

PROOF OF EVIDENCE OF GRAHAM CROSS

REGULATORY AND CONTRACTURAL FRAMEWORK



THE CHILTERN RAILWAYS (BICESTER TO OXFORD IMPROVEMENTS) ORDER

TRANSPORT AND WORKS ACT 1992

**TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006**

Chiltern Railways

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1. QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Graham Cross. I am the Business Development Director of Chiltern Railways.
- 1.2 I hold a B.A (Hons) in Geography from Oriel College, Oxford University.
- 1.3 I joined the railway industry in 1996 as a management trainee with Railtrack plc. In 1997 I joined the Office of Passenger Rail Franchising (OPRAF), as a Franchise Administrator. OPRAF was subsumed in to the Strategic Rail Authority (SRA) in 2001. At the SRA I was appointed Rail Development Manager, responsible for the management of the government side of a number of franchise agreements, and the running of the franchise replacement processes for both Chiltern Railways and Thames Trains.
- 1.4 I joined Chiltern Railways in January 2004, and was appointed to my present post in September 2007. I am responsible for Chiltern's government and regulatory relations and the commercial relationship with Network Rail. I also head up Chiltern Railways timetable planning team, and am thus instrumental in determining train service journey times and frequencies. As Chiltern Railways' expert in government and regulatory policy I have also contributed to the new government's review of rail franchising.
- 1.5 On the Order Scheme I led the commercial negotiations for Chiltern Railways with Network Rail, the Department for Transport and the Office of Rail Regulation (ORR). I was thus responsible for securing the regulatory and governmental authority for the promotion of the Order Scheme, and also its financing.

2 SCOPE OF EVIDENCE

- 2.1 The Secretary of State of State for Transport ("the Secretary of State") issued a Statement of Matters (**X/4**) for the Transport and Works Act ("TWA") Inquiry on 25th August 2010. In this Proof of Evidence I address, in particular, the following matters from that Statement of Matters, in whole or in part:

Matter 1. The aims and objectives of, and the need for the proposed connection between the London to Birmingham railway and the Bicester to Oxford railway, and the proposed improvements to the line between Bicester Town station and Oxford station ("the scheme")

Matter 13. Chiltern Railways' proposals for funding the scheme.

- 2.2 My Proof of Evidence covers:

- The national rail regulatory framework, and the duties of the interested parties
- The Chiltern Railways Franchise Agreement
- The requirement to develop a new rail link to Oxford
- The Order Scheme agreements
- The Order Scheme business case
- The Order Scheme funding arrangements
- The Wolvercot tunnel and W12+ gauge enhancement agreement

- Chiltern Railways' track record, including the delivery of major projects

3 THE NATIONAL RAIL REGULATORY FRAMEWORK

3.1 In this section I refer to Statement of Matters 1.

3.2 The UK national rail network is a highly regulated public transport system. In the period 1948 – 1993 both the railway infrastructure and the passenger and freight train services operating on it were the responsibility of a single nationalised statutory corporation, British Railways. In 1993, following a review of railway policy, the Government decided that the railway should be “vertically separated” with a single regulated company owning and maintaining the railway infrastructure, including the track and signalling. Passenger and freight train services would be provided by separate train operating companies. The legal changes needed to implement this restructuring were introduced by the Railways Act 1993 (“the 1993 Act”) (**CD/5.10**).

3.3 The 1992 White Paper “New Opportunities for the Railways The Privatisation of British Rail” (“the 1992 White Paper”) which prefaced the privatisation of the railways stated that:

- *“The Railways have substantial strengths. They have unrivalled city centre to city centre connections. They are particularly cost effective for long distance and heavy freight.”* (paragraph 2)

3.4 The 1992 White Paper accepted that the existing network and the specification of the passenger train service operating on it should broadly be maintained, through the statement:

- *“The Government fully recognises the social and other benefits of regional and commuter services. It is committed to providing continuing subsidy to them.”* (paragraph 8)

3.5 These factors led the 1993 Act to provide for the delivery of most passenger rail services by train operating companies through railway franchise agreements. Under section 23 of the 1993 Act the Secretary of State for is under a duty to designate railway passenger services for provision under franchise agreements. The services provided by Chiltern Railways are so designated.

3.6 Railway franchise agreements are normally entered into following a competitive procurement process. The franchise operator contracts to deliver specified passenger services and other outputs determined by the Secretary of State for after taking into account both public service and wider strategic and policy criteria. The franchise operator generally takes costs and revenue risks. Franchise Payments are payable under the terms of the agreement and the amount payable is specified in the agreement. Depending upon the cost and revenue position of individual franchises, these may be payments either to or from the Secretary of State and the payment flow may change during the course of the franchise.

