

Burdensome property

Non-operational land with little or no development potential

8.1. Our terms of reference direct us to consider the question of the efficiency and costs of British Rail's property activities, with particular reference to ((i)(h)):

its policy in relation to and management of non-operational land which, by reason of its physical characteristics or location, has little or no development potential.

Such land may be found in both the BRIL and residual non-operational portfolios. The 1973 review of major strategic options found that the best course, within optimum estate management, for depreciating assets and those where there are burdensome liabilities was sale. The Property Board's policy for such land therefore is to sell it, whenever possible.

8.2. As the sale of such land may take time and effort and buyers may be hard to find, short-term lettings are arranged where a minimum of £50 per annum can be obtained. The policy is to spend a minimum on maintenance. The Property Board told us that they carried out maintenance only where such work was necessary to comply with statutory or contractual obligations or to avoid substantial future capital expenditure or a disproportionate reduction in selling price. The Board said:

... there will always be certain parts of the estate which neither have potential in the foreseeable future, nor do they have significant opportunities for capital generation. Where these can be disposed of they are sold but where they cannot be sold they are maintained on the basis of least cost both in terms of actual expenditure and in staff resources. A typical example relates to small non-commercial land where new lettings are not encouraged; rent is collected annually and by banker's order as far as possible for existing lettings.

8.3. There is a statutory obligation on British Rail under the provisions of the Local Government, Planning and Land Act 1980 to register with the Department of the Environment Regional Offices or the Welsh Office all unused or under-used sites of not less than one acre in area. The collective holdings of the registrable authorities, including nationalised industries, form the Registers of Public Bodies' Underused and Unused Land and local authorities have copies of the parts which concern them available for public inspection, and keep them up to date. The Property Board told us that they co-operated fully with the Department of the Environment/Welsh Office in the preparation of the Register and that there was regular contact with the Department and Welsh Office on the registered sites and on progress in their disposal. Up to now, however, few disposals had arisen through this means.

8.4. The experience of trying to sell low value properties in the BRIL portfolio has brought into perspective some of the difficulties. Prior to sale all

BRIL property has to go through the release procedure described in detail in Chapter 6. This involves checking with several (ten in the region we examined) railway departments and can take a considerable time. No attempt has been made by British Rail formally to cost this process, but discussions with Property Board staff led us to believe that a full release could cost £500. The Board told us that because of the number of release applications involved in the sale of the minor BRIL properties bulk applications and short-cut methods were being used as far as possible. When the Board get down to the hard core of minor value properties, it is likely that the cost of sales will exceed their net proceeds. The Board said that this should be viewed against political requirements and savings in management of small properties. As we show in Chapter 9 (paragraphs 9.14 and 9.15), the Board have no adequate costing system to measure the relative costs of selling or of continuing to manage such property.

8.5. Illustrating these problems the Estate Surveyor and Manager of North-Western Region said about the BRIL minor portfolio:

I have over 3,500 BRIL minor properties and to meet the target date for disposal of 1989 I need to secure a sale of some 700 a year assuming all are cleared for sale. Of course all will not be cleared for sale and I would estimate that as many as 30 per cent will not receive clearance due to the nature of the property. Lineside allotments and garden extensions spring immediately to mind as potential clearance refusals.

The region was trying to secure the release for sale of all the BRIL minor properties as soon as possible. The higher value items (over £3,000 capital value) were being offered for sale first, often at auction. Fifty-three such items had been sold at auction in 1984, up to mid-December, but quite a large number had failed to find a purchaser. The Estate Surveyor and Manager said:

Discussions have taken place with agents with a view to engaging their services to dispose of the minor portfolio. At the present time a minimum sales commission of £200 plus disbursements is paid in respect of my minor auction items, but as the property being offered begins to fall below about £3,000 in value the agents' fees far exceed what one would like to pay as a percentage of sale price.

