

May 2016

UNLOCKING STATION SITES FOR HOUSING

Unlocking Station Sites for Housing

The March Budget set out the Government's vision that station sites provide excellent opportunities to deliver new housing. It confirmed that the Homes and Communities Agency would work in partnership with Network Rail, and local authorities, to provide land around stations for housing, commercial development and regeneration.

This was followed by an announcement by Communities Secretary, Greg Clark of a programme of development of railway stations and surrounding land.

Greg Clark confirmed that "*the government wants at least 20 local authorities to take the scheme forward and that ... with record numbers of people travelling by train, it makes sense to bring people closer to stations and develop sites that have space for thousands of new homes and offices.*"

The initiative certainly seems to be "on track" with York, Taunton and Swindon Councils already identifying rail sites that can be put forward for housing and regeneration.

Recent figures from Transport for London support the relationship between good connectivity and development, confirming that within London 73% of all residential development built since 2000 has been within 800m of a rail or tube station and 82% within 1km. TfL has also confirmed that it is anticipating 1.3 million more journeys by rail just into London by 2041 bringing the total to 4.1 million. It therefore makes perfect sense to improve stations, create new stations and provide housing within or surrounding such development. However, while the rhetoric is good, stations sites are some of the most complex in the country. Here we set out some of the key issues that will need to be addressed to make the ambitions a reality.

Land Ownership

Most of the land earmarked for development will be owned by Network Rail. Much of NR's land is unregistered and subject to a number of different agreements that have been put in place to protect the railway over many years. Getting the parties right for s.106 agreement purposes will be just one of the challenges.

Design and Density

The complex nature of station sites is likely to result in increased development costs which will encourage greater density to ensure that viability appraisal tests are met. While the Government has consulted on changes to planning policy to encourage greater density of development around commuter hubs (a definition of commuter hub is expected before July 2016 and any changes to the NPPF to be made later this year), greater density may not always accord with local policy and housing standards. It is also worth considering additional design features that buyers and businesses may demand due to proximity to the station and railway such as protection against noise and vibrations; another factor which could push up development costs.

Protection of the Railway

The need for enhancements to the railway itself should not be overlooked and development must be future proofed so that future rail expansion is not prevented. In addition any developer doing works near stations or the railway will usually need to enter into asset protection agreements with the railway operator (whether Network Rail or TfL) to ensure that the operational railway is fully protected both in the long term and during the works and remains operational throughout the works.. Again design may be affected by the proximity of the railway, for instance in order to prevent lighting creating glare and therefore hazard for train drivers and preventing items following from the development onto the tracks.

Consent from the Office of Rail and Road (**ORR**), will be a requirement if land owned by Network Rail is being disposed of. A disposal for this purpose is widely defined, including leases, tenancies, licences, rights of way and for services. Furthermore, Network Rail has strict licence conditions that it must apply to ensure the safety of the railway and ORR consent will only be achieved if these conditions have been met. ORR will also need to be satisfied that the land is no longer required for the operational railway including for maintenance or expansion.

Careful Site Selection

Finding appropriate sites may also be more difficult than anticipated. Potential developers will need to ensure that any development will be sustainable and that communities either already exist or can be created around a station hub. A number of rural and isolated stations will not be suitable for development and equally stations within and close to the city centres may have no room for expansion. Picking a site will therefore need to be a careful balancing act between need, demand, cost, space and sustainability.

Use of Permitted Development Rights

A final issue to consider is whether a proposed development, or at least part of it, might be achievable through permitted development rights.

The rights which are most likely to be of benefit to Network Rail include Part 7, 8A, 10 and 18 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (**GPDO**) which cover rights to carry out certain non-domestic extensions and alterations to stations, transport related development, repairs to services and development under local or private Acts or Order.

In terms of housing there are now permanent rights to turn office space into residential use under Part 3 Schedule 2, in Class O of the GPDO and a right (from 1 October 2017) under Class PA to apply for light industrial buildings to become residential. These types of buildings are common around stations and these rights offer potential for a run down building to become an attractive investment. Office buildings previously overlooked due to the time pressures of a temporary right now becoming a serious consideration again.

A new permitted development right which will apply in London and allow a certain level of upwards only development, without the need for applying for a specific planning permission, is also now a real possibility.

The consultation for upwards only development closed on 15 April and proposed a permitted development right to allow up to two additional storeys on an existing building, so long as the height of the developed building does not exceed the roofline of adjoining buildings. The aim is to increase London's available housing supply while protecting its adjoining countryside and green space by providing greater freedom to "build up" for new housing in London, rather than "build out". Recent case law confirming tenants' rights to quiet enjoyment of their premises, where a landlord is building up should of course be kept in mind. An important consideration also will be the need to retain rights to access the elements supporting such building up to maintain and renew them – an operational railway will need to ensure that its underlying operational land including stations are fully protected from any additional burden placed on them by such works and structures.

The Consultation confirms that prior approval will be required. Details of the issues to be considered before approval can be given are to be confirmed, as well as restrictions on what type of properties can be extended. If station buildings are to be included within this right, a new route for station development using permitted development rights, and therefore avoiding the requirement for section 106 obligations, could be a possibility.

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