3.7 In July 2004 the Government published the White Paper *The Future of Rail* (**CD/3.10**) which, among other things, made clear its support for improved performance on the railways including, where appropriate, the provision of infrastructure enhancements. Following the White Paper and the coming into force of the Railways Act 2005, responsibilities for the strategic and financial planning of the railways passed from the SRA to the Secretary of State. The safety and economic regulation of the railway

industry, including Network Rail and the train operating companies, became the responsibility of the ORR.

3.8 Under section 4(1) of the 1993 Act (as amended)¹ the ORR has a statutory duty as follows:

(1) the Office of Rail Regulation shall have a duty to exercise the functions assigned or transferred to it under or by virtue of this Part or the Railways Act 2005 that are not safety functions in the manner which it considers best calculated—

(zb) to promote improvements in railway service performance;

(a) otherwise to protect the interests of users of railway services;

(b) to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable;

(ba) to contribute to the development of an integrated system of transport of passengers and goods;

(bb) to contribute to the achievement of sustainable development;

(c) to promote efficiency and economy on the part of persons providing railway services;

(d) to promote competition in the provision of railway services for the benefit of users of railway services;

(e) to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator;

(f) to impose on the operators of railway services the minimum restrictions which are consistent with the performance of its functions under this Part or the Railways Act 2005 that are not safety functions;

(g) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

3.9 Network Rail is the monopoly supplier of the national rail infrastructure. It operates the network pursuant to a network licence granted by the Secretary of State on the 31st March 1994 (“the Licence”). The licence conditions are set out at Part III of the Licence. By condition 1.2 Network Rail has a “General duty” to achieve the purpose of condition 1.1. The purpose is to secure:

(a) the operation and maintenance of the network;

(1) The amending Act is the Railways Act 2005

(b) the renewal and replacement of the network; and

(c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:

- the quality and capability of the network; and

- the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.”

- 3.10 Chiltern Railways operates passenger train services over Network Rail infrastructure under the terms of a Track Access Agreement dated 5 February 2004 **(CD/2.14)**. This has subsequently been amended by a series of Supplemental Track Access Agreements. Under these agreements, Network Rail is directed by the ORR to grant Chiltern Railways permission to use certain routes and to undertake certain works. Chiltern Railways thus has full regulatory and commercial rights to invest in and undertake work on Network Rail infrastructure.
- 3.11 Chiltern Railways operates within the post Railways Act 1993 railway industry structure involving, at all times, close engagement with the Secretary of State, Network Rail and ORR with respect to the operation of its franchise and associated planned rail infrastructure improvements. The Franchise Agreement **(CD/2.2)** with the Secretary of State provides an agreed mechanism by which Chiltern Railways may bring forward rail infrastructure projects including Evergreen 3. It follows that the principle of the Order Scheme accords with the policy of the 1993 Act, as amended, to promote improvements to the performance of the railways and their development. In this context, the Order Scheme is the latest of a number of rail investment projects which Chiltern Railways has contracted to deliver in accordance with the regulatory framework within which the company operates.
- 3.12 Evergreen 3, as comprised in the Order Scheme, involves an upgrade to the national rail infrastructure and is consistent with the conditions of Network Rail’s licence and the requirement there to secure the improvement, enhancement and development of the network. This is implicitly acknowledged by Network Rail who are, with the agreement and approval of the ORR, providing funding for the Order Scheme works through the Regulated Asset Base (“RAB”) – *(the overall asset value against which Network Rail is allowed to earn a rate of return)*, and permitting access for Chiltern Railways to the Bicester to Oxford line.
- 3.13 Accordingly, in seeking to proceed with the Order Scheme works, Chiltern Railways is acting within a national policy and regulatory framework which seeks to deliver enhancements to the rail transport system in the UK as part of an over arching commitment to the achievement of sustainable railway development. It has made the TWA Order application in this regulatory and policy context and following an intensive programme of engagement with the Secretary of State, ORR and Network Rail which has led to the Secretary of State and Network Rail entering into the contracts referred to below and the ORR granting requisite regulatory approvals.
- 3.14 In this section I have set out evidence in relation to Statement of Matters 1. My conclusion is that it is the policy of the modern Railways Acts to promote improved performance and sustainable development of the national railway system. This is in

turn reflected in the duties of the Secretary of State, the ORR and Network Rail; and the Order Scheme, in principle, is consistent with the fulfilment of these duties.

