, and land 123 ('Provision of Drainage'), which is labelled 'Land not to be acquired or used'



The picture clearly shows that the security fencing at this point is within a metre or two of the edge of the carriageway, and so outside the Act Limits.

Public Highway not a right of way ?

"With regards to maintaining a footway along the road, the A413 London Road has never been a public right of way and the road did not have a footway before we started construction, although we understand that people do occasionally walk along there and do so at their own risk. This section of road in question will be realigned multiple times in order to construct the Small Dean Viaduct and prior to that we are required to undertake significant utility diversion works making it unsafe as a walking route. "

The A413 is a public highway, and so by definition a public right of way. All public roads are rights of way for pedestrians, except motorways for which special provisions are made. See the extract (next page) from 'Rights of Way', Riddal and Trevelyan, Ramblers Association (2007).

As the highway verge is a public right of way, outside the act limits, it is your responsibility to ensure that it is safe and unobstructed at all times, no matter what the level of use, or what inconvenience this may cause. Furthermore, the highways authority have a duty under section 130 of the highways act to prevent the obstruction of highways.

Please indicate how you intend to comply with this legislation.

9

Obstructions and other nuisances

9.1 Obstruction of the highway – a public nuisance and crime at common law

At common law an obstruction of the highway is one form of public nuisance. A public nuisance is some matter that materially affects the reasonable comfort and convenience of a class of Her Majesty's subjects who come within the sphere or neighbourhood of its operation. To commit a public nuisance is a misdemeanour at common law, the offender being liable to prosecution by way of indictment in the Crown Court. Further, obstruction of the highway is specifically made an offence by statute. The statutory offence is treated below (see 9.2).

With regard to the definition of an obstruction, in *R v Mathias* (1861) Byles J said 'A nuisance to a way is that which prevents the convenient use of the way by passengers', and in *Seekings v Clarke* (1961) Parker LCJ said 'It is perfectly clear that anything which substantially prevents the public from having free access over the whole of the highway which is not purely temporary in nature is an unlawful obstruction'. Thus for something to constitute an obstruction there does not have to be a complete blockage of the highway. Anything that impedes the existing legal access is an obstruction. For example, if the legal right of way is over a stile that is four feet high, and the height of the stile is raised to six feet, there is an obstruction to the extent of the added two feet.¹

Since the right of way over a highway is not limited to a made-up (e.g tarmac) surface but extends from one boundary to the other and so includes roadside verge,² interference with a verge constitutes obstruction.³ Thus if a fence or wall is erected, or a hedge planted, or stones placed, or land taken into cultivation (as by the creation of a flowerbed or the planting of shrubs) in such a way that the pre-existing width of a right of way is reduced or free passage impeded, then the fence, etc, constitutes an obstruction. (Encroachment by an adjoining landowner on to the highway constitutes the common law crime of *perpresture*.)