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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(ADMINISTRATIVE COURT)

CO/261/2001

Royal Courts of Justice
Strand
London WC2

Friday, 1st February 2002

B e f o r e:

MR JUSTICE SULLIVAN

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MANSARD COUNTY HOMES LTD

-v-

SURREY HEATH BOROUGH COUNCIL

- - - - -

(Computer-aided Transcript of the Stenograph Notes of
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MR M HORTON QC and MR G WILLIAMS (Judgment only) (instructed by WH Matthews & Co,
Kingston upon Thames, Surrey, KT1 2BZ) appeared on behalf of the Claimant.

MR N KING QC (instructed by the Borough Secretary, Surrey Heath Borough County Council,
Camberley, Surrey GU1 3HD) appeared on behalf of the Defendant.

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J U D G M E N T
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J U D G M E N T

1. MR JUSTICE SULLIVAN: This is an application under section 287 of the Town and Country Planning Act 1990 (“the Act”) to quash certain policies in the Surrey Heath Local Plan 2000 (“the Local Plan”) which was adopted by the defendant on 8th December 2000.

Background

2. 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. It is triangular in shape, 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.
3. 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.
4. 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. The 1994 Local Plan had evolved over some years. It “had its origins in the circumstances of the mid and late 1980s”. So the defendant commenced a review in September 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.
5. In 1996 the defendant published 11 topic papers as part of the process of reviewing the Local Plan. The housing topic paper did not propose the allocation of the site for housing. 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.
6. At that stage a study of the feasibility of reinstating the chord was being undertaken by Halcrow Transmark. 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. In February 1997 the defendant's Local Plan Working Party reviewed the sites that had been put forward for housing at the pre-deposit draft stage of the Local Plan. Evaluation of the site in the officer's report was as follows:

“It is considered that housing development on the site would be inappropriate for several reasons. Firstly, the site is believed to exhibit countryside characteristics and is linked both visually and physically to the other

countryside areas of the Blackwater Valley to the west. 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 has been set up to examine this issue. A 'Technical Appraisal' has been undertaken which shows that the railway chord can be reinstated. A 'Business Case' remains to be undertaken to show that services using this chord will be operationally viable. The environmental appraisal gives a very poor result.”

7. 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 in a section of the plan dealing with improvements to rail services policy M25 said this:

“Safeguarded Land for Future Public Transport Provision

The Borough Council and the County Council will safeguard land at the Sturt Road 'chord', Frimley Green, as shown on the Proposals Map, to ensure that inappropriate development does not prejudice its future re-use for rail transport.”

8. 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.

11.75 Land at Sturt Road contains a disused rail 'chord' on a largely intact embankment which when last used by trains linked the main line to London Waterloo with Frimley, Camberley and Bagshot. It is a major objective of the Borough Council and Surrey County Council to achieve a direct and attractive rail access from local stations to London, and to Heathrow Airport via the proposed Heathrow Rail Link, as this would be an important step towards reducing commuters reliance upon the local road network.

11.76 The Surrey Structure Plan at Policy MT13 promotes the development of existing services appropriate to the needs of existing and future users. Surrey County Council published a report in 1995 which investigated the Surrey Rail network with a view to identifying problem areas and opportunities for enhancing services. The 'Rail Line Improvements In Surrey' study demonstrated that passenger throughput at Camberley justified better rail services than is currently provided. The study looked at ways to improve the efficiency of existing services without new infrastructure, how improvements could be made by re-opening disused infrastructure and also at opportunities for new infrastructure, including new stations. The absence of a direct and fast route between Camberley and London (Waterloo) was identified as a particular problem. A number of potential solutions to providing a direct link between local stations and London were identified but re-opening the Sturt Road chord is almost certainly the most realistic way of achieving this link, being short in length and relatively inexpensive.

11.77 Surrey County Council and the Borough Council, together with Railtrack and South West Trains are undertaking further feasibility work to assess the viability of such a proposal, through the Surrey Health Rail Working Group. A study has been commissioned which demonstrates that it is technically possible to re-introduce either a single or a double line track using the chord and to programme direct services linking Bagshot, Camberley and Frimley to London Waterloo. This would significantly improve the travelling time to and from London and make the service much more attractive to commuters. Further feasibility work is progressing to establish the advantages to the service operators of re-instating a service via the disused chord.

11.78 During 1996, the Secretary of State endorsed his Inspectors recommendations on an appeal where the proposed development would have led to the severance of the embankment, contrary to the objectives of Policy MT13 of the Surrey Structure Plan 1994 and the intentions of Planning Policy Guidance Note 13.

11.79 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.”

9. The claimant lodged objections to a number of policies in the Deposit Draft Local Plan with a view to having the site allocated for housing. The objection said:

“Policy G1 defines the settlement areas on the Proposals Map. Objection is raised to Policy G1 in that the settlement area of Frimley omits the objection site.

The objection site should be removed from the Blackwater Valley Strategic Gap in that it does not materially contribute to the function of the Strategic Gap as set out in Policy RE4.

Policy H1 does not make adequate provision for new dwellings for the period 1st April 1997 to 31st March 2006.

When using appropriate environmental criteria and when a comparison is made between the objection site and the merits of some of the sites in Policies H2 and H3 then it is clear that the objection site should be allocated for housing in preference to those sites. Not only are some of the sites listed in H2 and H3 the subject of environmental objections but some are not available.”

10. Objection was raised to the phasing Policy H6 and to the allocation of a reserve housing site in Policy H7. So far as Policy M25 was concerned, the objection said:

“No evidence exists to suggest that there is a reasonable chance that the Sturt Road 'Chord' will be required in the future. The policy should therefore be deleted. Further the balance of advantage lies with the objection site for housing given that other more cost effective solutions to rail service provision are available and many of the housing sites proposed in the Plan are inappropriate.”

