

ART 4/8

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 1995

DIRECTION MADE UNDER ARTICLE 4(1)

WHEREAS the Council of the Borough of Surrey Heath being the appropriate local planning authority within the meaning of article 4(6) of The Town and Country Planning (General Permitted Development) Order 1995, are satisfied that it is expedient that development of the description set out in the schedule below should not be carried out on the land shown edged red on the attached plan, unless permission is granted on an application made under Part III of the Town and Country Planning Act 1990.

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of The Town and Country Planning (General Permitted Development) Order 1995 hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description set out in the schedule below:

SCHEDULE	Development by Telecommunications Code System operators being development comprised within Class A of Part 24 of the schedule to the said Order and not being development comprised within any other class.
-----------------	---

Given under the Common Seal of the Borough Council of
Surrey Heath this 30th day of November 1998

The Common Seal of the Council was affixed to this Direction
in the presence of

Chief Executive

**STATEMENT OF REASONS BY SURREY HEATH BOROUGH COUNCIL
FOR THE MAKING OF AN ARTICLE 4(1) DIRECTION IN RESPECT OF
LAND AT MINCING LANE, CHOBHAM, SURREY**

1. **Description of the site and/or area covered by the direction, and of the character of the surroundings.**
2. The site is located on the west side and to the rear of 35 Mincing Lane, to the north of Medhurst Close and is set within the adopted Metropolitan Green Belt. It comprises a mixture of an overgrown grassed and shrubbed area with areas of trees along its northern and western boundaries. The area of Mincing Lane and Medhurst Close which comprise the eastern and southern boundaries is residential in character, while the area to the north and west is open countryside. The site lies approximately 1 km north east of the centre of the village of Chobham.
3. **The grounds on which the authority consider that the direction is needed.** Authorities should identify any known proposals to carry out development which could damage an interest of acknowledged importance and address the harm which might arise from the exercise of permitted development rights, referring in particular to any rights exercisable for limited period. The nature of the proposal should be stated and an explanation given of its likely effect.
4. This area of land for which the article 4(1) Direction is being requested has been the subject of a planning application for a 24.7 metre high steel post

mast. The application was made by Orange Personal Telecommunications Services Ltd in 1996 and was given planning reference number SU/96/0517. The application was refused planning permission on the grounds that "The Local Planning Authority considers that the proposed mast would be visually intrusive in the countryside location and would have a detrimental impact on the visual amenity of residents in the vicinity". Orange PCS Ltd appealed against the decision, which was dealt with under the written representations procedure (ref APP/03640/A/96/274258). A copy of the Planning Inspectorate's decision of 15th April 1997 is attached. The Inspector's summary in dismissing the appeal was that the scheme would conflict with the criteria of Policy DP8 of the Structure Plan with regard to the availability of alternative sites where the environmental impact would be acceptable and (particularly) the opportunity for mast sharing. These requirements in the Development Plan reflect the advice in PPG8. It was considered that the need for a mast in this particular location and the benefits it would bring are not so strong as to outweigh the harm to green belt policy objectives and the serious risk to amenity. It was concluded that there are no very special circumstances to justify setting aside the strong policy prescription against an inappropriate development in the Green Belt.

5. An application for a Prior Approval determination by Orange PCS Ltd under Part 24 of the Schedule to the Town and Country Planning (General Permitted Development) Order 1995 for the erection of a 15 metre high lattice mast tower on the same site as the appeal application was received on 20th July 1998

(reference SU/98/0681). The proposal was considered by officers under the Council's Scheme of Delegation of Functions and the conclusion was reached that the 15 metre mast would not be harmful to amenities to such a degree to justify raising objection. A decision advising that the Council as Local Planning Authority, having considered the matter, resolved that the proposals can proceed without further consultation was issued on the 12th August 1998.

