

The claimant is the owner of land at Sturt Road, Frimley Green, Surrey (“the site”). The site is 1.9 hectares of unused land at the southwest edge of the urban area of Frimley Green, bounded to the south by the main line railway from Waterloo to Southampton, to the west by a local railway line which runs from Ash Vale to Ascot, via Frimley, Camberley and Bagshot, and to the east by residential development. A disused railway embankment 4 metres high, which formerly carried a connection between the local and the main lines, remains on the eastern part of the site. The connection (“the Sturt Lane Chord”) was closed in **1964** and the tracks were lifted in **1966**. The claimant purchased the site in **1988** and since that time it has been seeking to obtain planning permission for residential development.

An application for planning permission for 60 dwellings was refused in **1990**. In May **1992** the Inspector, reporting on objections to the previous version of the Local Plan, recommended that the settlement boundary should be extended to include the site. Officers advised members that the Local Plan Inspector's recommendation should be accepted, but members disagreed and the site was not allocated for residential development.

An appeal against refusal of planning permission for 60 dwellings was dismissed in November **1992** and the previous version of the Local Plan was adopted in January 1994. In February 1995 the Surrey Rain Line Improvement Study identified problems with services in the Blackwater Valley and suggested that the feasibility of reinstating the Sturt Lane Chord should be investigated.

1996 Review of Local Plan.

The movement topic paper said that the opportunity for reinstating the chord to provide a direct main line link from Camberley to Waterloo should be explored with Surrey County Council. The claimant made representations, contending that the site should be allocated for housing.

Railtrack applied for planning permission to remove the disused embankment. Planning permission was refused. Railtrack's appeal was dismissed in **April 1996**.

In **July 1996** Halcrow reported that reinstatement of the chord was feasible in engineering terms. The County Council decided that the business case for reinstatement should be evaluated.

It was considered that housing development on the site would be inappropriate because the site exhibits countryside characteristics and is linked to other Blackwater Valley countryside areas and secondly, it remains to be demonstrated that the railway embankment is not needed for improvements to the local railway network. The Surrey Heath Railway Working Group party showed that the railway chord can be reinstated and that a 'Business Case' remains to be undertaken to see if it is operationally viable.

The deposit draft of the Local Plan was published on **12th January 1998**. The site was not allocated for housing. Instead, it was included in the countryside beyond the Green Belt, placed within the Blackwater Valley Strategic Gap and the Land was safeguarded for Future Public Transport Provision

The explanation for the policy is set out in paragraphs 11.74 to 11.79, and is as follows:

“11.74 Planning Policy Guidance Note 13, 'Transport' (March 1994), makes clear that local planning authorities should ensure that disused transport routes are not unnecessarily severed by new building and non-transport uses, especially where there is a reasonable chance that

such routes may be put to use in the future.

The Borough Council therefore continues to safeguard this land and it is reserved as a future rail link. The land is otherwise countryside beyond the Green Belt and has no major development potential. The safeguarding therefore has no blight implications.”

In **November 1998** the Railtrack report did not support the proposal for the re-instatement of the Sturt Lane Chord stating it is neither economically nor operationally viable and said that It was unlikely that this view will change in the foreseeable future.

Council officers recommended that the chord should continue to be safeguarded on the basis of PPG13 guidance :

Were the land to be lost to development, the opportunities for its future use for transport purposes would be gone forever.”

On 19th February 1999 the train operating company, South West Trains, said, that they doubted that the project could ever be viable, without considerable Government support both in funding the capital cost of the works and revenue support for the cost of the of train service.

The Local Plan Inquiry opened in January 1999. And found in favour of reinstating the chord, in some considerable detail, and drew the following conclusions in respect of policy M25:

“6.43 Paragraph 5.36 of PPG12 states that local authorities should consider the potential of disused railway track beds and routes for possible future transport schemes and apply appropriate protective policies where justified.

6.44 Paragraph 4.24 of PPG13 puts an emphasis on rail transport and discusses local authorities funding rail infrastructure and exploring the potential for re-opening rail lines. In this context para.5.8 of the guidance advises that disused transport routes such as railways should not be unnecessarily severed by new buildings and non transport uses especially where there is a reasonable chance that such routes may be put to use in the future.