11. The Local Plan Working Party met in April 1998 to consider objections to the Deposit Draft. The Working Party rejected the site because of its location in the countryside beyond the Green Belt and because “Sturt Road railway chord needed for public transport”.
12. In November 1998 the demand assessment was published. It concluded that the likely revenue would not justify the capital cost. Railtrack had waited for this final report before forming its final view. In a letter dated 7th December 1998 to the County Council it said, inter alia:

“The report clearly demonstrates that there is no business case for the chord even at the (acknowledged) underestimated capital costs for construction, and without account being taken of the costs of land acquisition and of gaining powers to build. It should be noted also that the costs of signalling schemes has risen by the order of 50% since the original costing of this scheme.

The social benefits which the report identifies as arising from the construction of the chord and subsequent transfer of trips from roads to rail are not great. Assuming that there were public funds easily available for the construction of additional railway infrastructure, this scheme would in our view be unlikely to qualify.

Operationally, the need for trains to access the proposed chord from the down slow line requires the construction of ladder junctions across the up and down fast lines. Growth in traffic on the Waterloo main line has in recent years been significant. Current and forecast demand from the Train Operating Companies upon the main line are now such that the limitations on line capacity and the performance risk involved with this additional infrastructure would be difficult for railway operators to accept even if the Sturt Lane Chord had been demonstrated as having a sound business case; in the light of the study results these impacts are unacceptable.

In summary, Railtrack does not support the proposal for the re-instatement of the Sturt Lane Chord as it is neither economically nor operationally viable. It is unlikely that this view will change in the foreseeable future.”

13. Notwithstanding what they described as the “disappointing conclusions” of the demand assessment report, County Council officers recommended that the chord should continue to be safeguarded:

“There remains the opportunity for other options to improve rail services in the Surrey Heath area to be examined.

For example there is a possibility of creating an interchange station in the area of the chord. As noted previously, the proposed ladder junction to and from the chord across the main line poses a real problem. An alternative could be to provide a chord in one direction which need not cross the main line with services in the other direction being routed by a different route.

Potential passenger demand may well increase over time which could positively impact upon the economic viability of proposed schemes.

Options are therefore open for further investigation.

With respect to the future protection of the land from development,

particularly in relation to the forthcoming Surrey Heath Local Plan Inquiry, Members will need to carefully consider the findings of this latest study, and the advice of PPG13 coupled with other potential future uses of the land for transport purposes. Were the land to be lost to development, the opportunities for its future use for transport purposes would be gone forever.”

14. The officers recommended that the County Council, as part of the Surrey Heath Rail Working Group, should continue to investigate potential improvements to rail services in the Surrey Heath area and should continue to seek to protect the land of the former Sturt Lane Chord from development for potential future use for transport purposes. The defendant adopted the same stance.
15. On 19th February 1999 the train operating company, South West Trains, wrote to the claimant's planning consultants, saying, *inter alia*:

“The study [has] concluded that there is no justification for the construction of the chord line in the near to medium future. While it is impossible to predict changes in transportation policy which may bring further demands on the public transport services throughout the United Kingdom. It is doubtful if the potential benefits of such a connection from the Camberley Line to the main line would rank highly in Government spending for either capital projects or revenue support.

Growth in rail business has seen service frequency increasing both in the peak period and particularly to off-peak services throughout the South West Trains area and specifically within the London area. There are now periods of the peaks when the approaches to London are at capacity and a great deal of time and money is being spent investigating options to provide greater capacity, if not for trains then for seats and people. This of course impacts on the ability of ourselves to operate more trains, such as the service proposed using the Sturt Lane Chord.

Work carried out in support of the study within South West Trains found that potential growth in rail travel generated by the proposed chord line, if it were available now, was greatly outweighed by the cost of operating such a service.

Railtrack have already stated that they do not support the construction of the chord. South West Trains position is such that we must doubt 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. This ignores the more practical issue of crossing three busy tracks to access the chord line from the London direction and the impact this would have on other rail services.”

16. The Local Plan Inquiry opened in January 1999. On 7th March the defendant refused an application for planning permission for residential development on the site which had been made as long ago as 1996 but held in abeyance pending the defendant's consideration of objections to the Deposit Draft Local Plan. In the same month the claimant's objection was presented to the Local Plan Inspector. The claimant's planning consultant, Mr Warren, had participated in a round table discussion of housing provision in the Local Plan in February and argued that there was a shortfall in overall provision. At the claimant's main appearance at the Inquiry in March, he argued that:

“...this deficiency can be partially addressed by the inclusion of the objection site which has a capacity of some up to 60 dwellings. The larger of the identified deficits arises in the period 1998-2001 thus the objection site should be allocated in Policy H2 to partially make up the shortfall in the first phase of the Plan period.”

17. He reviewed the planning history of the site, including the various studies into the feasibility 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.

4.45 Full technical, financial and operational information is now available to be able to make an assessment of whether there is a reasonable chance that the Sturt Chord Link will ever be provided. Three issues are important to such an assessment. First, after a full technical and economic investigation spanning a period of 3 years no case can be made for reinstating the Chord and there is no debate in the assessment of whether even at some future date the link might be reinstated. In my opinion it is fair to say that having regard to the conclusions of the report there is no reasonable chance of future use. Para.5.6 of PPG13 adds that blight should be kept to a minimum by including in plans only firm transportation schemes on which work will commence within the Plan period. The prospect of a link has now to be discounted certainly in the Plan period and beyond. It is therefore inappropriate for the defunct route to be safeguarded by Policy M25.”