Conclusions: non-operational land with little or no development potential

8.6. We think that the policy to sell property of this kind is generally sound. We note in Chapter 6 the high administrative cost of the full release procedure and suggest that more direct and faster methods should be used whenever possible.

8.7. Sales at low prices which do not fully cover the costs of the release procedure and other selling costs may still be worthwhile if they bring relief from subsequent management costs. There may, however, be cases where it would be better not to proceed. We note that here, as elsewhere, good decision-making is hampered by a lack of cost information.

Closed branch lines

8.8. There is a considerable amount of land in the Property Board's hands which they wish to sell but cannot find a buyer for. In particular, the Board at 31 December 1983 had some 1,100 route miles of closed branch lines which involve a continuing obligation to fence, maintain structures, culverts and ditches, control weeds and vermin and prevent use by unauthorised occupation or tipping. The major problem with closed lines is that of the structures—the bridges, tunnels, viaducts, culverts and retaining walls—which have to be maintained to enable roads and footpaths to cross disused railway formations or for the support of adjoining land. The problem is exacerbated if the listing of a structure as being of historic or architectural interest means that it cannot be demolished without planning consent. We discuss listed buildings and structures in Appendix 8.1.

8.9. British Rail's liabilities for maintenance of accommodation¹ and occupation² works placed on them by statute (see paragraph 3.1) continue unless and until they are removed by statute, notwithstanding that the railway line concerned has been closed and British Rail have no further operational need for the land. This makes it difficult for British Rail freely to sell the land released by closing a line, as they need to secure from the purchaser an indemnity against their liability which they can be confident will endure and be honoured. This will be possible where the purchaser is a continuing body such as a local authority or where the land is sold to a single owner of adjoining land on each side of the line, who will be the only party entitled in practice to enforce the obligations on British Rail and who will pass the entitlement and the indemnity to any successors in title. In other cases it may be impossible to enforce any indemnity when land changes hands again after the initial sale and British Rail's obligations will still be enforceable.³

8.10. Highway works⁴ present a similar problem. Responsibility for all bridges carrying trunk roads was transferred by the Trunk Roads Act 1946 to the Department of Transport as the trunk road authority. For other highway works the only way British Rail can effectively dispose of their liability is to reach an agreement with the local highway authority. Such an agreement will transfer ownership of the structure to the authority, pass responsibility to it for maintenance and usually include a payment to the council of a lump sum reflecting the commuted cost of future maintenance.

8.11. The main source of continuing liabilities on closed branch lines is, as noted above, the structures. These are regularly inspected (generally every three

¹ Accommodation works are those works which it was necessary for the railway companies to carry out '... for the accommodation of the lands adjoining the railway ...' where a railway divided lands all in one ownership. Then as part of the agreement between the owner and the railway company and as required by the Railway Clauses (Consolidation) Act, the company would provide gates, bridges, culverts etc across or alongside the railway, to minimise the inconvenience to the landowner.

² Occupation works are the bridges etc provided to enable people to continue to use footpaths, cart tracks, waterways etc which the railway interrupted and which were used by various parties occupying nearby land.

³ If a railway preservation society takes over a line the necessary Order under the Light Railway Acts may and normally will include a provision transferring British Rail's liabilities to the new operators. But few societies of this kind have the skills and resources to meet the various Department of Transport requirements and safeguards.

⁴ Highway works are those bridges passing over or under a highway, and include all the works which support the highway, eg retaining walls and approach slopes.

years) by the Regional Civil Engineer's department, which prepares a schedule of work needing to be done. The Property Board decide what work to put in hand, and may authorise the Civil Engineer's department or an outside contractor to carry it out. If structures are to be sold with a closed branch line, the Board have to calculate what lump sum would be adequate compensation for the purchaser's taking over the liabilities and this involves assessing the long-term maintenance requirements.

