

PROPOSED CHILTERN RAILWAYS (BICESTER TO OXFORD IMPROVEMENTS) ORDER SECRETARY OF STATE'S VIEWS LETTER

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15 November 2011
Dear Sirs,

TRANSPORT AND WORKS ACT 1992

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATIONS FOR THE PROPOSED CHILTERN RAILWAYS (BICESTER TO OXFORD IMPROVEMENTS) ORDER AND DEEMED PLANNING PERMISSION

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, Mr J P Watson BSc FCIHT MICE MCMI, concerning the applications made by your client, The Chiltern Railway Company Limited ("Chiltern"), for:-

a. The Chiltern Railways (Bicester to Oxford Improvements) Order ("the Order") to be made under sections 1 and 5 of the Transport and Works Act 1992 ("the TWA"); and

b. a direction as to deemed planning permission for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990 ("the planning direction").

2. The Inspector held a public local inquiry into these applications between 2 November 2010 and 28 January 2011.

3. The Order, if made, would authorise Chiltern to carry out works to the railway between Oxford and Bicester and to construct a new length of railway to connect the Oxford-Bicester line to the Bicester-London line, so as to enable through trains to run from Oxford station to London Marylebone station. It would also authorise the construction or reconstruction of stations at Bicester Town, Islip, Water Eaton and Oxford; and works that would be needed for the proposed East West Rail route between Oxford, Bicester, Bletchley and Bedford. The planning direction, if given, would give deemed planning permission for the development provided for in the Order. Chiltern's proposals are referred to in this letter as "the scheme".

4. Enclosed with this letter is a copy of the Inspector's main report dated 15 July 2011 and addendum report dated 6 October 2011. The Inspector's conclusions are set out at section 9 of the main report, and his recommendations are at section 10.

Summary of Inspector's recommendations

5. The Inspector recommended that the Order should not be made and the planning direction should not be given. This was because the likely lack of a licence under the Conservation of Species and Habitats Regulations 2010 ("the Habitats Regulations") in respect of works which would affect the habitat of bats was an impediment to implementation of the scheme. The Inspector considered that it would be contrary to Government guidance to confer the compulsory purchase powers required for the scheme while such an impediment was likely.

Summary of Secretary of State's views

6. For the reasons explained in this letter, the Secretary of State considers that she is not yet in a position to decide whether to accept the Inspector's recommendations.

However, if Chiltern were able to overcome the impediment to implementation of the scheme identified by the Inspector, she would be minded to make the Order and give the planning direction. This letter invites Chiltern to inform the Secretary of State of progress since the close of the inquiry in agreeing with Natural England mitigation measures for species protected under the Habitats Regulations.

7. The impacts of the scheme on the protected species in question are discussed at paragraphs 34 to 37 below. These are the only matters on which the Secretary of State is inviting further representations. The arrangements for Chiltern and Natural England to respond to this letter are set out at the end of this letter.

8. In a separate letter being issued today, the Secretary of State for Communities and Local Government ("SoS/CLG") has set out his views on Chiltern's application for an exchange land certificate in relation to open space land required for the scheme. The SoS/CLG would be minded to give a certificate in respect of the open space land referred to at paragraph 33 below if the TWA Order were in due course to be made.

Secretary of State's consideration

9. Careful consideration has been given to all the arguments put forward by, or on behalf of, the parties as set out in the Inspector's report. The Secretary of State's consideration of the report is summarised in the following paragraphs. Numbers in brackets are references to relevant paragraphs of the Inspector's main report.

Procedural matters

10. In section 3 of the report the Inspector set out his views on the procedural issues raised by parties during the inquiry, including (at 3.6.4, 3.7.7 and 3.10.1) his views on various related legal submissions. The Secretary of State confirms that she agrees with the Inspector's views on the points of law raised in those submissions. However, in relation to the objection by British Waterways Board (3.5), the Secretary of State notes that section 17 of the Acquisition of Land Act 1981 does not apply to the Order under section 12(1) of the TWA. The Order (if made) would not therefore be subject to Special Parliamentary Procedure in the circumstances that the Board's objection is not withdrawn.

