

**PROPOSED CHILTERN RAILWAYS (BICESTER TO OXFORD IMPROVEMENTS)  
ORDER**

**CHILTERN RAILWAYS' RESPONSE TO THE APPLICATION FOR COSTS MADE  
BY MRS GRETA WALKER (OBJ7/6/1)**

**1 Introduction**

- 1.1 Mrs Walker is the freehold owner of land to the north of Gavray Drive (**No.01002: CD/1.10 p.1**) shown on Sheet 39 of the Deposited Plans and Sections and Open Space Plan (**CD/1.9**).
- 1.2 Her interest is required to be compulsorily acquired to provide part of the replacement open space for that taken (**Nos. 03002, 02003, 03005, 02007, 01011,01004: CD/1.10**) to enable the construction of the chord linking the Chiltern Railways London to Birmingham railway line to the Oxford to Bicester line (**CD/1.9: Sheet 39**).
- 1.3 Mrs Walker has objected to the Order on five principal grounds:
- Lack of consultation
  - The land to be acquired to construct the chord is not public open space and therefore does not require to be replaced
  - The exchange land, Mrs Walker's land, is not suitable as replacement public open space
  - The exchange land has potential development value
  - There is a more suitable exchange land site south of Gavray Drive
- 1.4 Chiltern Railways have responded to this objection in Ian Gilder's evidence **CRCL/P/12/A: 6.36-6.38**, and in rebuttals **CRCL/R/OBJ7/1, 2 and 3**.
- 1.5 By letter dated the 9th September 2010 [**CD/1.25a**] the Secretary of State for Communities and Local Government, exercising his powers under section 19 and Schedule 6 of the Acquisition of Land Act 1981, has given public notice of his intention to issue a certificate certifying that Mrs Walker's land (and other land) constitutes exchange land that is not less in area than that to be taken and equally advantageous to the public.
- 1.6 Mrs Walker did not make any representations or objections in respect of the notice by the relevant date 7th October 2010.

## 2 The application

2.1 Mrs Walker's applies for a full award of her costs incurred:

*in pursuing her objection through to this public inquiry. It was necessary for her to engage expert opinion to assist. The position regarding the POS is not clearly established by Chiltern Railway and its reliance upon the criteria under section 19 of the 1981 [Act] required expert attention. Experts were engaged to try and avoid the need to attend a public inquiry and this is evident in the chronology set out above. (OBJ/7/6/1:7.1)*

2.2 For the reasons set out in Ian Gilder's evidence and the rebuttal evidence identified in 1.4 above, Chiltern Railways contend that the position regarding the need to acquire the public open space comprising **Nos. 03002, 02003, 03005, 02007, 01011, 01004** is clear and the "Blue" land including Mrs Walker's land (Nos. **01002, 01001, 010212, 01013**) meets the criteria of section 19 of the 1981 Act.

## 3 Circular 3/94

3.1 The general principle that applies is that parties to a public inquiry held under the Transport and Works Act 1992 normally meet their own expenses. (**C3/94: Annex 1, paras. 2 and 4**)

3.2 Costs are awarded only when what is termed "unreasonable behaviour" is held to have occurred. (**C3/94: Annex 1, para. 3**) An exception to this rule is noted in Annex 5 to the Circular which is addressed below at paragraph 4.14 below.

3.3 Before an award of costs is made, the following conditions will normally need to be met [**C3/74 Annex 1: para. 7**]:

1. one of the parties has sought an award of costs;
2. the party against whom costs are sought has behaved unreasonably; and
3. this unreasonable conduct has caused the party seeking costs to incur expense unnecessarily because of the manner in which another party has behaved.

3.4 Four examples of unreasonable behaviour by applicants for a Transport and Works Order:

- failure to comply with procedural requirements;
- withdrawal of an application for a TWO;
- failure to attend an inquiry;
- introduction of new or amended evidence late in the proceedings

are set out in the Appendix to the Circular. None of the examples is relied on by Mrs Walker.

#### 4 Chiltern Railways' response to the application

##### *The application*

- 4.1 Mrs Walker has made an application for costs (**OBJ/7/6/1**).