4 THE CHILTERN RAILWAYS FRANCHISE AGREEMENT AND THE REQUIREMENT TO DEVELOP A NEW RAIL LINK TO OXFORD

- 4.1 In this section I refer to Statement of Matters 1.
- 4.2 Chiltern Railways operates passenger services pursuant to a Passenger Licence granted by the ORR, dated 28th April 1995 **(CD/2.1)** and the Chiltern Railways' Franchise Agreement dated 1st March 2002 and made between the Secretary of State (originally the SRA), M40 Trains Limited (an intermediate holding company of Chiltern Railways) and Chiltern Railways under Section 23 of the 1993 Act **(CD/2.2)**. Under the terms of the Chiltern Franchise Agreement Chiltern Railways, as the Franchise Operator, has contracted to deliver specified passenger services and other outputs determined by the Secretary of State after taking into account both public service and wider strategic and policy criteria. Franchise Payments are payable under the terms of the Franchise Agreement and the amount payable is specified in the agreement.
- 4.3 The Chiltern Railways' Franchise Agreement is unique in that it gives the Franchise Operator a franchise term which is potentially longer than the usual term of 7 to 10 years found in other franchise agreements, in return for the Franchise Operator taking the risk on the delivery of investment projects. The key features of the Franchise Agreement are set out below.
- 4.4 A financial relationship is created between the Secretary of State and Chiltern Railways through the contract requirement for Franchise Payments to be paid under the terms of the agreement. Initially these were payments from the Secretary of State to Chiltern Railways; but the payments are now from Chiltern Railways to the Secretary of State. Chiltern Railways was able to commit to this Franchise Payment profile because it took risk to deliver growth in the business, in large part as the result of the delivery of various investment projects during the course of the franchise.
- 4.5 Under Clause 4 of the Chiltern Railways' Franchise Agreement, Chiltern Railways is required to deliver a specified railway passenger service meeting passenger carrying capacity requirements. Chiltern Railways is also required to deliver certain improvements to railway facilities through an Output Plan which is part of the Franchise Agreement.
- 4.6 The Franchise Agreement is capable of lasting for twenty years. At the commencement of the Franchise Agreement there was only a guaranteed minimum franchise term of ten years. Progress towards the twenty year franchise period was dependent upon Chiltern Railways contracting to deliver further investment projects. An initial investment project contracted for was the immediate delivery of "Project Evergreen 1 - the doubling of the previously single track railway section of the Chiltern Line between Bicester North and Aynho Junction (south of Kings Sutton, where the Chiltern and Oxford-Banbury lines join). These immediate investments were termed "primary aspirations".
- 4.7 Clause 14.1 and Schedule 14 of the Franchise Agreement set out a mechanism for the development of what are termed "Secondary Aspirations" ("secondary" in that their delivery follows in time after the "primary" aspirations noted above). These are a series of investment projects additional to those immediately committed to, but proposed by Chiltern Railways for further consideration by the DfT and potentially

agreed as part of an iterative process called a Passenger Service Output Update (PSOU). If the PSOU process leads to a Secondary Aspiration being agreed by the DfT as a formal investment project, the DfT will then confirm an extension of the guaranteed minimum franchise term.

- 4.8 In 2004 following a “Special Output Review” Chiltern Railways contracted to deliver Project Evergreen 2, an innovative privately-financed project to increase capacity on the Chiltern Main Line and to provide additional platforms at Marylebone station. The minimum franchise term was increased to 12 years in consequence of the delivery of the project.
- 4.9 A PSOU in November 2007 led to Chiltern Railways’ commitment to deliver a new station at Aylesbury Vale Parkway and, in consequence, the minimum franchise term was extended by a further six months.
- 4.10 Two of the key Franchise Agreement “Secondary Aspirations” described in Part 3 of Schedule 14 of the Franchise Agreement are:
- 2.3 “Project Evergreen Phase C” *which states “The Franchise Operator proposed to increase capacity and reduce journey times on the section of line between High Wycombe and South Ruislip.....” and*
 - 2.8 “Oxford Line” *which states: “The Franchise Operator proposes to open a new route to Oxford, either between Princes Risborough and Oxford via Wheatley, with new stations at M40 Junction and South Oxford or via a new south to east curve at Bicester, with stations at Bicester Village and Water Eaton Parkway. Once opened, the Franchise Operator proposes to operate Passenger Services between Oxford and London Marylebone. It is envisaged that these Passenger Services would be a mixture of new Passenger Services and an extension of existing Passenger Services. It is acknowledged that Project Evergreen Phase C² (or broadly equivalent works) will be required before the Oxford line can be completed.”*
- 4.11 Secondary Aspiration 2.3, modified slightly in scope, is under construction now, and has become known as Project Evergreen 3 Phase 1.
- 4.12 The Order Scheme, known to Chiltern Railways as Project Evergreen 3 Phase 2 essentially comprises Secondary Aspiration 2.8 “Oxford Line”, as subsequently agreed with the DfT (the station referred to as Bicester Village in the Franchise Agreement is that known as Bicester Town and is referred to as such in the TWA Order application).
- 4.13 These two Secondary Aspirations progressed through the development process, starting with an initial report to the DfT on a new route to Oxford in February 2003.
- 4.14 On 1 August 2008 Chiltern Railways submitted to the Secretary of State, as the first stage of the second PSOU process, proposals for the “Evergreen 3” project, comprising:
- infrastructure works necessary to enable a direct rail service from London Marylebone to Oxford, via Bicester Town and a new station at Water Eaton Parkway (i.e. fulfilling Secondary Aspiration 2.8);
 - line speed and capacity enhancements for the London Marylebone – Birmingham line (i.e. fulfilling Secondary Aspiration 2.3).
- 4.15 On 7th November 2008 the Secretary of State wrote to Chiltern Railways granting permission to develop these proposals further.

