



Land at Garibaldi crossroads

Local Committee for Woking 26 April 2004

KEY ISSUE:

The report considers the legal situation regarding land at Garibaldi cross-roads, and what actions Surrey County Council should take in respect of local concerns about the land and its use.

SUMMARY:

This report addresses several matters related to a piece of land at Garibaldi cross-roads owned by Surrey County Council. The attached map (annex 1) highlights the land, at the junction of Chobham and Limecroft Roads. The matters addressed are:

- Surrey County Council decision not to sell
- rights and the law
- maintenance
- parking and vehicle access

OFFICER RECOMMENDATIONS:

The Committee is asked to

- a) emphasise that any action taken by Surrey County Council to clear or maintain the site is done under its power to promote well being, and is not a precedent for the future of this or any other site
- b) agree that Surrey County Council can do nothing about local people's view that the land should have been registered as common land unless there is a change in law which allows the registration of land which has not previously been registered
- c) agree that Surrey County Council should not spend public funds on further inquiry into whether the land is manorial waste unless and until any action is considered which would be affected by the answer
- d) include the land in the Local Transportation Service contract to cut the grass twice a year
- e) approve the recommendation from Estates Strategy in relation to the banks alongside the track
- f) approve the recommendation from Estates Strategy in relation to cutting back secondary growth and removing dead branches from trees on the site
- g) recommend that any contract for cutting back vegetation should include cutting back growth which renders it difficult for wheelchairs or pushchairs to get round the barrier across the track, while making it clear that Surrey County Council accepts no responsibility for the state of the track.
- h) recommend to the Member Asset Panel that Surrey County Council should not give permission for parking on the access track or land.

Introduction and background

1. This report addresses several matters related to a piece of land at Garibaldi cross-roads owned by Surrey County Council. The attached map (annex 1) highlights the land, at the junction of Chobham and Limecroft Roads. The land is comprised within the registered title SY673116 to Bisley Common. The land together with the remainder of the Commons was acquired from the Earl of Onslow for £6,850 on 17 May 1968. The land was originally acquired under the Surrey County Council Act 1931 and the Local Government Act 1933, which gave general powers.
2. The matters addressed are:
 - reminder of Surrey County Council decision not to sell
 - rights and the law
 - maintenance
 - parking and vehicle access

Sale

3. On 9 December 2002, the Surrey County Council Executive declared a number of areas of land surplus to requirements, and referred the future of all these areas of land to the Member Asset Panel to consider further and to report recommendations for disposal to the Executive. In July 2003, the Local Committee submitted its views to the Member Asset Panel on issues and needs which might have a bearing on the decision whether or not to sell. The minutes states that the Local Committee thanked the Panel for the chance to comment, and asked the Panel to note all the views collected by the Local Director for Woking from local people and interest groups, and comments about legal constraints expressed by local people, Woking Borough Council and the Principal Solicitor. In the light of all the views and comments and the strength of local beliefs about the land, the Local Committee recommended the Asset Panel:
 - “not to consider any proposals for the future of the land until the legal position is thoroughly and openly investigated
 - once the legal position is clear, to take the strength of local views into account before reaching a view about the future of the land
 - having reached a view about the future of the land, to consult the Local Committee before formally making an Asset Panel recommendation to the Surrey County Council Executive.”
4. A petition presented to the County Council’s Executive by Mrs Pauline Marshall on 11 November 2002 strongly objected to the sale of the land and sought reassurance that the land should be retained in public ownership. The Executive asked the Members’ Asset Panel to consider this also.

5. The Panel considered this at their meeting on 15 October 2003 and decided to recommend to Surrey County Council Executive that the land should be retained by the County Council in order to safeguard possible future receipts, and that the land should continue to be publicly maintained. Surrey County Council Executive approved this recommendation on 11 November 2003.

Rights and the law

Background

6. Local people believe strongly that they enjoy rights over the land.
7. If the land is sold at any time, it would keep its status (whatever that was) and the purchaser would take it subject to that status and any connected obligations or conditions.
8. There are no restrictive covenants registered against the title that would restrict or prevent a sale of or development of the land. But the land is subject to the following deeds:
 - a. Deed of Grant dated 23/05/1972 between Surrey County Council and Woking Water Company, granting rights to lay a 15" water main along, inter alia, the length of the eastern boundary of the above land. The deed also grants right of support and access for maintenance over a 30' width of land and a right of passage of water through the main.
 - b. Deed of variation of right of way to Macestep Limited to construct a new access route and full right of way for all purposes connected with use and enjoyment of Macestep's land as a builder's yard together with right to maintain the surface.

