Rother Valley Railway Limited

IN ASSOCIATION WITH THE KENT & EAST SUSSEX RAILWAY
Patrons: Rt Hon Lord Barker of Battle PC, Chris Green MA FCIT
ROBERTSBRIDGE JUNCTION STATION, STATION ROAD,
ROBERTSBRIDGE, EAST SUSSEX. TN32 5DG
www.rvr.org.uk

Richard Max & Co LLP
87 Chancery Lane
London WC2A 1ET

For the attention of David Warman 30 August 2018

By e-mail to:- David@RichardMax.co.uk

Dear Sirs,

Transport and Works Act 1992
Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order ("the Order") OBJ 1002

The Department for Transport has sent us a copy of your email dated 31 May 2018 in response to our application for the proposed Order. We also have copies of your letter of 25 July in reply to the letter from our legal advisers, Winckworth Sherwood LLP of 11 July 2018.

We now seek to address each of the points made in your objection letter and to express our willingness to continue to engage with you and your clients during the application process should you wish to do so. This letter also covers the four specific matters raised in your letter of 25 July.

We note that your clients are statutory objectors for the purposes of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("the Applications Rules") and that they wish to participate in the forthcoming inquiry.

A. Policy Context

We accept that the Secretary of State will need to be satisfied that there is a compelling case in the public interest for conferring compulsory powers on the Company. We strongly believe that the completion of the "Missing Link" of the Rother Valley Railway and the benefits that will flow from it does justify the grant of these powers. Whilst we respect your clients' position, we also note the support for the Order from local government, other organisations with responsibilities for tourism in the area and, of course, the National Trust. We would prefer to acquire the land required for the railway by agreement with your clients and to work with them to explore how the re-instatement of the railway can be of benefit to their farming enterprise and best enhance the local environment.

Turning to the points you make about the application, we strongly refute any suggestion that the application is invalid. In particular, the Book of Reference meets the requirements of the Applications Rules in that it contains the names of all those names ascertained by the applicant after diligent inquiry.

We do not accept that the plan accompanying our letters of 17 March 2017 (requesting confirmation of ownership details) were of poor quality. Both the letter and accompanying plan were perfectly adequate for your clients to understand, and to reply to accurately, had they wished to do so.

We do not accept that there were “errors” in the Book of Reference that were readily identifiable, and note that your objection letter did not give details. When asked for chapter and verse, you could cite just one land parcel, where Lynn Hoad was referred to instead of Thomas Hoad and that, had we been informed, we would have been able to notify the joint owners in their capacities as trustees for William Hoad. The book of reference has since been corrected and notices issued to rectify the position.

We do not accept that there are other third parties whose rights will be overridden by the proposed Order and who have not been duly notified. We know to whom you are referring, but your information is wrong. Those persons have no land interests or other rights affected by the application.

B. Environmental Impact Assessment

As you rightly state in paragraph 17 of your letter, the Secretary of State issued a Scoping Opinion on 22 June 2017, with which the comprehensive Environmental Statement submitted with the application complies in all respects.

As it was not possible to obtain access to your clients’ land to carry out surveys, despite numerous requests, the assessment was made using information from a variety of sources, and adopted a precautionary approach, based on a reasonable worst case. The methodology utilised for the assessment is very well recognised. As well as being accepted by the Secretary of State when giving his scoping opinion in 2017, the methodology was agreed with both the Environment Authority (EA) and East Sussex County Council Ecologist. The County Ecologist, in particular, was consulted on the content of the Environmental Statement Addendum in October 2017.

Given their entrenched opposition to the application, it is perhaps disingenuous to suggest that your clients would have permitted access to their land in anticipation of the application after planning permission was granted in March 2017. Indeed we wrote to your clients with an enhanced offer for their land in May 2017 and again in June 2017 requesting access for environmental surveys. In any event, that the approach taken was appropriate and that its conclusions are not out of date has been borne out by the results of the recent, detailed ecological surveys on the land acquired by the Company between Junction Road and Austins Bridge, which have been consistent with what was reported in the Environmental Statement.