Need and justification for the scheme

11. The Inspector noted that rail patronage had increased substantially in recent years between Oxford and London and that further growth was forecast; that peak overcrowding on Oxford to London trains was common; and that substantial housing and commercial growth was planned in Bicester and Oxford during the next 15 years. He also noted Network Rail's support for the scheme on the grounds that it would increase network availability, capability and capacity. For these reasons, the Inspector was satisfied that there was a strong need to increase rail capacity in the Oxford - London corridor and that the scheme would meet that need, as well as providing competitive choice for passengers (9.2.3-9, 9.3.2-3). He considered also that improved access to the railway for Oxford and north Oxfordshire was needed, which would be met by the provision of a new parkway station at Water Eaton and a new through station at Bicester (9.2.10, 9.3.4).

12. The Inspector accepted that the scheme would provide a sustainable alternative to the car, particularly for commuting journeys into Oxford and found that the scheme would improve peak-hour traffic conditions and reduce accidents in the Oxford area by 2016. However, he said that those changes would be only slight and there was no evidence that they would be maintained at other times of day. The scheme would also result in reductions of annual carbon emissions by 1100 tonnes during 2016 (9.3.5 – 9, 9.3.13-15).

13. As for other benefits, the Inspector said that only the most general evidence of the benefits of the East West Rail link was submitted to the inquiry. He concluded that while there was no currently demonstrated need for the East West Rail link, such a need may arise in the future, and the scheme would facilitate it (9.2.13, 9.3.12). The Inspector accepted further that the scheme could enhance part of Oxford station; the proposed closure of level crossings on the line would reduce the risks of collisions with trains; and that the scheme would improve connectivity between bus and rail at the proposed Water Eaton Parkway station (9.3.16-18).

14. The Secretary of State agrees with the Inspector's assessment of the need and justification for the scheme. In particular, she is satisfied that there is a compelling need to increase rail capacity between Oxford and London and considers that the scheme would bring substantial public benefits in terms of reduced travel times, better public transport connectivity and rail network capability. These benefits must, however, be weighed against any adverse impacts which the scheme might cause (taking account of proposed mitigation measures) as discussed later in this letter.

Alternatives to the scheme

15. The Inspector reported the various alternatives considered by Chiltern, including non-rail options, rail-based route options and variations within the Oxford–Bicester corridor. He was satisfied that the scheme was to be preferred to the alternatives considered (9.4.1–8). The Secretary of State agrees for the reasons given by the Inspector.

Funding for the scheme

16. The Inspector said that Chiltern proposed to finance all the works necessary to operate passenger trains from Oxford to the main line at Bicester via the new railway connection (referred to as "Phase 1" of the scheme) as a private commercial venture, without public subsidy. Funding for the proposed works to increase the loading gauge on the Oxford-Bicester line in readiness for use by freight trains if East West Rail proceeded ("Phase 2A") would be provided by the Department for Transport. However, funding for further upgrading of that line for the purposes of East West Rail ("Phase 2B"), would depend on the latter project being authorised and the availability of funding in the 2014-2019 High Level Output Specification period (9.5.1).

17. The Inspector considered the funding issues raised by objectors and the challenges to the passenger forecasts and economic analysis underlying the scheme, but was, in particular, satisfied that the modelling approach provided by Chiltern provided a sufficient basis for decision-making, providing the uncertainties were allowed for. He concluded that sufficient arrangements had been made for funding Phases 1 and 2A. Funding for Phase 2B, however, was not expected to become available before 2014, after the scheme

was expected to be brought into use (9.5.2-5). The Secretary of State agrees with the Inspector's conclusions on these matters, for the reasons given by the Inspector.

Impacts of the scheme on road traffic in the area

18. The Inspector concluded that the likely effect of the construction of the scheme on road traffic in the area would, in most cases, not be perceptibly harmful and could elsewhere be acceptable. This would depend in large part on the arrangements made through the Code of Construction Practice, which was subject to approval by the local planning authorities (9.7.1-3). As for operational effects, the Inspector found that the scheme would, when considered across the network as a whole, have no unacceptable effect on peak hour road traffic conditions, and would result in slight improvements, for example, in peak hour journey time (9.7.8). As regards the increased frequency of trains using the level crossing at London Road, Bicester, he found that the effect of the scheme would be acceptable in terms of its effect on traffic flows and there was no need to pursue alternative highway arrangements suggested by some objectors (9.7.9-15). The Secretary of State agrees with the Inspector's conclusions on these matters.

