

## **THE CHILTERN RAILWAYS (BICESTER TO OXFORD IMPROVEMENTS) ORDER: PUBLIC INQUIRY**

### **Note of the Pre-Inquiry Meeting held on Tuesday, 7 September 2010 at The Oxford Conference Centre, Park End Street, Oxford OX1 1JD**

#### **Introduction**

- 1 The meeting was opened at 11:00 by the Inspector, Mr John Watson BSc, FCIHT, MICE, MCMi, who welcomed those present. He had been appointed by the Secretary of State for Transport, to conduct an Inquiry into the Chiltern Railways (Bicester to Oxford) Improvements Order ("the Order"). He explained that the previously-appointed Inspector, Mr Boyland, was unwell and would be unable to attend the Inquiry.
- 2 The Inspector explained that his work would be open, fair and impartial. He would have no direct dealings with any parties, except while the Inquiry was in session or at accompanied site visits. He introduced the Programme Officer, Mrs Helen Wilson. She is independent of all parties. Mrs Wilson would be responsible for the schedule of appearances at the Inquiry under the direction of the Inspector, she would maintain the Inquiry Library and provide an interface (outside the Inquiry) between the Inspector and the parties. The contact details for the Programme Officer until the opening of the Inquiry are:

Mrs Helen Wilson  
32 Pennyford Close, Brockhill, Redditch B97 6TW  
Telephone: 01527 65741  
Fax: 01527 65741  
Mobile: 07879 443035  
e-mail: [progofficer@aol.com](mailto:progofficer@aol.com)

#### **Housekeeping**

- 3 Emergency exit arrangements were explained. Those present were asked not to smoke and to make sure their mobile phones were turned off.
- 4 The Inspector asked everyone present to sign the Attendance Sheets before leaving, if they had not already done so.

#### **Purpose of the Pre-Inquiry Meeting**

- 5 The Inspector outlined the key procedural steps from publication of the draft proposals, receipt of responses leading to the decision to hold a Public Inquiry and the arrangements for today's Pre-Inquiry Meeting. The purpose of this Meeting was not to hear evidence but to discuss the procedural and administrative arrangements, and to set out a timetable, for the Inquiry due to open on 2 November 2010. A note of this Meeting would be circulated.

## Purpose of the Public Inquiry

- 6 The Inspector explained that the purpose of the Inquiry would be to enable him to gather relevant evidence so that he could report to the Secretary of State on the proposed Order, the request for deemed planning permission and the objections and other submissions duly made. Having received the Inspector's report, the Secretary of State would decide what action to take. The Secretary of State might make the Order as promoted, or he might modify and then make the Order, or he might not make the Order; and the Inspector expected that his report would recommend one of those options. If the Order were made and planning permission granted, then that planning permission would probably be subject to conditions and they too would be a topic for discussion at the Inquiry.
- 7 Attention was drawn to the Statement of Matters issued on behalf of the Secretary of State on 25 August 2010 to everyone who had made representations to him (Inquiry Document X/4). It sets out the matters about which the Secretary of State particularly wishes to be informed for the purposes of his consideration of the application. The Inspector also drew attention to the statutory and other tests in respect of the compulsory purchase of land and the closure of public rights of way; appendix 1 to this note summarises those tests. The Inspector expected that evidence submitted to the Inquiry would address the Statement of Matters and the statutory and other tests, although evidence that also dealt with other relevant topics would not be turned away.
- 8 Discussion about the merits of Government policy, matters of compensation and points of law were outside the scope of the Inquiry. The application of Government policy to the proposals was, however, a relevant consideration. Should any points of law arise, a note may be taken by the Inspector and included in his Report. Matters of compensation, which would arise only if the Order was made, were for negotiation or for determination by the Lands Tribunal and are outside the scope of the Inquiry.
- 9 The Inspector had received a written procedural submission from Gosford and Water Eaton Parish Council which was largely about an element of the Order that would relocate an aggregate depot that does not, in the Council's submission, have planning permission. The Inspector asked whether anyone from the Council was present, and there was no reply. The Council considers that, for various reasons it had set out, the Inspector should not hear evidence about that part of the Scheme. The Rules allow the Inspector to refuse to permit the presentation of any matter that he finds irrelevant or repetitious. But the Inspector said that a contention that the Order seeks to achieve things that it ought not is relevant to the case; and the exploration of such a position should not be excluded from the Inquiry.
- 10 Chiltern Railways provided updates on three aspects of the Scheme:
  - i) A modification of the Scheme, affecting the area near Langford Lane, is proposed by Chiltern Railways and was to be published on Thursday 9 September. Representations would be invited to be received by 21 October 2010.

