

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

CHILTERN RAILWAYS' REBUTTAL PROOF OF EVIDENCE

IN RELATION TO

THE OBJECTION AND EVIDENCE OF ALISTAIR BUCKLEY

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 Alistair Buckley.
- 1.2 In particular, Alistair Buckley has raised points in his 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 the witnesses for Chiltern Railways have already covered in their evidence or responses to Questions of Clarification. 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 Alistair Buckley 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 and emails exchanged between Chiltern Railways and Alistair Stuart Buckley; letters dated 13 February 2010, 17 May 2010, 15 July 2010, 21 September 2010 to 20 October 2010 and 28th October 2010, attached as Appendix A to this rebuttal proof;

“the Objector” means Alistair Buckley;

“the Objector’s evidence” means the proof of evidence of Alistair Buckley;

“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 is the owner and occupier of 42 Whimbrel Close, Bicester. The Objector states that his property is approximately 20 metres from the railway centre line.

Noise Impacts, Michael Fraser

3.2 The Objector states that the main living areas of his property are at the rear of the property and will be directly affected by the Order Scheme. The Objector states that the existing single track line is used for freight only and the number of trains is very infrequent being an average of two to three trains per day. The Objector states that the proposed increase to rail traffic will see this rise to four passenger trains per hour (possibly less in the late evenings and on Sunday mornings but this is by no means guaranteed) plus the existing freight trains. The Objector states that additionally, if the East West Rail goes ahead this could rise to 12 trains per hour.

3.3 The Objector states that this increase will adversely impact on his property in particularly use of his conservatory which because of its basic construction it will be more exposed to the effects of increased noise and vibration levels and in the summer it is necessary to have the doors open to maintain an ambient temperature. The Objector states that it is also necessary to frequently open the bedroom windows for ventilation. The Objector states that he will no longer be able to do this since the late running times of the trains would cause continuous sleep disturbance.

3.4 While the Objector is correct that the train frequencies are expected to increase if the East West Rail project takes place, it should be noted that in a typical hour there will

only be 8 passenger train movements and one freight train movement (ie a total of 9 movements). This is the case because the two Cross Country Train movements per hour that were planned at the time of the ES, and which have been retained in the assessment, have been withdrawn from Cross Country Trains' business plan. Also, the freight trains are likely to be on movement in an hour (not one each way).

- 3.5 The prediction location that best represents the Objector's property in the ES **[CD/1.16]** is Receptor 4 (Langford Village), which is a similar distance from the tracks as the Objector's property (excluding the conservatory). This is further from the tracks than the closest properties in Whimbrel Close (Receptor 3). In Phase 1 a 6 dB exceedance of the night-time noise threshold was predicted, which was judged to be sufficiently marginal in terms of noise impact that mitigation at source through rail infrastructure solutions would be provided. On this basis, a barrier could not be justified. However, subsequent predictions in this area have confirmed that impacts may be slightly higher at individual properties, including No 42 Whimbrel Close, and the need for a barrier in Phase 1 will be reconsidered and confirmed during detailed design.
- 3.6 If the East West Rail project goes ahead, a barrier is proposed in Phase 2 which will reduce the noise impact to 2 dB as reported in Section 6, Table 6.23, of the ES for Receptor 4 **[CD/1.16]**. Subsequent predictions at the Objector's property suggest that the impact may be 1-2 dB higher than this. However, to put this impact into context it represents an exceedance of the stringent night time noise impact threshold (45 dB) by a maximum of 4 dB, which is just higher than 3 dB which is the smallest change in noise which is audible under normal conditions. The thresholds that have been adopted are stringent as discussed on page 8 of the Proof of Evidence of Michael Fraser **[CRCL/P/9/A]**. It has also been found that many people (68%) live in dwellings exposed to night-time noise levels above 45 dB standard. The maximum noise levels from the individual freight trains during the night are not expected to exceed the standards that are set out in the ES which relate to sleep disturbance, and therefore it is not expected that the potential for sleep disturbance will be significantly increased. The final form of mitigation will be implemented, based on the Noise and Vibration Mitigation Policy **[CD/1.29]** and enforced through Planning Condition 16 of **CD/1.12/1**.
- 3.7 The conservatory would need to be a habitable room in order for mitigation to be considered. The predicted impacts without mitigation are expected to be approximately 1 dB higher than the main house which is discussed above. However, the barrier that is being considered would be more effective for this ground floor conservatory than for the first floor of the property, and slightly better than the predicted level for the ground floor of the property. Predictions show that the train noise levels would be below the noise thresholds of 45 dB at night and 55 dB during the day, and therefore significant effects on the conservatory are not predicted. Below these thresholds PPG 24 **[CD/3.4]** states that noise does not need to be considered as a determining factor for new housing, and therefore no significant effects are predicted on the conservatory even if doors or windows are opened for ventilation.