The flood risk assessments were undertaken jointly by Capita (one of the leading UK consultants in this field) and the EA, in accordance with the guidelines required by the EA.

The traffic data in the Level Crossing reports was projected through to 2020 and has in fact grown much as predicted.

Given the small scale of the development that is the reinstatement of this single track railway, and the detailed work that has been carried out over a period of years, the submission of further information at this stage of the application would be both unnecessary and disproportionate.

C. Funding Matters/Charitable status

The project is funded by donations to the Rother Valley Railway Trust ("RVRT"), a registered charity. It follows that these donations are made by individuals who support the charity. There is nothing unusual about this.

The estimate of costs submitted with the draft Order complies with the requirements of the Applications Rules. This is a case where much of the railway between Bodiam and Robertsbridge has already been constructed and, consequently, RVRT is well aware of the costs involved and has demonstrated its ability to fund the necessary development. Most of the work has been undertaken by local contractors and volunteers to a high standard, including the construction of an attractive and well-built terminus at Robertsbridge.

RVRT has, therefore, a proven ability to raise the necessary funds to implement the Order scheme. There is certainly no legal or other requirement for individual donors to be identified before a Transport and Works Order can be made.

The position now is very different from that of over fifty years ago, when Barbara Castle was Secretary of State. The viability of heritage railways throughout the UK has been well demonstrated over the past decade, with steadily increasing numbers of visitors from both UK and overseas. It is clearly stated in the documentation that, once constructed, the Missing Link will be maintained and operated by the Kent and East Sussex Railway, which has a most satisfactory record in this respect.

Finally on this section, we do not accept your contention that the reinstatement of the historic railway in the Rother Valley, in part on the original earthworks and structures, is outside the scope of the charitable objects of RVRT.

D. Impact upon Parsonage and Moat Farm

Parsonage Farm

The Company takes issue with your statement that the railway would run "through the heart of the farm and disrupt every aspect of the farming business". We do, of course, accept that the reinstated railway would have an effect on a small area of Parsonage Farm where the route crosses several fields. However, access will be available to all fields as shown on the land plans, including to the fields immediately to the west of the A21. The existing access off the A21 North of the Mill Stream will remain, and an extended access off Northbridge Street to the North of the railway will provide access to land between the railway and the River Rother.
We remain keen to discuss with your clients how best any effects on their operations can be mitigated, and whether there is scope for measures that could bring benefits to their business. As you know, the Order already contains an option for a Halt at Salehurst.

Your clients are aware of our efforts to reach agreement for the acquisition of the land required for the railway at a price well above market value. We have also offered to purchase additional land to compensate your clients for any impacts on their business of returning to smaller fields in the part of the farm estate between the railway and the river. No response has been received to these offers. We have also offered, and remain willing, to

undertake a joint assessment, by independent valuers, of the effect on Parsonage Farm of the reinstatement of the railway, but this offer has not been taken up. Certainly, if your clients have plans for expansion of their hop enterprise, in particular, this could be considered by such assessment, and taken into account when considering potential mitigation of business impacts.

We continue to instruct our agents to seek to negotiate with your clients and we understand that contact is ongoing. We can assure you that the Company will continue to make every effort to negotiate satisfactory arrangements for the land as we wish to live in harmony with our neighbours.

Moat Farm

We refute any suggestion of a failure to engage with the owners of Parsonage Farm or Moat Farm. In particular, the Company has held many meetings with the owners of Moat Farm over the past 8 years.

We understand your clients' concerns about possible disturbance to the habitat that has developed over the years along the former embankment and trackbed. As your clients are aware, the existing embankment east of Austins Bridge has already been purchased by the Company and detailed environmental, arboreal and ecological surveys have taken place over a 12 month period. These have demonstrated that, as expected, it will be possible to manage the reinstatement without significant adverse impacts on the existing wildlife, flora and fauna.