- ii) Scheduled monument consent, needed because of the effect the Scheme would have on Roman archaeological remains, was expected by Chiltern Railways to be granted before the Inquiry opened.
- iii) The published Order plans show that the Scheme would take some open space land at Bicester and that other land would be provided as a substitute. In respect of one area of open space land, Chiltern Railways has asked the Secretary of State for Communities and Local Government to certify that the substitute land would be not less in area and equally advantageous to the public in comparison with that which would be taken. In respect of another parcel of open space land, it was stated that its extent would be below the statutory threshold and so no substitute would be needed. Chiltern Railways expected that the Secretary of State would publish, during September, a notice of his intention to issue a certificate to that effect. Such a notice was expected to make provision for public representation on the point and any dispute might be considered concurrently by the Order Inquiry. Chiltern Railways said that no certificate was sought in respect of open space at Oxford because the Scheme required such land there only temporarily.

## Appearances

- 11 The Inspector had tabled a list of the Statements of Case received by the Secretary of State, all of which he had received, and a note prepared by Chiltern Railways about the Proposed Order of the Inquiry which listed all objectors who wished to be heard at the Inquiry and of which Chiltern Railways were aware. The Inspector had also received a Statement of Case from Mr Michael Gotch, a member of Oxford City Council. He asked whether anyone was aware of any other party who wanted to appear at the Inquiry, or whether anyone on the list no longer wished to appear. Mr Sargent said that he wanted to appear at the Inquiry, although he was not included on either list, and the Inspector noted that Mr Sargent would appear. Ms Julebin (party Obj/97) said that she had submitted a statement of case but it was not listed. There is no need for a party's agent or representative to be listed in addition to the party for whom they act.
- 12 Attending the pre-inquiry meeting is not a pre-requisite of appearing at the Inquiry.
- 13 The Inspector explained that those who appeared in person to give oral evidence at the Inquiry to reinforce their written evidence would be in a position to cross-examine those of opposing views and may be cross-examined by those who oppose them. Whilst greater weight would be given to evidence made available to be tested by cross-examination, all oral and written evidence would be taken into account in the preparation of the Inspector's Report.
- 14 Chiltern Railways suggested, through the note previously mentioned, that the Inquiry might run most efficiently if objectors who are statutory bodies were the first objectors to appear, after which amenity groups with objections or representations relating to rights of way and countryside issues would appear, and then landowners, representors and other interested parties would appear in geographical order, from Oxford to Bicester. The Inspector said that "themed" sessions of Inquiries were often effective ways of considering a range of objections and, while he would be mindful of Chiltern Railways's submission, he would reach a view on possible "themes" once he had

considered the Statements of Case and objections more fully. Parties whose evidence included more than one "theme" would be able to appear at the Inquiry on more than one occasion, if a "themed" approach was adopted.

- 15 The Programme Officer will programme the Inquiry based on the completed questionnaire received. Anyone wishing to appear who has not returned a questionnaire is asked to provide the Programme Officer with contact details and time estimates by no later than Friday 24 September.