5.36 Local authorities should also consider the potential of disused railway trackbeds and possible future transport schemes, including rail (both passenger and freight), metro and light rail projects, and apply appropriate protective policies where justified.”

5.8 Authorities should ensure that disused transport routes, such as old canals and railways, are not unnecessarily severed by new buildings and non transport land uses, especially where there is a reasonable chance that such routes may be put to use in the future. As well as their original uses, such

2.261 Clearly, at present there is no business case for re-instating the Sturt Road 'chord'. Neither Railtrack nor the relevant train operating company supports this proposal. However, the Government is keen to secure a shift away from use of the private car in favour of public transport. Such a shift will almost certainly require significant improvement to the rail network. The possible introduction of road pricing and employee parking charges could well have an effect on the cost-benefit analysis of the planned rail improvement schemes. Additional sources of funding could become available to finance such schemes, particularly through the infrastructure and Investment Fund and the Rail Partnership Scheme. This could also affect the balance sheet.

2.262 Paragraph 5.36 of PPG12 indicates that the 'local authorities should...consider the potential of disused railway trackbeds and routes for possible future transport schemes, including rail...and apply appropriate protection measures where justified'. Paragraph 5.8 of

PPG13 urges local planning authorities to ensure that disused transport routes, such as old railways, are not severed, especially where there is a reasonable chance that such routes may be put to use in future. Paragraph 4.165 of the Government's 1998 White Paper on the Future of Transport says that 'development plans should give better protection to those sites and routes (both existing and potential) which could be critical in developing infrastructure to widen transport choices'.

2.263 Despite the negative result of the recent County Council study, which concluded that the journey time of a direct service from Camberley to Waterloo via Ascot and Richmond could be almost as fast as a route using the proposed Sturt Road junction, that it would be unwise to conclude that there is no prospect of the Sturt Road junction being re-established at some time in the future. However, residential development on the objection sight would effectively rule out that possibility. In my view, the housing requirements of the current Structure Plan can be met without the allocation of this land. I conclude that the continued safeguarding of this site for rail improvements is justified."

In December 1999 the revised version of PPG12 was published. Paragraphs 5.22 and 5.23 dealt with safeguarding transport routes. Paragraph 5.23 says:

"The Government's White Paper on Transport makes it clear that development plans should give better protection to those sites and routes (both existing and potential) which could be critical in developing infrastructure to widen transport choices. Alternative uses related to sustainable transport should be considered first for sites now surplus to transport requirements. Local authorities should therefore consider the potential of disused railway trackbeds and routes for possible future transport schemes including rail (both passenger and freight), metro and light rail projects, cycling and walking, and apply appropriate protective policies where justified..."

The officers then considered the recommendation to exclude the land from the Blackwater Valley Strategic Gap, saying:

"On balance it is concluded that the policy area of the Blackwater Valley Strategic Gap would be strengthened by the exclusion of the site, relying in modified form upon more consistent boundaries. This does not detract from the countryside valley of the site nor the need to safeguard the land for longer term transport improvements.

In terms of safeguarding of the site under Policy M25, the Inspector has recognised that it would be inappropriate to allow this site to be severed by housing development. This would take away the longer term prospects of utilising this site to help achieve improvements to rail services in this part of the Blackwater Valley. The Government's objectives for achieving a modal shift from car to public transport, can only be viewed as meaningful in a long term context. In Surrey Heath, where car availability rates are very high it will be essential for major improvements to rail services to be progressed as part of a package of public transport improvements and other policy initiatives, before measurable progress can be expected.

The Inspector has rightly placed much emphasis on Government Policy in PPG13 'Transport' (1994). The revised consultation draft of PPG13 'Transport' (October 1999) reinforces previous Government objectives and advice to local planning authorities. In particular, it continues to:

(c) ask local planning authorities to identify and where appropriate protect sites and routes, both existing and potential, which could be critical in developing infrastructure to widen choices for both freight and passengers and ensure that any such disused transport sites and routes are not unnecessarily severed by new buildings and non-transport uses.

There is nothing to suggest the Government policy will not continue to support the approach adopted in the Local Plan towards the safeguarding of this site on a long term basis.”

The claimants objected to the proposed modifications on the grounds that there was not a reasonable chance that the route may be put to use in the future and that there was little likelihood of SRA funding. There is no timescale for the theoretical reinstatement and whilst the technical report has indicated that the reinstatement of the link would be technically feasible, there is very little prospect of the link being reinstated in the future for economic reasons.”

