

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

CHILTERN RAILWAYS' REBUTTAL PROOF OF EVIDENCE

IN RELATION TO

THE OBJECTION AND EVIDENCE OF

BUCKINGHAMSHIRE, BERKSHIRE AND OXFORDSHIRE WILDLIFE TRUST

1 Introduction

- 1.1 This rebuttal proof of evidence has been prepared on behalf of the Chiltern Railway Company Limited (Chiltern Railways) to respond to particular aspects of the objection and evidence of the Buckinghamshire, Berkshire and Oxfordshire Wildlife Trust (BBOWT).
- 1.2 In particular, BBOWT has raised new points in its Proof of Evidence that Chiltern Railways had not previously addressed in the proofs of evidence prepared by their witnesses, which were submitted to the Inspector and to certain objectors on 1 October 2010.
- 1.3 It is not intended that this rebuttal proof should repeat material that the witnesses for Chiltern Railways have already covered in their evidence. Cross-references to relevant paragraphs of those witnesses' proofs of evidence are given below, where appropriate.
- 1.4 It is intended that this rebuttal proof should be a composite response by Chiltern Railways to those new points raised in the evidence of BBOWT and referred to above. In this respect, for cross-examination purposes, the name of Chiltern Railways witness who is responsible for each aspect of this rebuttal proof is given at the beginning of each section below.

2 Defined terms

- 2.1 The following defined terms are referred to throughout this rebuttal proof:

"the Correspondence" means recent correspondence in the form of emails exchanged between Chiltern Railways and BBOWT dated 21 December 2010, 23 December 2010 and 30 December 2010, which are

attached as Appendix A to this rebuttal proof;

<i>"the Objector"</i>	means BBOWT;
<i>"the Objector's evidence"</i>	means the Supplementary Proof of Evidence of Rebecca Micklem on behalf of BBOWT [OBJ211/4];
<i>"the Order application"</i>	means the application for the proposed Order submitted on 6 January 2010 and the Proposed Modification dated 9 September 2010; and
<i>"the Proposed Order"</i>	means the proposed Chiltern Railways (Bicester to Oxford Improvements) Order.

3 Chiltern Railways' Rebuttal of the Objector's Evidence

Context

- 3.1 The evidence of the Buckinghamshire, Berkshire and Oxfordshire Wildlife Trust (BBOWT) has been prepared by Rebecca Micklem a Conservation Officer for BBOWT.
- 3.2 BBOWT manages the Woodside Meadows Nature Reserve which is part of the Wendlebury Meads and Mansmoor Closes SSSI. BBOWT has a vehicular right to access the Nature Reserve along a track between Mansmoor Road and the Beebont level crossing. Details of the existing right of access are provided in Appendix 1 to Rebecca Micklem's proof [OBJ211/5].
- 3.3 Since the Supplementary Proof of Evidence was submitted, there has been continuing correspondence between Chiltern Railways and BBOWT relating both to the access and to the other objections made by BBOWT.

Access to Woodside Meadow Nature Reserve, Ian Gilder

- 3.4 The Objector states that the Order Scheme, with the closure of the Beebont crossing, would remove BBOWT's only access to Woodside Meadows. The Objector states that the Order Scheme would mean that BBOWT would be unable to undertake suitable management of the site and, therefore, unable to comply with Section 28E of the Wildlife and Countryside Act.
- 3.5 The Objector notes that Chiltern Railways intends to provide BBOWT with a right of access to Woodside Meadows via an alternative route. The Objector states, however, that the details within the TWA Order do not provide it with sufficient assurance that this is achievable.
- 3.6 Chiltern Railways has always intended that the replacement vehicular access to the Woodside Meadow Nature Reserve (the Reserve) should be via Work 13, the Holt's Farm Bridge, continuing along the diverted bridleway as far as the Reserve. This is set out in Appendix ASC4 to Andy Coates' evidence [CRCL/P/10/B], in particular, on Figure 2. The latest position in relation to a draft agreement which confirms Chiltern Railways' commitment to the provision of this access is set out in the emails of 23

December 2010 from BBOWT and 30 December 2010 from ERM, attached in Appendix A to this rebuttal. Chiltern Railways believes that this represents a proper replacement of the existing right of access across Beebont crossing.

