

Angela Foster

06/11002

From: David Warman <David@RichardMax.co.uk>
Sent: 30 May 2018 15:46
To: TRANSPORTANDWORKSACT
Subject: Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order

Dear Sirs

We write further to our earlier conversation with Mr Dunne in your offices in respect of the current application by Rother Valley Railway Limited under the Transport and Works Act.

As I advised Mr Dunne this firm acts for

- (i) Mr Andrew Hoad, Mrs Lynn Hoad, Mr Thomas Hoad and Mr William Hoad of Parsonage Farm, Church Lane, Salehurst, Robertsbridge, East Sussex TN32 5PJ; and
- (ii) The Trustees of the Noel de Quincey Estate (Mrs Vanessa de Quincey, Mrs Cherida Michell [and Mr Michael Conroy]) c/o Moat Farm, Salehurst, Robertsbridge, East Sussex, TN32 5PR

The proposed railway will run directly through the middle of both Parsonage Farm and Moat Farm. I confirmed that my clients object to the Order which, amongst other matters, proposes the compulsory acquisition of their land.

Mr Dunne kindly confirmed that we have until midnight tomorrow (31 May) to file our objection. I write to confirm our intention to file the full substantive objection tomorrow morning.

If you have any questions in the meantime please let me know.

Kind regards

David Warman



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From: David Warman <David@RichardMax.co.uk>
Sent: 31 May 2018 11:29
To: TRANSPORTANDWORKSACT
Subject: Rother Valley Railway (Bodiam to Robertsbridge Junction) Order
Attachments: Objection to RVR TWAO application 310518.pdf

Dear Sirs

Rother Valley Railway (Bodiam to Robertsbridge Junction) Order ("the Order").

This firm:

- (i) Mr Andrew Hoad, Mrs Lynn Hoad, Mr Thomas Hoad and Mr William Hoad of Parsonage Farm, Church Lane, Salehurst, Robertsbridge, East Sussex TN32 5PJ; and
- (ii) The Executors and Trustees of the Noel de Quincey Estate (Miss Vanessa de Quincey, Mrs Cherida Michell and Mr Michael Conroy) c/o Moat Farm, Salehurst, Robertsbridge, East Sussex, TN32 5PR

Please find attached an **objection** to the Order which is made jointly on behalf of our clients.

Please would you kindly acknowledge safe receipt.

Please would you also kindly provide copies of all objections and other representations that have been received in respect of the Order.

Kind regards

David Warman



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TRANSPORT AND WORKS ACT 1992

**TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006 – RULE 21**

**OBJECTION TO APPLICATION FOR THE ROTHER VALLEY RAILWAY (BODIAM TO
ROBERTSBRIDGE JUNCTION) ORDER ("the Order") BY ROTHER VALLEY
RAILWAY LIMITED ("RVRL")**

**NOTICE OF APPLICATION TO ACQUIRE LAND COMPULSORILY, TO USE LAND
AND TO EXTINGUISH RIGHTS OVER LAND**

**NOTICE OF APPLICATION TO ENTER ON LAND FOR SURVEYS AND
INVESTIGATIONS**

NOTICE OF APPLICATION TO USE LAND TEMPORARILY

To:

The Secretary of State for Transport
c/o Transport and Works Act Orders Unit
General Counsel's Office
Department for Transport
Zone 1/18
Great Minster House
33 Horseferry Road
London
SW1P 4DR

transportandworksact@dft.gsi.gov.uk

This **OBJECTION** is made jointly on behalf of:

- (i) Mr Andrew Hoad, Mrs Lynn Hoad, Mr Thomas Hoad and Mr William Hoad of
Parsonage Farm, Church Lane, Salehurst, Robertsbridge, East Sussex TN32 5PJ;
and
- (ii) The Executors and Trustees of the Noel de Quincey Estate (Miss Vanessa de
Quincey, Mrs Cherida Michell and Mr Michael Conroy) c/o Moat Farm, Salehurst,
Robertsbridge, East Sussex, TN32 5PR

By their solicitors:

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

david@richardmax.co.uk

Any correspondence relating to this Objection should be sent to this address.

REFERRAL OF OBJECTION TO A PUBLIC LOCAL INQUIRY

The Order, if confirmed, will authorise the compulsory acquisition of land owned by Landowners.

The Landowners are therefore "statutory objectors" to the Order for the purposes of Rule 23 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

The Landowners wish to exercise their right to have their objection heard at (and to be represented at) a public local inquiry. The Landowners consider it will be necessary for the evidence presented by RVRL to be tested under cross-examination.

On this basis the Landowners do not consider that a hearing would be appropriate in this case.

GROUND OF OBJECTION

Policy Context

The Secretary of State's guidance "A Guide to TWA Procedures" at paragraph 1.39 makes clear that before confirming the Order the Secretary of State will need to be satisfied that:

"there is a compelling case in the public interest for taking away someone's land or rights in land"

Reference is made to Circular 06/2004 – now superseded by the MHCLG guidance "Guidance on Compulsory Purchase Process and Crichton Down Rules" (February 2018).