18. He then carried out what he described as “a comparative sustainability analysis of the allocated sites and the objection site”. He was particularly critical of two allocated sites at Windlesham and East of Bellew Road and took issue with the poor environmental ranking given by the defendant to the site. He concluded as follows:

“Policy G1 - Amend settlement area boundary to accommodate objection site as a housing allocation

Policy H1 - Housing provision in the Deposit Draft Local Plan falls short of fulfilling the strategic housing requirement for Surrey Heath Borough

Policy H2 - Local Plan should allocate the objection site for housing 1999-2001

Policy H3 - Proposes unsustainable sites (particularly Windlesham and East of Bellew Road) for the period 2001-2006

Policy RE4 - The objection site should be removed from the Blackwater

Policy Area

Policy M25 - This policy can no longer be justified and can now be removed from the plan.”

19. Paragraph 7.16 of his proof of evidence said this:

“The extension of the settlement boundary at Frimley Green to embrace the objection site does, in these circumstances, provide the very best of solutions. Furthermore, the impeccable sustainability credentials of the objection site cause it to fall four square with government and strategic objections to achieve a sustainable pattern of development for new housing. In the circumstances the Inspector respectfully asked to recommend to the Council that it allocates the site for housing under Policy H2 of the replacement Local Plan for the period 2001, that the settlement boundary be amended (Policy G1), that Policy M25 be removed from the Plan and that the site be removed from the Blackwater Valley Policy Area (Policy RE4).”

20. Before turning to the Local Plan Inspector's report, it is helpful to set out the government policies referred to by Mr Warren and the Local Plan Inspector. The February 1992 edition of PPG12 (Development Plans and Regional Planning Guidance) dealt with safeguarding transport routes in paragraphs 5.35 and 5.36 as follows:

“5.35 Where planning authorities wish to safeguard land for particular road proposals, they should do so through a proposal in the local plan. Where the precise route of a proposed new or improved road is known at the time of the preparation of the plan, this should be shown on the proposals map as the route to be safeguarded. When the precise route is not known, but where proposals are sufficiently advanced the authority may define on the proposals map the area of land over which it intends to apply a safeguarding policy. The use of diagrammatic lines to illustrate the route should not be used where it could be misleading. For the sake of clarity, plans should list any road schemes which have previously been safeguarded and are now to be abandoned.

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.”

21. PPG13 “Transport” dated March 1994 said this, in paragraphs 5.6 to 5.8:

“5.6 Paragraphs 5.35 and 5.36 of PPG12 give advice on the safeguarding of transport routes in plans. This includes rail and light rail schemes as well as roads.

5.7 Blight should be kept to a minimum by including in plans only firm schemes on which work will commence within the plan period. Local planning authorities should use the process of preparing or amending development plans to review transport proposals and move the effects of blight where proposals are now unlikely to be taken forward by listing abandoned schemes. This is especially important for proposals, such as road widening, which affect large numbers of existing properties. Local planning

authorities should consider the potential benefits of development to fill in setbacks from the highway arising from lapsed widening proposals (especially when isolated or in short stretches).

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 routes may serve as cycle routes, pedestrian paths or bridleways.”

22. In his report to the defendant, the Local Plan Inspector grouped objections by topics corresponding with the chapters in the plan. In section 1 of his report he dealt with strategy and general policies; section 2 dealt with housing; section 3 with the urban environment; section 4 heritage, et cetera. The claimant's objections in respect of the Sturt Road site are dealt with in section 2 of the report, the housing section. Section 2 deals firstly with the quantum of new housing provision. It then deals in turn with each of the proposed housing sites, those allocated in the Draft Local Plan to which there had been objections and those put forward by objectors in addition to or in substitution for the allocated sites. In summary, the Inspector recommended the allocation of sites with a total capacity for about 700 dwellings. As to the choice of sites, he said this, in the summary of his recommendations:

“11. With two exceptions, I agree with the Council's selection of allocated housing sites, as reflected in their proposed changes to the deposit draft Local Plan. The exceptions are the site to the east of the Heath Park Drive, Windlesham; and the undeveloped part at the site at Bellew Road, Deepcut (excluding the Sergeant's Mess). In my view, the occupants of houses built on these essentially rural, 'green field' sites would be unduly reliant on car transport. The proximity of the Windlesham site to the M3 motorway, with the associated problems of noise and air pollution, also detracts from the suitability of that land for housing.

12. In order to reduce reliance on the private car, I consider that, as far as possible, new housing should be concentrated in public transport corridors, close to existing facilities. The main transport corridor in Surrey Heath runs from Frimley, through Camberley, to Bagshot. I have accordingly recommended the allocation of additional housing sites within this corridor, at Notcutts Nursery, Woodside Cottage, and College Ride, Bagshot; and at Whitehill Farm, Camberley. These sites each are within walking distance of reasonably frequent bus services and a railway station; and they are each within walking distance to primary schools, a range of shops and other services.”

23. The claimant's site is dealt with in paragraphs 2.244 to 2.265 of the Inspector's report. Having described the site and accurately summarised the claimant's objections, including the proposition that “in all the circumstances the site should be allocated for residential development”, the Inspector set out his own conclusions. He referred to the 1992 appeal and the views expressed by the earlier Local Plan Inspector in the same year, saying, in paragraphs 2.253 and 2.254:

“2.253 I agree with him that the objection site makes only a limited contribution to the rural appearance of this part of Surrey Heath. Very little of this land is now visible from the Ascot to Ash Vale railway line because of the screening effect of the tall, evergreen hedge at the trackside. From the

embankment of the Southhampton to Waterloo line, the sight appears as a grassy area at the edge of the settlement, hemmed in by railways. Nevertheless, the site is not part of the built-up area of Frimley Green. The Council's decision to exclude it from the defined settlement area does not seem to me to have been unreasonable.