- 3.7 BBOWT also maintains its objection to the provision of an accommodation track across the SSSI, which would be required to enable Mr Miller and Mr Howard to access a building and land to the east of the railway. Chiltern Railways' evidence as set out in paragraphs 2.47 to 2.50 of Andy Coates' evidence, in Appendix ASC4 [CRCL/P/10/B] and in paragraphs 5.1 to 5.9 of CRCL/P/10/E is that the provision of the track can be justified and that it should be included in the Order works. It remains Chiltern Railways' position that, unless alternative arrangements with the landowners concerned are agreed, the powers to provide this track need to remain within the Order.

Oxford Meadows Special Area of Conservation, Ian Gilder

- 3.8 The BBOWT's remaining objection relates to the potential impact of increased nitrogen deposition on the hay meadow habitat of the SSSI.
- 3.9 Chiltern Railways' position in relation to nitrogen disposition on this and other SSSIs is set out in CRCL/INQ/48. Natural England has yet to respond to the evidence set out in that note. In summary, there is no reason to believe that the predicted levels of emissions will have any adverse effect on the lowland hay meadow and certainly no adverse effect on the integrity of the SSSI.
- 3.10 Chiltern Railways has explored, at length, the potential for implementing an air quality monitoring arrangement on Port Meadow and on the other SSSIs, but has concluded that such a scheme was neither necessary nor practicable.

Other Sites of Special Scientific Interest, Ian Gilder

- 3.11 BBOWT's remaining concerns, apart from the proposed accommodation track considered in paragraph 3.7 of this Rebuttal, relate to air quality. Chiltern Railways' response in relation to the other SSSIs is the same as that set out in paragraphs 3.8 and 3.9 above.

Impact on Gavray Drive Meadows Local Wildlife Site, Ian Gilder

- 3.12 The Objector states that the Local Wildlife Site (LWS) is designated for its lowland meadow habitat and is protected through the planning system at the national level in PPS9 and at the local level through Policy C1 of the adopted Cherwell Local Plan and Policy EN24 of the Non-statutory Cherwell Local Plan.
- 3.13 The Objector states that the Order Scheme involves land take from the Gavray Drive Meadows Local Wildlife Site and brings an area of the Local Wildlife Site to the east of Charbridge Lane under open access to provide replacement open space. The Objector states that the most effective management for Gavray Drive Meadows is a late summer hay cut followed by aftermath grazing, but states that Chiltern Railways' proposals for managing the replacement open space in the Landscape and Ecology Enhancement Strategy [CRCL/P/12/B, Appendix IMG 13] maintains that grazing is not practical.