8.12. We considered some examples of the Property Board's estimates for repair work on such structures. In Appendix 6.1 we describe the case of Leaderfoot viaduct, a listed structure. In 1981 the estimated repair bill was £70,000. The Board sought permission to demolish, but this was refused. After an extensive inspection in 1984 British Rail's Regional Civil Engineer estimated repairs at £768,500, while a firm of consultants gave a figure of £380,000. In this case the reasons for the difference are being investigated and the Regional Civil Engineer expects to provide a revised estimate about midway between the two.

8.13. In the case of the sale to the Peak Park Planning Board of some 9 miles of the former Midland Railway, from Coombs Road Viaduct to Peak Forest Junction, the Divisional Chief Engineers at Nottingham and Manchester agreed with the Peak Board's consulting engineer on expenditure of £174,000 over a five- to six-year period to restore the individual structures. In subsequent negotiations the Peak Park Planning Board pressed for some recognition of the ongoing maintenance expenditure, and sought a sum of £254,000 as the commuted liability, against which the value of the land at £100,000 was to be offset. The Property Board then assessed the capitalised¹ value of the total liability as £293,000, and accepted the Peak Park Planning Board's offer. In his memorandum of 27 November 1979, giving his estimate the Divisional Chief Engineer at Nottingham said:

You will understand that it is not possible for me to give anything other than broad estimates of possible further expenditure because of the highly miscellaneous involvement of varying influencing factors which can occur in the future. There are few known facts which I can base my estimates on, for instance, the actual condition of structures at the moment is readily observable and estimates can be done with some accuracy to put them in order for a certain length of time. Another estimate which can be established with reasonable accuracy would be the demolition costs of the whole or part of a structure. What cannot be included in the calculations with any accuracy whatsoever are the unforeseen issues produced by the weather and other deteriorating influences which affect structures and sometimes bring about considerable expenditure.

8.14. In the case of two bridges in South Wigston, Leicestershire, the Leicestershire County Council wished to buy the land for a road improvement scheme and a reclamation scheme. On the basis of a recent tender exercise it was calculated that removal of all the piers and abutments would cost in the

¹ This figure was arrived at by calculating the net present value of some £26,000 per annum over 30 years at 8 per cent. The £26,000 per annum included the cost of progressively demolishing structures over the period.

order of £20,000 to £30,000. Consequently a sale to the council for a nominal sum was sought. In the event the council said that it did not wish to purchase the furthestmost abutment of each bridge. Estimating that the cost of demolition of these two abutments would be £11,600, the Property Board persuaded the council to include the two abutments in the sale by providing a 'dowry' of £6,000. Although the structures were said to be in good condition, no estimate was provided for the commuted value of their maintenance.

8.15. Table 8.1 shows the Property Board's estimate of the total liabilities represented by structures either on closed branch lines still in their possession or which remain their responsibility after the sale of the branch line.

TABLE 8.1 Property Board: schedule of structures and capital liabilities 1983

<i>Type of structure</i>	<i>Number</i>	<i>Capital liability £'000</i>	<i>Average liability per structure £'000</i>
Public road overbridges	2,860	99,836	35
Public road underbridges	2,229	32,124	14
Accommodation overbridges	1,292	26,273	20
Accommodation underbridges	2,704	29,200	11
Tunnels	221	47,686	216
Viaducts	337	20,989	62
Major culverts (over 6 ft diameter)	328	3,021	9
Other structures	285	3,410	12
Side bridges	28	280	10
Footbridges	24	240	10
Abutments only	69	690	10
Total	10,377	263,749	25

Source: Property Board.

The Property Board arrived at these estimates by calculating the present cost of demolishing or infilling each structure, or, in the case of some public road bridges, transferring them to the highway authority with a commuted sum for the future maintenance liability. Prices were at 1983 levels, based on regional averages of similar transactions, and assumed immediate action. No allowance was made for the effect of not being able to demolish listed buildings.

