

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

CHILTERN RAILWAYS' REBUTTAL PROOF OF EVIDENCE

IN RELATION TO

THE OBJECTION AND EVIDENCE OF

RICHARD WALKER ON BEHALF OF GRETA WALKER

1 Introduction

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

2 Defined Terms

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

"the Correspondence" means correspondence in the form of letters exchanged between Chiltern Railways and Richard and/or Greta Walker through her agent, Robert Thompson, dated 21 January 2010, 4 February 2010, 10 February 2010, 8 February 2010, 5 February 2010, 24 March 2010 and 27 May 2010, attached to this rebuttal

proof in Appendix A;

“the Objector” means Richard Walker on behalf of Greta Walker;

“the Objector’s evidence” means the evidence of Richard Walker [OBJ/007/4];

“the Order application” means the application for the proposed Order submitted on 6 January 2010 and the Proposed Modification dated 9 September 2010; and

“the proposed Order” means the proposed Chiltern Railways (Bicester to Oxford Improvements) Order.

3 Chiltern Railways Rebuttal of the Objector’s Evidence

Context

- 3.1 The Objector, Richard Walker, is the son of Greta Walker, who is landowner of part of the land to be acquired to provide the replacement open space as shown on Sheet 39 of the Deposited Plans and Sections and Open Space Plan [CD/1.9]. The landowner objects strongly to the compulsory purchase of the land. .

Landowner Consultation, Richard Caten

- 3.2 The Objector states that apart from a form received from Chiltern Railways in October 2009 in relation to land ownership there has been no consultation. The Objector states that there has been no attempt by Chiltern Railways to enter into a negotiated agreement with Greta Walker. The Objector states that there has been no publically accessible information on the need to compulsorily acquire land for replacement open space.
- 3.3 Chiltern Railways has explained the need for the acquisition of replacement open space, including sending an explanation of the legal position prepared by Chiltern Railways’ legal advisors. This was sent following a meeting with the Objector’s Agent and Solicitor. It would be premature to enter into acquisition negotiations prior to obtaining powers for the acquisition of all land needed for the Order Scheme.
- 3.4 A notice of making of the application under Rule 15 was served on the Objector.

Status of the Land to be Acquired, Ian Gilder

- 3.5 The land to be acquired which is considered to be de facto open space is shown on Sheet 39 of the Deposited Plans and Sections and Open Space Plan [CD/1.9]. The Objector states that the land to be acquired is not open space but is agricultural land. The Objector states that there is no evidence that Chiltern Railways has carried out any investigation as to what is and isn’t public open space.
- 3.6 The Objector sets out in Appendix 2 to his evidence the standards contained in Cherwell District Council’s Open Space, Sport and Recreational Facilities Needs Assessment Audit and Strategy (2004) for natural and semi-natural open space.

Page iv of the Executive Summary of that document states that natural and semi-natural open spaces should be “*A publicly accessible, spacious, clean and litter free site with clear pathways and natural features that encourage wildlife conservation and biodiversity. Sites should be maintained to protect nature conservation interest with interpretative signage and safety features where appropriate.*”

- 3.7 The Objector states that the land to the east of the stream, north of Gavray Drive is completely overgrown and has been for a number of years and there is no evidence of activity on this land.
- 3.8 The Objector quotes from paragraph 7.2.1 of the Planning Statement [CD/1.14] that there is a need for the permanent acquisition of land that *may* be used as open space and that the TWA Order application includes provision for replacement open space which *may* be needed. The Objector states that this infers a lack of certainty that the land to be acquired is open space.
- 3.9 Evidence from photographs taken in 2003 and 2009 show that the land to the north of Gavray Drive has been maintained and mown overtime but there is no evidence of active farm management or cultivation. The Objector only provides evidence that the land was farmed until 1984 when it was used for grazing and haymaking.
- 3.10 The definition of whether the land to be acquired is ‘de facto’ open space rests on the second part of the definition under s19(4) of the Acquisition of Land Act, 1981 [CD/5.6] that it is ‘*used for the purposes of public recreation*’. Chiltern Railways accepts that the land to be acquired is not formally designated open space and to that extent the standards quoted from the Open Space, Sport and Recreational Facilities Needs Assessment Audit and Strategy (2004) are not expected to apply. It is, therefore, of little importance that there are no interpretative signs or safety features. The land can be described as publicly accessible and spacious and is relatively clean and litter free with clear pathways and natural features. This can be seen in the photographs provided in Figure IMG 10.2 in Appendix IMG 10 in **CRCL/P/12/B**.
- 3.11 The Objector provides photographic evidence (Photographs 2 and 21) in Appendix 3 of his evidence of an abandoned shopping trolley and car. This is only evidence that the area may not be actively managed as open space, which Chiltern Railways acknowledges. The need to acquire replacement open space depends on the land being or appearing to be in use for the purposes of public recreation.
- 3.12 As stated in paragraph 6.37 of Ian Gilder’s evidence [CRCL/P/12/A] there is clear evidence from numerous site visits over the course of the Scheme development that the land to be acquired is currently being used as open space. Recent photographs from September 2010, in Appendix IMG 10 of Ian Gilder’s evidence [CRCL/P/12/B], clearly show informal public use of the site. As stated in paragraph 6.20 of Ian Gilder’s evidence [CRCL/P/12/A], Chiltern Railways recognises that although the land is in private ownership it can be accessed from a public footpath [FP 129/3] that crosses the site and at other points along the boundary which is not secure. Based on this evidence, Chiltern Railways has described the land as ‘de facto’ open space, in which case it has to be defined under s19(4) of the Acquisition of Land Act, 1981 [CD/5.6] as being ‘used for the purposes of public recreation’. Taking the typology of

