

025/246

Angela Foster

From: Charlotte Frizzell [Charlotte.Frizzell@naturalengland.org.uk]
Sent: 06 August 2010 11:39
To: TRANSPORTANDWORKSACT
Subject: Attn Angela Foster; Natural England Statement of Case for Proposed Chiltern Railway (Bicester to Oxford Improvements) Order
Attachments: WHITED119788-010009, Chiltern Railway Statement of Case, SEG.56.03, CF.pdf

Dear Angela Foster,

Please find attached the Natural England Statement of Case for the Proposed Chiltern Railway (Bicester to Oxford Improvements) Order:

<<WHITED119788-010009, Chiltern Railway Statement of Case, SEG.56.03, CF.pdf>>

Kind Regards

Mrs Charlotte Frizzell

Lead Environmental Planning Officer

Western Area Government Team, London and South East Region

Natural England

11 Fenlock Court, Blenheim Office Park

Long Hanborough, OX29 8LN

Tel: 0300 060 1925, Mob: 07824 597885

www.naturalengland.org.uk

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TRANSPORT AND WORKS ACT 1992

Statement of Case of Natural England

**Proposed Chiltern Railways (Bicester to Oxford
Improvements) Order**

Department for Transport ref: TWA/10/APP/01/OBJ/246

August 2010

Please address any queries or correspondence about this Statement to:

**Charlotte Frizzell
Natural England
11 Fenlock Court
Blenheim Office Park
Long Hanborough
Oxford OX29 8LN**

Email: charlotte.frizzell@naturalengland.org.uk

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1.0 The Purpose of this Statement

- 1.1 This is a Statement of Case in relation to the applications by Chiltern Railways, to provide them with powers to construct a new railway (including the reconstruction of the existing railway) between Bicester and Oxford together with the construction or reconstruction of stations and Bicester Town, Islip, Water Eaton and Oxford.
- 1.2 It is the intention of Natural England to appear at the Public Inquiry, to call evidence and to make submissions in respect to its objections. This Statement is structured to set out the case that Natural England will address.
- 1.3 The scope of Natural England's case will cover the following matters:
 - a) The status and functions of Natural England (Section 2 below)
 - b) The roles of Natural England at the Inquiry (Section 3 below)
 - c) The Nature Conservation designations and interests potentially affected by the proposed project (Section 4 below)
 - d) Natural England's objections to the proposals as submitted (Section 5 below)

2. Status and Functions of Natural England

- 2.1 Natural England is a non-departmental government body and the Government's advisor on biodiversity and landscape.
- 2.2 Our remit is to ensure sustainable stewardship of the land and sea so that people and nature can thrive. It is our responsibility to see that England's rich natural environment can adapt and survive intact for future generations to enjoy.
- 2.3 Natural England is working towards the delivery of four strategic outcomes, which together deliver on our purpose to conserve, enhance and manage the natural environment for the benefit of current and future generations.
- 2.4 Natural England is a statutory consultee in respect of (amongst other things) plans and projects subject to the requirements of the various Environmental Impact Assessment Regulations in England, proposals likely to affect a Site of Special Scientific Interest (SSSI) and plans or projects likely to have a significant effect on any European site (these include Special Protection Areas and Special Areas of Conservation).

3. The Role of Natural England at the Inquiry

- 3.1 Natural England was consulted by the Department for Transport on the application as it contained an Environmental Impact Assessment (EIA) for which we are statutory consultee. It was also considered that the proposal may affect a Site of Special Scientific

Interest (SSSI) and Special Conservation Area (SAC).

- 3.2 In accordance with procedures described in Section 5, the Inspector will have to consider whether the proposals are likely to have a significant effect on a European Site, either alone or in combination with other plans or projects. If the Inspector considers, in agreement with Natural England's view, that the proposal would have such an effect on the Oxford Meadows Special Area of Conservation ('the SAC'), then the Inspector will need to undertake an "Appropriate Assessment" under the provisions of Regulation 61 of the Conservation of Habitats and Species Regulations 2010. That assessment involves a mandatory consultation with Natural England and a requirement for the Secretary of State to have regard to Natural England's representations (Regulation 61). Natural England considers that its participation in the Inquiry process will fulfil the requirement for the Secretary of State to consult Natural England and have regard to its representations.
- 3.3 Natural England is of the opinion that the proposals as submitted do not contain enough information for us to advise on any likely significant effects on the SAC either alone or in combination with other plans or projects. Natural England has therefore objected to the proposals until further information is provided for us to be able to advise whether or not there will be a likely significant effect.
- 3.4 Natural England will also give evidence on the protection afforded to SSSI's under the Wildlife and Countryside Act (1981) as amended by Countryside and Rights of Way Act (2000). Again we believe that the proposals as submitted do not contain enough information to advise that there will be no significant adverse effect on the interest features of the affected SSSI's. Natural England has therefore objected to the proposals until further information is provided for us to be able to advise whether or not there will be a significant adverse effect.
- 3.5 Evidence will be provided by Natural England on the protection afforded to European Protected Species. A lack of information submitted with the application has resulted in Natural England being unable to advise that the favourable conservation status of species affected by the application will be maintained. Natural England has therefore objected to the proposals until further information is provided for us to be able to advise otherwise.
- 3.6 Natural England have also objected on the grounds that appropriate mitigation has not been brought forward in order to protect the local populations of badgers along the railway line. However we do not intend to submit any further evidence on this issue and the inspector should refer to Natural England's previous comments.