Effects of the scheme on the public rights of way network

19. The Inspector considered the effects of the proposed level crossing closures on users of the each of the public rights of way referred to in paragraphs 9.7.17 to 9.7.65 of his main report. The Inspector concluded that an alternative right of way would be provided for each right of way that was to be extinguished. He was satisfied that, overall, the scheme proposals (as modified by Chiltern in respect of Langford Lane and subject to a planning condition to safeguard access to residential properties in flood conditions) would have no unacceptable effect on users of the public rights of way network (9.7.66). He similarly concluded that the scheme proposal for diverting footpath FP129/3 over the new railway chord at Bicester was satisfactory (9.7.67).

20. The Secretary of State agrees with the Inspector's conclusions about the effects of the scheme on public rights of way for the reasons given by the Inspector. For the purposes of section 5(6) of the TWA the Secretary of State is satisfied that, where the Order (if made) would extinguish a public right of way over land, an alternative (where necessary) would be provided.

Noise and vibration

21. The Inspector was satisfied that acceptable noise conditions would prevail while the scheme was under construction, subject to the changes which he proposed to the construction noise control regime, which would be secured by planning condition 18 in Appendix 1 to the main report (9.8.1-6). As for operational noise, the Inspector concluded that Chiltern's calculation of future noise levels associated with the scheme was consistent with Government guidance; the interpretation of estimated operational noise levels was appropriate in the circumstances; and the noise reduction techniques proposed by Chiltern could have the effects claimed. He considered that the controls proposed in planning condition 19 were needed to give surety in these matters (9.8.7-21).

22. The Inspector was satisfied that the provisions of the Code of Construction Practice, if secured by condition, would result in no more than an acceptable degree of construction-related vibration (9.8.25). As regards operational vibration, the Inspector concluded that the performance standards set out in Chiltern's Noise and Vibration Mitigation Policy ("NVMP") were appropriate. However, he did not consider that Chiltern's comparison of the scheme with vibration levels measured near King's Sutton was reliable. He therefore proposed a planning condition to ensure that the vibration associated with use of the scheme would be no more than allowed in the NVMP (9.8.26-35).

23. Overall, the Inspector concluded that the scheme (with the application of the NVMP and subject to the planning conditions which he recommended) would have an acceptable effect on local residents, businesses and the environment by virtue of noise and vibration (9.8.24, 9.8.37). He did not agree with some objectors that it would be appropriate to limit the speed of trains using the scheme in places in order to reduce noise and/or vibration (9.8.38).

24. The Secretary of State agrees with these conclusions for the reasons given by the Inspector. In particular, she agrees that planning conditions 18 and 19 are necessary to ensure that the noise and vibration effects of the scheme are kept within acceptable limits.

Air quality

25. The Inspector was satisfied that, subject to compliance with an approved Code of Construction Practice, construction work associated with the scheme would have no significant adverse effect, through air quality changes, on local residents, business or the environment (9.8.39-41). He concluded also that the effect on local residents and businesses of operating the scheme would be within the Air Quality Assessment Criteria set out in the UK Air Quality Strategy, and therefore acceptable (9.8.42-48). As for the operational effects of the scheme on sites of special scientific interest in the vicinity of the scheme, the Inspector was satisfied that the scheme was not likely to have an adverse effect on the notified special interest features of those sites (9.8.49-54). The Secretary of State agrees that the impacts of the scheme on air quality are acceptable for the reasons given by the Inspector.

Water resources and the risk of flooding

26. The Inspector was satisfied that the scheme would have no harmful effects on local residents, businesses or the environment by virtue of its effects on water resources and the risk of flooding (9.8.56-59). The Secretary of State agrees.

Landscape and visual amenity

27. The Inspector noted that localised adverse visual effects would occur at a few locations, for example, as a result of proposed new bridges. Apart from those effects, he considered that, with the proposed planning conditions and certain design details reserved for later approval by the local planning authorities, the likely impact of the scheme with regard to the landscape and visual amenity would be to cause no significant harm (9.8.60-76). The Secretary of State agrees with the Inspector's assessment of these impacts for the reasons given by the Inspector.