2.254 However, the evergreen hedge now reinforces the effect of the Ascot to Ash Vale railway line in separating the objection site from the wooded countryside in the Blackwater Valley Strategic Gap to the west... I can see no good reason why, uniquely among sites to the east of the railway, the objection site should have been included as part of the Blackwater Valley Strategic Gap. For these reasons, I consider that this land should be excluded from this designation.”

24. He then turned to “safeguarding the railway link”. He understood the desire of the County Council and District Council to secure a restoration of the link between the local line and the main line, saying that “rail services in Surrey Heath are not what they might be”. However, he noted all of the difficulties involved in reinstating the link, including the fact that “the projected income would fall far short of the annual running cost”, and the safety and capacity problems relating to the provision of a ladder junction across the main lines (see paragraphs 2.255 to 2.258). In paragraph 2.259, he said:

“In my view it is questionable whether the reinstatement of the Sturt Road junction would provide the most cost-effective way of improving rail service from Frimley, Camberley and Bagshot to London. It is already possible to run trains directly between these stations and Waterloo, via Ascot. The fact that that service is currently limited to peak hours appears to reflect the existing pattern of demand rather than a lack of capacity. If a direct service can be provided at the peak period, when the network is at its busiest, I can see no reason (other than lack of demand) while additional direct trains should not be provided off-peak, when use of the network is less intense. Such an improvement would not require costly capital works of the type envisaged at Sturt Road. The necessary infrastructure is already there.”

25. Paragraphs 2.260 to 2.263 of his report are as follows:

“2.260 In 1995 the County Council commissioned a study of potential rail line improvements in Surrey. This indicated that the journey time of a direct service from Camberley to Waterloo via Ascot and Richmond could be as little as 52 minutes. That would be virtually as quick as the fastest projected time using the proposed Sturt Road junction. I accept that in practice it may be difficult to achieve such a performance, because of capacity constraints on the approaches to Waterloo. However, it seems to me that if there are funds for investment in the provision of a better rail connection between Surrey Heath and London, the development and improvement of the direct service via Ascot could offer the best return.

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 study, I consider 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."

26. Having dealt with the question of railway noise, he recommended that the proposals map be modified to exclude the site from the Blackwater Valley Strategic Gap and that the Local Plan be modified by the deletion of the final sentence of paragraph 11.76 and the amendment of paragraph 11.77 to read as follows:

"A number of possible ways of providing direct rail services between local stations and London have been identified, including the re-opening of the Sturt Road chord. It would be technically possible to re-introduce either a single or a double line track using the chord, and to programme direct services linking Bagshot, Camberley and Frimley to Waterloo. This would improve travelling time to and from London and make the service more attractive to commuters. However, a demand assessment has been undertaken to assess the likely viability of such a proposal. This concluded that the additional revenue from travellers switching from road to rail would not cover the additional operating costs of the amended rail service; and that 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 designed to deter car use."

27. 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...”

28. The Local Plan Inspector's report is a lengthy document. It was considered by the Local Plan Working Party in January and March 2000. Officers advised that the Inspector's recommendations in respect of the site should be accepted. Their report set out the claimant's objection and the Inspector's conclusions in some detail. The officers' response and recommendation included the following:

“The Inspector's comments and conclusions regarding the site's inclusion within the countryside (Policy RE3) and the absence of compelling reasons to allocate the land for housing are supported (Policies G1, H2 and H3).”

29. 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:

(a)...

(b)...

(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.”

30. The Council's Environment Committee agreed and the report was published as part of the formal statement of proposed modifications and statement of the Council's decisions in May 2000. The claimants objected to the proposed modifications, saying, inter alia:

“The modifications to paragraphs 11.76 and 11.77 of the Plan as set out in the Inspector's Report and proposed by the Local Planning Authority are noted. However, the safeguarding of the Sturt Chord rail link for the duration of the Plan period without any likelihood of the Chord being brought back into use is contrary to guidance in PPG13 which advises Local Planning Authorities to ensure disused transport routes such as old railways are not unnecessarily severed where there is a 'reasonable' chance that the routes may be put to use in the future.

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.”

31. These arguments were elaborated, and the objection made the point that the site “has substantial sustainability credentials.” This part of the objection to the modifications concludes:

“For these reasons, we believe that the proposed modifications to Policies H2 and H3 are incorrect and Policy H2 should be amended to reflect the inclusion of Land at Sturt Road as a housing allocation site. The proposals map should similarly be changed to reflect this.”

32. The claimant also objected to two new sites proposed to be allocated for housing in line with the Local Plan Inspector's recommendations, land at Notcutts Nursery and Woodside Cottage, Bagshot, saying:

“The proposals to identify land at Notcutts Nursery and Woodside Cottage, Bagshot under Policy H3 as a housing allocation for development with 150 dwellings is inconsistent with Government guidance on making the best use of previously developed land as advocated by PPG3 on housing, paragraphs 22 and 23....

Other sites including land at Sturt Road, Frimley Green fulfil the key objectives of Government guidance in the following ways:

- * Concentrating additional housing development within urban areas.
- * Making efficient use of land by maximising the re-use of previously developed sites.
- * Increased urban densities.
- * Ensuring that housing is well related to services and facilities.
- * Reducing the need to rely upon the motor vehicle and encouraging other forms of the movement.