8.16. The expected expenditure for 1984 on closed branch lines nationally is:

	£
Capital works	939,820
Maintenance	617,500
Total	1,557,320

If this rate of expenditure were to be maintained, its net present value over 30 years, discounted at 5 per cent, would be some £24 million. The Property Board believe that these figures will tend to increase in real terms, year by year, as deterioration of the structures increases. To produce a net present value on the same basis equal to the capital maintenance liability in Table 8.1, however, the

maintenance expenditure would have to grow each year by nearly 16 per cent per annum in real terms.

8.17 For this reason the figure of £264 million appeared to us unrealistic, and British Rail agreed that a more realistic figure could be arrived at. In the course of our hearings the Vice Chairman of British Rail said:

Another feature that worries me in some respects and pleases me in others is the engineers' facility for putting off the time when what was inevitable in March against a background of crisis and fall back in property sales becomes less inevitable in November. The engineers have a tremendous facility for postponing the crisis. I do not know whether that is a good thing or a bad thing. It is rather difficult to put your arms round this sort of liability. In theoretical terms it is a very big one.

8.18. We discuss the listing of British Rail's buildings and structures in more detail in Appendix 8.1. In many respects British Rail's position is not different from that of any other landowner but it is unusual in having a large number of listed buildings—640 in total, of which 112 are the Property Board's responsibility—and in the fact that some of the listed property, notably listed structures on closed branch lines, is of no value to British Rail but a source of continuing expense. In the case of Leaderfoot viaduct, for example, British Rail's estimate for the maintenance required was nearly ten times that for demolition. It may also be that decisions to list buildings will be taken more readily and decisions to permit their demolition less readily where the pressures for conservation are directed at a public sector body such as British Rail.

8.19. The Property Board told us that they had held discussions with the Department of Transport to seek alleviation of these burdens. The Secretary of State has recently expressed interest and information would shortly be provided to the Department of Transport with a view to trying again to obtain some relief.

Conclusions: liabilities for structures on closed branch lines

8.20. The Property Board are responsible for the continued maintenance of structures on closed branch lines, and the costs arising from this liability may be growing. We think that it is unsatisfactory that no reference to these liabilities is made in the Board's accounts.

8.21. It is important to establish a soundly-based estimate of the total of these liabilities. The Property Board's estimate of £264 million is unrealistic. Nor would it be safe to derive to an estimate from the current expenditure of about £1.5 million annually which flows from their unsatisfactory minimum maintenance policy.

8.22. A maintenance policy which minimises expenditure in the short term without the information to assess whether greater expenditure may not thus be incurred in the longer term is unsatisfactory. In paragraph 9.71 we address the need to develop a more sophisticated policy based on whole-life costs, with clear objectives for different types of property, and an adequate information

system to support it. This should produce a more realistic assessment of the value of the liabilities, and enable each region's total to be reconciled with its proposed future maintenance expenditure.

8.23. Accepting that there is considerable uncertainty about such things as rates of deterioration and the repairs which will eventually be needed, we think that, rather than arrive at a single figure for each structure, an upper and lower bound should be established based on sound costing information for different assumptions.

8.24. We note that the methods by which the overall cost of £264 million was calculated (see paragraph 8.15) are also used by the Property Board in negotiating the sum to be paid in respect of future maintenance liabilities when it is intended to transfer a bridge to a highway authority. We think that the Board should take care that such payments do no more than reflect the costs that would arise from a sound maintenance policy as proposed above.

Small rents

8.25. The Property Board define 'small rents' as those between £0.01 and £49.99 per annum. The Board say that the 'linear' shape of the railway estate and its peculiar characteristics make it unique compared with other estates of similar size and inevitably generate a far higher proportion of small rents. Small rents are mainly charged for rights related to the railway but include many small personal lettings. Examples of small rents are: gardens, allotments, garages, garage sites, storage sites, car parks, agricultural land, sewers, drains, water pipes, footbridges, rights of way, rights of light, wires, cables, etc.