Noise Mitigation Measures, Michael Fraser

- 3.8 The Objector is seeking that a noise barrier of suitable height and length between the railway and the property be provided prior to the commencement of work. The Objector is also seeking the implementation of an appropriate acoustic glazing system prior to the commencement of work to provide suitable ventilation to the main bedroom window and conservatory.
- 3.9 As discussed above, the need for a barrier will be reconsidered during detailed design, since the situation in Phase 1 is marginal. In Phase 2, a barrier has been shown to be justified. In Phase 1 and Phase 2, the residual noise impact is not high enough to justify statutory noise insulation. Neither do the impacts exceed + 10 dB, and therefore the noise impacts are too low to justify non-statutory noise insulation in the form of acoustic glazing and ventilation under the Noise and Vibration Mitigation Policy [CD/1.29]. Even if it were justified, it is unlikely that such glazing would be effective in reducing internal noise levels on an acoustically weak structure such as the conservatory.

Loss of Vegetation and Impacts on Privacy, Ian Gilder

- 3.10 The Objector states his concern that a large tree which shields his property from the track at the rear of his garden may need to be removed to implement the Order Scheme. The Objector states that this provides a degree of privacy from the railway track.
- 3.11 The Objector states that he does not consider that the proposed height of the noise barriers will be sufficient to retain current levels of privacy and prevent overlooking from the train into his bedroom.
- 3.12 The Objector is seeking the retention of the tree and trackside vegetation to the rear of his property reinforced by additional tree planting to aid privacy and minimise the visual impact of the Order Scheme. The Objector is also seeking the reasonable costs associated with installing blinds in his conservatory.
- 3.13 Section 10.5 of the Construction Code of Practice [CD/1.24/1] details the protection of mature trees. It is stated that the “*loss of trees shall be avoided as far as reasonably practicable*”. Works will be carried out in accordance with the guidelines set out in British Standard (BS) 5837:2005, ‘*Trees in relation to construction*’. The Code of Construction Practice will be enforced by Planning Condition 15 [CD/1.12/1]. Subject to detailed design there is no intention to remove this tree or vegetation along the strip of land to the rear of the Objectors property and the rail line.
- 3.14 The existing planting will be, wherever possible, maintained. The track will remain at the same height as existing views into the property at first floor level will, at worst, be transient.

Property Values, Richard Caten

- 3.15 The Objector states that the Order Scheme would hugely affect the desirability and value of this property, as well as the likelihood of him being able to sell it. The

Objector states that he has received independent advice that the reduction in the value of his property could be in the region of 30%.

- 3.16 The Objector states his understanding that statutory compensation is assessed when the line has been operational for a year. The Objector is concerned that as construction will take three years it will be difficult for him to sell his property in the intervening period and he will need to remain in his property for four years.
- 3.17 The Objector will be able to claim compensation for loss of property value under the statutory Compulsory Purchase Compensation Code.
- 3.18 A claim for compensation under the Land Compensation Act 1973 is made upon the expiry of one year after the commencement of the use of the public works. However, Chiltern hopes that operation will commence in December 2012, or sooner. This means that from commencement of construction until a claim under this statute can be made will be approximately two years, not four as the Objector fears.

