

The great British railway property journey



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With suitable house building land an increasingly scarce commodity, developing near railway infrastructure is becoming more popular. Tristan Wark considers the potential pitfalls.

Transport for London has a property portfolio that is 16 times the size of Hyde Park, and the mayor of London has set a target to build 10,000 homes on TfL land by 2021. Urban land suitable for housing is shrinking and innovative solutions are required to tackle the housing crisis. Building homes near railways can form part of a solution.

Modern train engines are quieter than their predecessors, and modern homes can be built to limit damage to their foundations from vibrations associated with a railway. As the spaces around rail infrastructure are being utilised like never before, it is worth bearing in mind the considerations involved in purchasing, renting, or developing such land.

First stop: searches

An early warning signal that buying land around railways can be complicated lies in conveyancing searches. There is no standard or comprehensive search that deals with railways, though there are various searches and enquiries that can be undertaken:

- Location specific: for example, for properties in central London a specific "mail rail" search confirms if the property is affected by or in the vicinity of the Post Office Railway Line. TfL railway searches can be undertaken if the property is likely to be near their apparatus.
- Future railways: the local search contains an optional enquiry as to whether the property is close to a proposed railway. Be aware of safeguarding zones to protect against conflicting development (for example, an area between Abbey Wood and Gravesend is safeguarded for a possible future Crossrail extension, and there are initial proposals for a Crossrail 2). Remember that rail projects outside London may get less attention but still need consideration, for example, the East West Rail proposed to connect Oxford and Cambridge by 2024.
- An environmental search would also be prudent, since land surrounding the railways has historically been used for freight storage and refuelling. While it won't show up in searches, also bear in mind that Japanese knotweed is a common problem around railway land.

Some of the above searches are not cheap (the Mail Rail search alone comes in at £450), so consideration should be given on a case by case basis as to what searches and enquiries are appropriate for a particular property.

Calling at: title issues

It is normal to find titles to properties around or near a current or historic railway to be littered with restrictive covenants and retained rights. The position isn't helped by the complex organisational history of the railways: the Victorian railway mania meant in one year alone (1846), 272 Acts of Parliament setting up new railway companies were passed, and there were more than 14 railway companies operating individual railways in the 1800s in southern England alone.

This all means a lack of national consistency: time spent deciphering antiquated deeds and research to work out an original railway operator's successors can be expected when buying land near a railway. While Network Rail now owns most active railways, that is not always the case and title to Network Rail land is generally unregistered, which doesn't aid title investigation.

Restrictive covenants may be in place that prevent any building or excavation close to the railway, or limit the property to uses that will not interfere with the railway. Similarly, there may be rights that allow Network Rail or TfL to occasionally access the property, for example, in an emergency or for maintenance works. Such rights may prevent a proposed development or impact the proposed use of the property. Network Rail may be prepared to release or modify the covenants and/or rights, but early dialogue is recommended as the process takes time.

If development is intended and the property remains close to an active railway, Network Rail may require a basic asset protection agreement be entered into (or an asset protection agreement for more major works). Such an agreement permits the works subject to various terms, conditions and obligations designed to safeguard the railway.

Case in point: arches

Arches have become increasingly popular for occupiers over recent years. They are trendy spaces with a sense of community for small to medium-sized businesses, offering prime city centre locations with affordable rent. A business looking at an arch as a potential location should also consider:

- Are there additional restrictions in relation to fit-out and alterations to avoid interference with the operational railway? If so, is the tenant certain their fit-out can be carried out in a compliant manner?
- Look out for other special clauses, such as a prohibition against electronic equipment at the premises that may interfere with railway traction or signalling equipment. Again, is the tenant able to comply?
- How does the service charge operate? A tenant won't want to be liable for the costs of repairing the arches themselves.

All aboard?

As we have seen, there are drawbacks to railway land and a good degree of caution is needed, but that is true of all brownfield sites and all property purchases. Former railway land has truly come to the market in the last few years and an ecosystem of experienced contractors and advisers now exist to provide the support and guidance to mitigate any risks and help you "mind the gap".

Points to consider when purchasing, renting, or developing railway land

- Property searches: TfL, Rail Mail, planned railways
- Environmental searches
- Restrictive covenants
- Retained rights of way
- Title: who has the benefit now?
- Asset protection agreements
- Restrictions on fit-out
- Service charge

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