Town and Village Green

9. The land is not registered Town and Village Green.

Green Belt

10. The land is designated as Green Belt in the 1999 Woking Borough Local Plan. Woking Borough Council will formally start a review of the Local Plan in summer 2004, but it is unlikely that the Green Belt designation will change.
11. The most important attribute of Green Belt is openness. There is a general presumption against inappropriate development within the Green Belt (PPG2). Such development should not be approved, except in very

special circumstances. Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. For planning permission to be granted, other considerations would have to clearly outweigh harm to the Green Belt.

12. There are no other designations in the Local Plan relating to this land.

Common land?

13. Land is common land if it is on the register of common land held under the Commons Registration Act 1965. If it is not on the register, it is not common land. Local people believe that it was an error that this land was not registered as common land. In 1970 Surrey County Council asked for the Commons Commissioner to register it, but withdrew their application when Woking Urban District Council objected on the grounds that it was not common land. Woking Borough Council have looked at WUDC minutes but cannot find a record of the reason for their objection. The land cannot now be registered. It is not therefore common land.

Consent under Section 194 of the Law of Property Act 1925

14. Consent from the Secretary of State is required to erect a fence, or construct a building or other works which would prohibit or impede access provided that rights of common existed on 1 January 1926. This test is different to that for common land under the 1965 Act or for public rights of access under Section 193 of the Law of Property Act 1925.

15. Now, the advice of the Council's Legal Services Department in such cases is that, if there is a possibility that Section 194 applies to the land, an application to the Secretary of State for consent should be made. If any such proposals were to be considered, the Council may at the time carry out investigations to assess whether rights existed on 1 January 1926. Such investigations may prove inconclusive and in that case, the Council's Legal Services Department advises that the Council should apply for consent. Or because investigations may be inconclusive, the Council may decide to apply for consent without investigating.

16. Where a breach has arisen in the past, action may be taken in the County Court by the County or District Councils, the landowner, the owner of a right of common of the land, or any other interested person. This is a power not a duty. The onus is upon the person or body taking the action to prove that there has been a breach. The remedy is reinstatement of the land to its original condition. It should be noted that actions may become time barred.

Manorial waste?

17. Local people also argue that the land is manorial waste. To support this contention, they quote references in the 1847 Tithe Award Book, local people now aged over 80 who remember using it in their childhood, photos from the early 1900s, and the deed between Surrey County Council and the Woking and District Water Company of 1972 which refers to "common and wastelands".
18. Manorial waste is covered by Section 193 of the Law of Property Act 1925 which gives the public a right of access for air and exercise. However, Section 194 (Secretary of State Consent for Constructions) applies a different test. Surrey County Council confirms that the land was originally part of the manor, but has no evidence to show whether or not it was manorial waste, and therefore cannot confirm the rights. Although the land was part of Lord Onslow's title, there is no indication one way or other from the title deeds as to whether the land was waste of the manor or not, i.e. we cannot tell whether it was the less productive land which was never cultivated.
19. The Council cannot advise members of the public on their legal rights. It could exercise its powers of wellbeing under the Local Government Act 2000 to research the issue; this is a question of resources. Mrs. Marshall argues that the local authority should look after the well-being of their community, and so should sort out this issue so that they do not risk losing rights. However, if the land were ever sold, there would be an obligation on the Council to disclose to prospective purchasers the possibility that the land may be manorial waste, and that any rights would continue under any new landowner. In my view, research would be appropriate at that time, either by the Council or the prospective purchaser.

Open Space?

20. The argument has also been made that Surrey County Council holds the land under the Surrey Act 1933 which requires public spaces, including this one, to be treated as if acquired under the Public Open Spaces Act 1906, and that this allows the County Council to hold and maintain the land for public recreation and no other. This is not substantiated but, in any event, does not preclude a change provided that the necessary procedure is followed.

Informal recreational open space?

21. Woking Borough Council has not made a formal decision to the question of whether the land is covered by the Local Plan Policy REC4 on the loss of informal recreational open space, but a planning officer went to look at the site and emailed to say that:

“The land is split into 2 halves by a track leading to what would appear to be a low key employment use. The northern section is covered in a mixture of trees, scrub and brambles and would appear to be unkempt and unused. There is also some evidence of a small amount of fly tipping. The southern section, closest to the Limecroft Road/Chobham Road junction has a number of mature trees and is grassed, although not cut recently. ... I do not consider that the northern section has any informal recreational value and whilst the southern area is managed and could be walked over, it is very small in size and would be only of limited recreational value. On balance I therefore consider that the land would not be covered by Policy REC4. I must stress that this is my personal view without prejudice to any formal decision that the Borough Council may take.”

They also advised that PPG17 para. 10 would also need to be considered.

Conclusions

22. My conclusion is that unless there is a change in law which allows the registration of land which has not previously been registered as common land, Surrey County Council can do nothing about local people’s view that it should have been registered.
23. On the question of whether the land is manorial waste at present, despite strongly held views from some local residents that Surrey County Council should take action to investigate their claims, I do not feel that it is necessary or appropriate for Surrey County Council to spend public funds on this unless and until any action is considered which would be affected by the answer to the question. This would of course be the case if sale of the land were being considered, or transfer to the highways authority.