open space in PPG17 the land can be categorised as a ‘*natural and semi-natural urban green space*’ including grasslands and meadows.

- 3.13 Despite the Objector’s assertion to the contrary, there is evidence of use of the strip of land alongside the London to Birmingham mainline as can be seen from Viewpoint 3 on Figure IMG 10.2 in Appendix IMG 10 in **CRCL/P/12/B**.
- 3.14 The statements in paragraph 7.2.1 of the Planning Statement [**CD/1.14**] that the land may be open space and that land may be acquired were written prior to the confirmation of the open space certificates by the Secretary of State for Communities and Local Government through the Government Office for London. On 29 January 2010, Chiltern Railways applied to for certificates under sections 19 and 28 of, and schedule 3 to, the 1981 Act [**CD/1.25**]. On 9 September the National Unit for Land Acquisition and Disposals [NULAD] issued the public notice of intention to issue an open space certificate (**Appendix IMG 3 in CRCL/P/12/B**) confirming, amongst other matters that replacement land will be provided in exchange for open space being acquired compulsorily for the purposes of the scheme. This was advertised on 16 September 2010 and 23 September 2010 in accordance with the provisions of Section 19(2A) of the 1981 Act. The Objector did not submit an objection to the issue of these open space certificates.

Equality of Access, Ian Gilder

- 3.15 The Objector states that the exchange land is 1.2 kilometres from the land to be acquired and would necessitate crossing a very busy road which also carries heavy goods traffic. The Objector states that the land to be acquired is only accessible from the western end which forces people to walk a long distance. The Objector states that the exchange land does not have car parking.
- 3.16 It is not clear from the Objector’s evidence what the quoted distance relates to. As shown on Sheet 39 of the Deposited Plans and Sections and Open Space Plan [**CD/1.9**], the land to be acquired is linear in nature, running for the most part along the alignment of the new railway chord and the existing Birmingham to London line. As the crow flies the furthest point of the land to be acquired is 950 metres and the closest 250 metres from the exchange land. *Table 1* of this rebuttal sets out some illustrative walking distances from residences to the south of Gavray Drive based on indicative locations shown on Figure OBJ7/1 in Appendix B to this rebuttal. As shown on Figure OBJ7/1 the land to be acquired can be accessed from a number of locations along Gavray Drive which reduces the walking distances for those closer to Charbridge Lane.

Table 1: Walking Distances from Residences South of Gavray Drive to the Exchange Land

Location	Distance to Open Space to be Acquired [km]	Distance to Exchange Land [km]	Net Difference [km]
Mallards Way	0.30	1.29	+0.99
Heron Drive	0.59	1.04	+0.45
Merganser Drive	0.57	0.61	+0.04

- 3.17 The distances in *Table 1* are meant to be illustrative and are intended to provide a context for considering the assertions and evidence about the relative distances for local residents to the land currently used as open space and the exchange land. Whilst people living at the far western end of Gavray Drive will have an additional kilometre to walk, those at the eastern end will have a similar walking distance to the exchange land as they currently have to the open space to the north of Gavray Drive.
- 3.18 Figure OBJ7/1 in Appendix B to this rebuttal shows that for most local residents there are alternative areas of open space that are closer, with associated shorter walking times, than the exchange land. The high level of accessibility to other areas of open space means that even those residents who are furthest away from the exchange land would not experience disadvantage in respect of being able to enjoy using open space and undertaking those activities that they would have previously have done on the land to be acquired. Chiltern Railways' view is that residents are not being forced to make a choice between the exchange land and the other alternatives, since these will still be available to them.
- 3.19 The Objector raises concerns about the dangers associated with crossing Charbridge Lane and seeks clarification as to why a footbridge or underpass has not been considered.
- 3.20 Chiltern Railways acknowledges that Charbridge Lane (A4421) is part of the Bicester 'ring road' and therefore is a primary traffic route. There is a footway along the western side of Charbridge Lane which allows safe passage to the point where people would cross adjacent to the entrance of the exchange land. This stretch of Charbridge Lane north of Gavray Drive, is straight, has good visibility and is relatively safe. The road is not identified in the draft Bicester Transport and Land Use Study 2 report (February 2009) as a link within Bicester which has high accident frequencies. For these reasons it was not considered that a footbridge or underpass was necessary.

3.21 The informal nature of the recreational uses taking place on the land to be acquired, such as dog walking, indicates that the users live in the residential areas to the south of Gavray Drive from where they walk to this land. The informal character and use of the open space would not attract people from a wider area by car. Therefore, in order to meet the tests of being equally accessible, car parking provision is not required.

Alternative Exchange Land Site, Ian Gilder

3.22 The Objector has identified a plot of land in Appendix 7 to his evidence which he promotes as an alternative site suitable to be used as exchange land. This is referred to as both the 'red land' and Three Corner Field. The Objector states a number of advantages this land has over the exchange land contained in the Order, namely:

- it is already allocated in the Non-statutory Cherwell Local Plan 2011 (2004) for proposed recreational use under policies R1 and R2;
- it is one of the driest fields in the area with a high water table;
- with the Order Scheme the land will be connected by a new footbridge over the rail chord maintaining the current footpath access and will, therefore, have better and safer access and than the proposed exchange land.
- the land is closer, only 100 metres from the land to be acquired;
- the land is more accessible not only for existing users but also for potential new users from the surrounding area, including the industrial units to the east, west and north; and
- it is of more than sufficient size.

3.23 The Proposals Map of the Non-statutory Cherwell Local Plan 2011 (2004) shows the 'red land' to the north of the London to Birmingham line as being potential open space under policies R1 and R3. The site is one of a series of open spaces in Bicester which are intended to create a circular route through the town linking strategic areas of open space such as Pingle Fields and through the area north of Gavray Drive to the site allocated for a new railway. The land has since been identified in the Cherwell District Council Green Spaces Strategy Background Document (July 2008) as natural to semi-natural open space (Page 116). This is further evidenced in the site description for Supplementary Consultation on Site Allocations Issues and Options: New and Amended Sites (February 2008) which describes the site [Site BI 74] as open space/recreational land. Although the identification of the land as open space will have no policy status until it is designated as such within the emerging development plan there is already recognition by the local authority of its current use as open space.

3.24 The photographic evidence in Figure OBJ7/2 (Appendix C) clearly shows informal paths and recreational use of the site as open space. As both Chiltern Railways and the local authority consider that the alternative site is already open space, it cannot qualify as suitable exchange land. The Objector provides evidence (Photographs 4,

7, 9 and 13) in Appendix 3 that the field has tracks around the outside from regular use by people walking their dogs and more established paths through the woodland areas. As stated in paragraph 6.22 of Ian Gilder's evidence [CRCL/P/12/A] land that was already open space was excluded from further consideration, despite any other advantages it might have had.

Comparability of Size of the Land to be Acquired and the Exchange Land, Ian Gilder

- 3.25 The Objector agrees with statement that the replacement open space is of a comparable size to the area taken.
- 3.26 **CRCL/INQ/21** updated sheet 39 of the Deposited Plans and Sections and Open Space Plan [CD/1.9] the land to be acquired that is open space is 17,093 m² and the area of the exchange land is 17,800 m².

Similarity in Character of the Land to be Acquired and the Exchange Land, Ian Gilder

- 3.27 The Objector disputes the statement that the exchange land is similar in character to the land to be acquired. The Objector provides photographic evidence (Photographs 22, 23 and 24) that he states show the lack of suitability of the exchange land as open space. Similar photographs can be found in Appendix IMG 12 in **CRCL/P/12/B** which shows the current overgrown vegetation on the site of dense scrub.
- 3.28 The exchange land is to be the subject of enhancement works as set out in the Landscape and Ecology Enhancement Strategy included as Appendix IMG 13 of Ian Gilder's Appendices [CRCL/P/12/B]. Once the Strategy has been implemented, Chiltern Railways believes that the exchange land will be similar in character and will allow for the same types of informal recreation activities to take place as currently occur on the land to be acquired. The creation of the new open space will be undertaken sensitively so that its current status as a County or Local wildlife Site is enhanced and not adversely affected.
- 3.29 Chiltern Railways consider that this Strategy will make the exchange land accessible to the public that would *'hitherto benefitted from the order land and, more generally, the public at large'*.
- 3.30 As stated in paragraph 6.38 of Ian Gilder's evidence [CRCL/P/12/A], the site for the replacement open space was chosen as it demonstrated a number of clear advantages over other sites in the locality, namely that it is not in active agricultural use, covered by a planning allocation or planning permission or subject to a management agreement. It is comparable in size, similar in character and adjacent to the area currently being used as open space. The site also presents the added advantages of offering opportunities for the ecological enhancement in line with its status as a County Wildlife Site in conjunction with the site immediately to the south which is being managed to enhance wildlife interest as part of a S106 agreement attached to the Gavray Drive permission. In these and all other respects Chiltern Railways conclude that the replacement open space is equally advantageous.

4 Conclusion

- 4.1 This rebuttal proof responds comprehensively to the evidence presented by the Objector.
- 4.2 Chiltern Railways has explained the need for the acquisition of replacement open space and have consulted with the Objector following submission of the TWA Order Application. It would be premature to enter into acquisition negotiations prior to obtaining powers for the acquisition of all land needed for the Order Scheme.
- 4.3 This rebuttal has provided evidence on the status of the land, equality of access, alternative exchange sites and size of land and concludes that the replacement open space proposed by Chiltern Railways is equally advantageous to the public and otherwise meets the tests in the Acquisition of Land Act. The alternative proposed by the Objector is already open space, albeit not formal public open space and could not, for that reason, qualify as replacement open space.

Appendix A

CRCL/R/OBJ7

Relevant Correspondence
between Chiltern Railways
and the Objector

085/7

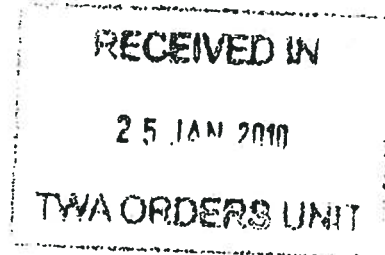
R. Thompson
Valuation & Management
Consultancy Ltd.



Valuation & Consultancy on Development & Rural Property Issues

21st January 2010

The Secretary of State for Transport
c/o Transport & Works Act Orders Unit
Department of Transport
Zone 1/31
Great Minister House
76 Marsham Street
London SW1P 4DR



By Recorded Delivery

Dear Sirs,

Re: Proposed Chiltern Railways (Bicester to Oxford Improvements) Order

The writer has been instructed to act on behalf of Mrs Greta Rosemary Walker, of 57 West End, Launton, Bicester, Oxon, OX26 5DG. Mrs Walker is the freeholder and occupier of a block of land, copy plan enclosed, which is adjacent to the Birmingham (Moor Street) - London (Marylebone) railway line and the Charbridge Lane on the outskirts of Bicester, Oxfordshire. Our client's land has been included within the planning application boundary, albeit at this stage the information supplied is extremely scant and does not indicate the purpose for which the acquisition is proposed.

On behalf of our client we wish to lodge an objection to this Order under the Transport & Works Act 1992 and request that you will confirm that our client will be given the opportunity to be heard at a forthcoming Public Enquiry.

The writer will provide further details of the objection prior to the date of the Public Enquiry in the hopes that a settlement can be agreed. However, it would be helpful, in the meantime, if Chiltern Railways would provide us with details of exactly why our client's land is required in order to produce this proposed scheme.

Yours faithfully

R Thompson Bsc MRICS IRRV FAAV

cc:
R N Spencer Esq
L Payne Esq
Mrs Walker

No
enclosures
(copy plan)

UK Registered Office: 'The White House', 150 Bloxham Road, Banbury, Oxfordshire OX16 9LE

Tel/Fax: 01295 262578 Email: bob.thompson@talktalk.net

R. Thompson Bsc Director Registered No. 3736355 VAT No. 729 8352 96

Nicola Finlay

From: Paul Clarke [PaulClarke@ardent-management.com]
Sent: 04 February 2010 15:22
To: 'bo b.thompson@talktalk.net'
Cc: ERM UK Chiltern Objections; Peter Gibbard
Subject: CHILTERN EVERGREEN 3 - OBJECTION 7 - MRS GRETA ROSEMARY WALKER

I refer to your letter dated 21st January 2010 objecting to the acquisition of plot 01002 on behalf of your client and your subsequent letter attaching plans.

We are dealing with the land and property issues related to this project for Chiltern, so this objection has been passed to me to deal with.

The purpose of the acquisition of the land is set out in the application documents. These can all be found on the project website at <http://www.chiltern-evergreen3.co.uk/> . The following explains how to negotiate these documents:

- The land is shown as plot number 01002 on the Deposited Plans and Sections and Open Space Plan.
- The Book of Reference notes your client as the freehold owner of this plot.
- As this plot is shown within Limits of Land to be Acquired or Used on the plans, the purpose and nature of the powers sought is set out in the draft Order. It is shown in Schedule 2 as being subject to acquisition powers for use as Exchange Land.

Exchange Land is required as land to the west of Charbridge Lane is being acquired as the site of the new railway. Under the Acquisition of Land Act 1981, Section 19, this land is regarded as Open Space. Open Space cannot be compulsorily acquired unless suitable Exchange Land is acquired to replicate the land to be acquired, or the acquisition has been authorised by Special Parliamentary Procedure. Therefore, your client's land is not needed for the works, but as Exchange Land. Such land has to be "equally advantageous" to the public as the land to be acquired, making this land and that surrounding it ideal.

Land acquired for this purpose then has to be dedicated for public use. Article 40 of the draft Order sets out how this will be achieved.

Your client will be entitled to compensation in respect of the acquisition of the land under the Compulsory Purchase Compensation Code as will be applied by the Order.

I should point out that the Public Inquiry into the scheme will not consider matters that should be dealt with by the Lands tribunal once a claim for compensation has been made, as is set out on the notice your client received.

Please let me know if you need any further information.

Regards

Paul



Paul Clarke | Associate Director
Ardent Management Limited
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Nicola Finlay

From: Paul Clarke [PaulClarke@ardent-management.com]
Sent: 10 February 2010 19:58
To: Bob Thompson
Cc: Peter Gibbard
Subject: Re: CHILTERN EVERGREEN 3 - OBJECTION 7 - MRS GRETA ROSEMARY WALKER

Bob

I appreciate the position and agree that it would probably be advisable to meet. Do you want to meet with your client and others or just the two of us?

In terms of dates, I am still relatively free, pending the end of the Objection Period, please let me know when suits you. In terms of location, my office is in London, but we could use the offices of the schemes environmental consultants in Oxford. Alternatively, we could meet on site or at your office. I am largely working from home in Kenilworth on this project so I am happy to meet wherever suits you best.

Regards

Paul

Paul Clarke | Associate Director Ardent Property Consultants
 Tel: 0870 443 9100 | Mobile: 07900 052307

www.ardent-management.com

--- original message ---

From: "Bob Thompson" <bob.thompson@talktalk.net>
Subject: Re: CHILTERN EVERGREEN 3 - OBJECTION 7 - MRS GRETA ROSEMARY WALKER
Date: 10th February 2010
Time: 5:46:49 pm

Mr Clarke , Thank you for your response. My client is elderly who relies very much on advice from her accountant and surveyor (the latter being Mr Bob Spencer FRICS with whom I have worked as a colleague over the years). However the Mr Spencer is also getting on in years and is now retired , nonetheless Mrs Walker will only follow his advice. Mr Spencer has asked me to deal with the matter on his behalf even though he will very likely be the party in direct contact with the client. None of the parties are in tune with websites, nor even if the relevant sections are printed, so the idea of the meeting with one of your reps is to run through exactly what are the proposals , why the subject land is required to replace POS which is also to be acquired and whether alternative sites have been considered. This objection has nothing to do with compensation matters and nor has it been lodged just for the sake of causing mischief or delay. Once your representative has explained the matter in full , we will take a view on the matter and I will advise The Dept of Transport accordingly if there is a change of mind on our client's part. If you are in agreement to the meeting , I dare say we could meet on site , or in an office in Bicester. A meeting prior to the 17th Feb is not possible but if you want to put forward some dates from the third week of Feb onwards I will check and come back to you. Regards Bob Thompson.

----- Original Message -----

From: [Paul Clarke](#)
To: ['Bob Thompson'](#)
Cc: [Bob Spencer](#) ; [Peter Gibbard](#)
Sent: Monday, February 08, 2010 2:14 PM
Subject: RE: CHILTERN EVERGREEN 3 - OBJECTION 7 - MRS GRETA ROSEMARY WALKER

We are obviously willing to meet with landowners where there are post application issues that need to be resolved. As this is a straightforward acquisition I would be grateful if you would let me know what your client wishes to discuss.

22/11/2010

Regards

Paul



Paul Clarke | Associate Director
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PaulClarke@ardent-management.com | www.ardent-management.com

From: Bob Thompson [mailto:bob.thompson@talktalk.net]
Sent: 05 February 2010 09:35
To: Paul Clarke
Cc: Bob Spencer
Subject: Re: CHILTERN EVERGREEN 3 - OBJECTION 7 - MRS GRETA ROSEMARY WALKER

Mr Clarke, thank you for your e-mail but are you prepared to send one of your representatives to meet with me to discuss this matter . In all cases of CPO with which I have been involved over the years ,agents for the acquiring authority have been prepared to meet the owners/ agents to discuss the matter. Regards Bob Thompson BSc MRICS IRRV FAAV.

----- Original Message -----

From: [Paul Clarke](mailto:PaulClarke@ardent-management.com)
To: 'bob.thompson@talktalk.net'
Cc: 'chiltern.objections@erm.com'; [Peter Gibbard](mailto:Peter.Gibbard@talktalk.net)
Sent: Thursday, February 04, 2010 3:21 PM
Subject: CHILTERN EVERGREEN 3 - OBJECTION 7 - MRS GRETA ROSEMARY WALKER

I refer to your letter dated 21st January 2010 objecting to the acquisition of plot 01002 on behalf of your client and your subsequent letter attaching plans.

We are dealing with the land and property issues related to this project for Chiltern, so this objection has been passed to me to deal with.

The purpose of the acquisition of the land is set out in the application documents. These can all be found on the project website at <http://www.chiltern-evergreen3.co.uk/> . The following explains how to negotiate these documents:

- The land is shown as plot number 01002 on the Deposited Plans and Sections and Open Space Plan.
- The Book of Reference notes your client as the freehold owner of this plot.
- As this plot is shown within Limits of Land to be Acquired or Used on the plans, the purpose and nature of the powers sought is set out in the draft Order. It is shown in Schedule 2 as being subject to acquisition powers for use as Exchange Land.

Exchange Land is required as land to the west of Charbridge Lane is being acquired as the site of the new railway. Under the Acquisition of Land Act 1981, Section 19, this land is regarded as Open Space. Open Space cannot be compulsorily acquired unless suitable Exchange Land is acquired to replicate the land to be acquired, or the acquisition has been authorised by Special Parliamentary Procedure. Therefore, your client's land is not needed for the works, but as Exchange Land. Such land has to be "equally advantageous" to the public as the land to be acquired, making this land and that surrounding it ideal.

Land acquired for this purpose then has to be dedicated for public use. Article 40 of the draft Order sets out how this will be achieved.

Your client will be entitled to compensation in respect of the acquisition of the land under the Compulsory Purchase Compensation Code as will be applied by the Order.

I should point out that the Public Inquiry into the scheme will not consider matters that should be dealt with by the Lands tribunal once a claim for compensation has been made, as is set out on the notice your client received.

Please let me know if you need any further information.

Regards

Paul



Paul Clarke | Associate Director

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Nicola Finlay

From: Paul Clarke [PaulClarke@ardent-management.com]
Sent: 24 March 2010 14:50
To: 'Bob Thompson'
Cc: ERM UK Chiltern Objections; Peter Gibbard
Subject: RE: GRETA WALKER

Bob

I am aware of this site and it was considered. But, I was advised that it would not be classed as being suitable as replacement space by the Secretary of State for Transport, who has to certify such land as being so. This land is only accessible on foot, it is landlocked, unlike your clients land.

The '81 Act is the only relevant legislation, what is classed as public open space is not clear, in my opinion. It is basically any land that the public has access to and is not developed. We have had cases where paved areas and even a car park have been classed as open space.

The criteria for what constitutes replacement open space is also in that Act in s19 -

"that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or"

I have also asked if a clawback could be inserted in the title of the land when it is transferred to the new owner. Unfortunately, the latter part of the above section is so prescriptive that this would not be possible.

Please let me know if you need any further information.

Regards,

Paul

Paul Clarke | Associate Director
Ardent Property Consultants
Tel: +44 (0)870 443 9100 | Mobile: +44 (0)7900 052307 PaulClarke@ardent-management.com
| www.ardent-management.com |

-----Original Message-----

From: Bob Thompson [mailto:bob.thompson@talktalk.net]
Sent: 24 March 2010 13:41
To: Paul Clarke
Subject: Re: GRETA WALKER

Paul I had a meeting with Mrs Walker and her son last week and the long standing advisors. One point put forward was that there could be an alternative site which has access under the railway so I believe. This differs from the subject site where those wishing to use the new POS would have take their life into their hands by crossing the very busy ring road. I expect you will tell me that this poposed site as attached is also POS if so who is able to classify it as such and do you know the Statute which notes the criterior for being so classed. Regards Bob

----- Original Message -----

From: "Paul Clarke" <PaulClarke@ardent-management.com>

Nicola Finlay

From: Paul Clarke [PaulClarke@ardent-management.com]
Sent: 27 May 2010 10:49
To: 'Bob Thompson'
Cc: Pritpal Singh-Swarn; Peter Gibbard; Sarah Goodall
Subject: RE: GRETA WALKER.1

Bob

My apologies for the delay in responding to you. I fully agree that your request is not at all unreasonable. I have only recently received the necessary reply from colleagues who are dealing with the issue, we are somewhat swamped!

We considered that the green land is POS as there is clear evidence of public use of it. It is a site that locals could no doubt sustain an application on for the site to be registered as a Town or Village Green. I am actually very surprised that the owners have not fenced it to prevent this from happening. One of the concerns was that seeking acquisition powers over the site without providing for replacement space could have led to the locals making such an application.

With regards to the acceptability of your clients land as replacement open space I am told:

"It is considered that the replacement open space meets the tests set out in Annex L of Circular 06/2004 Compulsory Purchase and the Critchel Down Rules in that it is of a comparable size to the area being taken, adjacent to the area currently being used as open space, equally accessible for local residents who currently use the land north of Gavray Drive, similar in character and will provide an area of informal grass land that can be used for the same purposes as the existing area of open space.

As stated in paragraph 16 of PPG17, 'in considering planning applications - either within or adjoining open space - local authorities should weigh the benefits being offered to the community against the loss of open space that will occur'. The acquisition of open space is integral to the development of the Scheme in delivering wider sustainable transport objectives. These benefits need to be weighed against any loss of open space that occurs. As replacement open space is to be provided, the Scheme is considered to comply with the objectives of open space policy to maintain levels of public provision and enjoyment."

Chiltern has also now made its application to the Secretary of State for an Exchange Land Certificate under s19 ALA. It is not solely Chiltern's decision that your clients land is suitable replacement open space, it has to be approved as being so.

I hope the above is of use. Please let me know if you need any further information.

Regards,

Paul

Paul Clarke | Associate Director
Ardent Property Consultants
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| www.ardent-management.com |

-----Original Message-----

Nicola Finlay

From: Bob Thompson [bob.thompson@talktalk.net]
Sent: 27 May 2010 15:18
To: Paul Clarke
Cc: Pritpal Singh-Swarn; Peter Gibbard; Sarah Goodall
Subject: Re: GRETA WALKER.2

Paul, Understood, many thanks, Regards Bob

----- Original Message -----

From: "Paul Clarke" <PaulClarke@ardent-management.com>
To: "'Bob Thompson'" <bob.thompson@talktalk.net>
Cc: "Pritpal Singh-Swarn" <Pritpal.Singh-Swarn@wriighthassall.co.uk>; "Peter Gibbard" <PeterGibbard@ardent-management.com>; "Sarah Goodall" <Sarah.Goodall@erm.com>
Sent: Thursday, May 27, 2010 9:48 AM
Subject: RE: GRETA WALKER

> Bob

>

> My apologies for the delay in responding to you. I fully agree that
> your request is not at all unreasonable. I have only recently
> received the necessary reply from colleagues who are dealing with the
> issue, we are somewhat swamped!

>

> We considered that the green land is POS as their is clear evidence of
> public use of it. It is a site that locals could no doubt sustain an
> application on for the site to be registered as a Town or Village Green.
> I am actually very surprised that the owners have not fenced it to
> prevent this from happening. One of the concerns was that seeking
> acquisition powers over the site without providing for replacement
> space could have lead to the locals making such an application.

>

> With regards to the acceptability of your clients land as replacement
> open space I am told:

>

> "It is considered that the replacement open space meets the tests set
> out in Annex L of Circular
> 06/2004 Compulsory Purchase and the Critchel Down Rules in that it is
> of a comparable size to the area being taken, adjacent to the area
> currently being used as open space, equally accessible for local
> residents who currently use the land north of Gavray Drive, similar in
> character and will provide an area of informal grass land that can be
> used for the same purposes as the existing area of open space.

>

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> applications - either within or adjoining open space - local
> authorities should weigh the benefits being offered to the community
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> wider sustainable transport objectives. These benefits need to be
> weighed against any loss of open space that occurs. As replacement
> open space is to be provided, the Scheme is considered to comply with
> the objectives of open space policy to maintain levels of public
> provision and enjoyment."

>

> Chiltern has also now made its application to the Secretary of State
> for an Exchange Land Certificate under s19 ALA. It is not solely
> Chilterns decision that your clients land is suitable replacement open
> space, it has to be approved as being so.

>

> I hope the above is of use. Please let me know if you need any
> further information.

>

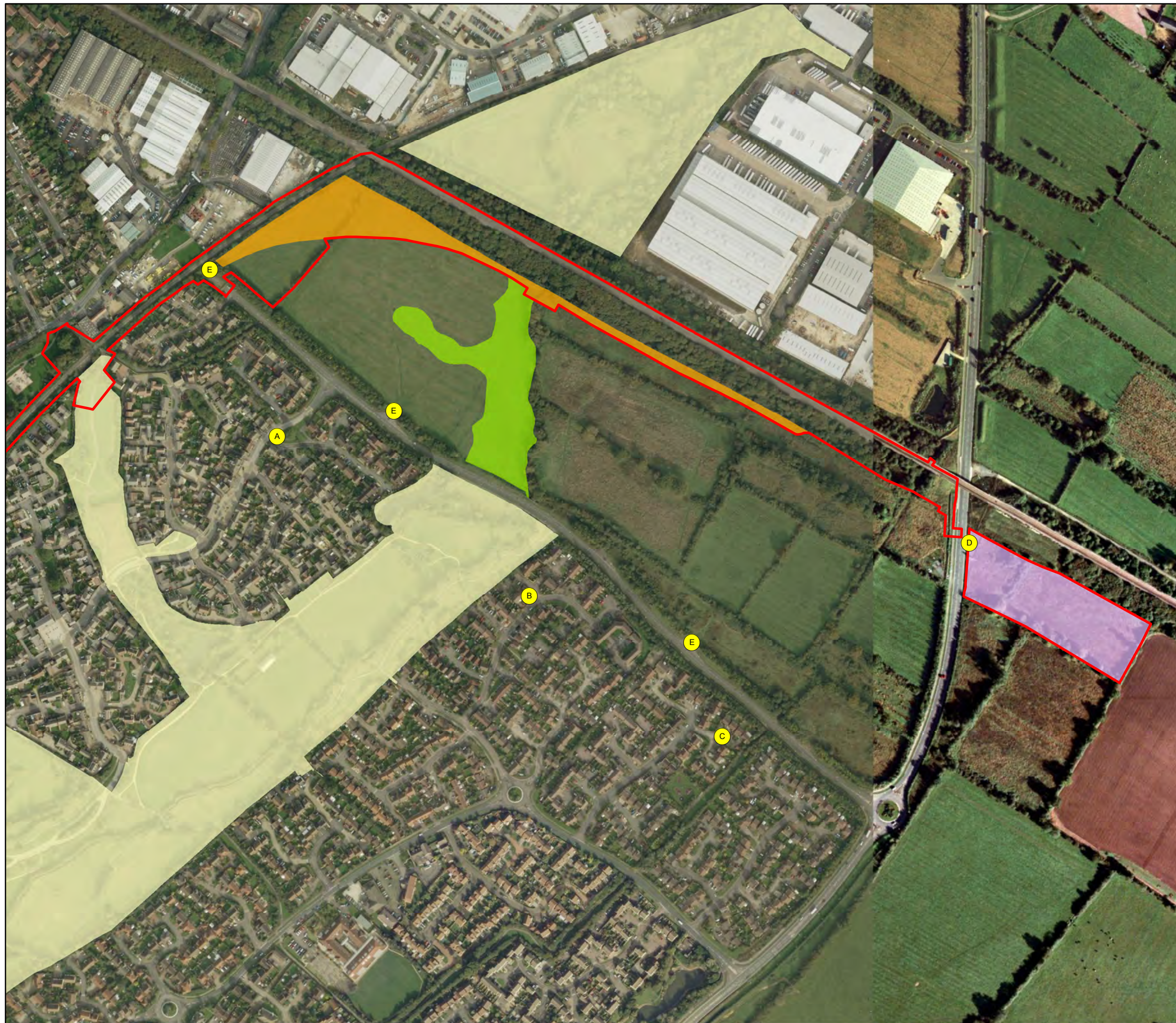
> Regards,

>

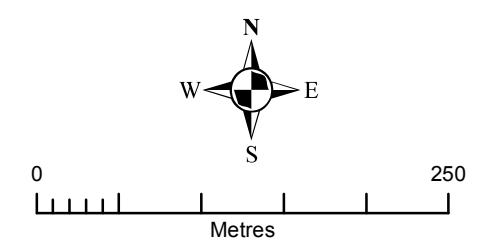
Appendix B

CRCL/R/OBJ7/3

Figure showing location of open space




- KEY:
- Scheme Boundary
 - Open Space to be Acquired
 - Area of Open Space to be Provided under Planning Permission 04/0279/OU
 - Exchange Land
 - Existing Areas of Open Space
 - Distance Receptors
 - A - Mallards Way
 - B - Heron Drive
 - C - Merganser Drive
 - D - Entrance to Exchange Land
 - E - Entrance to Open Space to be Acquired



TITLE:
Figure OBJ7/1
 Location of Open Space to be Acquired and Exchange Land

CLIENT: Chiltern Railways		SIZE: A3
DATE: 22/11/2010	CHECKED: SLG	PROJECT: 0110147
DRAWN: IG	APPROVED:	SCALE: As Scale Bar
DRAWING: OpenSpace_OBJ_7_1.mxd		REV: 0

ERM
 Eaton House
 Wallbrook Court
 North Hinksey Lane
 Oxford OX2 0QS
 Telephone: 01865 384800
 Facsimile: 01865 204982



SOURCE: Reproduced from Ordnance Survey digital map data. © Crown copyright. All rights reserved. 2010 License number 0100031673. (c) 2010 Microsoft Corporation and its data suppliers
 PROJECTION: British National Grid

File: 0110147\ChilternRailways\Working\Planning\Objections\OpenSpace_OBJ_7_1.mxd

Appendix C

CRCL/R/OBJ7/3

Figure of Objector's
Alternative Site



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Scale 0 50m

Source: Google Maps

Objector's Alternative Site for Exchange Land

CLIENT: Chiltern Railways	SIZE: A3	Figure OBJ7/2	
ERM 2nd Floor, Exchequer Court 33 St Mary Axe London EC3A 8AA Tel: 020 3206 5200 Fax: 020 3206 5440		Objector's Alternative Site for Exchange Land	
DATE: 28/06/2010	CHECKED: SG	PROJECT: 0110147	
DRAWN: NT	APPROVED: IG	SCALE: Not To Scale	
DRAWING NO:			REV: 0

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