- 4.16 The PSOU process concluded on 6th January 2010 with Chiltern Railways contracting to deliver Evergreen 3 outputs including the Order Scheme through a Deed of Amendment to the Franchise Agreement (**CD/2.13**). Conditional upon the specified outputs being delivered, the franchise term was extended to its full duration, until 2021.
- 4.17 It follows that the principle of the Order Scheme, which has emerged through the franchise process, accords with the policy of the 1993 Act, as amended, to promote improvements to the performance of the railways and their development. In this context, Evergreen 3 is the latest of a number of rail investment projects which Chiltern Railways has contracted to deliver in accordance with the regulatory framework within which the company operates.
- 4.18 In this section I have set out evidence in relation to Statement of Matters 1. The Franchise Agreement with the Secretary of State provides an agreed mechanism by which Chiltern Railways may bring forward and deliver rail infrastructure projects and this mechanism has proved very successful in practice. My conclusion is that the Franchise Agreement requires Chiltern Railways to make proposals for a new rail route to Oxford; that the Order Scheme achieves that purpose; and these proposals have subsequently been agreed by the Secretary of State, subject to the granting of the necessary TWA Order.

5 THE EVERGREEN 3 PROJECT AGREEMENTS

- 5.1 In this section I refer to Statement of Matters 1 and 13.
- 5.2 The Order Scheme is being promoted by Chiltern Railways pursuant to:
- a Deed of Amendment to the Franchise Agreement made in respect of the Order Scheme works dated 6 January 2010 (**CD/2.13**);
 - a Track Access Agreement with Network Rail, dated 5 February 2004 (**CD/2.14**)
 - the 73rd Supplemental Track Access Agreement with Network Rail, dated 10 February 2010.
- 5.3 The Deed of Amendment (**CD/2.13**) requires Chiltern Railways to:
- submit a TWA Application in respect of the agreed “Oxford Robust Outputs” by 8 January 2010;
 - provide or procure the “*Oxford Robust Outputs*” (i.e. the works needed to deliver the Oxford-London Marylebone service);
 - provide or procure the “*Oxford Timetable Outputs*” (i.e. the agreed level of train services);
 - provide or procure the “*DfT Specified Freight Robust Outputs*” (i.e. the works in Wolvercot Tunnel).
 - The Likely Delivery Date for the last three of these Outputs is December 2012, with a Backstop Delivery Date of May 2014. Chiltern Railways must use reasonable endeavours to deliver the Outputs by the Likely Delivery Date and, in any event, do so by the Backstop Delivery Date.
- 5.4 On 8 January 2010, Chiltern Railways entered into an Asset Protection Agreement and Asset Purchase Agreement under which Chiltern Railways and Network Rail

agreed that the enhancements required to deliver the Evergreen 3 outputs would be carried out in accordance with the terms of the Asset Protection Agreement and Network Rail would purchase the completed works under the terms of the Asset Purchase Agreement. Chiltern Railways has also entered into an agreement with construction and engineering contractor BAM Nuttall to construct the Order Scheme works.

5.5 To deliver the enhanced passenger rail services that have been contracted through the 6 January 2010 Deed of Amendment, Chiltern Railways requires enhanced access rights to the network from Network Rail. These enhanced rights are conditional upon the Evergreen 3 works being completed. The 73rd Supplemental Track Access Agreement, dated 12 February 2010 sets out agreements in respect of the “Evergreen 3 Works”, of which EG3 Phase 1 is work on the Chiltern main line between London and Birmingham, and EG3 Phase 2 is:

- *“works to connect the Chiltern Main Line to the Bicester-Oxford route by the construction of a new junction at Bicester and upgrade works on the Bicester Town - Oxford route including the construction of a new station at Water Eaton Parkway (as such works may be amended during development and construction of such works), such works to be delivered under a construction contract procured by the Train Operator and transferred to Network Rail.”*

5.6 The Supplemental Track Access Agreement states that:

- *“The Train Operator shall use all reasonable endeavours to satisfy the EG3 Phase 1 Conditions Precedent and the EG3 Phase 2 Conditions Precedent as soon as reasonably possible.”*

5.7 The EG3 Phase 2 Conditions Precedent are:

- all the EG3 Phase 1 Conditions Precedent have been satisfied. (Note the main line works are scheduled to take place before those between Bicester and Oxford);
- Theoretical Proving has been carried out by the Train Operator and confirmed in writing as successful by Network Rail in relation to EG3 Phase 2;
- the EG3 Phase 2 Assets have been Taken Into Use;
- the EG3 Phase 2 Works have been Accepted;
- First Great Western Limited has voluntarily relinquished all of its rights to operate railway passenger services between Oxford and Bicester Town in respect of its track access contract with Network Rail.
- The acquisition of the completed works will be financed through the Network Rail Regulatory Asset Base (RAB). Additions to the RAB require ORR approval. This approval was given in a letter of 8th January 2010, which confirmed that the RAB project meets the ORR investment framework policy criteria.