Further Increases in Train Services, Allan Dare

- 3.19 The Objector believes that with the Order Scheme in place there is a high possibility that the number and frequency of trains could increase either if the East West Rail project goes ahead or if Chiltern Railways increases train frequencies on the line.
- 3.20 The proposed train frequencies for both Chiltern Railways and East-West Rail are set out in Table 3 of Allan Dare's evidence [CRCL/P/2/A]. These provide sufficient capacity to meet both the forecast initial demand and traffic growth over time. Under the terms of the 1993 Railways Act train operators can run additional trains, subject to line capacity being available, but it is not envisaged that additional services will be required.

4 Conclusion

- 4.1 This rebuttal proof responds comprehensively to the evidence presented by the Objector.
- 4.2 Subject to final design, the most suitable form of noise mitigation will be provided during Phase 1 and Phase 2 of the Scheme, in accordance with Chiltern Railways Noise and Vibration Mitigation Policy [CD/1.29] and enforced through Planning Condition 16 of CD/1.12/1. The provision of a noise barrier in Phase 1 will be considered during detailed design and a barrier will be justified for Phase 2.
- 4.3 Planting will be maintained at the rear of the Objector's property as far as possible, and any views from passing trains will be transient. The Objector may be able to make a claim under the Land Compensation Act 1973, and it is estimated that under this statute the Objectors could claim in approximately two years time.

Appendix A

CRCL/R/OBJ245

Relevant Correspondence
between Chiltern Railways
and the Objector

From:

Alistair Buckley
42 Whimbrel Close
Bicester
OX26 6XP

To:

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

13th February 2010

Re: Chiltern Railways Evergreen 3 Project

Dear Lord Adonis,

I am writing to you with regard to the Transport and Works Act Order application put forward to you by Chiltern Railways for improvements to the Bicester to Oxford railway, known as the Evergreen 3 project.

Having studied the plans and documents made available by Chiltern Railways, I feel I must strongly express my objection to a number of elements of this project regarding its effect on my property.

My property, 42 Whimbrel Close, Bicester, backs onto the existing single line track between Tubbs Crossing and Gavray Drive, with the rear of the house being about 20 metres from the centre of the track way centreline for the double tracking project.

The reasons for my objection are:

1. The proposed increased rail traffic and its speed:

The proposed substantial increase in the rail traffic and its speed, in relation to the present track usage, will result in a significant increase in noise disturbance and its frequency within the house and out in the garden, considerably adversely affecting my use and quiet enjoyment of the property, possibly with the experience of some vibration. Additionally there is the possibility that the trains could be left idling close to the property while they wait for the nearby level crossing to come down, further increasing the noise disturbance.

I have noted that the Non-technical Summary Environmental Statement says that "Predicted noise impacts described as substantial or high will occur at 16 locations, generally houses close to the railway from the western end of Gavray Drive". Clearly my property is one of these.

2. Loss of privacy :

Since the increase in rail traffic is made up of passenger trains there will be a significant effect on my personal privacy since the height of the track in relation to my property means that people on board the trains will be able to see into the main bedroom, conservatory, and garden all of which will also affect my quiet enjoyment of these areas. Additionally I am concerned that there will be

an additional loss of privacy in my main bedroom caused by the proposed footbridge crossing near Garth Park which would replace the ground level crossing currently in place.

3. The effect on the value and saleability of the property:

As a result of these proposals and for the reasons outlined above, the value and future saleability of my property will also be permanently and adversely affected also.

I sincerely hope that you and your colleagues will take all of the above into consideration when contemplating this application.

Yours sincerely

Mr Alistair Buckley

Our Ref: PC/P3.2.3.245.3/EG3/001
Your Ref:

Mr A Buckley
42 Whimbrel Close
Bicester
Oxon
OX26 6XP

Dir Tel – 07900 052307
E-mail – paulclarke@ardent-
management.com

17th May 2010

Dear sir,

**Draft Chiltern Railways (Bicester to Oxford improvements) Order
Objection number 245**

We refer to your letter dated 13 February 2010 addressed to the Secretary of State for Transport. The following are Chiltern's responses to your points of objection:

1. The proposed increases rail traffic and its speed:

Whimbrel close has been considered in scheme planning, the results of which can be seen in the Environmental Statement (ES), which was submitted as part of Chiltern's application for powers to build the scheme. This must consider all environmental impacts expected. You can download a copy from www.chiltern-evergreen3.co.uk/. This document sets out where impacts are expected and sets out what Chiltern intends to do to mitigate these impacts. These mitigation methods are legally binding obligations on Chiltern, as they are set out.

