

The Chiltern Railway and Port Meadow

Summary Statement of 15th December 2010 on behalf of the Freemen of Oxford and the Port Meadow Protection Group

1. INTRODUCTION

- 1.1.1 We have submitted our statement on 16th November, which is before the Inspector, and may be taken as read [OBJ/341/1]. Our statement declares our views about the following: the rights of the Freemen of Oxford in the Registered Common Land of Port Meadow [sect.2]; the nature of their authority over the Meadow [sect. 3]; the status of the Meadow as Registered Common Land [sect. 4]; the omission of the Registered Common Land from the application and Environmental Statement [sect. 5]; notification of the Freemen [sect. 6]; the Port Meadow Protection Group [sect. 7]; Works on Common Land [sect. 8]; Driving on Common Land [sect. 9]; Impacts on Port Meadow Livestock [sect. 10]; Impacts on Hydraulic Capacity of the Floodplain [sect. 11]; Impacts on Floodplain Ecology [sect. 12].
- 1.1.2 We have seen, and take note in this statement of, Chiltern Railways' rebuttal statement [CRCL/R/OBJ314], sent to us by Chiltern Railways' consultants on 7th December. We have also seen their Update Note on Rights sought over Port Meadow [CRCL/INQ/50], and the related modifications to the order [CRCL/INQ/16/1] sent to us by the same consultants on 14th December 2010.
- 1.1.3 We wish to be clear that we are concerned only to protect the values of Port Meadow, and the ways in which it is used: beyond that we have no wider objection to the railway proposal, which in principle we support.

2 PORT MEADOW, REGISTERED COMMON LAND AND THE FREEMEN OF OXFORD [SECTION 2 OF ORIGINAL STATEMENT]

- 2.1.1 The rights of the Freemen are ancient and unassailable. Whatever the technicalities of legal title referred to in the Rebuttal Statement [sect3.7-3.11]

- 2.1.2 The City Council does not hold legal title, as stated in paragraph 3.9 of the Rebuttal . This is a serious mis-statement. There are no title deeds to Port Meadow. Registration for purposes of the Commons Registration Act does not confer the same ownership as registration under the Land Registration Acts. The footnote (on page 3 of the Rebuttal) sets out precisely the reasons why the Freeman did not register as owners under the 1965 Act.
- 2.1.3 Whatever claims are now made, it is obvious that, if the Chiltern Railways advisers had properly been aware of the status of Port Meadow as Registered Common Land and the rights of the Freeman of Oxford and the Wolvercote Commoners then they would have taken steps to consult with them over the proposals before the Inquiry.
- 2.1.4 In Old English a Portman was a burgess, or freeman, one of the tradespeople who ran the affairs of a borough. “Port” Meadow therefore had the meaning “Freemen’s “ Meadow, many centuries ago.
- 2.1.5 This fact is recognised in the present century, by none other than the Rural Payments Agency of the Department of Environment, Food and Rural Affairs. This they do this by acknowledging (as Chiltern Railways has been so reluctant to do) that the Freeman are the beneficial owners of Port Meadow, in making their annual Single Farm Payment direct to the Treasurer of the Freeman of Oxford, and not to the Oxford City Council. As befits responsible landowners, this is passed on by the Freeman to the graziers themselves.
- 2.1.6 For anyone in doubt about the beneficial ownership by Freeman of their common land, in relation to numerous English boroughs, we would refer them to the opinions of Charles Sparrow QC, who frequently demonstrated their inalienable rights (see, for example, his lecture on Freeman’s Land and Property presented at Great Grimsby in 1982: <http://www.freemen-few.org.uk/Public/Cart/Products/CategoryProducts.aspx?CategoryID=42>)

2.1.7 Specifically about Port Meadow, Sparrow wrote, on 27.1.1981: “On the evidence before me, I am of the opinion that the Freemen of Oxford are the beneficial owners of Port Meadow and that the Council holds Port Meadow as bare trustee for the Freemen”.

3 OMISSION OF REGISTERED COMMON LAND FROM THE APPLICATION [SECTION 5 OF ORIGINAL STATEMENT]

3.1.1 We repeat that the Registered Common land of Port Meadow was not properly reported in Inquiry documents and was only brought before the Inquiry in the Inspector’s Note on Common Land of November 5 [CRCL/INQ/13, map in App. A]. While it was possibly not appropriate to show the Registered Common Land on all the Deposited Plans it clearly should have been indicated in the Book of Reference [CD1.10] that refers to statutory or other designations (e.g. for Parcel 20009: ‘Green belt; Site of Special Scientific Interest, Public Open Space, Special Area of Conservation’), and the Planning Direction Drawings [CD1.13] that include no less than eleven statutory or other designations.

3.1.2 We are grateful for the reference to the single occurrence of ‘registered common’ in the Environmental Statement Chapter 5, Land (sect.5.4.4); however it is misleading of the Rebuttal to state in the same paragraph [3.25] that “Figure 8.1 of the Environment Statement [CD/1.17] illustrates statutory and non-statutory designated sites within 2 and 10km of the Scheme; Port Meadow with Wolvercote Common and Green are shown”.

3.1.3 What is shown on this plan is the ‘Oxford Meadows’ Special Area of Conservation (SAC is a designation made under the European Habitats Directive), and not the Registered Common, which has not been properly mapped in any of the project documents submitted prior to November 5th. The rebuttal is therefore incorrect.