The development along the former embankment is subject to stringent planning conditions enforceable by the local planning authority to ensure the protection of wildlife and supporting habitat. The conditions go further than this, and also require the Company to secure opportunities for the enhancement of the nature conservation of the site. We are fully on board with this, and continue to engage with both English Nature and the county ecologist to ensure that the reinstatement of the railway is carried out sensitively. We do feel, therefore, that your clients concerns are misplaced and could be allayed through engagement with the Company.

With regard to potential severance, the existing access has been maintained in the Order plans. The statement in the Environmental Statement is therefore accurate. The Company has also offered to install additional crossings should they be shown to be necessary; for example, in the event that the farm is divided between Miss Vanessa de Quincy and Mrs Mitchell.

The current owners of both Parsonage Farm and Moat Farm are opposed to the reinstatement of the railway on its former route across the valley. As a result they have been unwilling to engage with us. This is understandable. The fact of the matter is that the impacts of the construction and operation of the railway will not be of the magnitude that your objection letter suggests and that the works will be subject to the scrutiny of relevant experts. We remain eager to demonstrate that each enterprise can co-exist.

E. Impacts on Highway Safety

We note that your clients instructed WSP to review highways impacts of the Order scheme, including a review of the Motts Macdonald work, and we further note that when we requested a copy of that review you responded that no formal report exists.

Nevertheless, in response to the summary points in paragraph 54 of the objection letter, we have the following comments:

The traffic studies report predicted flows up until 2020 and, to date, they remain close to predictions. We therefore reject your assertion that they are out of date.

The ORR did not object to the application for planning consent and has not objected to the application for this Order. Your letter fails to acknowledge that there is a distinction between a crossing on the mainline network, managed from a remote control centre, on which trains can travel at high frequency and at high speeds with extended braking distances, and the proposed low-intensity, low-speed operations on the heritage railway where each crossing will be controlled manually from a control box on site.

The local highway authority, East Sussex County Council, has not objected to the order whilst the strategic highway authority, Highways England, has made it clear that it has no “in principle” objection to the crossing of the A21 and that it is seeking an agreement with the Company.

The crossings in the Order have been subjected to Stage 1 Road Safety Audits and findings, where appropriate, have been incorporated into the Level Crossing designs. The arrangements are also the subject of stringent planning conditions.

WSP’s assumptions as to closure time are incorrect. The closure time of the proposed new level crossing units is no more than 51 seconds. WSP may find it helpful to view a video of a virtually identical existing crossing operating on a busy main road:
https://youtu.be/_kJnZIQsNZk

The economic impact of delays arising from the use of the level crossings is very low. Obviously, the majority of impacts would be likely to arise from the A21 crossing. The two lesser roads would give rise to even lower delays and little cost impact.

You refer to the Cambrian Railway Order 2017. Obviously, each Order is determined on its own merits. That particular Order provided for the transfer from Network Rail to Cambrian Heritage Railways Limited of statutory rights and liabilities relating to existing railways described in the Schedule to the Order. It is not a works Order. It is pertinent that the locations of the crossings over the two trunk roads in this case (A483 and A5) were on high speed, straight stretches of carriageway and not comparable to the location of the proposed crossing of the A21(near the roundabout at the foot of the valley). What the Order actually provides in relation to the relevant roads is that, regardless of the transfer, the undertaker would not cross the A5 and A483 without the consent of the ORR and Highways England, and not on the level, and would not cross the A495 or Porth-y-waen School crossing without the consent of the ORR. Clearly, therefore, that order did contemplate level crossings over an A road in the future.