Whimbrel close is listed in table 6.12 in ES vol2 as receiving a substantial impact from phase 1, and a high impact from phase 2. In table 6.14 it states that there are approximately 3 properties in Whimbrel close which are eligible for statutory noise mitigation.

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Vibration levels have also been assessed to be a possible problem at the properties on Whimbrel Close that are closest to the line, the extract below is from ES vol 2 page 6-42:

The estimated VDV levels of ground vibration are not expected to exceed the assessment criterion beyond approximately 10 m from the tracks. Receptors that are close to or within this distance from the tracks include Quadrangle House on St Peters Road, Kareol (the level crossing keeper's house southwest of Islip), Oddington Crossing house, 53 London Road Bicester, and the closest properties to the railway on Whimbrel Close, Bicester. In these areas, specialist resilient track forms will be used, if practicable, so that vibration from the new track at the nearest sensitive receptors will be no higher than the levels specified in BS 6472 for 'a low probability of adverse comment'.

In table 6.22 it states that at Whimbrel close noise insulation will be provided in the form of noise barriers to protect the ground floor of the nearest properties as a result of Phase 1, if noise levels are expected to reach these levels following detailed design. Table 6.23 explains that a noise barrier will be needed for noise mitigation for Phase 2. The baseline noise levels at the properties closest to the railway in Whimbrel close showed 48dB in the day and 47dB in the night. As a result of phase 2 the levels will rise to 66dB in the day and 64dB at night. The trigger levels for statutory noise insulation are 66dB in the day and 61dB at night. Statutory noise insulation is in the form of secondary double glazing, or some other glazing method with the same performance characteristics. Mechanical ventilation is also added, to prevent noise through windows.

With regards to phase 2, on page 6-59 (ES Vol2) it discusses further mitigation methods and states:

Whimbrel Close – The upper floors of the closest properties are likely to qualify for statutory noise insulation which will reduce the internal effect of the 16 dB predicted impact.

As your property is one of the closest properties to the railway on Whimbrel Close, it is likely that it would be one of the properties eligible for statutory insulation, however until the detailed design phase, the exact properties are unknown. However it is extremely likely that the noise barriers will be implemented from phase 1. This will reduce the noise levels to an acceptable level.

The curve on the track near to Whimbrel close will also be designed with a suitable cant (tracks laid at a slight tilt) and track profile to minimise the risk of curve noise. Also in the unlikely event that wheel squeal does arise, operational measures will be taken to reduce it, including track profiling or wheel or rail lubrication.

2. Loss of privacy:

Table 7.4 (page 7-16) Vol2 in the ES, explains the landscape mitigation measures and states that measures will be taken around the Tubbs lane footbridge:

Planting to be introduced to the site of the proposed Tubb's Lane footbridge to screen in part views of the proposed structures from recreational users in the park and residents of dwellings. Native species shrubs to be introduced in groups and sites to screen in part the taller elements of the proposals thereby integrating this structure into the receiving landscape.

With regards to the footbridge, figure 7.6A Vol3 of the ES, shows the proposed footbridge structure at Tubbs Lane. As is shown in this photomontage, the highest levels of the bridge including the walkway over the railway are screened to provide privacy for the nearest properties on Whimbrel Close.

The noise barriers as mentioned above in part 1 are highly likely to be implemented along the backs of the properties in Whimbrel Close. The approximate locations of these barriers can be seen in figure 6.1B of ES volume 3. These noise barriers are approximately 2 metres high from the level of the track and should therefore minimise the view of your garden and house from the train.

3. The effects on the value and saleability of the property:

You will be compensated for any reduction in value of your property resulting from noise and vibration under the Compensation Code, as will be brought into effect by the Order when made. There is a free booklet produced by the Communities and Local Government website entitled 'Compulsory Purchase and Compensation Booklet 4: Compensation to Residential Owners and Occupiers' this explains how such compensation is determined.