In all these key criteria land at Sturt Road, Frimley Green performs better than land at Notcutts Nursery and Woodside Cottage, Bagshot.”

33. In September 2000 the defendant's Environmental Committee considered an officer's report on objections to the proposed modifications. The report dealt with objections to the allocation of land at Notcutts Nursery and Woodside Cottage, and referred in terms to the revised PPG3 housing which had been published in March 2000. Officers summarised their response to the objections as follows:

“The Inspector, in making his recommendation to release the site for housing development, and the Council in allocating the site for housing development as a Proposed Modification to the Plan, have judged that this site is better in planning terms than the limited alternative sites which are in less sustainable locations. There has been considerable and understandable objection to this allocation in the Proposed Modifications, particularly from the residents of Bagshot. Notwithstanding this, no new evidence of a materially significant nature has come forward in the consultation exercise to cast doubt on the planning merits of the allocation.”

34. In respect of the claimant's site, the officers said:

“Summary of Representation: The references in the supporting text of Policy M25 are objected to on the grounds that there is no reasonable prospect that the safeguarded land will be needed for rail improvements.

Officer Response: Not agreed. 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.”

35. Members agreed and the Local Plan was adopted on 8th December 2000. Policy M25 was renumbered M18 and the explanatory text was amended in accordance with the Inspector's recommendation. The site was included in the countryside beyond the Green Belt but excluded from the Blackwater Valley Strategic Gap.
36. One might have expected the background history relevant for the purposes of this challenge to the policies in the Local Plan to have stopped there, but the final act was to come. The claimant had appealed against the refusal in March 1999 of its 1996 application for planning permission for residential development. By agreement between the parties, the appeal had been held in abeyance pending the defendant's consideration of the Local Plan Inspector's report. The appeal was taken out of abeyance, and an Inspector held an inquiry from the 3rd to 5th October 2000. Shortly before the Inquiry, the Council's Assistant Chief Planner wrote to Mr Warren on 15th September 2000, saying, inter alia:

“...I can confirm that in the Authority's view, there is no reasonable prospect of the Sturt Chord being implemented during the period of the reviewed local plan.

With regard to your point (b), it is not the Authority's view that there is no reasonable prospect of the Sturt Chord being implemented in the foreseeable future. The re-use of the Sturt Chord depends on several factors. For example, the availability of third party or Government funding and the changes which are likely to occur as a result of the Government's

sustainability initiatives for transport and travel, together with the outcome of the Shadow Strategic Rail Authority's franchise replacement process will all be relevant factors. In my view it would not be reasonable to conclude at this stage that there was no prospect of the Chord being brought into use in the foreseeable future.”

37. 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.”

38. When dealing with the relevant planning policies, the Inspector referred to the then still emerging Local Plan, saying in paragraph 6:

“I note that the Local Plan Inspector's Report on the emerging Local Plan was published before the publication of the most recent guidance contained in Planning Policy Guidance (PPG) 3: Housing. The Local Planning Authority's Committee report on the Proposed Modifications confirms that a sequential approach to the identification of housing sites was adopted in the preparation of the emerging Plan which was generally in line with the approach set out in PPG3. I note that no urban capacity assessment or examination of housing density issues has been carried out. Nevertheless, the procedure for progression to adoption chosen by the Local Planning Authority which incorporates an early review is in line with the guidance in PPG12. In these circumstances and having regard to the advanced stage that the emerging Plan has reached in the plan preparation procedure and to the advice contained in paragraph 48 of PPG1: General Policy and Principles, I will give its provisions great weight in my consideration of this appeal.”

39. Dealing with the effect on the countryside, the Inspector said this, in paragraphs 11 and 12 of his decision:

“11. In order to meet housing targets, it has not been possible to allocate only sites within defined settlements in the emerging Local Plan. At the Inquiry I heard a considerable amount of evidence comparing the merits of the appeal site as a housing site to those of other sites which had been allocated for housing in the emerging Plan. I inspected the other sites as part of my site visit. The appeal site and the allocated housing sites referred to are all on the edge of settlements and could be regarded as urban extensions. Each has its own credentials as a housing site in terms of amenity value, sustainability, access to services, level of existing, proposed and formal development, relationship to the existing urban area and other matters. I accept that the appeal site is located close to the facilities provided in Frimley Green and, as such, I consider that its development for housing purposes would not be contrary to policies of the adopted and emerging Plans which seek to encourage sustainable development. However, as part of this appeal, I am not in a position to make a full and comprehensive analysis of the relative merits of the alternative urban extension sites. This can only be done properly through the Local Plan process. On the basis of the evidence which I heard at the Inquiry and my own observations on 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 planning permission.

12. I noted the views put forward by the appellants that the Local Plan Inspector's comparative assessment of the housing allocation sites was flawed and was made without the benefit of the latest PPG3 guidance. However, I am satisfied that the Local Plan site selection procedure followed the sequential approach advocated in PPG3, having considered firstly those sites within the existing urban areas, then brownfield sites outside of settlement areas which are locationally acceptable and, finally, sites in the countryside... 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. I will deal with this appeal on the basis of the evidence before me and the appellants will need to pursue their concerns regarding the allocation of housing sites in the emerging Local Plan in other ways.”

40. Having considered the characteristics of the site he said this, in the final sentence of paragraph 15 of the decision letter:

“In these circumstances, I do not consider that the site should be treated as part of the built-up area or that the local line and hedge form a more natural boundary to the settlement.”