Cultural heritage

28. The Inspector noted that the scheme would cause some harm to the setting of the conservation area at Islip and to the setting of six listed buildings (9.8.77, 9.8.80). The scheme would also cause harm to various non-designated heritage assets, but much of this could be mitigated through measures to be secured by proposed condition 9 in Appendix 1 to the main report (9.8.83). The Inspector accepted that the severance by the scheme of two historic rights of way would have a negative effect on the cultural heritage of the area (9.8.84). He concluded that the overall adverse effect of the scheme on cultural heritage and archaeology would be slight to moderate (9.8.85). The Secretary agrees with the Inspector's conclusions on these matters.

Effects on commercial property and agricultural land

29. The Inspector noted the effects of the scheme on property currently in commercial use in Bicester and at the site of the proposed Water Eaton Parkway station, including the proposed replacement for the freight sidings and aggregates depot at that site. He was satisfied that, subject to the planning conditions which he proposed, the scheme need not harm the established commercial use of property (9.8.86-90). The Inspector said that some 15.19 hectares of the best and most versatile agricultural land would be permanently taken for the scheme. He was satisfied that appropriate arrangements were proposed in respect of agricultural land that would be taken or used temporarily for the scheme (9.8.91-92). The Secretary of State agrees with the Inspector's conclusions on these matters.

Effects on rights of access (other than the allotment access near Aristotle Lane)

30. The Inspector said that the scheme would affect private rights of access through the closure of accommodation crossings. He noted that Chiltern proposed to provide alternative access routes where necessary, and elsewhere to meet compensation costs in accordance with the compensation code. The Inspector recommended no changes to Chiltern's proposals and considered that if loss were to arise it could be addressed by compensation (9.8.93-97). The Secretary of State agrees with the Inspector's conclusions and is satisfied that Chiltern's proposals in this regard are acceptable.

Effects on development land

31. The Inspector considered the impact of the scheme on development land at Water Eaton and at various locations in Bicester. He attributed substantial weight to the harm which would arise if the approved Material Recovery Facility ("MRF") at Water Eaton did not proceed because of the scheme. However, he considered that other harms, for example to openness and the landscape, would arise or be intensified by the alternative proposal advocated by Grundon Waste Management Limited for co-location of the MRF and the scheme. He concluded that the alternative proposals would not be acceptable and should not be pursued (9.8.98-105). In relation to the areas of development land in Bicester, the Inspector concluded that if harm or financial loss were to arise from implementation of the scheme these would be matters for compensation (9.8.106-110).

The Secretary of State agrees with the Inspector's conclusions on these matters for the reasons given by the Inspector.

Open space

32. The Inspector considered that certain plots of land in Bicester west of Charbridge Lane and north of Gavray Drive, which had been identified in Chiltern's application as open space, were not open space for the purposes of the Acquisition of Land Act 1981 ("the 1981 Act") or the Town and Country Planning Act 1990. He concluded that the scheme's only permanent effect on open space would be at Tubbs Lane level crossing and that the effect there would be acceptable (9.8.111–129).

33. The Secretary of State notes that, in the letter referred to at paragraph 8 above, the SoS/CLG has agreed with the Inspector's conclusions on this matter and would be minded to give a certificate under the 1981 Act in respect of the acquisition of open space at Tubbs Lane, if the TWA Order were in due course made. The Secretary of State notes also that, as a consequence, Chiltern would not be required to provide replacement open space land at Bicester, and that the TWA Order (if made) would not be subject to Special Parliamentary Procedure.

Impacts on protected species: Bats

34. The Inspector said that bat roosts were present only at Wolvercot Tunnel and that the Tunnel was used for swarming, commuting, foraging and as a temporary roost site. The scheme would change conditions in the tunnel during the construction stage because of the proposed works to lower the floor and to relay the tracks. Once in use, the scheme would result in more trains passing through the tunnel and at higher speed than they do now. The Inspector accepted that this would increase the risk to bats and that the tunnel roosts might be rendered unusable. However, the mitigation measure proposed by Chiltern - in the form of a lighting installation to sweep the Tunnel clear of flying bats before each train arrived – was an innovative one and there was no evidence that it had been used successfully elsewhere.

35. The Inspector concluded that implementation of the scheme without mitigation would be likely to damage or destroy a breeding site or resting place used by bats. While he found no reason to conclude that there could be no acceptable mitigation, appropriate mitigation had yet to be identified. It therefore remained to be shown that the scheme with appropriate mitigation would not be harmful to the interests of bats. The Inspector noted further Natural England's view that, on the basis of the information before the inquiry, an application for a licence under the Habitats Regulations was likely to fail (9.9.2-14).