4. The Nature Conservation Designations and Interests in the Area of the Proposed Project

- 4.1 Natural England is concerned that the proposals could adversely affect the following national and international nature conservation sites and protected species, as follows:

International Designation

- 4.2 Oxford Meadows is a Special Area of Conservation (SAC) classified by the Secretary of State for the Department for Environment, Food and Rural Affairs (DEFRA) under the provisions of the European Commission's Habitats Directive. In light of Regulations 8 and 13 of the Conservation of Habitats and Species Regulations 2010, the SAC is a fully designated European Site as a matter of law.
- 4.3 The SAC covers some 265.89ha in Oxfordshire. The Port Meadow and Wolvercote Common and Green component of the SAC is classified for supporting the largest of only two known sites in Britain for Creeping Marshwort (*Apium repens*)

National Designations

Port Meadow with Wolvercote Common and Green Site of Special Scientific Interest

- 4.4 This SSSI is one of four component SSSI's within the Oxford Meadows SAC. It was notified by the Nature Conservancy Council in 1955 under the National Parks and Access to the Countryside Act 1949 and subsequently revised in 1977. Under the Wildlife and Countryside Act 1981, the site was revised by English Nature in 1986. The SSSI is notified for its population of *Apium repens*, Creeping Marshwort, along with the lowland hay meadows which have been continuously grazed for thousands of years. The site also supports nationally scarce plant species.
- 4.5 The SSSI is 168.5ha in extent. An area of this site is located within the application boundary, whilst the railway line runs immediately alongside the SSSI for approximately 500m.

Wendlebury Meads and Mansmoor Closes Site of Special Scientific Interest

- 4.6 This SSSI was notified by the Nature Conservancy Council in 1977 under the National Parks and Access to the Countryside Act 1949. Under the Wildlife and Countryside Act 1981, the site was revised by English Nature in 1986. The SSSI is notified for MG5 unimproved grassland.
- 4.7 The SSSI is 74.09ha in extent. The railway line and hence application site, runs through the middle of the SSSI for a distance of approximately 515m.

European Protected Species

- 4.8 Surveys conducted by Keystone Environmental have found roosting and swarming activity of several species of bats within Wolvercote Tunnel, which is within the application site. This was evaluated as being of local importance for roosting habitat and regional importance for swarming behaviour. All species of bats and their breeding sites or resting places are protected under regulation 41 of the Conservation of Habitats and Species Regulations 2010 and Section 9 of the Wildlife and Countryside Act 1981.
- 4.9 Surveys have also found populations of Great Crested Newts along the railway line, within and adjacent to the application site. Great Crested Newts are protected under Schedule 2 of the Conservation of Habitats and Species Regulations 2010 and Schedule 5 of the Wildlife and Countryside Act 1981.

5. Natural England's Objections to the Proposals as Submitted

- 5.1 Natural England will submit that the proposal do not contain enough information to allow us to advise that there is no likely significant effect on Oxford Meadows SAC either alone or in combination with other plans or projects, and the proposed development is not required for the nature conservation management of the site. Consequently, in deciding whether the proposals should be permitted, under the provisions of the Conservation of Habitats and Species Regulations 2010, the Inspector will, as a matter of legal obligation for the SAC, need to follow at least the first three steps outlined below, and one or more of the subsequent steps if appropriate in the light of the applicant's case:
- STEP 1 Under Regulation 61, decide whether the proposals would be likely to have a significant effect on the SAC, alone or in combination with other plans or projects and, if it is concluded that the effects would be likely to be significant, make an Appropriate Assessment of the implications for the site in view of its conservation objectives. In making this assessment Natural England must be consulted (Regulation 61).
- STEP 2 Pursuant to Regulation 61, consider whether the project will adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which the Secretary of State might propose that planning permission be granted.
- STEP 3 In accordance with Regulation 61, but subject to Regulation 62, reject the proposal unless the Secretary of State ascertains that the project will not adversely affect the integrity of that SAC.
- STEP 4 If the project fails the test in Regulation 61, consider, in accordance with Regulation 62, whether there is no alternative solution for the project's objectives; if not so satisfied, dismiss the appeal; if so satisfied, proceed to Steps 5 and 6.
- STEP 5 Consider in accordance with Regulation 62, but subject to Step 6, whether the project must be carried out for imperative reasons of overriding public interest.
- STEP 6 Consider whether compensatory measures can be secured are taken which would be necessary to ensure that the overall coherence of Natura 2000 is protected. It is Natural England's view that the securing of such compensatory measures is a pre-requisite of agreeing to the project even if it otherwise survives Step 5; in short, Steps 5 and 6 are linked and interdependent.
- 5.2 The information provided with the application is insufficient in a number of respects to enable the competent authority to undertake an appropriate assessment. Natural England will submit that the application has a likelihood of significant effect on the European sites. Natural England will describe what evidence is lacking in the application, which would be necessary for the competent authority to undertake the appropriate assessment.
- 5.3 Natural England contends these proposals will have a likely significant effect on the SAC interest features, have the potential to cause adverse harm to the interest features of the SSSI's and affect the favourable conservation status of the bats roosting and swarming

at Wolvercote tunnel. Natural England will submit that:

- a) The applicant has not submitted sufficient information to enable the competent authority to undertake a complete appropriate assessment on the SAC.
- b) The applicant has not submitted sufficient information to fully determine the effects of the proposals on the SSSI's.
- c) The conservation objective of the SAC is 'subject to natural change, to maintain, in favourable condition, the habitats for creeping marshwort *Apium repens*'. A reduction in suitable habitat would result in a loss of favourable conservation status. The provision of a bridge link to the allotments would result in a loss of 13m² of the SAC and would alter the management of the land blocked off to cattle between the bridge and railway line. The applications have suggested an alternative option, which is to increase the height of an existing footpath. This option may be less damaging, however Natural England is yet to receive a detailed design on this to be able to advise accordingly.
- d) Similarly allowing access across Port Meadow to the allotments could result in damage to the SAC and SSSI if uncontrolled.
- e) An increase in the number of trains along the line adjacent to the SAC will result in an increase in the air pollution. This could have an effect on the vegetation within the SAC and change the composition of species. The effect of the air pollution which has been modeled needs to be compared to the species on the ground and any impacts need to be mitigated for.
- f) A final detailed plan of the works to be carried out on and adjacent to Wendlebury Meads and Mansmoor Closes SSSI needs to be submitted. This should include the provision of access tracks for landowners and the relocation of livestock buildings and any other work that is proposed. Accompanying this should be an assessment of the impacts on the SSSI, including the effect of the works on the hydrology, justifications for any impacts and if necessary (i.e. impacts cannot be avoided) details of any mitigation needed as a result of the works. Without this Natural England cannot advise if the SSSI will be impacted by the works.
- g) As with the SAC an increase in the number of trains along the line through the SSSI will result in an increase in the air pollution. This could have an effect on the vegetation within the SSSI and change the composition of species. The effect of the air pollution which has been modeled needs to be compared to the species on the ground and any impacts need to be mitigated for.
- h) An increased number and speed of trains running through Wolvercote Tunnel could have an impact on the bats that roost and swarm here. Surveys are to be carried out in August/September this year which will help to inform a mitigation plan for the works. Until this evidence has been produced Natural England cannot advise on the suitability of this mitigation.

Due to the above concerns and lack of information Natural England will submit that the Inspector cannot be sufficiently certain that there will be no likely significant effect on the SAC and the Inspector cannot conclude that the application will cause no adverse harm to the interest features of the SSSI, or the favourable conservation status of the bats.

6. Documents to be referred to by Natural England

6.1 Natural England may refer to any or all of the following documents:-

Correspondence between Natural England and the Applicants

Natural England, various dates, the citations and maps of the national and international nature conservation designations.

Anon, 1992, Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora – The Habitats Directive

European Commission, April 2000, *Managing Natura 2000 Sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC*. European Commission

European Commission, January 2007, *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC Clarification of the concepts of alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence and opinion of the Commission*

European Commission, 2005, European Court Justice Ruling. Case C-6/04 *Commission of the European Communities Vs United Kingdom of Great Britain and Northern Ireland, (Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora)*

European Commission 2004, Judgment of the Court (Grand Chamber) of 7 September 2004 in Case C-127/02 (*reference for a preliminary ruling from the Raad van State*): *Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij 1*. Known as *Waddenzee case*. *Directive 92/43/EEC - Conservation of natural habitats and of wild flora and fauna - Concept of 'plan' or 'project' - Assessment of the implications of certain plans or projects for the protected site*.

Conservation of Habitats and Species Regulations 2010

Wildlife and Countryside Act 1981

Woolley v Cheshire East Borough Council and Millennium Estates Limited, judgment of His Honour Judge Waksman QC, 5th June 2009 [2009] EWHC 1227 (Admin)

Mitchell-Jones, A., 2004, *Bat Mitigation Guidelines*. English Nature.

ODPM, 2005, Planning Policy Statement 9, *Biodiversity and Geological Conservation*

ODPM Circular 06/2005 DeFRA Circular 01/2005 *Biodiversity and Geological Conservation Statutory obligations and their impact within the planning system*

Natural Environment and Rural Communities Act 2006

Natural England., 2009, *Natural England's Position on Transport and the Natural Environment*

We may also make reference to other published material that is relevant to this application.