Prejudice to future dualling of the A21

Highways England have recently confirmed to us that there are no current proposals for the dualling of the A21 at this location. Further, the Company does not accept that a future dualling of the road would be prejudiced by the existence of the railway crossing. Due to the topography of the location, improvements of any significance to the A21 at Robertsbridge suggests that they would include an elevated section over the roundabout (that could continue and pass over the railway). This would be the case regardless of the railway. Again, we would remind you that neither the District nor County Councils have objected to the Company's proposals for this crossing.

The Mott McDonald delays report demonstrates clearly that there would be no measurable adverse effect on the regeneration of Hastings.

Car Parking in Robertsbridge

It is not suggested by the Company that all visitors to the reinstated railway will arrive by train. However, despite your comments about unreliability of the Hastings line, the fact of the matter is that main line trains to Robertsbridge are frequent and reliable, and that passengers will be able to walk over to the heritage railway from the main line station, as well as to and from the villages of Robertsbridge and Salehurst from the heritage railway's Robertsbridge terminus.

Concerns about existing parking in Robertsbridge, and the fear that the railway could bring about excessive parking, were fully aired during the inquiry into Rother District Council's development plan and, later, in a number of objections to our planning application; notwithstanding these concerns, the decision on both occasions was to support the proposed Missing Link scheme.

We anticipate that the proximity of the heritage railway to the main line station will make it more attractive for people to leave their cars at home when they visit the area. Further, the large Network Rail car park is less used, and cheaper, at weekends and on public holidays when most passengers can be expected. We will continue to work with Rother District Council to resolve any concerns about parking in the village.

Flooding Impacts

Again, we note that your objection letter refers to commissioning WSP to carry out a review but that, when we requested a copy, you responded that no formal report exists.

We do not accept the assertions in your letter. The Flood Risk Assessment ("FRA") work for the Missing Link was undertaken jointly by Capita and the EA, in accordance with the EA's requirements. The modelling covered the basin upstream and downstream, well beyond the limits of the proposed railway. It also covered a range of potential events, as required by the EA, demonstrating that the railway would have no significant effect on flood levels or durations. Turning to the specific points made in your letter, there is no evidence to suggest that such problems are likely to arise, but it is also worth noting that the planning conditions attached to the permission for the development are designed to ensure that any flood risk is appropriately managed, taking account of the lifetime of the development. In your letter of 25 July you requested a copy of the Modelling report to the FRA and this included with this letter as an attachment to the e-mail.

Maintenance of the railway will be managed from the railway corridor. This access would also be adequate to repair the railway in the event of damage. There is no reason to suspect that the presence of the railway would have any bearing on use or access to your clients' farmland during a flood event and access during a flood event would remain unaltered, whether for emergency vehicles or livestock. The results of the FRA demonstrate that potential blocking of several existing culverts would have a negligible effect on the flood levels.

Maintenance of structures outside the railway land would be maintained in the same way as they are now. They would not be under increased pressure as a result of the presence of the railway.

Any petrol, oil and chemicals will be stored outside the floodplain. With regard to use of the site compound during construction, the planning conditions provide for all necessary pollution prevention methods as part of the Construction Environmental Management Plan which is to be approved by the local planning authority prior to construction.

The re- construction of the railway is straightforward and would be completed within an 18 month period. Work on those sections already completed has demonstrated the Company's ability to complete the works in this time scale.

Ecological and Landscape Impacts

Again, we note that your objection letter refers to commissioning WSP to carry out a review of ecology and nature conservation impacts of the railway but that, when we requested a copy, you responded that no formal report exists.

The Order land is situated within the High Weald Area of Outstanding Natural Beauty. The High Weald AONB Unit, which is the body with overall responsibility for the protection of the area, has been consulted on the application, and has no objection to the Order being made.

It is in the interests of the heritage railway to maintain the character of the area through which it will pass; not least because that will be a major attraction for visitors to it. Natural England, which is the body with overall responsibility for the natural environment, has been consulted on the application, and has no objection to the Order being made.