No new evidence, additional to that considered at the Inquiry, has been put to undermine the longer term need for the land to be safeguarded for rail improvements. The Inspector concluded that it is important to consider the need for the safeguarded land in a long-term context. Recommendation: No change to policy.

In his decision letter dated **17th November 2000** the Inspector dismissed the appeal. He identified two main issues:

“The effect of the proposal on the rural character and function of the countryside; and,

The effect of the proposal on future public transport opportunities.”

The Inspector turned to the second issue, the effect on public transport opportunities. He summarised the history, including the views of Railtrack and South West Trains (see above), and concluded, in paragraphs 23 to 25:

“23. PPG13 gives guidance on the safeguarding of transport routes and the avoidance of blight. The recently published version of PPG12 builds on and is complementary to the PPG13 guidance. From the evidence which I heard at the Inquiry, I consider that there is little prospect of the appeal site being required in order to improve rail services within the period of the Emerging Local Plan. However, even though objections were raised to the safeguarding of the Sturt Chord during the Local Plan process and the Local Plan Inspector being made aware that neither Railtrack nor the train operating companies supported the reinstatement of the chord, he considered that it was appropriate to retain Policy M25. Where disused transport routes are concerned, the national guidance advises that these should be safeguarded from unnecessary severance by new buildings and non-transport land uses. Even though the Sturt Chord may not be required during the emerging Plan period, I consider that Policy M25 is consistent with this national guidance. The appeal proposal would clearly sever the disused route and, as adequate provision is made in the emerging Local Plan, I cannot conclude that the proposed development is necessary to meet the current housing demand.

24. At the inquiry I heard evidence concerning new funding and organisational arrangements which could alter the prospects for securing investment in the local rail network. I also heard evidence concerning infrastructure improvements which were under consideration and possible future rail and light rail proposals. While it seems unlikely that the Sturt Chord will be required to provide improvements to the rail network in the immediate future, in the light of these developments together with the greater emphasis being given by central government to the need to improve public transport and to reduce reliance on the private car, I do not consider that it can be concluded that there is no prospect of the land being required in the future. In my opinion, the land is located at an important position on the rail network, at the crossing of the local line and the main line. Even if the operational difficulties ultimately prevented reconnection of the two lines, there is the potential for employing the land as an interchange point between the lines and between different transport modes. The site could, therefore, play a critical role in developing infrastructure to widen transport choices. PPG13 gives additional weight to the need for protection in circumstances where there is a reasonable chance that disused routes may be re-used in the future. I accept that, in the uncertain circumstances at the

time of the Inquiry, much of the debate surrounding future rail developments was speculative and that there was insufficient evidence to indicate whether or not there was a reasonable chance of the proposals reaching fruition. However, until these issues have been fully explored, I consider that it is essential that the land is safeguarded.

25. On the second main issue, therefore, I conclude that the proposal could be harmful to future public transport opportunities. It would, therefore, be contrary to policy MT13 of the adopted Structure Plan, Policy TN7 of the emerging Structure Plan, and Policy M25 of the emerging Local Plan.”

The Inspector's overall conclusion in paragraph 29 of the decision letter was:

“I have concluded that the proposal would be harmful to the character and function of the countryside and that it would be harmful to future public transport opportunities.”

The claimant challenged the Inspector's decision under section 288 of the Act. There were six grounds of challenge, the first being that the Inspector had misapplied the advice in paragraph 5.8 of PPG13 by failing to ask himself and to determine whether there was a reasonable chance of the appeal site being put to public transport use in the future and erred in concluding that policy M25 (now M18) was consistent with paragraph 5.8 of PPG13. The challenge was dismissed by His Honour Judge Rich QC (Sitting as a High Court Judge) on **14th September 2001**.