5.8 On 26th March 2010 Chiltern Railways concluded an agreement with First Great Western (FGW) and the DfT to transfer FGW's existing Bicester Town –Oxford passenger service to Chiltern Railways as from May 2011. Chiltern Railways will take responsibility for delivering the Public Service Requirement on this route from the same date. Chiltern Railways also envisage concluding an agreement with Oxfordshire County Council to maintain the enhanced level of service specified in their agreement with FGW, until the Order Scheme works commence.

5.9 In this section I have set out evidence in relation to Statement of Matters 1 and 13. With respect to the former, my conclusion is that Chiltern Railways have the necessary agreements in place with the DfT, Network Rail, and the ORR to deliver a new rail route to Oxford; that these specifically require construction of the Order Scheme (subject to TWA authority); and that they, in turn, reflect national rail policy concerning the need to promote the use and development of the network, as noted in section 3 above. With regard also to that policy, Chiltern Railways has agreements in place with the main contractor, thus giving certainty to project costs and delivery.

6 THE EVERGREEN 3 COMMERCIAL CASE

6.1 In this section I refer to Statement of Matter 13

6.2 The Order Scheme is to be funded on a fully-commercial basis, with all financial, commercial and performance risk taken by Chiltern Railways. As shown in **Table 1** below, Chiltern Railways’ revenues and committed DfT payments will be sufficient to pay for the Phase 1 and Phase 2A works.

Table 1: Chiltern Railways Commercial Business Case

	Total 2010-2021 £m
Farebox income	157.3
Network Rail facility charge	- 116.5
Incremental maintenance & renewals costs	- 26.3
Incremental train operating costs	-7.6
Station operations, marketing, staffing costs	-5.5
3 rd party agreements	-18.1
DfT payment for Phase 2A works	18.0
Total cash flow	1.1

6.3 This business case was approved by the Board of DB Regio UK Ltd, (Chiltern Railways’ parent company) on 18 December 2009 and was audited and agreed by the DfT prior to the 6th January 2010 agreement.

6.4 As noted in Leo Eyles’ evidence (**CRCL/P/5/A**), the Order Scheme also has a positive economic case, with a high Benefit:Cost ratio (BCR) demonstrating substantial societal benefits. As the Order Scheme is not dependent on public sector support, it will provide public benefits at private risk.

6.5 Phase 2B of the Order Scheme will only proceed when the East West Rail (EWR) project is authorised. As explained in Patrick O’Sullivan’s evidence (**CRCL/P/4/A**), the East West Rail Consortium (EWRC) has undertaken a number of engineering and business studies of the “Western Section” of the route (Oxford/Aylesbury to Milton Keynes). Engineering design has been completed to Network Rail GRIP 4 level, and in July 2010, the GRIP 4 Outline Business Case OBC was published.**(CD/2.19)** This demonstrated that there is an exceptionally strong economic case for the western section with a forecast BCR of up to 6.3 for the Preferred Option. This is exceptional for a public transport scheme, and above the historic DfT approval threshold of 2.0.

6.6 In this section I have set out evidence in relation to Statement of Matters 13. My conclusion is that the Chiltern Railways scheme (Phase 1) is viable in commercial and economic terms, is fully funded and has contracts for its construction in place. The Phase 2A works are also fully funded and contracted. There is, thus, certainty that these works will be delivered if the TWA Order and other consents are granted. I also conclude that the business case for the EWR project is likewise high, and there is thus a reasonable likelihood of the Phase 2B works being delivered as part of that project.

7 THE EVERGREEN 3 FUNDING ARRANGEMENTS

7.1 In this section I refer to Matter 13.

7.2 The Order Scheme works will be split into 3 phases:

Table 2: Key Deliverables, by Phase

Bicester-Oxford: Key Deliverables	
Phase 1	New Bicester Chord line; track doubling Gavray Road Junction - Langford Junction, and Islip Junction – Peartree Junction; new line Woodstock Road Junction-Oxford station; rebuilding Bicester Town, Islip and Oxford stations; new station at Water Eaton Parkway; resignalling throughout; closing and replacing level crossings; mitigation works.
Phase 2A	W12+ clearance, in Wolvercot Tunnel, and elsewhere.
Phase 2B	Double track Langford Junction-Islip junction and Peartree Junction-Woodstock Road junction; second platform at Islip station; new MoD connection and widening of A41 bridge for 3 tracks; mitigation works.