- 3.14 The Objector recognises that the Landscape and Ecology Enhancement Strategy would bring a small area of the LWS into better, but not the most effective management, whilst introducing recreational pressure onto the site. The Objector states that it is not clear that there will be an overall benefit to the ecological value of the site and no data has been presented to show whether there would be an overall negative or positive effect on the ecological interest of the site.
- 3.15 The Objector is concerned that no assessment has been made of the number of users that the site is providing replacement open space for, and how much this is likely to increase due to the approved residential development to the west of Charbridge Lane. The Objector recognises that Chiltern Railways would not be directly responsible for the provision of open space for the approved development north of Gavray Drive, but states that its strategy would open up the land to public access and make it vulnerable to visitor pressures. The Objector is concerned about the likely cumulative impact of the approved residential development and the Order Scheme.
- 3.16 The Objector states that alternative land of lower existing biodiversity value should be identified to provide the replacement open space, thus avoiding further negative impacts on the Local Wildlife Site.
- 3.17 The Objector states that there has been no indication given as to how long the Landscape and Ecology Enhancement Strategy would be in place for, so it is not possible to assess its long term impact. The Objector is also seeking clarification on the funding to secure its implementation.
- 3.18 A recent proposal by BBOWT has been that the replacement open space, together with other parts of the LWS, should be subject to a joint management arrangement, to include grazing.
- 3.19 Chiltern Railways' evidence in relation to the impacts of the Order Scheme on the Gavray Drive LWS was clarified in **CRCL/P/12/F**. This concludes that the Order Scheme will have no permanent impact on the Gavray Drive Meadow LWS, taking into account the reduced area of permanent land take and the permitted housing development.
- 3.20 Replacement open space is to be provided on land east of Charbridge Lane. This, as set out in Appendix IMG 13 in **CRCL/P/12/B**, has been designed both to meet the requirements for replacement open space and to be enhanced for wildlife management. The reasons why this site was selected has already been explored at the Inquiry, in relation to Mrs Walker's objection [**OBJ/007/2** and **OBJ/007/3**] and is covered in Chiltern Railways' rebuttal evidence [**CRCL/R/OBJ007/1** and **CRCL/R/OBJ007/2**]. The alternative sites which were reviewed, before this was selected, were the land which is already in de facto open space use, to the north of the railway and the fields to the east of Charbridge Lane, immediately to the south of the proposed replacement open space. These latter fields are also designated, along with the site selected as replacement open space, as part of the LWS. These were rejected, in part, because they have already been identified, in the s106 agreement for the Gavray Drive housing development to be enhanced and managed as part of the ecological mitigation for that scheme.

- 3.21 Chiltern Railways is aware of the need for long term management of the replacement open space and wildlife site. This is being pursued with Cherwell District Council, which has indicated that it would be prepared to accept responsibility for future maintenance, subject to the conclusion of appropriate financial arrangements with Chiltern Railways.
- 3.22 Chiltern Railways is sympathetic, in principle, to a wider management arrangement. The Wildlife Management Plan, to which BBOWT refers, forms part of the s106 agreement for the Gavray Drive, but will only take effect when that scheme has detailed permission and is going to proceed.
- 3.23 Chiltern Railways' position is that the Order Scheme will have no adverse impact on the LWS, taking into account the proposed ecological enhancement and management of the replacement open space.

Species of Principal Importance, Ian Gilder

- 3.24 The Objector states that in her initial response to the EIA consultation, she highlighted concerns about two species listed as being of principal importance under Section 41 of the NERC Act 2006, namely the brown hairstreak (*Thecla betulae*) and tassel stonewort (*Tolypella intricata*).
- 3.25 The Objector notes that no brown hairstreak were reported in the Invertebrate Survey despite there being historic records within 500 metres of the scheme boundary. The Objector states that the area around Bicester is known to be a hotspot for this species which has a restricted distribution in the UK. The Objector states that having consulted ERM, Chiltern Railways' environmental consultants, it is understood that no specific survey for brown hairstreak was undertaken although she believes blackthorn scrub to be present within the Order Scheme boundaries. The Objector states that she has been advised by ERM that mitigation and enhancement proposals are to be put forward for this species, though at the time of writing the evidence she was not aware of the information having been submitted. The Objector accepts that effective mitigation and enhancement work could be implemented without baseline survey data on which to base the detail of such proposals.
- 3.26 The Objector states that tassel stonewort is known to occur on the bridleway which leads off Mansmoor Road to the Beebont level crossing currently used by BBOWT to access Woodside Meadow. The Objector notes that the species was recorded by ERM in 2010. The Objector states that she understands that the Order Scheme would lead to the hard surfacing of the track, although no details of this are provided in the application. The Objector states that she has found no assessment of impacts on, or proposals for mitigation or enhancement of, tassel stonewort in the ES. The Objector states that in order to comply with the requirements in PPS9 to deliver biodiversity enhancement, information needs to be submitted which demonstrates how brown hairstreak butterflies and tassel stonewort will be conserved through the proposals.
- 3.27 Since the BBOWT evidence was submitted, there has been continued discussion on both of these matters between Chiltern Railways and BBOWT.