3.1.4 We therefore remain mystified that the original Chiltern Railways documents appear to have overlooked the fact of Port Meadow’s being Registered Common Land, and the rebuttal appears to reveal continuing confusion

**4 WORKS ON COMMON LAND [SECTION 8 OF ORIGINAL STATEMENT] AND
IMPACTS ON THE HYDRAULIC CAPACITY OF THE MEADOW [SECTION
11 OF ORIGINAL STATEMENT]**

- 4.1.1 We are grateful for the admission that the proposed alterations to the path do indeed constitute works [Rebuttal par. 3.40], and we continue to hold that they do indeed constitute ‘restricted works’ as defined by Section 38 of the Commons Act 2006 as being “works for the resurfacing of land” [38(2)b].
- 4.1.2 We reluctantly accept that the Commons Act can apparently be circumvented by the Transport and Works Act,¹ but find it to be an extraordinary result of this apparent exemption that the careful considerations of the Commons Act with regard to the interests of commoners and others can be so disregarded by other statutory procedures.
- 4.1.3 Our concern remains for the nature of the reconstituted path, and the care of the vegetation beside the descending path on the Port Meadow side. We would wish the Freemen to be consulted on this matter, and for detailed proposals of the intended works to be placed before the inquiry rather than merely the indicative drawings appended to CRCL/INQ/50. We would insist on the greatest care being taken to protect the existing trees alongside this ramp, due to their importance as much-sought protection for livestock.
- 4.1.4 We note that the proposed works would require access over a period of three months, to which we do not object. It would be preferable for this to be undertaken in the winter, when livestock numbers are at a minimum.

¹ Commons Act 2006, Sect. 38 (6) states that the prohibition on restricted works does not apply to – “(a) works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment.”

4.1.5 A site meeting took place yesterday, to discuss drainage at this very point (the foot of the ramp). Present were representatives of Natural England, Environment Agency, British Geological Survey (groundwater studies), Oxford City Council, the Freemen, Wolvercote Commoners and others, notably rare plant specialists. It is strongly recommended that Chiltern Railways and its consulting engineers coordinate their dialogue to ensure a coherent approach to the drainage issues raised by their ramp, in relation to the adjacent network of ditches.

5 DRIVING ON COMMON LAND [SECTION 9 OF ORIGINAL STATEMENT] AND IMPACTS ON LIVESTOCK [SECTION 10 OF ORIGINAL STATEMENT]

5.1.1 We are delighted that as a result of various representations Chiltern Railways have indicated that they do not now seek to acquire rights to drive on Port Meadow [Rebuttal paragraph 3.28, 3.48].

5.1.2 We therefore expect to receive assurance that the ‘Power to Acquire New Rights’ in Section 25 paragraph (5) of the Draft Order [**CD 1.2**] will be entirely withdrawn,² and that there will be no consequential driving or parking of cars on Port Meadow as a result of the Order or its authorised works. In the few hours since receiving CRCL/INQ/16/1, we suppose that this document achieves this, but we would like clear confirmation that this is so.

5.1.3 We note that in **CRCL/INQ/50**, paragraphs 4.1 and 4.2, Chiltern Railways relies for the solution to the access problems, on the existing informal arrangements between the City Council and the Trap Grounds allotment holders. We are mindful of the probability of the breakdown of such arrangements involving keys, which are highlighted in the statement by the Wolvercote Commoners [**OBJ/321/1**]. We would therefore want discussions to be held (before the conclusion of the Inquiry) between all concerned parties (ourselves and the Wolvercote Commoners included) and a cap on

² Section 25, (paragraph (5)):- acquisition of rights over (d) “the land numbered 29010, 29011 and 30009 in the city of Oxford on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Aristotle Lane Crossing”.

use imposed. The reasons for this (primarily livestock security) were outlined in detail in our original statement.

- 5.1.4 We fully support the proposal by the Wolvercote Commoners that any scheme involving increased access by vehicles to the Meadow must be very strictly controlled, particularly in relation to the temporary issue of keys, and that such a scheme should be backed by an insurance policy in perpetuity, taken out at the expense of Chiltern Railways, in respect of both the livestock and third party damages. We already stated that the stock on Port Meadow has a value of the order of £500,000.

6 CONCLUSION

- 6.1.1 The proposal and the rebuttal fail to acknowledge the particular status of the Freemen as beneficial owners of Port Meadow. The Freemen will continue to resist any proposal that is injurious to their interests in Port Meadow.
- 6.1.2 We are surprised at the confusions we have exposed, in the proposal documents and the rebuttal, of the fact that Port Meadow is Registered Common Land.
- 6.1.3 Chiltern Railways has offloaded its problem (of access across Port Meadow to the Trap Grounds allotments) onto the City Council and the owners and users of Port Meadow. Until this is satisfactorily resolved, we maintain our objection. Resolution will require restriction on numbers of journeys, the tightest possible control of keys, and insurance cover, at least.
- 6.1.4 We object to the potential increased disruption of the use of the flood refuge, with its grazing, sheltering, and shading that is necessary for the Freemen's cattle and horses.
- 6.1.5 We object to all those works which risk impeding the flow of natural flood water, displacing floodwater elsewhere, and hence reducing the flood-absorptive capacity of Port Meadow. We are not reassured by the statements in the Rebuttal (paragraphs 3.54, 3.55 and 3.59).

Alison Cobb, Stephen Cobb, Binsey, Oxford, 15.12.10