41. He dealt with the Blackwater Valley policy area in paragraph 16, saying, inter alia:

“I accept that the site is different in character from the regenerating woodland and heathland in the Blackwater Valley to the west and to the landscaped grounds to the office complex to the south. Nonetheless, it forms part of the mosaic of different parts of undeveloped land between the settlements. In my opinion, it should be properly treated as part of the countryside. However, in the light of the site's functional isolation from the main Blackwater Valley Policy Area and imminent changes to the Policy Area boundary, I do not consider that the proposal would be contrary to the general thrust of adopted policies dealing with that area.”

42. The Inspector noted the comments that had been made in the past by various Inspectors as to the suitability of the site for housing, including the Local Plan Inspector's recommendation in 1992 that the site should be so allocated. He said this, in paragraphs 17 and 18 of the decision letter:

“17. As part of my site visit I viewed the site from trains on both railway lines. I note that the Local Plan Inspector in 1992 made no reference to views of the site from the railways.

Being hemmed in by railways and development and having an unkempt appearance, the site makes little contribution to the visual quality of the landscape. However, despite this lack of particular value, its openness contributes to the dominance of countryside over built development in this area when viewed from the main line. From this direction, the proposal would appear as a clear extension beyond the existing settlement boundary and would substantially consolidate the presence of built development

alongside the railway. In my opinion, this would be harmful to the existing balance between built development and countryside and would significantly reinforce the impression of travelling along the edge of a substantial built-up area.”

43. In paragraph 20 he said:

“From the Spencer Close and Chartwell cul-de-sac the proposal would result in the boundary between the built-up part up of the settlement and the adjacent open land being replaced by the blunter confinement of the hedge, railway and woodland beyond. In my opinion this would be harmful to the existing transition between the settlement and the countryside which allows a more open and intimate relationship between the two.

21. On the first main issue, therefore, I conclude that the proposal would involve development outside existing and proposed settlement boundaries and would be harmful to the character and function of the countryside.”

44. 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.”

45. 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.”

46. 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.

The claimant's submissions summarised

47. The particulars of claim were extensively amended on 17th January 2002 and re-amended on 21st January. As re-amended, the grounds of challenge are set out in nine paragraphs. These paragraphs are in turn divided into sub-paragraphs, and in some cases sub-sub-paragraphs, so that on the face of the particulars there would appear to be no less than 18 alleged errors on the part of the Local Plan Inspector and/or the defendant, some of them expressed to be in the alternative. These grounds were amplified in a 50-page skeleton argument. In truth, the claimant has two basic complaints, as explained by Mr Horton QC in his submissions.

48. Firstly, the safeguarding policy imposed by Policy M18 was inappropriate and/or unnecessary given that there was no reasonable chance of the chord being required for transport purposes within the foreseeable future. The Inspector appeared to have adopted a “no prospect” (unwise to conclude that there is no prospect) test. Such a test was not in accordance with government policy and was perverse and disproportionate in terms of striking a fair balance between the need to avoid blighting land with development potential and the need to safeguard future transport opportunities.

49. Secondly, against the background of an acknowledged need to find additional land for housing, some of which would have to be released from countryside beyond the Green Belt, there had been no comparative evaluation of the merits of releasing the claimant's site as

against the merits of the other sites allocated for housing in the deposit draft version of the Local Plan in 1998 or in the Local Plan as finally approved by the defendant in the light of the Inspector's recommendations. The gist of the claimant's complaint is that the merits of releasing the site for housing were not considered as part of a comparative exercise because it had been ruled out, on the basis that it should be safeguarded under what is now Policy M18. But, as report succeeded report, the case for safeguarding had progressively weakened, culminating in the letters from Railtrack and South West Trains, which had made it clear that there was no prospect of re-use. The prospect that had looked hopeful when the draft Local Plan was placed on deposit in January 1998 had become a mere hope or "pie in the sky".

50. The claimant accordingly sought an order quashing in particular Policies G1, H2, H3, H8 (dealing with reserve sites and formerly Policy H7) and M18 in the adopted Local Plan.

Conclusions

51. 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."

52. 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."

53. 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'.”
54. 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.
55. Against this background a policy which presumes against the unnecessarily severance of disused transport routes, and applies that presumption with especial force where it is demonstrated that there is a reasonable chance that they may be put to use in the future, cannot be said to be Wednesbury unreasonable. Nor is it disproportionate. The policy does not presume against severance whatever the circumstances. It seeks to prevent “unnecessary” severance. Deciding whether severance is unnecessary will inevitably involve a balancing exercise. The need for severance to accommodate a proposed allocation or development will have to be weighed against the prospects for re-use.
56. Subject to the claimant's second criticism (see below), it is plain that the Local Plan Inspector carried out such a balancing exercise and, in doing so, did not place any special weight on the presumption against severance. Having said (paragraph 2.263) that it would be unwise to conclude that there was no prospect of the Sturt Road junction being re-established at some time in the future and that housing development would effectively rule out that possibility, he said:
- “In my view the housing requirements of the current structure plan can be met without the allocation of this land.”
57. 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.'”
58. Such policies were indeed included in the next edition of PPG13. I can see no perversity or

error in the Inspector's approach, which was in turn adopted by the defendant in accepting his recommendations. Paragraph 5.18 of PPG12 (1992) urges Local Planning Authorities, when considering time scales in relation to a development plan, to keep blight to the minimum. It was submitted on behalf of the claimant that the Inspector's approach (adopted by the defendant) paid no or insufficient regard to the blighting effects of Policy M18. The advice in paragraph 5.36 of PPG12 (1992), that Local Planning Authorities should apply "appropriate protective policies where justified", and the advice in paragraph 5.8 of PPG13 (above) both take account of the need to avoid blight. Appropriate policies are those which prevent unnecessary severance.