- 3.28 Chiltern Railways' position in relation to the brown hairstreak remains that there is no evidence, at Gavray Drive, or elsewhere, that the butterfly or its eggs occurs on blackthorn within the Order Scheme boundary. Chiltern Railways is prepared to do all it reasonably can to manage and recreate blackthorn scrub along the railway, in locations, such as Gavray Drive, where brown hairstreak has been found. Existing scrub will be cut back rather than removed, wherever possible, and blackthorn will be used as part of the new planting mix for hedgerows in these locations. Chiltern Railways is prepared to propose a suitable planning condition to deliver this commitment and has suggested a draft of this for comment by BBOWT.
- 3.29 Chiltern Railways' evidence in relation to tassel stonewort, which has been found on the existing bridleway between Mansmoor Lane and the Beebont Crossing is set out in Appendix ASC4 in **CRCL/P/10/B**. The plant could be maintained in situ or moved to the margins of the hardened track at this location and continue to survive. Chiltern Railways is prepared to consider the translocation of his species from its present location, if this is agreed, in due course, with BBOWT to be a better solution. Chiltern Railways is prepared to propose a suitable planning condition to deliver this commitment and has suggested a draft of this for comment by BBOWT.

4 Conclusions

- 4.1 Chiltern Railways has been engaged with continuing discussion with BBOWT in relation to their objections.
- 4.2 Chiltern Railways has offered an agreement to BBOWT which will provide a proper replacement access to the Trust's Reserve.
- 4.3 In relation to the air quality issues on the SSSIs, BBOWT is aware of the continuing dialogue with Natural England and has not brought forward any independent evidence that would counter Chiltern Railways' position on these issues.
- 4.4 Chiltern Railways acknowledges BBOWT's concerns regarding brown hairstreak and tassel stonewort and, while not accepting that there will be a significant residual adverse environmental effect from the Order Scheme, is prepared to propose two planning conditions which will secure what Chiltern Railways believes are appropriate enhancement and mitigation measures for these species.

Appendix A

CRCL/R/OBJ211

Relevant Correspondence
between Chiltern Railways
and the Objector

FW: Further Emails to include in BBOWT Rebuttal Appendix A

Nicola Finlay

Sent: 04 January 2011 14:54

To: Nicola Finlay

From: Ian Gilder
Sent: Thursday, December 23, 2010 5:41 PM
To: Beccy Micklem
Subject: RE: CR Inquiry: BBOWT Position

Beccy

I am prepared to agree a condition along the lines of that proposed by you.

I will work on a wording and include it in the BBOWT rebuttal. You would still be able to propose further amendments, which, if not agreed by us, could be submitted directly to the Inspector, or him to consider at the Conditions session.

Regards

Ian

Ian Gilder
Head of Planning, ERM, Exchequer Court, 33, St. Mary Axe, London, EC3A 8AA
T (direct):020 3206 5661
T: 020 3206 5200
F: 020 3206 5440
M: 07802 886132

From: Beccy Micklem [beccymicklem@bbowt.org.uk]
Sent: Tuesday, December 21, 2010 3:57 PM
To: Ian Gilder
Subject: RE: CR Inquiry: BBOWT Position

Dear Ian,

Thank you for your email - with regard to the draft legal agreement, following advice from our solicitors I am running this past colleagues and hope to get back to you soon. We would wish to be at a point whereby the issue of the track across the SSSI has been resolved before signing an agreement, but hope that you agree that it is useful to progress with other matters in the agreement in the meantime.

With regards to the brown hairstreak and stonewort conditions:

- whilst I understand that there is an intention on your part to avoid the need to hard surface the track, as it stands the information submitted to the inquiry is on the basis that the track would be hard surfaced. Therefore for the time being I would find it most helpful if a condition could be drafted for inclusion - I assume that, should the order be later amended, then the need for this condition could be reviewed.

I have provided some draft wording below, which I envisage would need to be an additional condition to those already put forward with the Order?