8.26. Small rents occur in the non-operational portfolios but by far the majority (73 per cent) are in the operational estate. There are some 29,000 lettings¹ producing £310,000 per annum of which some 15,000 are wayleaves and easements; and in addition there are approximately 15,000 'nil' rents almost all of which are wayleaves and easements.² In addition, there are easements granted to British Telecom, and a further 28,500 separate electricity board and CEGB arrangements (mainly cables across the railway), where payment is made in one fixed block sum annually from each authority. Small rents, 'nil' rents² and block sum items account for over three-quarters of the total number of lettings but less than 2 per cent of the revenue.

8.27. As noted above some 29,000 small rent items produce about £310,000 per annum. Administrative and management costs are not collected in such a way as to show how much a property, or type of property, costs to administer in general, or to show for a property the cost of activities—eg rent reviews, sales. On the basis of a 'shot' estimate based on a 'very broad average', the Property Board have estimated administration costs of small rents at £30 per letting per annum. Small rents thus make a loss of some £680,000 per annum. We were able to analyse this loss by region. The smallest loss was in Scottish

¹ Altogether there are 29,140 live and 3,930 empty small lettings, at December 1984.

² Many 'nil' rents stem from rights granted in the early days of the railway eg for adjoining owners to walk along the line.

Region, which has the least lettings, and the greatest in Eastern and North-Western, which has the most. Southern Region recovered the lowest proportion of its costs in revenue (18 per cent), followed by Eastern (23 per cent); South-Western (49 per cent) and North-Eastern (40 per cent) recovered the most.

8.28. The Property Board drew our attention to a number of factors which contribute to these losses including:

- (a) The unavoidable physical remoteness of many small rent items from administering offices.
- (b) Although much of the work is routine many cases need professional judgement in order to protect railway interest.
- (c) The Board are obliged to consult the railway departments concerned in respect of many new or altered arrangements.
- (d) Termination of uses, refusal of applications and rent revision are all emotive issues and the Board's public position to some extent limits full freedom of action.

We also note that it is usually not practicable to reduce costs by making no attempt to collect rents, as this may affect British Rail's legal rights.

8.29. The Property Board tell us that the work involved in increasing small rents to economic levels is rarely commensurate with the additional income accruing, and a judgement has to be made as to whether it is worth pursuing a small debt for an item which was not profitable in the first instance. They said that their policy in recent years has mainly been one of discouraging new lettings and re-lettings, with rationalisation and sale where possible of existing lettings. A large proportion of small rents have not been revised to current market levels. The Board's recent investigations have shown that there is scope for rental increases, in the £10 to £24.99 per annum rent band in particular, because many of these have not been reviewed for several years.

8.30. The Property Board have recently established new guidelines for small rents in the operational estate:¹

- (a) Small rents should be actively managed.
- (b) Commercial rents (eg for agricultural land or small private car parks) should first be reviewed individually and indexed by RPI for review by computer.
- (c) Domestic rents (eg for garages and gardens) should be reviewed with the use of standard rents for types of property, and indexed by RPI for review by computer.
- (d) Amenity rents (eg individual allotments and certain footbridges) should be converted to peppercorn rents where practicable.
- (e) The creation of new tenancies at small rents should continue to be avoided and all opportunities taken for termination, amalgamation and rationalisation.
- (f) Administration should be kept to a minimum and wherever possible rents should be fixed to cover them.

¹ Memorandum to the Management group dated 25 September 1984.

The Property Board told us that the 1979 review of estate management procedures had recommended standard procedures for small rents, to be carried out largely by clerical staff; this practice is to be extended to achieve lower unit costs and enrich the work of clerical staff.

8.31. In the case of wayleaves and easements the Property Board say that they receive many applications for facilities across and over their land, many of which, while of little value to the Board, are nonetheless required in the public interest; and that their position as a statutory undertaker and nationalised industry obliges them to co-operate with local authorities and other organisations acting for the public good by accommodating these requests without charging the full economic cost. Even where there is no public interest at stake, the Board can be placed under extreme pressure through MPs, Government departments or local authorities to deal with applications which on estate management grounds would not even be considered by a private landowner. The Board are perceived as being of a different status although legally their ownership of land places them in no different a position to landowners generally. Where the value of a wayleave to an applicant is very small or the facility is being provided for the public benefit the Board will always be prepared to consider a concessionary charge or even to grant the facility at no charge. We noted that it was in the nature of the estate that there would be very many requests for wayleaves.