The RICS also run a free Compulsory Purchase hotline which can be contacted on 0870 333 1600, they will put you in touch with a specialist for 30 minutes free advice.

We hope the above answers the questions that you raised in your objection, but if you wish to seek any further clarification, please do not hesitate to contact the undersigned.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P. Clarke', written in a cursive style.

Paul Clarke
Associate director

cc C Baker ERM

Our Ref: PC/P3.2/EG3/001
Your Ref:

Mr A Buckley
42 Whimbrel Close
Bicester
Oxon
OX26 6XP

Dir Tel – 07917 341614

E-mail – petergibbard@ardent-management.com

15th July 2010

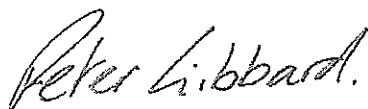
Dear Mr Buckley,

**Draft Chiltern Railways (Bicester to Oxford improvements) Order
Objection number 245 – Mr A Buckley**

I am writing further to the letter we sent to you on 17.05.10 in response to your letter of objection, which was sent to the Department For Transport. We have not received any response to the letter we sent to you, I trust we have addressed all of your concerns.

If you do have any further questions in relation to the proposed Order or if we have not successfully addressed your concerns, please do not hesitate to contact the undersigned or Paul Clarke on paulclarke@ardent-management.com. If you feel that we have addressed your concerns with the above Order then you are able to withdraw your objection by writing to the Secretary of State for Transport. Ideally Chiltern will have no objections remaining at the Public Inquiry, we welcome the opportunity to work with you to achieve this position.

Yours faithfully,



Peter Gibbard
Assistant Surveyor

cc C Baker ERM

42 Whimbrel Close
Bicester
OX26 6XP

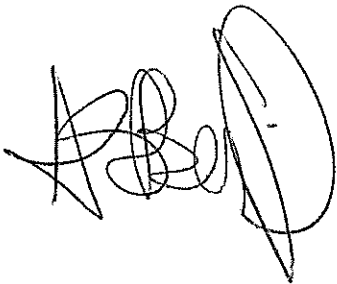
24th September 2010

Dear Sir or Madam,

Chiltern Evergreen 3 TWA

I am writing to confirm that I have instructed Bircham Dyson Bell Solicitors to act on my behalf in relation to my objection to the above.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Alistair Buckley', written in a cursive style.

Alistair Buckley

OBJ 245

Nicola Finlay

From: Paul Clarke [PaulClarke@ardent-management.com]
Sent: 20 October 2010 11:44
To: 'TEARLE Lee'
Cc: WALKER Angus; chiltern objections; ERM UK Chiltern Objections; Peter Gibbard
Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley
Follow Up Flag: Follow up
Flag Status: Red

Lee

The s61 consent process requires specialist knowledge of working methodology and noise implications, so it is best left to the Local Authority.

Your client bought a house adjacent to a railway line, in the full knowledge of the risk that its use could change at any time. The use has increased very recently due to a timetable change.

I look forward to hearing from you further once your client has come back to you. Please let me know if you need any further clarification of its content.

Regards,

Paul



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From: TEARLE Lee [mailto:LeeTEARLE@bdb-law.co.uk]
Sent: 20 October 2010 10:30
To: Paul Clarke
Cc: WALKER Angus; chiltern objections; 'ERM UK Chiltern Objections'; Peter Gibbard
Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Paul

I have forwarded the policy to my client. I will contact you again shortly after my client has had the chance to consider properly the policy.

Regarding your other comments:

Many statutory processes have been varied by agreement including the variation in question nor is it an unreasonable request

The operational railway line adjacent to my client's property at present is nothing compared to what it will be should the Order be made and the works carried out and the massive increase in service frequency that this will cause.