6. At the meeting of the Council's Development Control Committee held on 5th October 1998, the Committee expressed its concerns about the proposed erection of the 15 metre mast without the need to apply for planning permission ; and it was suggested that an Article 4 Direction be made to remove permitted development rights in respect of the erection of telecommunications masts on the land at Mincing Lane. The Committee was apprised of the advice contained in appendix D of Circular 9/95 and in paragraph 18 and 19 of Planning Policy Guidance No 8. However, the Committee was of the opinion that notwithstanding Government guidance, an Article 4 direction should be pursued, subject to Counsel's advice as to whether such action would be fettered by the Council's response to the Prior Approval procedure. The Committee's formal resolution is as follows:

- (i) the Borough Secretary be instructed to seek Counsel's advice on whether the Council is fettered by its response to the Notice of Intention (Prior Approval) in seeking to impose an Article 4 Direction under Schedule 2 part 24 of the Town and Country Planning (General

Permitted Development) Order 1995 in respect of the erection of a telecommunication mast on land at Mincing Lane, Chobham; and

- (ii) subject to the receipt of satisfactory advice from Counsel, the Chief Planner (Development Control) be authorised, after consultation with the Chairman and Vice-Chairman, to seek an Article 4 Direction under the Town and Country (General Permitted Development) Order 1995, in respect of the withdrawal of permitted development rights, in the interests of visual amenities, for the erection of telecommunication masts on land at Mincing Lane, Chobham, comprising the site the subject of the Notice of Intention together with surrounding land in the same ownership.

Following the receipt of Counsel's opinion in connection with the possibility of estoppel, an area measuring some 10m x 10m in which a base has been laid for the mast the subject of the previous Prior Approval procedure, has been excluded from the proposed Article 4 Direction area.

- 7. The Authority, in allowing for a 15 metre high mast to be erected on this site has acted in a fair and flexible manner to try and help ensure telecommunications coverage. However, due to the site's sensitive nature the Authority wish to remove permitted development rights for future masts.

The site is an open, undeveloped area of countryside, whereas Medhurst Close comprises an attractive medium density modern housing development. The introduction of any further masts in this countryside location would thereby contribute to a blurring of distinction between town and country and would be inappropriate development, for this green belt location, the rural character of which is important to preserve. Should any further masts be erected on the site they would be visible from the surrounding areas, including from residential properties, in particular those of Medhurst Close. These properties enjoy a rural setting which would be adversely affected by the erection of any further masts.

8. **Where the direction is not aimed at an immediate threat, the measures taken to inform those with an interest about the proposed direction and of any representations received.**

The Authority has served notice on the owners and occupiers of every part of the land contained within the direction and a copy of the notice is enclosed.

9. **Where a wide area direction is proposed, any special topographical features which make the area particularly vulnerable to damage should be stated, as well as (if applicable) the fact that the area is in a National Park or area of outstanding natural beauty, etc.**

The Article 4(1) direction applied for is limited in area and is the minimum area required to prevent serious harm to the green belt and residential amenity.

10. **Where visual considerations are important, particularly where the direction would affect such areas as conservation areas, photographs of the site and its surroundings. Cases of urgency need not be delayed for this.**
11. A set of photographs showing the site as viewed from Medhurst Close is enclosed. These show the site's relationship between the residential and countryside areas and the fact that any additional masts would adversely affect the open character of the green belt and would adversely harm the visual amenities enjoyed by the residents of Medhurst Close.
12. **Where there is urgency, the reasons for urgent treatment and the period within which the decision is needed.**
13. The telecommunications operator has expressed the view that whilst other sites could be investigated, the site is the preferred location for a further mast within the Chobham area. In the circumstances, the Secretary of State's early consideration of this request would be appreciated.