### **Procedure and Programme at the Inquiry**

- 16 The Inquiry would be conducted in accordance with The Transport and Works (Inquiries Procedure) Rules 2004. The Inspector also drew attention to the document "Transport and Works Act Orders – A Brief Guide", which had been issued to each party by the Transport and Works Act Unit of the Department for Transport; and the DfT's "A Guide To TWA Procedures" and The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, all of which would be Inquiry documents.
- 17 Chiltern Railways would give evidence first to present its case for the scheme; then supporters and representations other than objections, followed by objectors. Questions of clarification may be put orally to Chiltern Railways' witnesses at this stage, but there would be not cross-examination. Supporters who appear at the Inquiry to give evidence may be cross-examined by objectors at the time the supporter appears.
- 18 The sequence to be followed in the presentation of each objector's case will be:-
  - a Should the objector so wish, cross-examination by the objector or their advocate of Chiltern Railways' witnesses on the witness's evidence and any rebuttal (i.e. Chiltern Railways' written response to the objector's evidence). Chiltern Railways will make its witnesses available for this purpose throughout the Inquiry by arrangement with the Programme Officer, and so each objector should notify the Programme Officer in advance if he/she wants to cross-examine Chiltern Railways witnesses.
  - b Presentation of evidence in chief by the objector, reading aloud their proof of evidence or summary proof of evidence as appropriate.
  - c Chiltern Railways will then have an opportunity to cross-examine the objector.
  - d The objector will then have an opportunity to correct any misleading answers he/she may have given in cross-examination (or for re-examination by their advocate),
  - e The objector will then have the opportunity to make a closing submission, either immediately after re-examination or towards the end of the Inquiry.
- 19 Chiltern Railways will give its closing submission at the end of the Inquiry.
- 20 A note on closing submissions is attached to this note as Annex B.

- 21 Questions of clarification are those which are intended to enable the questioner better to understand the matter to which they relate. They are not cross-examination. Questions of clarification of evidence-in-chief may be dealt with in writing before the Inquiry, or orally when the relevant witness first appears. All written questions of clarification should be forwarded in writing to the Programme Officer before noon on 15 October 2010, or on any earlier date. With the Inspector's approval, these will be promptly passed to the questioned party who will provide a written response to the questioner, with two copies for the Programme Officer, all to be received within 7 calendar days of receipt of the question by the questioned party (except where the question of clarification raises very complex matters, in which case a holding reply should be issued during the 7-day period). All written questions of clarification and the written responses will be Inquiry Documents and should be numbered by their originator. This approach was accepted by all present at the meeting.
- 22 Mr Anstey, who represents a number of parties, had asked before the Meeting that the Inquiry should be deferred because of delays he had experienced in receiving information from Chiltern Rail. The Inspector explained that he has no authority to defer the Inquiry, the date having been set by the Secretary of State; and that the arrangement described in paragraph 21 was intended to avoid lengthy delays in the provision of information.
- 23 The Inspector may pose questions to any party throughout the Inquiry.
- 24 The role of a witness is to present evidence; a role of an advocate is to marshal the questions during cross-examination. Both roles may be carried out by an individual objector or supporter. No new material could be introduced by those asking questions during cross-examination.

### **Presentation of Evidence - Documentation**

- 25 Evidence in chief is commonly presented at an Inquiry in the form of a written proof of evidence. This is usually a text document. It may be supported, if the witness wishes, by volumes of Appendices and/or Figures (both may contain drawings and diagrams) which should be bound separately from the Proof to which they refer. If a party submits more than three documents it is helpful to include in one of the documents a list of all the documents submitted by that party, so that recipients can be confident they have all the documents.
- 26 A proof of evidence is a prepared written statement from which a witness at the Inquiry reads word for word. Proofs of evidence may be of any length. Summaries of proofs of evidence are required by the Rules wherever a witness's proof of evidence is more than 1500 words long. The purpose is to save time at the Inquiry, because it is only the summary proof that is read by the witness to introduce their evidence. Proofs of less than 1500 words may be read in full. Cross-examination, and the Inspector's report, will be based on the whole evidence of each witness. Summary proofs of evidence should be prepared in the expectation that they and nothing else will be used when introducing a witness's evidence at the Inquiry; they may be in note form and may set out cross-references to the main proof. The Inspector asked whether anyone would be disadvantaged by this approach, and no-one present at the meeting said that they would.