8.32. Nevertheless the Property Board regard wayleaves as less of a problem and more of an opportunity than other small rents. Because of the large number of certain classes of wayleaves, it has been possible to agree scales of charges—both annual and capital—with a number of organisations. Such scales reduce the administrative work at regional level, and aid single-billing to large organisations permitting a further reduction in administrative work both for the Board and the applicant. The main scales of charges are with the CEGB/electricity boards, British Gas, local authorities and water authorities for sewers, drains and water pipes. Applications from these authorities form the bulk of the wayleaves granted by the Board.

8.33. Where there are no agreed scale charges, each application is valued on its merits. There is a small number of wayleaves granted by the Board producing a substantial income because of the benefits to the applicant in dealing with a single landowner. Where there are further cost advantages to applicants which can be quantified the valuation of the facility will take these factors into account. The Mercury project is expected to produce a substantial income to the Board as well as giving the Board access to modern telecommunications facilities. Cable television will in some areas permit the use of discontinued tunnels etc which the Board have been unable to sell because of the onerous maintenance obligations.

Conclusions on small rents

8.34. It is in the nature of the Property Board's estate that there will be many tenancies producing little rent, and that there will be a large number of wayleaves. It is unsatisfactory that the Board's costs should exceed their revenue on their small rents lettings by over half a million pounds a year. Although

some of the properties can be sold, most of them are on operational land, and cannot. A great deal of the Property Board's efforts in the future can be expected to be directed towards the efficient management of less than attractive properties.

8.35. Much in the Property Board's new guidelines for small rents is based on good and sensible ideas. However, the decision about whether it is worthwhile to let a property or not, or what sale price to ask for small rent property is bedevilled by the lack of cost information.

8.36. We accept that when seeking costing information the Property Board have to bear in mind that the value of information should be at least equal to the cost of getting it. Nevertheless, we think the Board would benefit from better costing information than they now have as we discuss in paragraph 9.26.

8.37. The Property Board policy should be to improve the net returns from small rents, by seeking to raise them where this is practicable and giving careful attention to costs, which may be reduced in some cases by, for example, deferring rent reviews so as to reduce costs below normal, or granting peppercorn rents. The choice of rental arrangement should be based on a sound assessment of all costs and revenues associated with each type of small rent. Our conclusions on the sale of properties with little or no potential for development (paragraphs 8.6 and 8.7) apply to the sale of small lettings.

8.38. We welcome the Property Board's proposed changes in procedure to reduce costs by making greater use of clerical staff.

Conclusions: review of burdensome properties

8.39. We have discussed in this chapter various burdens placed upon British Rail in relation to property. Where these burdens are inherent in the continuing operation of the railway, it seems to us that the resulting costs are a proper charge on the Railway Business, as they would be on any commercial company.

8.40. Where these burdens are associated with land no longer required for railway operations we question whether the costs should remain a charge upon the Railway Business. This is particularly so if British Rail are to succeed in aim of running the railway as a commercial business rather than as a social service. For example, the costs of maintaining listed buildings and structures which are no longer required by the railway (and have no other use) are incurred in response to the expressed wish of society that these buildings and structures should be preserved as part of the national architectural heritage. We see a clear analogy with the costs incurred by British Rail in maintaining uneconomic passenger services, which are currently in part met by the PSO grant. As another example the security of cattle in relation to a disused branch line no longer seems an appropriate responsibility for British Rail.

8.41. It seems to us anomalous that British Rail, as a relic of their history, should continue to be responsible for all the liabilities that they currently bear in respect of property no longer needed by the railway. We propose that the Department of Transport should undertake a thorough review to determine how far these liabilities should be removed or separately funded.