22/10/2010

Regards

Lee

Lee Tearle
Associate
For and on behalf of Bircham Dyson Bell LLP

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From: Paul Clarke [mailto:PaulClarke@ardent-management.com]

Sent: 19 October 2010 19:24

To: TEARLE Lee

Cc: WALKER Angus; chiltern objections; 'ERM UK Chiltern Objections'; Peter Gibbard

Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Lee

I have attached the Noise Policy that I have previously mentioned, that is now adopted by Chiltern. This takes care of the obligation that you refer to below.

With regards to your other points:

3.1.2 - this is a statutory process that Parliament has thought to be fit for purpose, so not requiring variation.

3.6.3 – your client owns a property that is already adjacent to an operational railway line, the service patterns upon which can change at any time.

I presume the attached policy will change your advise to your client in respect of the need for an agreement? I look forward to hearing from you further.

Regards,

Paul



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From: TEARLE Lee [mailto:LeeTEARLE@bdb-law.co.uk]

Sent: 18 October 2010 16:47

To: Paul Clarke

Cc: WALKER Angus; chiltern objections; 'ERM UK Chiltern Objections'; Peter Gibbard

22/10/2010

Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Paul

Thank you for your email.

Your comments on the agreement make reference to the fact that issues are covered in the ES or dealt with by noise regulations but this does not amount to an undertaking that the necessary mitigation works will be carried out. This, in essence, is the point of the agreement in that it will provide my client with certainty as opposed to potential obligations set out in the ES and Noise Policy etc.

Dealing with some of the specific observations that you have made I would respond as follows:

Clause 3.1.2 - this will allow my client the opportunity (should he so wish) to make representations to the local authority when your client makes an application under section 61 of the Control of Pollution Act 1971.

Clause 3.6.3 - My client is concerned that passengers on the trains may be able to see into his property (certainly if the trains are held adjacent to his property for any reason). The provision of blinds would afford some measure of protection against my client's loss of privacy if the new line is built and passenger services run on it.

My response to most of the other points that you have raised is that the agreement requires an undertaking from your client that it **will** carry out the necessary mitigation (install noise barriers and install suitable noise insulation etc) rather than what your client **may** do. I am happy to respond in more detail pending confirmation that your client is willing to consider the terms of the agreement.

I can confirm that my client remains, for now, willing to enter into agreement with your client but I would reiterate that Mr Buckley will appear before the inquiry if no agreement is reached.

Regards

Lee

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For and on behalf of Bircham Dyson Bell LLP

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From: Paul Clarke [mailto:PaulClarke@ardent-management.com]

Sent: 13 October 2010 17:41

To: TEARLE Lee

Cc: WALKER Angus; chiltern objections; 'ERM UK Chiltern Objections'; Peter Gibbard

Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Lee

I have attached a copy of the pdf'd agreement with my comments against each point. As you will see, I really can see no benefit in the agreement!

The noise policy will be available later this week. However, in any event the obligations it contains are in line with the ES. As you know, that will be an obligation upon Chiltern, so

22/10/2010

the policy is simply a clarification.

Regards,

Paul



Paul Clarke | Associate Director
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From: TEARLE Lee [mailto:LeeTEARLE@bdb-law.co.uk]
Sent: 12 October 2010 16:22
To: Paul Clarke
Cc: WALKER Angus; chiltern objections; 'ERM UK Chiltern Objections'; Peter Gibbard; 'Ian Gilder'
Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Paul

With the start of the inquiry not far away it would be helpful if you could provide me with an idea as to when the noise policy will become available and whether, pending sight of that report, your client is prepared to consider other aspects of the draft agreement which are not concerned with sound barriers.

regards

Lee

Lee Tearle
Associate
For and on behalf of Bircham Dyson Bell LLP

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From: TEARLE Lee
Sent: 05 October 2010 17:17
To: 'Paul Clarke'
Cc: WALKER Angus; 'chiltern objections'; 'ERM UK Chiltern Objections'; 'Peter Gibbard'; 'Ian Gilder'
Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Paul

Thank you - I await sight of the noise policy when it is available

The draft agreement is not solely concerned with noise barriers however and confirmation as to whether your client is willing to consider these other aspects would be welcomed.

Regards

Lee

22/10/2010

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For and on behalf of Bircham Dyson Bell LLP

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From: Paul Clarke [mailto:PaulClarke@ardent-management.com]

Sent: 05 October 2010 17:13

To: TEARLE Lee

Cc: WALKER Angus; chiltern objections; ERM UK Chiltern Objections; Peter Gibbard; Ian Gilder

Subject: Re: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Lee

Chiltern will not enter into agreements to install noise barriers where they are not required, due to the potential precedent. But, as discussed, I will send you the noise policy when it emerges, very soon I am told, and we can consider it again in light of that.

Regards

Paul

Paul Clarke | Associate Director

Ardent Property Consultants

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PaulClarke@ardent-management.com | www.ardent-management.com |

On 5 Oct 2010, at 14:57, "TEARLE Lee" <LeeTEARLE@bdb-law.co.uk> wrote:

Paul

As you will no doubt be aware my client has submitted his proof of evidence in respect of the above inquiry.

My client remains willing, however, to negotiate the terms of an agreement to meet his concerns whereby he would be prepared to withdraw his objection once agreement is reached.

As I suspected, my client's view is that an agreement is appropriate in this instance as the agreement provides him with certainty that the mitigation works will be carried out by your client irrespective of whether noise levels reach certain criteria.. Further the agreement covers issues of privacy not covered by the ES or statutory Noise Insulation Regulations.

I should be grateful if you could take instructions and confirm whether your client is willing to negotiate the terms of an agreement.

I look forward to hearing from you.

Regards

22/10/2010

Lee

Lee Tearle
Associate
For and on behalf of Bircham Dyson Bell LLP
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From: TEARLE Lee
Sent: 22 September 2010 14:18
To: 'Paul Clarke'
Cc: WALKER Angus; 'chiltern objections'; 'ERM UK Chiltern Objections'; 'Peter Gibbard'
Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Paul

I do not believe that my client would agree.

The agreement provides him with certainty that the mitigation works will be carried out by your client irrespective of whether noise levels reach certain criteria.. Further the agreement covers issues of privacy not covered by the ES or statutory Noise Insulation Regulations.

I will forward your email to my client and revert with instructions.

It would, in any event, be helpful to have sight of the noise policy as soon as it is published.

Regards

Lee

Lee Tearle
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From: Paul Clarke [mailto:PaulClarke@ardent-management.com]
Sent: 22 September 2010 13:11
To: TEARLE Lee
Cc: WALKER Angus; chiltern objections; 'ERM UK Chiltern Objections'; Peter Gibbard
Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector

22/10/2010

Alistair Buckley

Lee

I do not consider that an agreement is necessary here. The ES sets out when mitigation measures will be employed, based upon the actual circumstances. The Noise Insulation Regulations takes care of statutory mitigation. This will vary dependant upon the phase of the works powers applied for. The ES sets out works in Phases 1 and 2b, which give rise to different noise impacts. The agreement simply states that mitigation will be applied. Based upon the above, it will not always be needed, or in the same form. The issue should be clarified very soon by a noise policy that is being produced and published. This will follow the form of the DLR noise policy, which I know BDB is familiar with. I will forward you a copy once it is finalised. This will (I haven't seen the final form yet) state basically that mitigation will be applied if levels reach certain criteria.

Regards,
Paul

<image001.jpg>

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From: TEARLE Lee [mailto:LeeTEARLE@bdb-law.co.uk]

Sent: 21 September 2010 17:00

To: Paul Clarke

Cc: WALKER Angus; chiltern objections; 'ERM UK Chiltern Objections'; Peter Gibbard

Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector

Alistair Buckley

Paul

Thank you for your email.

Firstly I can confirm that Bircham Dyson Bell has recently been instructed by Mr Buckley in respect of his objection. I would apologise for the oversight in not formally notifying you of this earlier. I will ask Mr Buckley to confirm this directly to you if this would be of assistance and I will also formally notify the Programme Officer directly.

You have previously indicated to Angus that Chiltern Railways is prepared to consider meeting the reasonable legal fees of objectors for their part in preparing an agreement that addresses their concerns in return for the withdrawal of their objections.