Maintenance

Background

24. At the same meeting of 11 November 2003, the Executive decided to ask the Local Committee to decide the question of maintenance of the land: who should be responsible for it, to what standard, and how any maintenance should be funded. The Panel added that they did not consider that the site should be maintained by local residents because the legal implications are so complex.
25. Pending a permanent decision about responsibilities, Surrey County Council Estates Strategy has cut the grass and brambles, cut back to secondary growth on the trees, and in January 2004 agreed to look at making the route accessible to people in wheelchairs or with pushchairs.

26. I went to look at the land with Mrs Marshall on 30 October 2003; a brief report on my findings forms annex 2. I have also consulted the Local Transportation Director about the cost of cutting the grass, and the Surrey County Council Equalities' Officer about duties to make the path accessible under the Disability Discrimination Act.

Conclusions

27. The cost of keeping the grass cut is so small compared with the benefit of doing so – not only to local people, but also to those passing through on their way in and out of Woking – that I recommend that it should be included in the grass cutting contract. The purpose is only to keep weeds at bay, and not to create a manicured park, so I recommend two cuttings a year.

28. I am not the appropriate person to decide whether anything needs to be done to the banks alongside the track, and have referred this to Estates Strategy to review and take any action they think is appropriate. At the Local Committee meeting, I will report their advice.

29. I have asked Estates Strategy to recommend what, if anything, they would recommend in relation to the trees, and in particular, to cutting back secondary growth, and removing dead branches; and if they advise something needs to be done, how often, and at what cost. At the Local Committee meeting, I will report their advice.

30. The Disability Discrimination Act does apply to keeping pedestrian routes accessible to people in wheelchairs where this is reasonably practical. The barrier across the track is intended to stop cars from cutting across the corner while allowing pedestrians to do so, but the track is not a designated pedestrian route, and the users of the yard are not required to maintain the surface in a condition suitable for wheelchairs. Nevertheless, I recommend that any contract for cutting back vegetation should include cutting back growth which renders it difficult for wheelchairs or pushchairs to get round the barrier across the track, while making it clear that Surrey County Council accepts no responsibility for the state of the track.

31. I have recommended to, appropriate transportation colleagues that the bus-stop sign needs to be put up again or removed, and am assured that this will be done.

Parking and vehicle access

Background

32. There is an access road across the site to the yard behind. There have been local objections to:
- existence of the access road
 - goods vehicles using the access road
 - vehicles parking on the access road
 - vehicles parking on the grass (not on the access road).
33. Since the Executive meeting that decided not to sell the land, Surrey County Council Estates Strategy has also asked the Local Director to consider whether or not parking should be permitted on the land if it is properly licensed and to advise the Member Asset Panel. There is currently no formal approval for the users of the yard to park on the access road or the land. The right of access over the track specifically prohibited parking outside the curtilage of the yard.
34. Matters have been further complicated because a new company has taken over the yard behind the land, to which the track gives access, with different vehicle movements. The Traffic Commissioner has decided to hold a Public Inquiry to consider the new company's application for a goods vehicle operator's licence. The Public Inquiry will consider the objections by Surrey County Council and Woking Borough Council and the representations of local residents. The Public Inquiry will be on 27 April 2004. Meanwhile, there have been allegations of unauthorised use of goods vehicles. The necessary agency has been advised of this. It has been further alleged that because the vehicles are large, the access track is being unlawfully widened.
35. The unsubstantiated argument has been made locally that because Surrey County Council holds the land under their powers of acquisition set out in the Public Open Spaces Act 1906, licensing any other use, including parking, without planning permission would be unlawful (S.19, Acquisition of Land Act 1981). It is argued that the access road is not lawful under the same act.
36. It is also argued that Surrey County Council should have got permission from the Secretary of State to move the track in 1996 (S. 194) and that this was not done.
37. It is further argued that if the land were common land or manorial waste, it would be illegal under S193 (4) of the Land and Property Act 1925 to park or drive on it, and effective consent cannot be given. A number of local people have made representations to Surrey County Council about this.