No development shall commence until a strategy for the conservation of priority species has been submitted and approved. This plan will provide details of measures to:

(i) conserve the population of tassel stonewort near Mansmoor Road both during construction and operation, preferably in situ or, if this is not possible, through translocation according to a methodology agreed with BBOWT

(ii) manage existing and new planting of blackthorn within the scheme boundary appropriately to provide suitable habitat for brown hairstreak butterflies both during construction and operation

Reason: to ensure conservation of populations of priority species in accordance with the provisions of the Natural Environment and Rural Communities Act 2006.

I realise this wording does not differ hugely from that offered before, please do let me know if there are any particular aspects which are of concern, so that we can come to an agreement.

Kind regards,

Beccy

FW: Emails to include in BBOWT Rebuttal Appendix A

Nicola Finlay

Sent: 04 January 2011 14:51

To: Nicola Finlay

From: Ian Gilder

Sent: Thursday, December 30, 2010 11:26 AM

To: Beccy Micklem

Cc: julietclark@eversheds.com; jon.neale@chilternrailways.co.uk; paulclarke@ardent-management.com

Subject: RE: CR Inquiry: BBOWT Position

Beccy

I promised you a response to this, so that we could progress a property agreement separately from your remaining objections.

I cannot see that the track that CRCL is proposing across the SSSI is relevant to the replacement of your access.

Paul Clarke will provide you with a plan. The access track will extend from the north west end of Work 13 along the new bridleway as far as is needed to gain access to your Reserve. Since we have yet to agree where on the NW boundary of the Reserve it is best to cut through the hedge and ditch to the field, I suggest this section is marked accordingly and dealt with in the drafting.

The hedgebank is clearly long established, but judging from our earlier site visits, it will be possible to put a track across it, avoiding mature trees.

I note in your amendments a reference in 3.2 to maintenance by CRCL. As I set out in my email of 14 December, CRCL will have no long term maintenance responsibility for Work 13. The bridge itself and the approach ramps will be vested in Network Rail. The County Council will have its normal responsibility in so far as this is a bridleway, but this will only extend to ensuring that Work 13 and the rest of the bridleway are passable. The maintenance of any track that CRCL provides for BBOWT from the end of Work 13 to the Reserve will fall to BBOWT to maintain, as the sole individual user.

I have noted your comment regarding BBOWT's legal fees and have referred this to CRCL for decision.

I trust that these suggested amendments are acceptable to BBOWT. If they are, I will instruct Eversheds to make the necessary amendments to the agreement so that it can be progressed.

Regards

Ian

Ian Gilder

Head of Planning, ERM, Exchequer Court, 33, St. Mary Axe, London, EC3A 8AA

T (direct): 020 3206 5661

T: 020 3206 5200

F: 020 3206 5440

M: 07802 886132

From: Beccy Micklem [beccymicklem@bbowt.org.uk]

Sent: Thursday, December 23, 2010 10:13 AM

To: Ian Gilder

Subject: RE: CR Inquiry: BBOWT Position

Dear Ian,

I have attached a copy of the draft legal agreement with suggested changes. As I mentioned in my previous email, we are not willing to sign an agreement until the issue of the track across the SSSI has been resolved, however I believe it is useful to progress with other matters in the meantime.

I would be grateful if you could provide a map clearly showing the route proposed to be used by BBOWT (the map provided did not show the red line referred to in the agreement), and the point at which you envisage access into Woodsides Meadow is provided. We will then be able to determine whether the proposed access point is acceptable in terms of ground conditions and that it avoids unacceptable environmental impact. As you may be aware, there is a wood bank along the western boundary of Woodsides Meadow and it would be helpful to know if this is likely to be affected by the access - it would be helpful to know if it has any historical interest and I wondered whether you have any information on this?

I also thought it would be useful to let you know now that our legal costs in considering this agreement are already very close to the £1000 mentioned in clause 4, so our costs will exceed this amount in order to achieve an agreement. I would therefore be grateful if you could reconsider the sum mentioned in this clause.

Kind regards,

Beccy