The purpose/justification for the recent email and attached agreement was to meet Mr Buckley's legitimate concerns with regards to the impact that the proposed railway will have on his property and the mitigation that will satisfy Mr Buckley so as to enable him to feel able to withdraw his objection. The alternative, clearly, is for Mr Buckley to appear at the inquiry. I assume that your client would prefer to reach agreement with Mr Buckley in this regard thereby removing the need for his attendance at the inquiry and saving the time and expense of both parties.

From the environmental statement it appears that Mr Buckley's property will be adversely affected hence the mitigation requirements in the draft agreement though clearly Mr Buckley will consider your response to this.

Again, please accept my apologies if it appears that this has been "sprung on" you by surprise - this was not the intention. Rather the hope is that agreement can be reached whereby both of our respective clients are satisfied with the outcome of discussions.

Regards

Lee

Lee Tearle

Associate

For and on behalf of Bircham Dyson Bell LLP

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From: Paul Clarke [mailto:PaulClarke@ardent-management.com]

Sent: 21 September 2010 14:47

To: TEARLE Lee

Cc: WALKER Angus; chiltern objections; ERM UK Chiltern Objections; Peter Gibbard

Subject: RE: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Mr Tearle

I am afraid that you are mistaken, Chiltern has not given such confirmation in relation to fees. Furthermore, we have never dealt with Birchams in relation to this objector, we have dealt directly with Mr Buckley.

Our last correspondence was a letter from us asking Mr Buckley for a response to our reply to his objection, which we have not received. I am therefore rather surprised to receive your email and a draft agreement, with no explanation or justification.

Will you please explain the background to this and why you feel that the attached agreement is appropriate. It seems to be providing that mitigation measures are constructed, irrespective of need.

Regards,
Paul

<image001.jpg>

Paul Clarke | Associate Director

Ardent Property Consultants

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From: TEARLE Lee [mailto:LeeTEARLE@bdb-law.co.uk]

Sent: 21 September 2010 11:58

To: Paul Clarke

Cc: WALKER Angus

Subject: Draft Chiltern Railways (Bicester to Oxford improvements) Order - Objector Alistair Buckley

Dear Mr Clarke

I am assisting Angus Walker in respect of the above.

Following confirmation that Chiltern Railways was willing to meet objector's reasonable legal fees in reaching agreement with an objector in return for withdrawing their objection Bircham Dyson Bell has been instructed by Mr Alistair Buckley to prepare such an agreement which I now attach.

You will note that Mr Buckley's concerns relate to the possible effect of the scheme on his property and the increased disturbance (loss of quiet enjoyment) and loss of privacy at his property during the construction of the new railway and once the railway is operational. It is the last two issues (disturbance and loss of privacy) which are the focus of the agreement.

I should be grateful if you could please acknowledge receipt of the email and agreement and confirm, in due course, the identity of the lawyer at Eversheds who will (I assume) be dealing with this matter on behalf of Chiltern Railways.

Kind regards

Lee Tearle

Associate

For and on behalf of Bircham Dyson Bell LLP

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28 October 2010

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Telephone +44 20 3206 5661
Facsimile +44 20 3206 5440
Email ian.gilder@erm.com

Your ref: OBJ/245

Dear Alistair Buckley

Proposed Chiltern Railways (Bicester to Oxford Improvements) TWA Order

I write to you as an objector to the Chiltern Railways TWA Order. Specifically, you have raised concern about the effect of noise and/or vibration of the proposed Scheme and its impact on your property.

Chiltern Railways is committed to using the Best Practicable Means to design the railway so as to avoid significant noise and vibration impacts. Enclosed is the *Chiltern Railways (Bicester to Oxford Improvements) TWA Order Draft Noise and Vibration Mitigation Policy (October 2010)*, which sets out Chiltern Railways' commitment to control noise and vibration impacts in detail. This document will be finalised following consideration of improvements that are identified during the Inquiry.

We hope that this policy, which will be legally enforced by planning condition, will satisfy your concerns regarding noise and vibration, and that you will be able to remove your objection to the Scheme.

Yours sincerely,



Ian Gilder
Head of Planning

For and on behalf of the Chiltern Railway Company Ltd