36. The Secretary of State agrees with the Inspector's conclusions on these matters. She accepts that effective measures to mitigate the impacts of the scheme on bats in Wolvercot Tunnel are necessary, but remain to be identified. She understands, however, that, since the close of the inquiry, Chiltern has applied to Natural England for a licence under the Habitats Regulations in respect of bats and is continuing to discuss its mitigation proposals with Natural England. She therefore considers it appropriate to invite Chiltern and Natural England to update her on progress with identifying appropriate mitigation measures before she decides whether to accept the Inspector's

recommendation summarised at paragraph 5 above. The arrangements for doing so are set out at the end of this letter.

Great Crested Newts

37. The Inspector said that Chiltern's proposals to mitigate the harm which the scheme would cause to the habitat of great crested newts had not been agreed with Natural England and a licence under the Habitats Regulations had yet to be applied for (9.9.15-18). The Secretary of State similarly invites Chiltern and Natural England to advise her of progress in this matter.

Other species

38. The Inspector was satisfied that acceptable arrangements could be made in respect of reptiles and badgers affected by the scheme (9.9.19-20). He also recommended planning conditions to assist in the conservation of brown hairstreak butterflies and tassel stonewort (9.9.21-22). The Secretary of State agrees with the Inspector's conclusions on these matters.

Effects of the scheme on nationally and locally designated habitats

39. The Inspector was satisfied that, subject to compliance with conditions 34 and 35 in Appendix 1 to the main report, the scheme would not be likely to have an adverse effect on the notified special interest features of the Sites of Special Scientific Interest in the vicinity (9.9.24-30). The Inspector attributed only slight weight to the harm which the scheme would cause by the loss of 2% of the Gavray Meadows county wildlife site (9.9.32). The Secretary of State agrees with these conclusions for the reasons given by the Inspector.

Effects of the scheme on the Oxford Meadows Special Area of Conservation ("SAC")

40. The Inspector considered that potential impacts on the SAC could come from construction effects, including direct damage or disturbance, smothering in dust and hydrological change; air pollution caused by exhaust emissions from trains on the new railway; and hydrological change during operation of the scheme. On the basis of the evidence before the inquiry he concluded that, subject to compliance with conditions 16 and 33 in Appendix 1 to the main report, the scheme was not likely to have any significant effect on the integrity of the SAC, having regard to the conservation objectives of the site (9.10.1-18).

41. The Inspector also considered the potential for the SAC to be affected by development at the Northern Gateway site identified in the Oxford Core Strategy development plan, which at the time of the inquiry had yet to be adopted. He concluded, however, that there was no other plan or project at that site which had been articulated in enough detail to allow a reliable assessment to be made of its likely effects on the SAC, either alone or in combination with the scheme (9.10.19-21).

42. The Secretary of State agrees with the Inspector's conclusions on these matters, for the reasons given by the Inspector. She therefore considers it unnecessary for her to carry out an appropriate assessment for the purposes of the Habitats Regulations or to consider the matters referred to by the Inspector at paragraphs 9.10.23-28 of his main report. She notes also that the Oxford Core Strategy development plan was adopted on 14 March 2011 and includes a requirement for further assessment of the air quality effects of the Northern Gateway traffic on the SAC.

Measures for mitigating any adverse impacts

43. The Inspector was satisfied that Chiltern's draft Code of Construction Practice, subject to compliance with the requirements in condition 18 in Appendix 1 to the main report, would establish a suitable regime for the construction of the scheme (9.11.1-3). Taking into account the various mitigation measures proposed by Chiltern, such as the NVMP referred to at paragraph 22 above, and the proposed planning conditions, the Inspector concluded that residual adverse environmental effects of the scheme after mitigation would be those referred to in paragraphs 27 (visual impact), 28 (cultural heritage), 29 (agricultural land) and 39 (designated habitats) above (9.11.4-31).

44. The Secretary of State agrees with the Inspector's assessment of the proposed mitigation measures and the adverse impacts of the scheme which would remain. She considers that these relatively limited residual adverse impacts are acceptable and fall to be weighed against the substantial public benefits of the scheme identified in paragraphs 11 to 14 above. However, in the absence of agreement between Chiltern and Natural England on measures to mitigate the impacts of the scheme on bats and great crested newts, she is not yet in a position to carry out a properly informed balancing of the advantages and disadvantages of the scheme.