7.3 Phase 1 will be financed as a private commercial venture, with capital costs funded out of farebox earnings. This method of funding is similar in principle to that adopted for Chiltern Railways’ earlier Evergreen 2 project which had a capital cost of around £80m and likewise entailed upgrading and adding to Network Rail assets. The funding structure for Phase 1 is as follows:

- Chiltern Railways is funding the outline design and development work, and takes the specification risk.
- Chiltern Railways will make payments against defined project deliverables to the chosen contractor (BAM Nuttall) and will take the resultant cost and delivery risks.
- Chiltern Railways receives monies to pay the contractor from Network Rail, when agreed milestones are reached at a pre-agreed sum. The completed works will form part of Network’s Rail’s Regulatory Asset Base (RAB). Chiltern Railways will then pay Network Rail for the capital costs of the scheme, by means of a facility charge over the 30 year financing life of the project. This will in turn be funded by the passenger revenues earned, at a rate agreed with the ORR. The DfT in January 2010 gave assurances to Network Rail that, after 2021, the successors to Chiltern Railways will continue to pay this charge until the expiry at the end of the 30 year period. As Chiltern and its successors take the full revenue risk of the Order scheme, Chiltern has in effect a “mortgage” with Network Rail.

- Any freight operators or other non-competing users of the line, such as traffic associated with the East West Rail project, will pay track access charges to Network Rail as laid down by the ORR. Chiltern Railways will not receive any financial benefit from such third party charges.
 - Chiltern Railways is a private-sector company, as is Network Rail (at the time of writing). The Phase 1 works do not require any public subsidy, and do not add to the national debt.
- 7.4 The ORR notified its approval of these arrangements, and the inclusion of the Order Scheme works in Network Rail's Regulated Asset Base (the figure on which Network Rail's allowable rate of return is calculated) in 2009.
- 7.5 As noted above, in January 2010 Chiltern Railways signed agreements on the above arrangements with the Department for Transport, Network Rail and BAM Nuttall (subject to the Secretary of State granting the TWA Order), together with a Deed of Amendment to the Chiltern Railways Franchise Agreement **(CD/2.13)**.
- 7.6 The January 2010 agreements also cover the Phase 2A works for gauge enhancement at Wolvercot Tunnel and elsewhere, as noted in Section 9 below.
- 7.7 The carrying-out of the Phase 2B works is dependent on the EWR project being authorised. Work is now proceeding on the EWR funding model, and on a detailed Business Case. It is expected that this will be formally submitted to the DfT in the autumn of 2010, funding sought in 2011 and DfT Rail High Level Output Statement [HLOS] identification secured in 2012. Conditional Funding approval is anticipated for 2013, followed by Invitations to Tender being issued and Full Approval secured in 2014 (ie the start of Network Rail CP5). This would enable construction to start in 2015, and services to commence in 2017. The EWR project is described in more detail in Neil Gibson's evidence **(CRCL/P/3/A)** and Patrick O'Sullivan's evidence **(CRCL/P/4/A)** on behalf of the EWRC.
- 7.8 In this section I have set out evidence in relation to Statement of Matters 13. My conclusions are that the Chiltern Railways works (Order Scheme Phase 1) provide public benefits at private expense; that they are fully-funded, with all monies approved and allocated; that they do not make a call on the public purse, and will not be affected by the Government's public spending review. I also conclude that the Phase 2A works are also fully funded (see below), and that there is a reasonable prospect of the Phase 2B works being funded as part of the EWR project.

8 THE WOLVERCOT TUNNEL AND W12+ GAUGE ENHANCEMENT AGREEMENTS

- 8.1 In this section I refer to Statement of Matters 1 and 13.
- 8.2 The railway through Wolvercot tunnel was built as double track, but was reduced to single track in 1973.
- 8.3 Chiltern Railways' proposed train services will not need double track on this section. As Chiltern Railways only operate passenger trains, they do not require loading gauge enhancements along the Bicester-Oxford line.
- 8.4 In September 2009 the DfT published its report on a "Strategic Rail Freight Network" (SRFN). This identified those rail freight routes that are most important to the national economy, including the rail corridors leading from the major ports. A programme to deliver an increased loading gauge along these corridors is now under way, to allow carriage of international shipping containers on ordinary railway wagons. This work is

specified and funded by the DfT and Network Rail, with contributions from Regional Development Agencies and port operators. Work on the Southampton-Oxford-Midlands route is currently in hand, and will be completed by spring 2011.