59. Two aspects of blight are relevant for present purposes: the public interest in ensuring that the site should be used for housing (if it is needed and suitable for that purpose) and the claimant's interest in receiving proper compensation if its land is blighted. So far as the latter aspect is concerned, the claimant served a purchase notice under section 137 of the Act, which was accepted by the defendant on 23rd May 2000. Compensation will be assessed in due course. So far as the former aspect is concerned, the Inspector concluded that the site was not needed to meet Structure Plan housing allocations. The claimant's submissions relating to the comparative suitability of the site are the basis of its second complaint (see below).
60. It was submitted that the Local Plan Inspector adopted a perverse or disproportionate approach in concluding that safeguarding should continue notwithstanding his conclusion (see paragraph 2.260) that "if there are funds for investment in the provision of a better rail connection between Surrey Heath and London, the development and improvement of the direct service via Ascot could offer the best return". It will be noted that, in making this suggestion, the Inspector did not conclude that this option "would offer" the best return. Moreover, it is quite unrealistic to suppose that he overlooked the fact that he had made this suggestion, when he concluded three paragraphs later that continued safeguarding was justified.
61. It was submitted on behalf of the claimant that the approach to safeguarding described in paragraph 5.8 of PPG13 could be pursued through development control decisions to refuse planning permission if the need for safeguarding was established, and that it was unnecessary to include a safeguarding policy in the Local Plan. Given the importance of the Local Plan in providing guidance to would-be developers, residents and the local planning authority (see section 54(A) of the Act), this submission is not realistic. Once the claimant's underlying submission that "any such policy should at least incorporate the reasonable chance test" is rejected, it is clearly appropriate that a safeguarding policy in line with the advice in paragraph 5.8 of PPG13, to say nothing of similar policies in the Structure Plan, should be included in the Local Plan.
62. 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.
63. I turn to consider the claimant's second complaint, that the site was wrongly excluded from Policies H2 and H3 and the reserved sites in Policy H7 because there was no evaluation of its merits as a housing site, by comparison with the merits of those sites which were allocated. At first sight there appears to be some force in this complaint. Paragraphs 2.244 to

2.265 of the Inspector's report dealing with the claimant's objection do not refer to the comparative merits of other sites, save for the statement in paragraph 2.263 that the Structure Plan requirements can be met without the allocation of the site. But these paragraphs should not be read in isolation. They must be considered in the context of the layout and content of the report as a whole.

64. I have described the manner in which the Inspector reported on the objections to the housing policies in the plan. Having considered the amount of housing provision, he went on to consider the rival contenders, including the claimant's site, on a site-by-site basis, recommending in each case whether the site should or should not be allocated for housing. In a few cases comparisons are drawn with certain characteristics of other sites (see for example paragraph 2.333), but generally the Inspector confines his assessments to the merits of the particular site under consideration. As part of his analysis, he accepted the criticisms made by Mr Warren, and many other objectors, of the allocations at Heath Park Drive, Windlesham, and (in part) Bellew Road, Deepcut, and recommended that these sites should not be allocated. Instead, he recommended the allocation of four new sites.
65. Against this background, it is unrealistic to contend that the Inspector failed to evaluate the comparative merits of the rival sites listed in section 2 of his report when making his recommendations to the Council as to which sites should be allocated for housing. As a matter of common sense, he would have recommended the "best" sites in his estimation. Having dealt with the merits of the each of the rival sites and recommended those he considered most suitable, he was able to conclude that the requirements of the structure plan could be met without the allocation of the claimant's site. It is true that the Inspector does not state in terms that the requirements of the Structure Plan can be met "on more suitable sites", but to criticise his conclusions on that basis is to consider paragraph 2.263 in isolation.
66. Having considered the views of the 1992 Local Plan Inspector, who considered the site should not be included in the designated countryside area, the Inspector concluded that the Council's decision to exclude the site from the defined settlement area (i.e. to designate it as countryside beyond the Green Belt) was not unreasonable.
67. The Local Plan Inspector reported to the Council; it was for the Council to decide upon the merits of the site put forward for housing. The claimant objected to the Council's proposed modifications on the basis that two of the sites recommended for allocation by the Inspector were less suitable for housing than the site. The officer's response, accepted by the Environment Committee, was that:

"The Inspector, in making his recommendation to release the site for housing development, and the Council in allocating the site for housing development as a Proposed Modification to the Plan, have judged that this site is better in planning terms than the limited alternative sites which are in less sustainable locations."
68. It will be recalled that in its proposed modifications and statement of reasons in May 2000, the Council had agreed with the Inspector's conclusions regarding the site's inclusion in the countryside, and said that its exclusion from the Blackwater Valley Strategic Gap "does not detract from the countryside value of the site". The claimant disagrees with that assessment, but it is plain, when the evidence as a whole is considered, that both the Inspector and the Local Planning Authority did have regard to the suitability of the site for housing as compared with the other sites that were eventually allocated in the Local Plan as adopted.

69. The claimant's submission to the contrary ignores the reality of the process in which both the Local Plan Inspector and the defendant were engaged. I accept that, having considered the Local Plan Inspector's report and the objections to the modifications, the defendant could have said to the claimant in terms, "your site is not as suitable as the sites we have chosen to allocate for housing." It did not do so. It does not follow that the reasons given to the claimant for rejecting the site were inadequate. The defendant's reasons are sufficiently clear: it considers that the site does have some value as countryside and should be safeguarded under Policy M18. Inadequacy of reasons is not one of the many grounds of challenge.