NOTICE OF SERVICE OF AN ARTICLE 4(1) DIRECTION

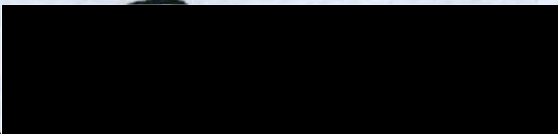
To: The Owner

You are hereby notified that the Borough of Surrey Heath, being the appropriate Local Planning Authority within the meaning of Article 4(6) of the Town and Country Planning (General Permitted Development) Order 1995, has applied to the Secretary of State that Development rights afforded to Telecommunications Code System Operators being development comprised within Class A of Part 24 of the Schedule of the Town and Country Planning (General Permitted Development) Order 1995 be removed. The Land to which it is intended to remove the rights is the grassed and wooded area to the rear of 35 Mincing Lane, Chobham, Surrey.

A copy of the said Order which has been submitted to the Secretary of State is enclosed, and any representations you wish to make should be addressed directly to the Secretary of State as follows:

Government Office for the South East
Surrey, East and West Sussex Area Team
Bridge House
1 Walnut Tree Close
Guildford GU1 4GA

FAO Mr R Lockie

Date 14th December Chief Executive 

1998

GEN\PLANT&C-PERM



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117-987 8927
Switchboard 0117-987 8000
Fax No 0117-987 8769
GTN 1374

King Sturge & Co
7 Stratford Place
London
WIN 9AE

Your Ref:

Sarah Richmond

Our Ref:

T/APP/D3640/A/96/274258/P7

Date:

15 APR 1997

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY ORANGE PERSONAL COMMUNICATIONS SERVICES LTD
APPLICATION NO: 96/0517

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the failure of the Surrey Heath Borough Council to give within the prescribed period notice of their decision in respect of an application for a telecommunications facility comprising the erection of a 24.7 m high steel pole mast supporting two omni antennae and one 0.6 m diameter radio transmission dish; the installation of one BTS Class 3 cabin, one PSU cabin and a meter cabinet; the construction of a 2.15 m high security chain link fence and 3 m wide access gates, a concrete base with gravel surround and associated minor works at 31-33 Mincing Lane, Chobham. I have considered the written representations made by you, the Council, the Chobham Parish Council and interested persons, including those made directly to the Council which have been forwarded to me. I inspected the site on 11 February 1997.

2. The site comprises part of an area of rough grass to the rear of 35 Mincing Lane, which lies about 1 km north east of the centre of Chobham. To the south and east the surrounding area is residential, whereas the site itself is part of a larger expanse of open countryside and woodland stretching to the north and west. It falls within the Metropolitan Green Belt, as defined on the adopted Surrey Heath Local Plan, 1994.

3. Policy PE2 of the 1994 Surrey Structure Plan and Policy RE3 of the Local Plan state that there is a general presumption against inappropriate development in the green belt. The mast does not fall within any of the categories of development appropriate for the green belt, such as proposals meeting the essential requirements of agriculture or forestry, or other uses which preserve the open nature of the countryside. The development plan reflects government policy in Planning Policy Guidance Note 2 (PPG2). I consider that the proposal would not comply with established green belt policy and would be an inappropriate development, which by definition would be harmful to the function and purpose of the green belt.

4. Having read the representations and visited the site and its surroundings, I consider the main issue in this case is whether the harm to the green belt and any other harm would be outweighed by any other considerations, thus constituting the very special circumstances needed to set aside the strong presumption against the proposal.

5. The site forms the southernmost part of a finger of countryside which extends into the village from the common to the north. Clearly, the mast and associated equipment would reduce the openness of the green belt to a degree, prejudicing one of the principal purposes of designation. I acknowledge that the mast would be a slender structure of little bulk; the equipment cabins are small and would occupy just a few square metres of ground. Nevertheless, the tall mast and equipment would be alien urban features in the landscape. Although much of the structure would be screened from some views from Mincing Lane by a row of cypress trees and the vegetation along the frontage to no 35 and the adjoining property, it would be visible from some sections of the highway and nearby houses. More seriously, it would be a prominent, unsightly intrusion in the green belt when seen from the roadway and houses in Medhurst Close to the south. The submitted application plan allows no scope for landscaping on the site itself to ameliorate the adverse impact of the equipment cabins, fence and the lower section of the mast.