- 27 Rebuttal evidence is evidence prepared in response to the evidence of the "other side". It should not raise wholly new points. It should be provided in writing to be received by the "rebutted" party at least 7 calendar days before the objector's programmed appearance at the Inquiry, providing the "rebutted" evidence is submitted in accordance with the timescale set out in this note. Rebuttal evidence would be taken "as read" at the Inquiry, and there would be an opportunity for rebutted parties to respond orally to rebuttal evidence when they appeared at the Inquiry.
- 28 A projector, linked to a laptop computer, was used at the Meeting and would be available at the Inquiry. It can display common document formats such as Word files or .pdf format files and would be available for material provided by any party. Videos may be displayed, providing that they are short and are submitted to the Inquiry in the same way as any other document. Videos should be in a format capable of being displayed by computer without specialist software and should be submitted in the same way as any other Inquiry document, accompanied by a note explaining the material on the video that its author intends to be illustrated.
- 29 Reference may be made to the Core Documents. Any other document used as a reference must be provided in hard copy of the whole document or, preferably, the relevant extract. If a party wishes to give in evidence material drawn from the internet, it should be printed and submitted, perhaps as an Appendix to the proof of evidence. Reference to a website address is not sufficient as website material may change or be removed.
- 30 Documents should be A4 size (or folded to A4) wherever possible. Parties were discouraged from using foolscap sized binders.
- 31 Documents prepared for the Inquiry should be marked to show on whose behalf they were submitted. All document paragraphs and pages should be numbered, for ease of reference at the Inquiry and afterwards.
- 32 Four copies of all documents would be required in hard copy; three to be sent to the Programme Officer and one direct to Chiltern Railways. In addition, wherever possible, the provision of electronic copies to the Programme Officer would be very helpful so that the document may be put on the Inquiry website. Parties should not rely on the Programme Officer printing out material that has been e-mailed to her.
- 33 Each document presented at the Inquiry should be uniquely numbered and the document numbering system that is to be used is at Annex C. Document numbers should be agreed with the Programme Officer before they are submitted to the Inquiry. A Document List would be maintained by the Programme Officer.
- 34 All proofs of evidence, summary proofs of evidence, appendices and supporting reference material should be issued so as to be received in hard copy by the Programme Officer and (where appropriate) Chiltern Railways by the close of business (17:00) on 1 October 2010.
- 35 All documents submitted to the Inquiry would be placed during the Inquiry in the Inquiry Library where they would be available to all parties and to the public.

## The Inquiry

- 36 **Venue:** The Inquiry will be held at the same location as the Pre-Inquiry Meeting: The Oxford Conference Centre, Park End Street, Oxford OX1 1JD, opening at 10.00 a.m. on Tuesday, 2 November 2010.
- 37 **Timing of Appearances:** The timing of appearances at the Inquiry would be agreed with the Programme Officer. An outline Programme would be produced by the Programme Officer but will be subject to change in the light of events.
- 38 **Sitting Times:** The Inquiry would normally sit on Tuesdays to Fridays inclusive. Inquiry hours would be 10:00 to about 13:00 and 14:00 to about 17:00 on Tuesdays, Wednesdays and Thursdays and 09:30 to about 13:30 on Fridays. There would be mid-session breaks.
- 39 **Sitting Dates:** The Inquiry is expected to last for about 6 weeks. It will not sit on Saturdays, Sundays or Mondays, or on the 25 and 26 of November. Should the Inquiry take longer than expected, the Inspector will arrange an adjournment over the Christmas break.
- 40 **Inquiry Library:** The Programme Officer would maintain a public library of all Inquiry documents at the Inquiry venue during the Inquiry.
- 41 **Photocopying:** Facilities would be available at the Inquiry, for the taking of modest amounts of copies of material needed for the Inquiry.
- 42 **Inquiry Website:** The Inquiry website can be found at <http://www.chiltern-evergreen3.co.uk/index.php/twa-inquiry>. It will include all material submitted to the Inquiry in electronic form.

## Site Inspections

- 43 The Inspector would make unaccompanied visits to public places to familiarise himself with the areas affected by the proposals. Accompanied site inspections would also be made if requested by any party to locations that would enhance understanding of the evidence presented during the Inquiry sessions. Further evidence may not be presented during site inspections. On such inspections the Inspector would need to be accompanied by representatives of both Chiltern Railways and objectors. Requests to accompany the Inspector, or for the Inspector to visit particular locations (with a reference to the evidence given to the Inquiry to which the site visit would refer), should be made to the Programme Officer. It is likely that accompanied site visits will be scheduled to happen toward, or shortly after, the end of the Inquiry.
- 44 The Inspector emphasised that parties should not rely on the Inspector's site visits to inform him of transient conditions such as (for example) traffic conditions or the presence of protected species. Evidence of such things, where considered relevant, should be objectively gathered before the Inquiry and produced in evidence at the Inquiry.