##### *Unreasonable behaviour*

- 4.2 The unreasonable behaviour on the part of Chiltern Railways alleged by Mrs Walker is said to relate to meetings and correspondence in February and May 2010 between Ardent (Paul Clarke) and Robin Thompson BSc MRICS FAAV in which Mr Thompson queried whether the 'Green' land (Nos. **03002, 02003, 03005, 02007, 01011,01004**) was public open space, and the suitability of the 'Blue' land including Mrs Walker's land (Nos. **01002, 01001,010212, 01013**) as exchange land (**OBJ/7/6/1; 5.2-5.4**)
- 4.3 In an email to Mr Thompson dated the of 4th February 2010 (**CRCL/R/OBJ7/1** Appendix A) Paul Clarke responded to the objection to the Order made on behalf of Mrs Walker explaining that the purpose for the acquisition of her land was set out in the application documents: in particular, that the land was shown in Schedule 2 of the Order as being subject to acquisition powers for use as exchange land for public open space to the west of Charbridge Lane required for the new railway.
- 4.4 Paul Clarke subsequently met Mr Thompson at Oxford on the 26 February 2010 where he further explained the reason for the acquisition of Mrs Walker's land to provide exchange land (**OBJ/7/6/1:5.2**).
- 4.5 By email to Mr Thompson dated 27 May 2010 Paul Clarke restated Chiltern Railways' position that there was clear evidence of public use of the 'Green' land. He also explained that Mrs Walker's land met the tests of replacement open space land set out in Annex L C06/2004, and that Chiltern had made an application under s19 ALA 1981 (**CRCL/R/OBJ 7/1:Appendix A**) (**CRCL/R/7/3: 3.3**)
- 4.6 On the same day Mr Thompson replied; *Paul, Understood, many thanks, Regards Bob (Ibid)*.
- 4.7 It is submitted that, contrary to the allegation in **OBJ/7/6/1:5.2**, 'sufficient evidence' was made available to Mr Thompson in this correspondence to support the contention that the 'Green' land was public open space. He was referred to the application documents where in Vol. 2: 5.4.1 p.5-2 of the Environmental Statement (**CD/1.16**) land north of Gavray Drive is identified as open space used by the public.
- 4.8 The correspondence provides no grounds to support Mrs Walker's allegation that Chiltern Railways behaved unreasonably in correspondence and meetings with her representatives in the period February to May of 2010.
- 4.9 The heart of Mrs Walker's claim for costs is set out in **OBJ/7/6/1: 5.4** where it is said:

*(i) it is submitted on behalf of Mrs Walker there is no evidence to support such use [the 'Green' land used as public open space] as alleged by Chiltern Railways;*

*(ii) for the reasons set out in the proof of Evidence of Robert Thompson submitting the test under section 19 of the Acquisition of Land Act 1981 ("1981 Act") has not been met. More particularly it has not been established that the Green Land is POS (even which is denied) the Blue land is not considered as suitable exchange land.*

*The "Green" land used as public open space*

- 4.10 As set out in **CRCL/R/OBJ7/1;3.7-3.8, /2, 3.6-3.7, /3, 3.12-3.14**, there is clear evidence that the "Green" land is currently being used as open space for the purposes of public recreation. There is no evidence that the land has been actively managed for agriculture.

*Mrs Walker's land as suitable exchange land*

- 4.11 For the reasons explained in **CRCL/R/OBJ7/1: 3.13-3.25, /2:3.9-3.12, /3:16-3.21** Mrs Walker's land, forming part of the "Blue" land, is suitable exchange land that meets the criteria of s19 of the 1981 Act and the Secretary of State has given notice of his intention to give a certificate to that effect (**CD/1.25a**). Mrs Walker has raised no objections to the notice.

## **5 Other matters**

- 5.1 The criteria in s19 relate to the area of and the equality of advantage as public open space of, the exchange land and not its suitability for development. Under the statutory Compensation Code Mrs Walker would receive the full market value (including development value, if applicable) of her land following its compulsory acquisition.
- 5.2 The alternative open space exchange land site suggested by Mrs Walker is extant public open space and therefore unsuitable as exchange land (**CRCL/R/OBJ7/2, 3.18-3.20**).
- 5.3 Annex 5 of C3/74 provides that where an owner of land successfully opposes compulsory acquisition an award of costs will be made in favour of the objector unless there are exceptional reasons for not doing so. For the reasons set out in Ian Gilder's evidence **CRCL/P/12/A: 6.36-6.38** and the rebuttals **CRCL/R/OBJ7/1, 2, and 3** Chiltern Railways contend that the Order should be confirmed by the Secretary of State including powers to compulsorily acquire Mrs Walker's land to provide exchange public open space.

## **6 Conclusion**

- 6.1 For the above reasons Chiltern Railways have not behaved unreasonably in their correspondence and meetings with Mrs Walker's representatives, or in providing the evidential basis for the compulsory acquisition of Mrs Walker's land to provide exchange land for public open space required to be taken for the Order scheme. Nor is there any evidence that demonstrates that Mrs Walker has incurred expenditure which can be attributed to any unreasonable conduct on the part of Chiltern

Railways. Accordingly, the general conditions for an award of costs (**C3/74: Annex1, 7**) against Chiltern Railways are not met.