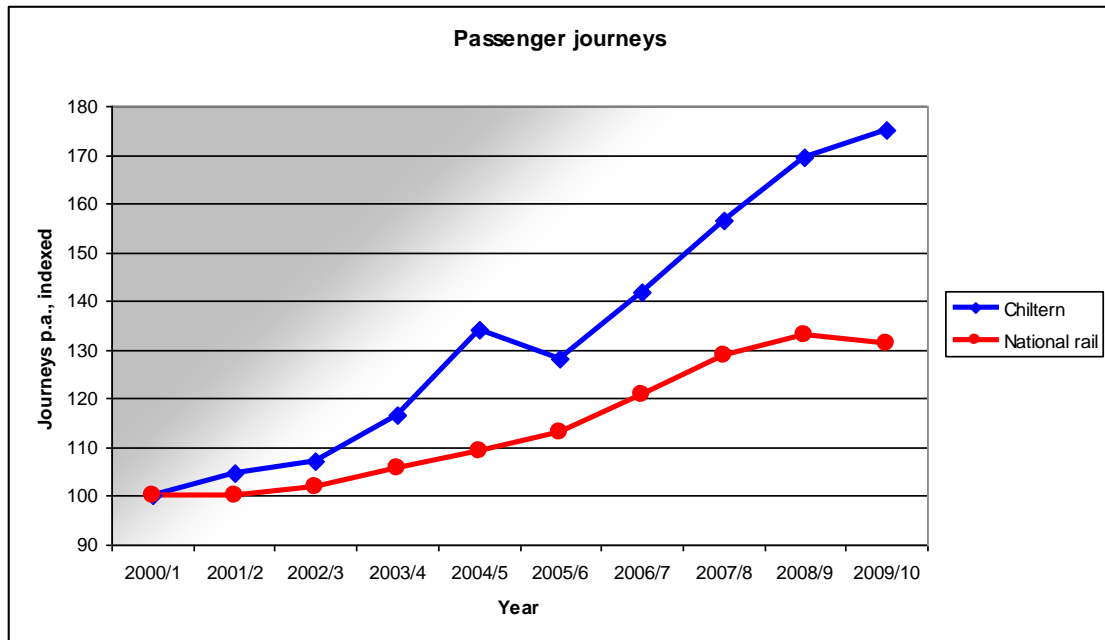
- 8.5 The SRFN includes the potential EWR route from Oxford via Bicester to Bletchley and Bedford; should the EWR project proceed, it is possible that freight trains carrying international shipping containers will operate over the Bicester-Oxford line. This will require clearances for W12+ gauge (i.e. allowing 9'6" high containers and future electrification), and thus require gauge enhancement work in Wolvercot tunnel and elsewhere.
- 8.6 Further details of the rationale for loading gauge enhancement and the SRFN are given in Allan Dare's evidence (**CRCL/P/2/A**).
- 8.7 Studies for the DfT indicated that it would be more economical and less disruptive to carry out this work at the same time as the Chiltern Railways Order Scheme. The DfT thus proposed to Chiltern Railways that the work be carried out as part of the Evergreen 3 project, and funded by a direct financial contribution from the Department. This would give a considerable saving to the public purse compared with doing the work at a later date. As with the other Phases, Chiltern will bear the delivery and cost risk, for work which fulfils a public need.
- 8.8 The gauge enhancement work thus forms Phase 2A of the Order Scheme. The 6 January 2010 Deed of Amendment to the Franchise Agreement includes:
- A requirement for Chiltern Railways to deliver the Phase 2A works
 - A contractually committed payment from the DfT to Chiltern Railways, subject only to the granting of the TWA Order,
- 8.9 Provision for the Phase 2A works is also made with the Construction Contract with BAM Nuttall.
- 8.10 In this section I have set out evidence in relation to Statement of Matters 1 and 13. With respect to the former, my conclusion is that the Phase 2A works at Wolvercot tunnel and elsewhere meet national policy objectives for the development of a SRFN. I also conclude that the Phase 2A works are fully funded, with all monies allocated; and that the construction of and payment for the scheme are fully contracted and are thus not affected by the Government's public spending review.

9 **CHILTERN RAILWAYS' TRACK RECORD**

- 9.1 In this section I refer to Statement of Matters 1 and 13.
- 9.2 Chiltern Railways began operating in 1996, as a result of a management buy-out for the Chiltern Railways franchise. Chiltern Railways renewed its franchise in 2002, with potential duration until 2021. Chiltern Railways is now owned by DB Regio UK Limited, which is a subsidiary of Deutsche Bahn, Germany's national railway company. The senior management team, however, remains UK-based and the strategy of investing to grow the business continues to be pursued.
- 9.3 Chiltern Railways now operates passenger train services from London Marylebone via Amersham to Aylesbury and Aylesbury Vale Parkway; via High Wycombe to Banbury, Leamington Spa, Birmingham Moor Street and Kidderminster; from Leamington Spa to Stratford upon Avon; and from Princes Risborough to Aylesbury.