Adequacy of the Environmental Statement

45. The Inspector was satisfied that the Environmental Statement was adequate, except in relation to the matter of vibration as explained in paragraph 22 above. He was satisfied also that all statutory requirements with regard to publication and consultation had been fully complied with (9.12.1-9).

46. The Secretary of State agrees with the Inspector's conclusions on this matter. However, she considers that until mitigation measures in respect of bats and great crested newts have been settled she does not have sufficient information to come to a fully informed view on the likely environmental impacts of the scheme.

Other relevant issues

47. The Inspector's consideration of other matters raised in evidence to the inquiry is set out in section 9.13 of the main report. Other than in relation to the matters discussed in paragraphs 48 to 52 below, he did not consider that any of those matters would inhibit the making of the Order or require changes to the scheme. The Secretary of State agrees.

East West Rail

48. The Inspector considered that there would be no benefit to the public interest in the acquisition of land required for the construction of the Phase 2B access to the MoD site at Bicester or for additional parking at Islip station before East West Rail was authorised (9.13.1-3). The Secretary of State agrees for the reasons given by the Inspector.

Wendlebury Gate Stables

49. The Inspector considered that the effect of the scheme on keeping horses in fields at these stables would, on the balance of the evidence, be acceptable. However, he considered that without mitigation the noise associated with use of the scheme would be materially detrimental to conditions at the stables and would render riding tuition unsafe. He therefore proposed a planning condition to require appropriate mitigation measures at this location to be identified and implemented, subject to independent validation and approval by the local planning authority (9.13.10-14). The Secretary of State agrees with the Inspector's conclusions on these matters for the reasons he has given.

Access to Trap Ground Allotments via the Aristotle Lane crossing

50. Chiltern's proposal to close this private level crossing was opposed by the Trap Ground Allotment Association ("the Association") and others who considered that there were exceptional circumstances for retaining the crossing and providing a new one across the fourth track which would be added as part of the scheme. In considering this issue, the Inspector took into account Network Rail's policy on managing risk at level crossings, which said that only in exceptional circumstances should new crossings be permitted (9.3.17). However, having compared the scheme proposals and those of the objectors and their respective impacts on safety and access to the allotments, the Inspector found that the harm which the objectors' proposed level crossing would avoid outweighed the harm which closure of the existing crossing would avoid, prior to the introduction of the currently unauthorised East West Rail scheme. He also agreed with the objectors that the circumstances were exceptional because, among other factors, their proposal would provide the only universally feasible and reasonably practicable means of access to the allotments (9.13.16–31).

51. The Inspector therefore concluded that the Aristotle Lane crossing should not be closed and that a new accommodation crossing should be provided across the fourth track (Work No. 3 in Schedule 1 to the Order) for the use of members of the Association. He recommended that Chiltern or Network Rail introduce reasonably practicable measures to enhance safety at this location by the time the new crossing opened (9.13.32). In respect of car-parking arrangements at Aristotle Lane, the Inspector was not persuaded that the scheme should be modified in the way proposed by one objector (9.13.33).

52. The Secretary of State agrees with the Inspector's conclusions for the reasons the given by the Inspector. In particular, she agrees that the balance of advantage is in favour of maintaining access to the allotments by way of the existing Aristotle Lane crossing and a new crossing over the proposed fourth track at this location. She notes that, as a consequence, there would be no need for works in the Oxford Meadows SAC to raise a section of bridleway on Port Meadow near Aristotle Lane bridge, which formed part of the alternative access arrangements proposed by Chiltern (9.10.9).

Green Belt

53. With regard to the proposed Water Eaton Parkway station and the Park and Ride facility, the Inspector was satisfied that the five tests in paragraph 3.17 of PPG2: Green Belts were met in this case and that the proposals would not therefore be inappropriate development in the Green Belt (9.14.1–2). The Inspector considered that other elements of the scheme such as the relocation of the aggregates depot at Water Eaton and the proposed new bridges, would be inappropriate development in the Green Belt. However, he was satisfied overall that the harm by reason of inappropriateness, and any other harm, was clearly outweighed by other considerations in favour of the scheme, such as the strong need for increased rail capacity between Oxford and London. He was satisfied also that the circumstances in this case were very special in that Oxford would be provided with a necessary improvement to London and elsewhere while causing relatively little harm (9.14.3-12, 9.15.2).