70. Even if I felt some doubt as to the adequacy of the reasons given for not allocating the site for housing, I would have had no hesitation in exercising my discretion not to quash the relevant policies in the Local Plan in the light of the conclusions reached by the Inspector in the 17th November 2000 decision letter. The Inspector placed "great weight" on the emerging Local Plan (see paragraph 6), but he did not regard it as conclusive. He "heard a considerable amount of evidence comparing the merits of the appeal site as a housing site to those of other sites which had been allocated for housing in the emerging Plan". He inspected those other sites as part of his site visit. While he was unable "to make a full and comprehensive analysis of the relative merits of alternative sites", saying that that could "only be done properly through the Local Plan process", nevertheless, having seen the alternative sites and having heard a considerable amount of evidence, he was able to say:

"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."

71. 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."

72. It was repeatedly submitted on behalf of the claimant that the categorisation of the site as countryside was "artificial" and "self-serving"; the site had been designated as countryside merely because the Council wished to safeguard it under M18. This argument too was advanced before the Inspector at the inquiry in October 2000. The relevant extracts of the decision letter are set out above. The Inspector considered the contribution made by the site to the countryside. He concluded not merely that the proposal would involve development outside existing and proposed settlement boundaries, but also that it would be "harmful to the character and function of the countryside" (see paragraphs 21 and 29 of the decision letter). In so concluding, and in concluding (see paragraph 29) that the proposal would be "harmful to future public transport opportunities", the Inspector was, in effect, accepting the submissions made to him by the defendant. Those submissions echoed the reasons why the defendant had declined to allocate the site for housing in the Local Plan.

73. In the light of this very recent decision letter, it is plain what the defendant's answers would be if it was asked to give further particulars of its reasons for not allocating the site for housing. For the reasons set out above, the claimant's two basic complaints are devoid of

substance. Any question marks which might have remained following the Local Plan Inspector's report and the defendant's modifications, and in my view there were none of any significance, have been conclusively answered against the claimant in the decision letter dated 19th November 2000.

74. For these reasons, this application must be dismissed.

75. Yes, Mr King.

MR KING: Would your Lordship then dismiss the application and make an order that the claimant should pay the defendant's costs. Your Lordship should have had -- or the Court should have received in fact two separate statements of costs, one for today and the earlier one for the hearing last week.

MR JUSTICE SULLIVAN: I did not have the latter. I did have today, although the case in fact has gone over one day but --

MR KING: Yes. My Lord perhaps has just been handed that. The statement of costs for the hearing last week comes to the total of £9,898, and for today comes to -- does your Lordship now have that, £803.50?

MR JUSTICE SULLIVAN: That is what I did see. Wait a minute. I have it here, I think. Yes, I have it.

MR KING: I am very grateful to your Lordship. The sum total of those two -- I have worked it out myself, I give no warranty that it is correct, but I have checked it -- is £10,701.50.

MR JUSTICE SULLIVAN: Yes.

MR KING: We would ask your Lordship, therefore, to make a summary assessment of costs in that amount, £10,701.50.

MR JUSTICE SULLIVAN: Yes. Mr Williams, first of all, can you say anything against the principle of costs; and then, secondly, as to the detail?

MR WILLIAMS: My Lord, that application is not resisted, and the statements my learned friend has referred to are agreed approved.

MR JUSTICE SULLIVAN: Thank you very much indeed. Then the application is dismissed. The claimant is to pay the defendant's costs; they are to be summarily assessed in the sum of £10,701.50.

MR WILLIAMS: My Lord, I am instructed to seek permission to appeal.

MR JUSTICE SULLIVAN: Yes.

MR WILLIAMS: This application falls into two parts, the first relating to the purpose and the nature of the policy under consideration.

MR JUSTICE SULLIVAN: Yes.

MR WILLIAMS: And the second relating to the role of proportionality within judicial review. As to the first, it is submitted that policies of this nature are very topical and the continuing trend of central government policy is likely to be a shift from road towards rail and other means of transport. Therefore, the issue of when and how the government may safeguard land is likely to recur

numerous times.

As a result, the legality, the proper construction and the implementation of these policies, is of general importance, as is the balance that must be struck between those policies and the private interest in developing land and the public interest in the use of land for development. It goes without saying, my Lord, that any alteration of that balance from that which has been concluded today would make a different outcome on the present facts on appeal very conceivable.

As to the role of proportionality in judicial review, it is an issue of general public importance as to how it should be treated. First and fundamentally, whether or not it warrants a separate head of review at all; and secondly, the intensity of review that should be applied where the doctrine is an issue; and finally, the role which the court is to play when applying the doctrine, namely does it effectively put itself in the shoes of the decision maker, albeit with a more limited remit, or does it merely survey and review the options that were available to the decision maker in more the traditional Wednesbury fashion.

Again, my Lord, any changes to the answer to those questions, as from the position implicit in your judgment, would have a dramatic effect on the success of this argument on appeal. The Inspector of the Local Plan Inquiry largely accepted the claimant's position as to the likely future use of the land for rail, and it is submitted that therefore on appeal, the claimant would have a real prospect of success and would raise questions of general public importance which, if answered differently, would produce compelling reasons for allowing the appeal.

MR JUSTICE SULLIVAN: Thank you very much indeed. I do not need to trouble you. Thank you, Mr King.

I think this decision turns really entirely on its own particular facts and I am not satisfied there is a real prospect of success. I am quite satisfied there are no other compelling reasons. I also observe, of course, that this is the second time that a substantial part of the submissions have been considered. They have been considered in substance and rejected by His Honour Judge Rich in addition to myself.

For those reasons, permission to appeal is refused. But thank you very much for your submissions, and pass on my thanks to Mr Horton. And thank you, Mr King.

MR KING: Thank you, my Lord.