The land on which the Missing Link is to be constructed is entirely within the administrative area of East Sussex County Council. The County Council's ecologist has been consulted on the application, and the Council supports the Order being made.

The Secretary of State has given a scoping opinion which confirmed that, subject to further assessment of landscape and visual amenity (which has been carried out and reported in October 2017), the environmental information provided to him would provide an Environmental Statement of sufficient scope for the purposes of a TWA application.

Subject to the acquisition of land which, in the absence of a private arrangement, cannot be obtained without statutory authorisation, the existing planning consent provides all that is legally required for the development. As your letter rightly points out, the implementation of the development is subject to a number of Grampian conditions to ensure the protection of wildlife, legally protected species and habitat and to secure opportunities for enhancement of the nature conservation value of the site. The Company is working with interested parties in relation to the implementation of these conditions.

The Company has purchased the existing section of railway embankment from Austins Bridge to Junction Road, a distance of just under half a kilometer. Detailed environmental, ecological and arboreal surveys have been undertaken over a 12 month period, the results of which have fed into detailed management and mitigation plans for that part of the route. These surveys have confirmed that no significant damage to the environment will occur on this part of the Missing Link and there is no reason to suggest that it would not be possible to construct the balance of the route on the same basis.

Economic Benefits of the Order.

The Company is excited about the economic benefits to the area that will be delivered by the completion of the Missing Link. As you know, it has commissioned Steer (formerly Steer Davis Gleave) to produce a report on the economic impacts of the railway. You will appreciate that the report is not a document required by the Applications Rules, but nevertheless the final report will be shared with you, and other interested parties, as soon as it is available.

We note that your objection letter refers to commissioning Volterra to carry out a review of the economic case for the Order but that, when we requested a copy, you responded that no formal report exists.

The Manchester Metropolitan University ("MMU") study carried out in 2013 concentrated narrowly on the direct benefits of additional tourism passengers. Inter alia, it referred to findings by the All Party Select Committee and Heritage Railway Association that heritage railways make a significant contribution to local economies. It concluded that the Missing Link would have a significantly beneficial economic and social impact on Rother District and the adjoining economies and that the development fits well with the vision and objectives of Visit England's Strategic Framework for Tourism. In your letter of 25 July, you request a copy of an earlier MMU study dated September 2007. I enclose a copy of that study.

Steer is making a wider assessment of the economic impacts, using current best practice benefits analysis methodology, which includes construction benefits (which are significant) and other relevant factors.

We draw your attention to support for the reinstatement of the railway from the organization with responsibility for tourism marketing in the area, 1066 Country, as well as from Kent County Council, East Sussex County Council and Rother District Council.

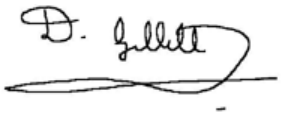
Conclusion

In your letter to Winckworth Sherwood of 25 July, you stated that your clients do not expect to rely at the public inquiry on the "internal advice notes" produced by WSP and Volterra upon which the bulk of your clients' objection is based.

We understand your clients' dismay at the prospect of the former railway line being reinstated on existing and re-created embankment across part of their land. However, it is simply wrong to conclude that, because they do not want the scheme, it will give rise to a multitude of negative or detrimental effects. The limited dis-benefits of the scheme are effects that can be mitigated and managed, as already provided for in the conditions attached to the grant of planning consent and are comprehensively outweighed by the positive case for re-instatement of the railway to provide a sustainable link between Robertsbridge and Tenterden, with the significant tourism and other economic benefits that it will bring.

We want to be good neighbours, and to work with your clients to address their practical concerns about potential impacts on their use of their properties. We understand their reluctance to engage with us to date but would welcome an opportunity to meet with the landowners, to go through all the reports and to discuss the proposals in more detail if this would be helpful.

Yours sincerely



David Gillett CBE; BSc (Civ. Eng); MICE; MIEE; C Eng
RVR/TWA Project Manager