6. The Local Plan contains no specific policy regarding telecommunications development. Policy DP8 of the Structure Plan states that new telecommunications equipment will normally be permitted, subject to a number of criteria. These include proof of an established need for the development and a lack of alternative sites for the equipment, for example through sharing existing masts or erecting antennae on existing buildings. PPG8 advises that government policy is to facilitate the growth of new and existing telecommunications systems. Before local planning authorities refuse to grant permission for such equipment on design or siting grounds, they should seek to understand the constraints faced by the operator, and discuss the feasibility of alternative sites.

7. You argued that the mast would be part of an integrated mobile phone network which was being established by Orange. At present there is a gap in the network in the vicinity of Chobham and along stretches of the A319 and A3046. The Council accept that a mast is needed to provide signal coverage in the identified hole, for the efficient operation of the appellants' network. However the Council argue that the proposal would not comply with the requirement of criterion (iii) of Policy DP8 and the advice in PPG8 regarding alternative sites.

8. From your detailed comments and the evidence of the ANET plots showing signal strength from different positions, it is evident that there are technical or land ownership constraints at six of the seven sites you have identified. The Council argue that a mast at Ford Road owned by Mercury PLC would offer the appellants the potential to serve the Chobham area. You argue that an extension of the mast to allow Orange's equipment at a height of 30 or 35 m would still leave a small gap in coverage in the village, identified by the Council as being between Red Lion Road and Brimshot Lane. However, even if antennae were placed at a height of 30 m, this area is smaller than the hole in coverage to the south west of the village, including a section of the A319, that would result if the 25 m mast were to be erected at Mincing Lane. In either event, the number of residential properties that would suffer inadequate coverage would not be significantly different. The Ford Road mast would have the benefit of better coverage along the A319.

9. I appreciate that for operational reasons the equipment of different companies has to be separated by a distance of 5 m. You say that Mercury, the existing operator, would require to locate its equipment at a higher level than Orange, for commercial rather than planning reasons. However, there appears to be no sound justification for moving the Mercury equipment, which apparently operates satisfactorily at a height of 20 m. In these circumstances I have found no compelling argument to suggest that the joint use of a single higher mast at Ford Road, which is reasonably well screened in the wider landscape, would

not be possible. From the evidence put to me therefore, I consider that the possibility of using an alternative mast providing equivalent coverage in the Chobham area, but with less severe environmental impact, cannot be ruled out.

10. In summary, I consider the scheme would conflict with the criteria of Policy DP8 of the Structure Plan with regard to the availability of alternative sites where the environmental impact would be acceptable and (particularly) the opportunity for mast sharing. These requirements of the development plan reflect the advice in PPG8. In these circumstances I consider that the need for a mast in this particular location and the benefits it would bring are not so strong as to outweigh the harm to the green belt policy objectives and the serious risk to amenity that I have already outlined. I have concluded that there are no very special circumstances to justify setting aside the strong policy presumption against an inappropriate development in the green belt.