54. The Secretary of State agrees with the Inspector's conclusions on these matters for the reasons given by the Inspector. She is satisfied that the scheme is consistent with PPG2: Green Belts.

Consistency with national and local planning, transport and environmental policies

55. The Inspector said that, in the light of Court judgments before and during the inquiry about the status of Regional Strategies, he regarded the relevant Regional Strategy (the South East Plan) as part of the development plan on an ongoing basis. He noted that the abolition of Regional Strategies remained a Government commitment which the SoS/CLG considered to be a material consideration where relevant, although the lawfulness of this position was still subject to challenge at the time of the inquiry (3.2.2-3).

56. The Inspector concluded that the scheme, subject to the planning conditions in Appendix 1 to the main report, would be consistent with the overall direction of national and local planning and environmental policies, including the South East Plan, and that any harm to the objectives of individual policies would be more than outweighed by the scheme's overall benefits. He was satisfied also that the scheme would be consistent with relevant elements of national and local transport policies. (9.15.1–19).

57. The Secretary of State notes that, since the inquiry, in a decision on 7 February 2011 in *Cala Homes (South) Ltd v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin) the Court held that the Government's intention to legislate to revoke Regional Strategies was capable of being a material consideration. Although the Secretary of State has taken this matter into account in determining this case she gives it limited weight at this stage of the Parliamentary process.

58. The Secretary of State agrees with the Inspector's conclusions on the extent to which the scheme is consistent with national and local policies. She is satisfied that the scheme conforms broadly with relevant policies at all levels.

Planning conditions

59. In the light of representations made to the inquiry and having regard to other relevant matters, the Inspector recommended that the conditions set out Appendix 1 to

the main report should be attached to the planning direction, if given. He was satisfied that they would meet the tests in DoE Circular 11/95 of being necessary, relevant to planning and to the development being permitted, enforceable, precise and reasonable (9.16.1–4).

60. The Secretary of State agrees that, in most respects, the Inspector's proposed planning conditions are necessary and appropriate for the reasons given by the Inspector. If she decided in due course to give the planning direction, she would be minded to attach those conditions to the direction, subject to the following modifications. The modifications are:

- to insert a set of definitions;
- to allow the local planning authority to approve revisions to details previously approved under the conditions, in the interests of flexibility, as proposed by Chiltern in its revised application for the planning direction (condition 30 in inquiry document CD/1.12/4);
- in condition 17 in Appendix 1, to require land used temporarily for construction to be restored to the reasonable satisfaction of the owner of the land, rather than "to its former condition, or such condition as the local planning authority may approve"; this is to ensure consistency with article 29(4) of the Order, which also provides that Chiltern would not be required to replace a building removed under that article.

Case for conferring compulsory purchase powers for the scheme

61. The Inspector considered the scheme against the tests in ODPM Circular 06/2004 Compulsory Purchase and the Crichel Down Rules. Having found that the scheme would bring benefits that would clearly outweigh the harm it would bring, the Inspector was satisfied that, subject to the planning conditions he had recommended, there was a compelling case in the public interest that sufficiently justified interfering with the human rights of those with an interest in the land subject to the proposed compulsory acquisition powers. This was, however, subject to the following exceptions (9.17.13-15). He did not consider there was a case in the public interest for the compulsory acquisition of:

- the land at Bicester which Chiltern proposed to give in exchange for the land shown as open space in its application, but which the Inspector had found not to be so (see paragraph 32 above) (9.17.5.a);
- the land and interests on Port Meadow included in Chiltern's application, some of which Chiltern no longer sought and others which would not be needed as a consequence of the Inspector's conclusion that the Aristotle Lane level crossing should not be closed (see paragraph 51 above) (9.17.5.b);
- the land and interests for works forming part of the Phase 2B proposals, but which would not be implemented unless East West Rail was authorised (see paragraph 48 above) (9.17.5.c); and
- other areas of land which Chiltern no longer wished to acquire (9.17.5.d).

62. The Inspector was satisfied also that Chiltern had a clear idea how it intended to use the land which it proposed to acquire and that, other than in respect of the Phase 2B proposals referred to in paragraph 48 above, sufficient arrangements had been made for funding the scheme (9.17.15-17).