**Other Business**

45 There being no further business, the meeting closed at 13:07.

J.P. Watson  
INSPECTOR  
9 September 2010

## ANNEX A

### STATUTORY TESTS

- 1 Where the Order would extinguish a public right of way over land, the Secretary of State should be satisfied either that an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required.
  
- 2 Where land is to be compulsorily purchased, there should be:-
  - A compelling case for acquisition in the public interest, and
  - Evidence that this justifies interfering with the human rights of those with an interest in the land, and
  - Evidence that the acquiring authority (Chiltern Railways) has a clear idea of how the land is to be used, and
  - Evidence that the acquiring authority can show that all necessary resources to carry out its plans are likely to be available in a reasonable time scale, and
  - Evidence that the scheme is unlikely to be blocked by any impediment to implementation.

## **ANNEX B**

### **NOTE ON CLOSING SUBMISSIONS**

- 1 There is no obligation on any party to make a closing submission. This explanatory note is intended to assist parties with limited experience of public inquiries in the preparation of their closing submissions.
- 2 The purposes of your closing submission might be broadly:
  - i) To summarise very briefly the points from your case as it rests at the time of making the closing submission.
  - ii) To identify any point on which you have been satisfied by those whose case you oppose.
  - iii) To identify in the cases of those you oppose those aspects of their case which you claim not to have been made out.
  - iv) To make any legal submission associated with your case. If any decided case is referred to in your closing submission, full copies of the judgment must be provided with the closing submission.
- 3 Closing submissions do not contain new evidence.
- 4 Parties may make closing submissions at the end of their appearance to give evidence at the Inquiry, or may reserve their right to make a closing submission toward the end of the Inquiry.
- 5 Closing submissions given toward the end of the Inquiry may be made in writing only, or in writing and orally. The same weight is given in either case. The oral presentation of closing submissions will consist of the party reading out, verbatim and without addition, to the Inquiry their written closing submission. Three copies on paper and one copy on CD-rom or USB memory stick will be required. If you want to make your closing submission toward the end of the Inquiry, please contact the Programme Officer to arrange an appointment.
- 6 The Rules establish that the Promoters (in this case, Chiltern Railways) have the final right of reply and so their closing submission will be made at the end of the Inquiry.

## **ANNEX C: DOCUMENT NUMBERING**

### **Chiltern Railways**

1. Proofs will be numbered as CRCL/P/[no.]/A for Main Proof
2. Appendices as CRCL/P/[no.]/B
3. Summary proofs as CRCL/P/[no.]/C
4. CRCL/P/[no.]/D onwards will be used for Supplementary Proofs/Written Responses to Inspector's Questions etc.
5. CRCL Rebuttals, which are likely to be multi-authored, to be numbered – CRCL/R/OBJ [no]/A
6. Written Requests for Clarification to be numbered CRCL/C/OBJ[no]/A

Please note anyone who has submitted a Statement of Case - this has already been numbered /1 – eg. Statement of Case by the Environment Agency is OBJ248/1

### **Supporters**

All documents to prefixed SUP/[no]/ - then /1 for the first document submitted (if no SoC submitted); /2 for the second etc.

### **Representors**

All documents to prefixed REP/[no]/ - then /1 for the first document submitted (if no SoC submitted); /2 for the second etc.

### **Objectors**

All documents to prefixed OBJ/[no]/ - then /1 for the first document submitted (if no SoC submitted); /2 for the second etc.

### **General Inquiry Documents**

Documents introduced by the Inspector are numbered X/1, X/2 and so on.

### **Notes**

1. Any party who does not know their SUP; REP; OBJ number is asked to contact the Programme Officer.
2. Please reference all documents in the top right hand corner on the front page/cover.