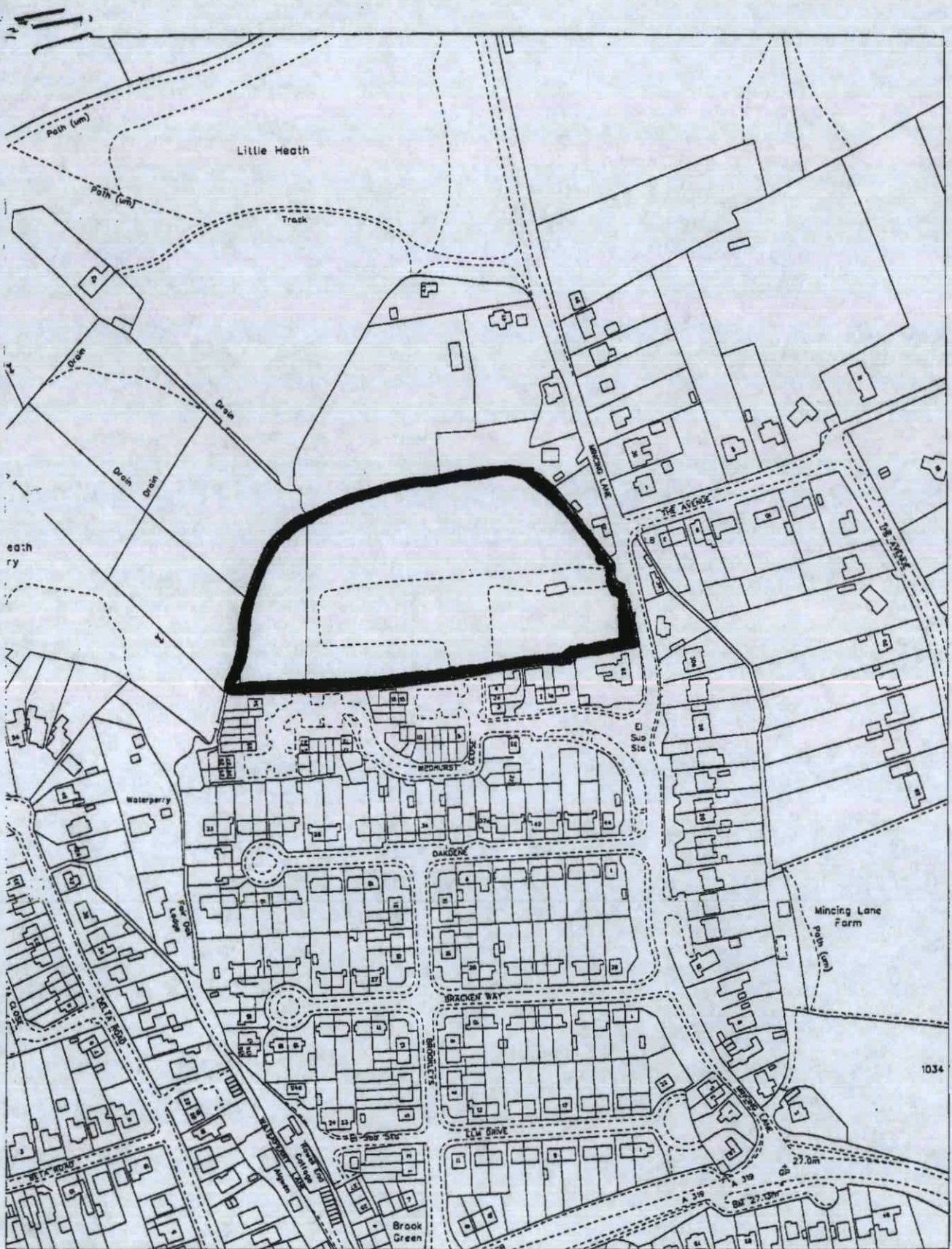
11. I have taken into account the concern of some local residents about health risks, which is not a planning matter. Similarly, I acknowledge that the nature of the equipment is such that no residents would be disturbed by noise emissions or suffer undue interference with television reception. I have found none of these points, or any other matters drawn to my attention, to be of sufficient weight to alter my conclusions.

12. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

Yours faithfully



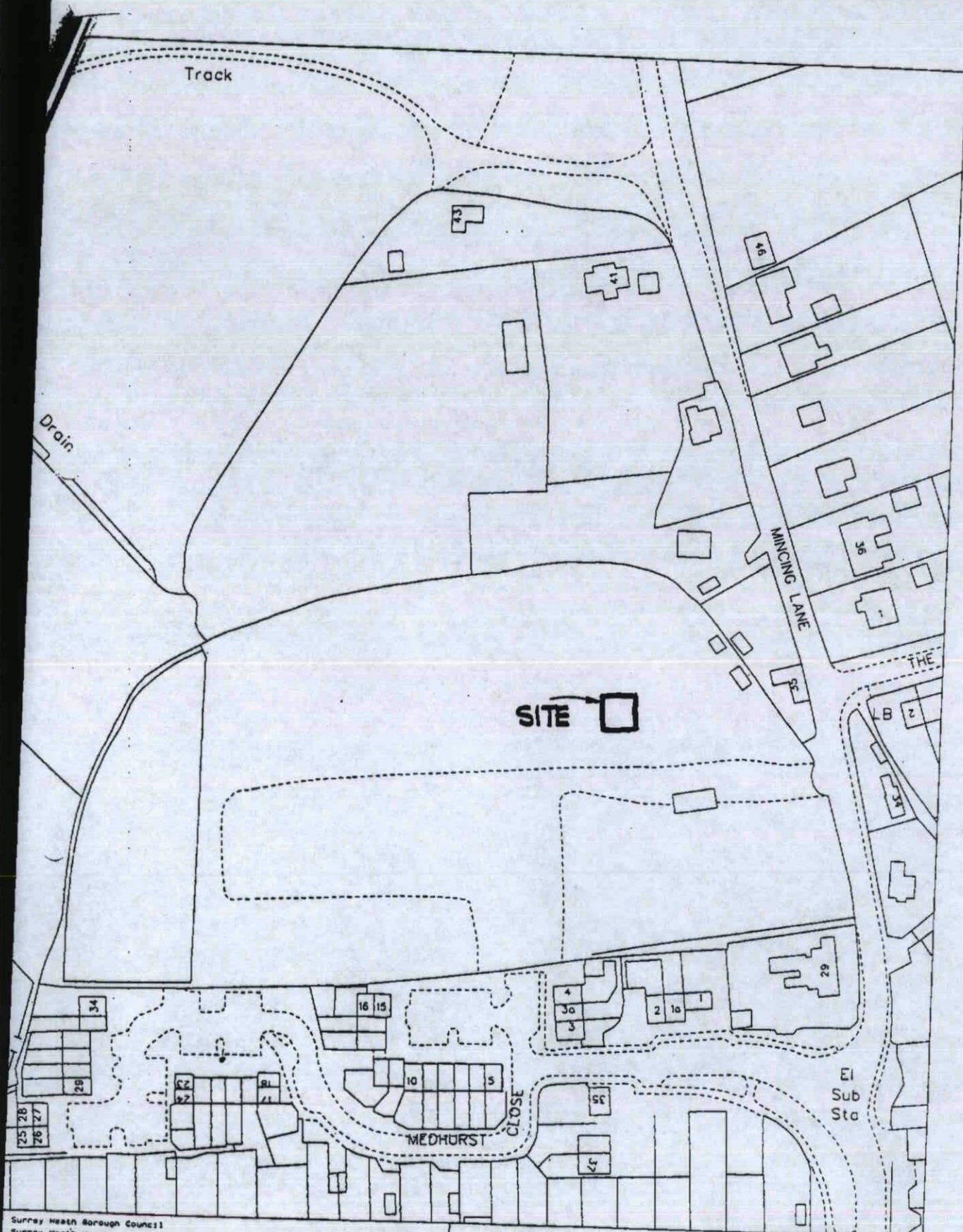
G M SALTER BA MRTPI
Inspector



Surrey Heath Borough Council
 Surrey Heath House
 Knoll Road
 Camberley, Surrey, GU15 3HQ. Licence No. LA 079618

Reproduced from the Ordnance Survey mapping with the permission of the
 Controller of H.M.S.O. Crown Copyright. Unauthorised reproduction infringes
 Crown Copyright and may lead to prosecution or civil proceedings

Scale		↑ N ↓
1:	2500	
Date		
14/12/98		



Surrey Heath Borough Council Surrey Heath House Knoll Road Camberley, Surrey, GU15 3HD	2	SU/96/517 LAND AT 31-33, MINCING LANE CHOBHAM	Scale 1: 1250 Date 30/01/97
--	-----------------	---	---

Reproduced from the Ordnance Survey mapping with the permission of the Controller of H.M.S.O. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings

