

OBJECTOR'S STATEMENT OF CASE

OBJECTION BY MCKAYS SECURITIES PLC

PROPOSED CRCL (BICESTER TO OXFORD IMPROVEMENTS) ORDER

APPLICATION TO THE SECRETARY OF STATE UNDER SECTION 6 OF THE TRANSPORT AND WORKS ACT 1992 FOR AN ORDER UNDER SECTION 1 OF THAT ACT

APPLICATION TO ACQUIRE LAND OR RIGHTS IN LAND COMPULSORILY, TO USE LAND, FOR POWERS TO CARRY OUT PROTECTIVE WORKS TO BUILDINGS, TO EXTINGUISH RIGHTS OVER LAND AND TO IMPOSE RESTRICTIVE COVENANTS

LAND IN THE DISTRICT OF CHERWELL AND THE CITY OF OXFORD AND ASSOCIATED WORKS BETWEEN BICESTER AND OXFORD TOGETHER WITH THE CONSTRUCTION OR RECONSTRUCTION OF STATIONS AT BICESTER TOWN, ISLIP, WATER EATON AND OXFORD

OBJECTION NUMBER [●]

12 APRIL 2010

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1 INTRODUCTION

- 1.1 This Statement of Case is submitted by Shoosmiths on behalf of the objectors, McKay Securities Plc (the "**Objector**")
- 1.2 It is made in support of the objection made by the Objector against the application by Chiltern Railway Company Limited (CRCL) to the Secretary of State for Transport under section 6 of the Transport and Works Act 1992, for an Order authorising works in the district of Cherwell and the city of Oxford (the "TWA Order") to construct a new railway (including the reconstruction of existing railway) and associated works between Bicester and Oxford together with the construction or reconstruction of stations at Bicester Town, Islip, Water Eaton and Oxford.

2 OBJECTOR'S INTEREST IN PROPERTY AFFECTED BY THE TWA ORDER

- 2.1 The Objector is the freehold owner and landlord of the property known as McKay Trading Estate, Bicester, Oxfordshire (the "**Property**"). Part of the Property is included in the TWA Order as:

Plot 04010 – 3354.75 sq m Hardstanding, private road and car park, trees, shrubbery, thickets, land, Mckay Trading Estate, Bicester, Oxfordshire;

Plot 04020 – 287.23 sq m Manufactory (unit 8) Mckay Trading Estate, Bicester, Oxfordshire;

Plot 04021 – 337.60 sq m Manufactory (unit 9) Mckay Trading Estate, Bicester, Oxfordshire;

Plot 04022 – 338.57sm Manufactory (unit 10) Mckay Trading Estate, Bicester, Oxfordshire;

Plot 04023 – 344.50 sq m Manufactory (unit 11) Mckay Trading Estate, Bicester, Oxfordshire;

Plot 02424 – 308.37 sq m Manufactory (unit 12) Mckay Trading Estate, Bicester, Oxfordshire;

3 GROUNDS OF OBJECTION

- 3.1.1 The Objector will bring evidence to support its grounds of objection raised in its letter of objection dated 12 February 2010 attached.

4 CONSULTATION WITH THE OBJECTOR

- 4.1 The Objector is surprised and disappointed by the lack of communication received from CRCL or its agents. The only communication that has been received ahead of receipt of the TWA Order, was a requisition for information from CRCL' referencing agents. As far as the Objector is aware there has been no public consultation over the proposal to construct a two storey car park adjacent to the Station on the Objector's Land. All proposals that were subject to public consultation proposed the car park to the South of the railway line.

- 4.2 The lack of public consultation does not accord with the spirit of the guidance for promotion of a TWA Order and when coupled with the lack of detailed information provided in the supporting documentation to the TWA Order has required much more input from external consultants and therefore additional costs to the Objector.
- 4.3 The lack of information and certainty has already had a significant impact on the value of the Objector's land holdings and will have a continuing effect until the TWA Order is confirmed and the land vested in the promoting party. The McKay Trading Estate is seriously blighted, with existing tenants looking to relocate and new tenants not being able to be given any certainty over access or parking arrangements due to the Objector having no certainty on the proposed arrangements.
- 4.4 The Objector requires certainty in relation to the proposals to understand the impact on its current operation and tenants and to ensure it has control over its land holdings to protect its ability to redevelop the property in the future in accordance with planning policy for the area, without additional cost or impact due to the inadequate access arrangements.
- 4.5 The Objector requires a response to its request for information in relation to the proposal and requires physical certainty at the outset rather than being forced to rely on the Compensation Code.

5 CONCLUSION

The Objector considers insufficient justification has been provided to justify the acquisition of the Objector's land interests and insufficient information has been provided to enable the Objector to understand the impact of the proposals on the operation of the Retained Land.

The Objector requests that the Secretary of State refuse to confirm the TWA Order until such time as the Objector's concerns have been fully addressed and satisfactorily resolved.

6 DOCUMENTS TO BE REFERRED TO IN EVIDENCE

Design and Access Statement prepared by ERM and dated 15 December 2009

Non Statutory Cherwell Local Plan dated 2011

The Environmental Impact Assessment

Chiltern Railway's Funding Statement dated 6 January 2010

Chiltern District Adopted Local Plan dated 1997 including Adopted Alterations 2001

The Secretary of State for Transport
 c/o Transport and Works Act Orders Unit
 Department for Transport
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Our Ref KJH/ch 169102.52
 Date 12 February 2010

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Dear Sir

**THE TRANSPORT AND WORKS ACT 1992
 PROPOSED CHILTERN RAILWAYS (BICESTER TO OXFORD IMPROVEMENTS) ORDER (the
 "TWA Order")
 OBJECTION MADE ON BEHALF OF MCKAY SECURITIES PLC (the "Objector")**

We are instructed by the Objector, whose registered office is at 20 Greyfriars Road, Reading, RG1 1NL, to act on its behalf in submitting an objection to the TWA Order.

Objector's interest in property affected by the TWA Order

The Objector is the freehold owner and landlord of the property known as McKay Trading Estate, Bicester, Oxfordshire. Part of the property is included in the TWA Order as:

- Plot 04010 – 3354.75 sq m Hardstanding, private road and car park, trees, shrubbery, thickets, land, Mckay Trading Estate, Bicester, Oxfordshire;
- Plot 04020 – 287.23 sq m Manufactory (unit 8) Mckay Trading Estate, Bicester, Oxfordshire;
- Plot 04021 – 337.60 sq m Manufactory (unit 9) Mckay Trading Estate, Bicester, Oxfordshire;
- Plot 04022 – 338.57sm Manufactory (unit 10) Mckay Trading Estate, Bicester, Oxfordshire;
- Plot 04023 – 344.50 sq m Manufactory (unit 11) Mckay Trading Estate, Bicester, Oxfordshire;
- Plot 02424 – 308.37 sq m Manufactory (unit 12) Mckay Trading Estate, Bicester, Oxfordshire;

Accordingly, the Objector is a statutory Objector.

The Objector does not consider that sufficient justification has been provided for the acquisition of its land by the use of compulsory purchase powers. In addition, the Objector is uncertain as to how the implementation of the proposals will affect its use and enjoyment of all that land shown edged red on the attached plan, including units numbered 1-7 of McKay Trading Estate (the "Retained Land"). It therefore objects to the TWA Order.



Grounds of objection

The Objector objects to the TWA Order being made by the Secretary of State on the following grounds:

1 INSUFFICIENT JUSTIFICATION FOR THE ACQUISITION OF LAND

- 1.1 The Objector contends that insufficient justification has been provided to justify the acquisition of the Objector's plots by way of compulsory acquisition.
- 1.2 The Design and Access Statement prepared by ERM and dated 15 December 2009 ("the Design and Access Statement") which is submitted in support of the TWA Order states at paragraph 3.2.14 "land adjacent to the station building is to be acquired to allow Station Approach to be rationalised and improved and dedicated station parking to be provided. The station development will require the demolition of seven industrial buildings including.....units 8 to 12 of the McKay Trading Estate". The statement continues at 3.2.15 "the London Road /Station Approach junction is to be improved and will make the station a more visible gateway to Bicester".
- 1.3 The Objector contends that there are other parcels of land which could be acquired to meet the requirements of paragraph 3.2.14 of the design and access statement and provide a better design solution to address the statement in paragraph 3.2.15, without the need to acquire the Objectors plots and which could minimise land take from private land owners. The TWA Order and supporting documentation does not justify the need for a standalone two deck car park on the Objectors land. Alternative solutions to the design and access arrangement for the station have not been thoroughly considered to minimise land take and provide a more dynamic parking arrangement.
- 1.4 The Objector is of the opinion that other parcels of land would be not less than accessible for the provision of a station car park and would provide a more cogent and workable planning solution and access arrangement for the station for both pedestrians and vehicles. The acquisition of parcels of land adjacent to London Road would provide a more accessible entrance to the station from London Road, remove the need to acquire the Objector's plots and would reduce the adverse impact on the Objectors Retained Land.
- 1.5 The Objector contends that the proposal is contrary to the Local Planning Authority's policy for redevelopment on the Land adjacent to Bicester Town Railway Station. The proposal will undermine the existing policy and the emerging policy in the LDF. Policy S17 of the Non Statutory Cherwell Local Plan 2011 identifies the land adjacent to the Station for mixed use development. The Objector acknowledges that this includes railway related uses but the policy clearly states that "piecemeal proposals that would prejudice the implementation of an overall strategy for this area will not be permitted". The Objector contends that the proposal is a piecemeal proposal which will prejudice the future development of the area as it does not seek to unlock the area or open up the access arrangements or provide a gateway into this part of Bicester as required by the planning policy.
- 1.6 The Objector contends that should the proposal be constructed with its current design the effect would be that the area would remain "under used" and it would "not constitute an effective use of a prominent site", neither would it allow for future development to make effective use of this prominent site which is identified as a reason for allocating this area for redevelopment in paragraph 5.87.1 in the supporting text to policy S17.
- 1.7 Whilst the emerging policy in the LDF is not as detailed as the Non Statutory Cherwell Local Plan 2011 it is clear from the public consultation undertaken by the Local Planning Authority from 2007 to date that it intends for the land adjacent to Bicester Town Station to remain allocated as a mixed use residential and employment site. Therefore, the Objector contends that Chiltern Railways should be required to thoroughly consider the impact its proposal will have on the long term objective to redevelop this area.

2 INTERFERENCE WITH USE AND ENJOYMENT OF RETAINED LAND

- 2.1 It is unclear to the Objector having reviewed the supporting documentation submitted with the TWA Order, how the access arrangements to the Objector's Retained Land will operate during the construction of the Proposals and following completion of the works.
- 2.2 The Objector objects to the proposals as inadequate access has been provided for the Retained Land. For example drawing No. AL002.1 appended to the Design and Access Statement does not include any access arrangements for Unit 1 of the McKay Trading Estate, no access to the parking and access at the Rear of Unit 2 and extremely limited access to the front of Unit 2. The proposed arrangements shown on drawing No. AL002.1 would sterilise Units 1 and 2. The Objector objects to the proposal unless or until Chiltern Railways provide access which is equivalent to the current access arrangements enjoyed by all the Units on the Retained Land.
- 2.3 In addition to the obvious and immediate concerns arising from the drawings, the Objector has instructed highways engineers to review the documentation and ensure safe operation of the access and egress from the Retained Land to the public highway, and the operation of the accesses into the Industrial Units with appropriate size vehicles, both during construction and following completion of the works.
- 2.4 The Objector objects to the proposal unless and until a binding arrangement is entered into providing the Objector with assurance that it will have equivalent rights of access for its Retained Land as it currently enjoys for the McKay Trading Estate. The Objector currently has unlimited access direct to the public highway for any use or purpose carried out on the McKay Trading Estate. If that part of the road edged and hatched green on the plan (the "McKay Estate Road") is to be a private road the Objector requires the McKay Estate Road to be constructed to adoptable standards and to benefit from easements which grant full and unfettered rights of access and services to be provided for whatever use the Objector achieves planning consent for in the future. The Objector requires Chiltern Railways or the party who will be the owner of the McKay Estate Road to enter into a legal agreement confirming that the Objector or its successors in title to the Retained Land shall not be required to pay any maintenance for the McKay Estate Road nor shall it be required to seek the consent of the owner of the McKay Estate Road should the Objector or its successors in title propose to redevelop the Retained Land. Without these specific provisions the Objector objects to the proposed TWA Order.
- 2.5 The Objector objects to the proposed TWA Order as insufficient information has been provided in the documentation to ascertain whether the London Road/Station Approach junction will be able to operate safely for the number and types of vehicles proposed. The documentation is contradictory as it states at paragraph 4.4.8 of the Design and Access Statement that the junction will operate as a mini roundabout. The remainder of the documentation refers to the revised London Road/Station Approach junction as a priority junction with right turn lane. The Objector requests further information from Chiltern Railways to clarify the proposal so that it can fully assess the impact of the proposal on the use and enjoyment of its Retained Land.
- 2.6 Insufficient detail has been provided in the documentation to demonstrate if the realignment of Station Approach, McKay Estate Road and the revised Station Approach/London Road junction is feasible or can operate without adverse impact to users accessing the Retained Land. The limited information provided in the documentation shows a sub-standard right turn lane. The Objector requests sight of an appropriate independent Stage 1 Road Safety Audit of the proposed junction improvements along with the associated Designers Response. The Objector objects to the proposal until Chiltern Railways provides sufficient information to confirm the safety of the proposed London Road/Station Approach junction and the ability for HGV traffic to access the Retained Land.

- 2.7 The Objector is concerned about the safe operation of Station Approach and the McKay Estate Road given the potential future use by buses, cars and HGVs. The documentation to support the proposed access into the Retained Land requires more detail. The Objector contends that HGVs will have to cross onto the opposite side of the carriageway on the McKay Estate Road to egress from the Retained Land. It is proposed that, as the Retained Land will remain an Industrial Estate, there will be HGV traffic attending on a regular basis, making the operation of the revised alignment of Station Approach and the McKay Estate Road unsafe. Therefore the Objector objects to the proposal as it affects the safe operation of its Retained Land.
- 2.8 The Objector is concerned that Chiltern Railways have under-estimated the level of traffic which will be passing through the London Road/Station Approach junction which will have an adverse effect on the Retained Land. The Objector requests that Chiltern Railways provides further data in relation to the use and operation of the Station Approach junction.
- 2.9 Section 10, Schedule 5 of the Order requests power to temporarily close Station Approach. The Objector cannot find any further reference or programme revealing the nature or extent of the Stopping Up Order. The Objector objects to the temporary closure of Station Approach until Chiltern Railways provides sufficient information to confirm that the temporary closure of Station Approach will not adversely affect the operation of the Retained Land.
- 2.10 The Objector contends the proposal will result in additional closures of the London Road level crossing which will have an adverse impact on the access arrangements for its Retained Land, which will continue as McKay Trading Estate. The modelling for the proposal assumes the closure of the London Road level crossing 4 times per hour. The Environmental Impact Assessment supporting the proposal identifies that up to 10 trains per hour will pass through the station when the East West Route comes forward. The Objector contends that the modelling seriously underestimates the frequency of queuing occurring at the level crossing. It is likely that Station Approach would be blocked at most times when the level crossing closes, and may struggle to clear again at peak times before the next closure. The Objector objects as insufficient information has been provided to analyse the impact of the additional closures of the level crossing. The Objector requires Chiltern Railways to provide a detailed daily study to be produced to enable analysis of the impact of the proposal on the level crossing and the resulting impact on the access to the Retained Land via Station Approach. The Objector requires Chiltern Railways to find a design solution to overcome the need for a level crossing at London Road. The Objector objects to the proposal unless and until Chiltern Railways satisfies it that there will be no adverse impact on the access to the Retained Land as a result of the additional closures of the London Road level crossing.
- 2.11 The Environmental Impact Assessment and other supporting information do not set out the implications of the development on Station Approach or the McKay Estate Road. The Objector requests that Chiltern Railways provides the visibility/geometry and swept path analysis to ensure the safe operation of all access arrangements and that Chiltern Railways makes the S-Paramics model it has relied upon for its analysis available for the Objector to review to ensure the access arrangements into the Retained Land by HGV traffic is safe and not adversely affected by the proposals.
- 2.12 The Objector is concerned that no evidence has been provided to demonstrate that the service area to be provided to serve the Retained Land is sufficient in size to cater for the likely service vehicles. Inadequate manoeuvring and servicing space will prejudice the viability of the Retained Land. The Objector objects to the proposal until it is satisfied, and detailed evidence has been provided, confirming that the appropriate servicing arrangements are to be provided.