### Conclusions

Although the first ground of complaint was elaborated in a variety of different ways, it covers the same ground in substance as the submissions which were rejected by His Honour Judge Rich. The learned judge pointed out the difference between paragraph 5.35 of PPG12, which deals with safeguarding land “for particular road proposals”, and paragraph 5.36, which invites Local Planning Authorities to “also consider the potential of disused railway trackbeds and routes for possible future transport schemes”. In paragraph 17 of his judgment the learned judge said:

“It seems to me to be clear beyond doubt that the guidance as to setting out new road proposals which were to appear as proposals on the local plan with, I would accept, the intention that they should be pursued within the plan period, if not actually completed, is quite different from that in respect of disused routes where appropriate protection policies are to be applied. Paragraph 5.8 of PPG13 indicates appropriate protection policies, namely that such routes are

'not to be unnecessarily severed by new buildings or non-transport land uses...'

PPG13 says that those policies are to be applied 'especially where there is a reasonable chance that such routes may be put to use in the future'.

That especial provision, however, is, in my judgment, a clear indication that even where 'no reasonable chance' (so-called) is established or contemplated, unnecessary severance is to be avoided. Clearly, the remoter the possibility of re-use, the slighter the necessity which would nonetheless justify severance. But the distinction between the policy as to blighting in the case of safeguarding disused routes, irrespective of the firmness or immediacy of any proposed re-use, as opposed to avoiding reference in the plan to new routes unlikely to be implemented is, I think, clear.”

The learned judge then set out the terms of paragraph 5.7 of PPG13. In paragraph 20 he referred to paragraph 5.22 in the December 1999 edition of PPG12, saying, in paragraph 21:

“This is a different policy to that advised on disused routes where protective policies may be

justified in the absence of firm plans.”

He then set out the terms of paragraph 5.23 of the revised PPG12, concluding in paragraph 22:

“It follows, in my judgment, that it was not essential for the application of that policy contained in paragraph 5.8 of PPG13 that the inspector should determine in the words of that paragraph that there was such a reasonable chance that the disused route should be re-used as to raise the presumption against unnecessary severance to the especial case. It was enough to bring the safeguarding policy into play that the appeal policy involved severance and that the inspector judged it not to be necessary because, as he said, 'adequate provision for housing is made in the emerging Local Plan'.”

Mr King QC, on behalf of the defendant, invited me to adopt those conclusions. I respectfully agree with the learned judge. The claimant's first complaint effectively ignores the word “especially” in paragraph 5.8 of PPG13. Central government policy advice could have been framed so as to ask Local Planning Authorities to ensure “that disused transport routes, such as old canals and railways, are not unnecessarily severed by new buildings and non-transport land uses where there is a reasonable chance that such routes may be put to use in the future”. If the policy had been so expressed, there might well have been some justification in the claimant's first complaint, but it is not so expressed and that should not be a cause for any surprise. One does not have to be a canal or railway enthusiast to be aware of the fact that over the last 30 years, a number of old canals and disused railway lines have been restored to use as transport routes, despite the fact that for many years there appeared to be no prospect whatsoever, much less any reasonable chance, of their re-use.

“In my view the housing requirements of the current structure plan can be met without the allocation of this land.”

Severance was not necessary so continued safeguarding was justified. In recommending amendments to the explanatory text in the Local Plan, the Inspector recognised:

“..that in the light of various reports referred to above, 'it would be difficult to recommend that the scheme should progress at present. Nevertheless, the balance of advantage could change as a result of government policies to deter car use.’”

The 1999 PPG12 (paragraph 5.23 above) is intended to strengthen, not limit, the presumption against unnecessary severance of disused railway track beds and other routes “for possible future transport schemes”. Policy M18 safeguards the chord against “inappropriate development”. The claimant points out that it does not refer to unnecessary severance, but the necessity for severance, based on the alleged need to use the site for housing, is dealt with elsewhere in the Plan. Sites are allocated to meet the housing needs identified in the Plan in Policies H2 and H3. Those sites do not include the claimant's site.

“I am not satisfied that the appeal site is so clearly more suitable for housing development than the other allocated urban extension sites that this would justify the granting of permission.” In paragraph 12 he considered the claimant's criticism that the Local Plan Inspector's comparative assessment of the housing allocation sites was flawed and was made without the benefit of the advice in the latest PPG3. Mr Horton reiterated this criticism of the Local Plan Inspector in his submissions before me. The Inspector's answer in paragraph 12 of the decision letter dated 17th November 2000 is instructive:

“I do not consider that the approach adopted in the preparation of the Local Plan in identifying housing allocations is so fundamentally different from the guidance in PPG3 that I should limit the weight that I give to the emerging Plan.”