63. The Inspector considered that the lack of a licence under the Habitats Regulations in respect of bats (see paragraph 35 above) was an impediment to implementation of the scheme. In his view, to confer on Chiltern compulsory purchase powers while such an impediment was likely would be contrary to the advice of Circular 06/2004 (9.17.18).

64. The Secretary of State agrees with the Inspector's conclusions on these matters for the reasons given by the Inspector. She agrees in particular that it would be inappropriate to give Chiltern compulsory acquisition powers for the scheme while it was likely that an application for a bats licence would fail. However, for the reasons explained in paragraph 36 above, she wishes to be informed about any progress in identifying appropriate mitigation measures before determining Chiltern's applications for the Order and deemed planning permission.

Inspector's conclusions and recommendations on the Order and planning direction

65. The Inspector concluded, for the reason given at paragraph 63 above, that the Order should not be made and that consequently the planning direction should not be given (9.18.1, 9.20.3). He recommended accordingly at 10.1.

66. The Inspector considered that, if the Secretary of State decided to make the Order, it should be modified by the deletion of references to the land described at paragraph 61 above; by the deletion of Aristotle Lane Crossing from the list of crossings to be closed in Schedule 9 to the Order; and to make the modifications proposed by Chiltern (described at paragraphs 9.6.1-5 of the main report) so far as they did not conflict with the previously mentioned deletions. Consequential changes to the book of reference, the deposited plans and sections and the planning direction drawings would be required (9.18.3). The Inspector considered further that, In the event that the Order was made, it would be appropriate to give the planning direction subject to the conditions set out in Appendix 1 to the main report (9.20.4).

The Secretary of State's overall views on the Inspector's conclusions

67. For the reasons explained in this letter, the Secretary of State is satisfied that there is a compelling need to increase the rail capacity between Oxford and London and that the scheme would bring substantial transportation benefits. She considers that, if Chiltern identified suitable measures to mitigate the effects of the scheme on bats and great crested newts, those benefits would outweigh by a considerable margin the residual environmental adverse effects of the scheme and the harm which the scheme would cause to development land at Water Eaton (paragraph 31 above refers). In those circumstances, the Secretary of State would be minded to make the Order and give the planning direction. However, for the reasons given in paragraphs 44, 46 and 64 above, while mitigation measures for those species remain to be agreed with Natural England, she is not in a position to reach a properly informed view on whether, overall, the likely adverse impacts of the scheme are acceptable. She is, accordingly not yet in a position to determine Chiltern's applications.

68. The Secretary of State confirms that, if she were in due course minded to make the Order, she would be minded to accept the modifications proposed by the Inspector as

described in paragraph 66 above. She would also be minded to delete article 40 of the Order (open space at Bicester) about the provision of replacement open space land (see paragraph 33 above); and to insert a reference in the description of Work No. 3 in Schedule 1 to the Order to the provision of a new accommodation foot crossing at Aristotle Lane (see paragraph 51 above).

Post-inquiry representations

69. Since the close of the inquiry, the Secretary of State has received representations from two objectors relating, respectively, to the business case for the scheme and to the impact of the scheme on activities at Wendlebury Gate Stables. She considers that nothing in those representations constitutes new evidence, or raises a new issue, which needs to be referred to the parties to the inquiry. They do not cause her to take a different view of the matters before her than she would otherwise have taken based on the evidence before the inquiry.

Next steps

70. Chiltern and Natural England are invited to advise the Secretary of State on:

- any progress since the close of the inquiry in agreeing mitigation measures in respect of bats and great crested newts; and, as a consequence,
- the prospects that applications by Chiltern for licences under the Habitats Regulations in respect of those species would succeed.

The Secretary of State invites responses on those matters to be sent to Robert Fox, TWA Orders Unit, at the address at the top of this letter, by 13 December 2011. Apart from those matters, the Secretary of State is not inviting further representations on other aspects of the scheme discussed in this letter.

71. Once the responses to this letter have been considered, we will advise interested parties whether or not the Secretary of State is minded to accept the Inspector's recommendations on Chiltern's applications.

Distribution

72. Copies of this letter, and the Inspector's Conclusions and Recommendations, including Appendix 1 (Recommended Planning Conditions) to the main report, are being sent to those who appeared at the inquiry, all statutory objectors whose objections were referred to the inquiry under section 11(3) of the TWA but who did not appear, and to Natural England.

Yours faithfully,



Martin Woods