9.4 Chiltern Railways has consistently been a rail industry leader for punctuality and service quality, and has delivered rail traffic growth which far outstrips the national average.

Figure 1: Chiltern Railways passenger traffic growth



Source: LENNON. ORR “National Rail Trends”

Note that the Chiltern dip in 2005/6 was due to the effects of the Gerrards Cross “Tesco tunnel” incident, which closed the main line for seven weeks

9.5 The increase in rail traffic growth on the Chiltern Railways’ network has been driven by, and is a result of, the company’s investments. Since 1997 a number of infrastructure investments projects have been undertaken, to a value of circa £400m. These include:

- reinstating double track between Princes Risborough and Aynho Junction (the Bicester North - Aynho Junction component of which formed “Project Evergreen 1”);
- line capacity enhancements between London and Princes Risborough, and additional platforms at London Marylebone station (“Project Evergreen 2”);
- reinstating the grade 2-listed buildings at Birmingham Moor Street station (further work to reinstate the terminal platforms is now in hand);
- new train servicing depots at Wembley and Stourbridge Junction;
- new stations at Warwick Parkway and Aylesbury Vale Parkway.

9.6 Some of these works have developed on a simple commercial basis, and remain in Chiltern Railways’ ownership. Others were developed on a Design-Finance-Build-Transfer basis, and are now owned by Network Rail. In all cases Chiltern Railways (or its holding company) has taken the project design, programme, cost and revenue risks.

- 9.7 In every case the projects have been specified and undertaken by Chiltern Railways, using in-house project management expertise, and have been delivered on-time and on-budget.
- 9.8 In this section I have set out evidence in relation to Statement of Matters 1 and 13. My conclusion is that Chiltern Railways has a track record in delivering a high rate of rail traffic growth, and is thus eminently capable of meeting the Order Scheme's objectives; and likewise has a successful track record in specifying, funding and delivering major rail projects.

10 OVERALL SUMMARY AND CONCLUSIONS

10.1 My overall conclusions are that the Order Scheme:

- Fulfils national rail policy objectives;
- Meets the requirements of the Chiltern Railways Franchise Agreement
- Meets the specific requirement, as set out in the Franchise Agreement and the Deed of Amendment, to develop and deliver a new rail route to Oxford;
- Is fully funded, and therefore sure to proceed if an Order is granted;
- Has all the necessary railway industry and regulatory approvals in place;
- Has the construction contract in place, with provision for any changes which might be required by the TWA Order;
- Future-proofs the overall works, and incorporates specific railway infrastructure works required by other public rail schemes, thus avoiding multiple disruption and reducing future costs.
- Provides public benefits at private risk.

GLOSSARY

DfT	Department for Transport
EWR	EWR: the proposed Oxford-Milton Keynes – East Anglia rail link Evergreen 1,2,3 A series of infrastructure investment policies developed and delivered by Chiltern Railways
East-West Rail Consortium:	Group of local authorities promoting EWR
FGW	First Great Western Ltd. – current franchisee for the Bicester-Oxford service, and for Oxford station
GRIP	Guide to Railway Investment Projects: Network Rail process for developing investment schemes, from Output Definition (1) to Project Close Out (8). GRIP 4 is Single Option Selection
HLOS	High Level Output Statement. Identification of future railway outputs and projects that may call on public funds
LENNON	Localised Earnings Nationally Networked Overnight: National rail industry ticket sales database
Loading gauge	The clearance gauge for structures alongside or above the tracks
M40 Trains Ltd.	The holding company for The Chiltern Railway Co. Ltd., which is in turn owned by DB Regio UK Ltd.
OPRAF	Office of Passenger Rail Franchising: government body responsible for letting rail franchises; subsequently subsumed into the SRA, and then DfT
Order Scheme	The works as set out in the TWA application
ORR	Office of Rail Regulation: the rail industry’s economic and safety regulator
PSOU	Passenger Service Output Update: iterative process whereby Chiltern Railways and the DfT take forward the “Secondary Aspirations” for the Chiltern franchise
RAB	Regulated Asset Base: the overall asset value against which Network Rail is allowed to earn a rate of return
Secondary Aspiration	Investment proposal in the Chiltern Railways franchise agreement, which is to be developed and delivered after the committed investments are delivered.
SFN	Strategic Freight Network
SRA	Strategic Rail Authority; government body responsible for developing rail policy and letting franchises; subsequently subsumed into the DfT
TWA	Transport & Works Act 1992
TWAO	Transport & Works Act Order
W12+	Loading gauge with clearances for 9’6” high containers and European-width swap-bodies on conventional-height wagons; the “+” signifies clearance for overhead electrification at 25kV ac as well