3 FAILURE TO DEMONSTRATE FINANCIAL VIABILITY OF THE PROPOSALS

- 3.1 The Objector is aware that Rule 10 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (SI 2006/1466) (the "TWA Rules") prescribes the documents which must be submitted to the Secretary of State in connection with an application for a Transport and Works Act order. Whilst an estimate as to the cost of the works has been provided in accordance with Schedule 3 to the Rules there is scope for uncertainty as to the viability of the project, particularly given the current economic climate.
- 3.2 Chiltern Railway's 'Funding Statement – 6 January 2010' (submitted with the TWA Order to the Secretary of State) states the Proposals will be brought forward in two phases. The Objector's land holdings are affected by Phase 1. Section 1 c sets out how Chiltern Railways proposes to fund Phase 1 of the Proposals. It confirms that the Department of Transport issued its preliminary confirmation for Chiltern Railways to proceed in this manner in August 2009. However, there is no confirmation that Network Rail has the funds available or committed to the Proposals to forward fund the Proposals as set out in 1 c. The Objector contends that the lack of a statement from Network Rail confirming the funding arrangements leads to uncertainty as to the viability of the scheme.
- 3.3 Any uncertainty as to the adequacy and availability of funding for the project is fuelled further by the statement that Chiltern Railways expects to reach Financial Close with the Department for Transport shortly. The Objector questions the viability of the funding arrangements, given that funding for Phase 1 of the project does not appear to have been identified or committed by the Department for Transport. The Objector seeks evidence that there are sufficient resources to ensure that there is no impediment to the implementation of the works pursuant to the TWA Order.

4 CONSULTATION WITH THE OBJECTOR

- 4.1 The Objector is surprised and disappointed by the lack of communication received from Chiltern Railways or its agents. The only communication that has been received ahead of receipt of the TWA Order was a requisition for information from Chiltern Railways' referencing agents. As far as the Objector is aware there has been no public consultation over the proposal to construct a two storey car park adjacent to the Station on the Objector's Land. All proposals that were subject to public consultation proposed the car park to the South of the railway line.
- 4.2 The lack of public consultation does not accord with the spirit of the guidance for promotion of a TWA Order and when coupled with the lack of detailed information provided in the supporting documentation to the TWA Order has required much more input from external consultants and therefore additional costs to the Objector.
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4.5 The Objector requires a response to its request for information in relation to the proposal and requires physical certainty at the outset rather than being forced to rely on the Compensation Code.

5 CONCLUSION

- 5.1 The Objector considers insufficient justification has been provided to justify the acquisition of the Objector's land interests and insufficient information has been provided to enable the Objector to understand the impact of the proposals on the operation of the Retained Land.
- 5.2 The Objector requests that the Secretary of State refuse to confirm the TWA Order until such time as the concerns set out in this letter of objection have been fully addressed and satisfactorily resolved.

The Objector reserves its right to expand upon these grounds of objection in its Statement of Case to the public inquiry. The Objector also reserves the right to add to these grounds of objection should any further matters (of which it is currently unaware) come to light.

Postal address for correspondence

With reference to the Department for Transport's requirement that a postal address for correspondence be supplied by Objectors to the TWA Order, we should be grateful if all correspondence relating to this objection may be sent to Shoosmiths at Russell House 1550 Parkway Whiteley Hampshire PO15 7AG (reference KJH/CH -169102.52).

Please acknowledge safe receipt of this letter and please confirm that the Objector, McKay Securities PLC, has been duly noted as a statutory Objector to the TWA Order.

We look forward to hearing from you.

Yours faithfully

Shoosmiths