38. However, Legal Services advises that although it is a criminal offence to drive across the land without lawful authority, that authority is given lawfully by the owner, currently the Council. The Council has a policy, Executive Resolution 14 October 2002, whereby residents can buy the vehicular right of access by exercising their statutory rights under the Regulations to Section 68 of the Countryside & Rights of Way Act 2000. Whoever owns the land will also be bound by the statutory rights which can be exercised under these Regulations. Where the 2000 Act does not apply, the Council may still lawfully grant a right of way, for a premium, but would make such grant subject to the grantee obtaining any Section 194 consent for constructions where applicable.
39. The builders' yard is currently restricted from parking on the land. This restriction on its title can be removed by the builder applying to Surrey County Council when a premium would be payable for a Deed of Modification of the Covenant. The restriction is only enforceable by the neighbouring landowner, Surrey County Council, in its private capacity through an action under trespass, if it chooses to do so.
40. Even if none of the above applied, it is further argued that it would require planning permission for anyone to park on the access road or the land because it is in the Green Belt, and that to permit parking by the business would be an inappropriate development. To support this argument, local people point out that when planning permission was given for the current location of the track in 1996, parking was not allowed.
41. Woking Borough Council would take action for breach of the planning regulations such as parking where not permitted. I therefore asked Woking Borough Council whether planning permission is required for the firm that uses the yard to park vehicles on the track or the land, and if so, if it would be likely to be given. The answer was that whether parking needs permission is "a matter of fact and degree". If it is casual and informal and there is no mark or development on the land the answer would be no. However, if Surrey County Council gave permission for parking, that would make it likely that the parking stopped being casual and informal, in which case, planning permission would be needed. Woking Borough Council stated that they would not grant permission. Moreover they would elect to take enforcement action with regard to an ongoing breach; and the action would be against the owner of the land (i.e. Surrey County Council) for allowing the breach of planning control.

Options and conclusions

42. In consequence of the advice from Woking Borough Council in respect of planning permission, I recommend that the Local Committee recommend to the Member Asset Panel that as landowner, Surrey County Council should not give permission for parking on the access track or land.
43. I have advised Estates Strategy that the posts which prevent vehicle access to the grass need to be replaced.

Consultations

44. There has been extensive consultation with a few local people who are interested in the land and with Woking Borough Council local Members (Cllrs Hayes-Allen, Hinks, Kingsbury and Smith). Advice has been sought from: Woking Borough Council planners; Surrey County Council officers in Estates Strategy; Surrey County Council legal team; and Surrey County Council Equalities' Officer.

Implications

45. **Equalities:** Recommendation (g), if approved, means that people in wheelchairs and with pushchairs will be able to use the track which is currently inaccessible to them. There are no specific implications for ethnic minorities or women.
46. **Self-reliance:** none.
47. **Community safety:** cutting the grass maximises sightlines for traffic. Dealing with dead branches in trees minimises the risks of them falling on people.
48. **Sustainable development:** Surrey Wildlife Trust did not take over this land because it is of no wildlife value. If the grass is cut twice a year, this will encourage different wild flowers and plants to grow, whereas if it is not cut, it will become covered with brambles and saplings.
49. **Health:** some local people use this land to exercise their dogs, and to access longer walking routes behind. This should be encouraged.

Financial Implications

- 50. There are no capital implications.
- 51. The revenue implications of grass cutting will be met by the Local Transportation Service.
- 52. The revenue implications of work to the trees or banks alongside the track cannot be predicted until the recommended course of action is known.

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BACKGROUND PAPERS: "Good Practice Guide on managing the use of public land", Department for Environment, Food & Rural Affairs, June 1998
Emails between C Holloway and Mark Cupitt, Woking Borough Council, in March 2004 regarding planning permission
Correspondence from Derek Lloyd, Estates Strategy, and C Holloway in November and December 2003

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ANNEX 2**Report on visit to land at Garibaldi crossroads 30 October 2003**

There are a lot of brambles over much of the land. These have grown up comparatively recently; there are none in photos from 1987, 1997 and 1999.

The path along the side parallel to and further from Chobham Road is overgrown with undergrowth and tree branches so that people cannot walk along it.

The bus stop midway along the section by Chobham Road has fallen over and is now almost covered with vegetation. As a result there is now nothing to show that a bus stop exists.

Posts to prevent illegal parking on the land are made of wood and become hard to spot when the grass gets high, so they get knocked over when grass is cut.

Some trees are dead or have dead branches, and need clearing for health and safety reasons.

As soon as the area looks unkempt, for example when cut vegetation is left in piles or posts and bus stops are left knocked over, people drop litter and sometimes dump substantial rubbish.

A short, wide, vehicle track leads from the builder's yard to Chobham Road. It is poorly surfaced and uneven, leading to puddles.

The same track has earth banks running along both sides. As a result, water falling on the path can no longer run onto the land and sink in, but tends to accumulate.

At the builder's yard end of the track, water should flow into a ditch and away. However a low wall of earth now runs beside the ditch, presumably created when people cleared the ditch. So the water cannot get into the ditch. Instead it runs down the track.

The large tree by the barrier across the track has substantial growth from the base. This blocks the track if not cut back, and is believed locally to weaken the tree itself.

People in wheelchairs or disability buggies would have difficulties getting round the barrier across the track.