Section 12 of this Guidance repeats that "a compulsory purchase should only be made where there is a compelling case in the public interest". It goes on to state:

"An acquiring authority should be sure that the purposes for which the compulsory purchase is made justify interfering with the human rights of those with an interest in the land affected"

The Order will provide negligible public benefits at best (on RVRL's own analysis) which will be heavily outweighed by the negative effects of the proposals in terms of highway safety, flooding, ecology as well as the impact on the continued operation of Parsonage Farm and Moat Farm.

There is no case whatsoever (let alone a compelling one) to justify the forced acquisition of the Landowners' land and interference with their Article 1 human rights.

The Order should be rejected by the Secretary of State at the very earliest opportunity.

The Landowners **OBJECT** to the Order on the following grounds:

A. INVALID APPLICATION – TECHNICAL ERRORS AND OMISSIONS

Statutory Requirements

[References to a Rule or Rules are to the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006]

1. The Order, if confirmed will authorise the compulsory acquisition of land owned by the Landowners.
2. Pursuant to Rule 10 (4) RVRL is required to submit a plan and book of reference in accordance with requirements of Rule 12.
3. Rule 12(8)(a) requires the book of reference to contain “the names of all owners, lessees, tenants (whatever the tenancy period) or occupiers of any land which it is proposed” (our emphasis) shall be subject to compulsory purchase.
4. Rule 12(10) provides that the requirements of Rule 12(8) only extend to including those names, “which have been ascertained by the applicant, after making diligent inquiry” (our emphasis).
5. Rule 12 (11) provides that where an applicant has made diligent inquiry, “the application shall not be invalidated by reason only of any error in, or omission of information from, the book of reference”.
6. Rule 15 requires an applicant to serve written notice of the application in the prescribed form on all parties named in the book of reference.

Errors and Omissions in the Book of Reference

7. The book of reference forming part of the application does not meet the requirements of Rule 12 in that it omits the names of owners of land proposed to be compulsorily acquired.
8. Prior to making the application, on 17 March 2018 RVRL wrote to some (but not all) of the Landowners. The purpose of the letter was to request confirmation that RVRL’s analysis of the ownership of the land proposed to be compulsorily acquired was accurate. The letters were accompanied by a poorly printed A4 plan and a summary appendix purporting to identify all parties with an interest in the identified plots. The letter did not request a response within a stated timeframe.
9. On 29 March 2018, Richard Max & Co, on behalf of the Landowners, wrote to RVRL to explain that due to the scale and quality of the plans provided and the nature of the description of the individual plots, it was impossible for the Landowners to provide the requested confirmation. The letter requested A1 copies of the plans and expressly confirmed that the Landowners would respond substantively on receipt of this information.
10. No response was received to Richard Max & Co’s letter until 19 April 2018 – the day the application was submitted to the Secretary of State. The letter advised that RVRL believed the plans provided were adequate and confirmed that the application would be made that same day.

11. The requested A1 plans were only made available after the application had been submitted following further requests made of RVRL's surveyor from one of the Landowners' surveyors.
12. In any event, having now received the requested A1 plans, the errors made by RVRL in the book of reference are readily identifiable from a basic Index Map search at HM Land Registry.
13. The Landowners also understand that other third parties whose rights will be overridden by the proposed Order have not been included within the Book of Reference and have therefore not been duly notified.
14. Against this background, the application for the Order is invalid as it does not comply with the requirements of Rules 10 and 12.
15. Furthermore, in circumstances where RVRL has:
 - i. Written to the Landowners requesting confirmation of the ownership position in respect of the land proposed to be compulsorily acquired;
 - ii. The Landowners have expressly confirmed they will respond but requested larger scale plans to enable them to respond accurately;
 - iii. RVRL has nevertheless chosen to submit the application before supplying the requested plans and providing the Landowners with the requested opportunity to respond substantively; and
 - iv. In any event the applicant has seemingly failed to carry out a basic Index Map search at HM Land Registry of all the relevant land.

RVRL has not made "diligent inquiry" as required by Rule 12(10) so it is unable to rely on Rule 12 (11).

16. **For these reasons the Landowners request that the application is immediately rejected by the Secretary of State on the basis that it is invalid.**

B. ENVIRONMENTAL IMPACT ASSESSMENT ISSUES

17. The Landowners note that the Secretary of State issued a Scoping Opinion dated 22 June 2017 in contemplation of the application for the Order being made.
18. The Scoping Opinion confirms the Secretary of State's view that the Environmental Statement dated June 2014 (together with the addendum dated November 2016) submitted in support of RVRL's application for planning permission were appropriate to serve as the Environmental Statement for the purpose of the application for the Order (subject to the requirement for further information to be provided in respect of landscape against the High Weald AONB Management Plan).
19. The Landowners note that notwithstanding the June 2017 Scoping Opinion, Rule 8(8) enables the Secretary of State to require additional information to be provided in connection with the applicant's Environmental Statement.

20. The Landowners consider that many of the surveys and assessments underpinning the Environmental Statement (and the associated Addendums) are demonstrably out of date. This conclusion is supported by the advice of RVRL's own consultants.
21. By way of illustration:
- The baseline in the Environmental Statement methodology (para 4.3.4) assumed the start of construction in 2015. It is now unlikely that construction will start until late 2019 at the very earliest;
 - The noise assessment is based on monitoring undertaken in November 2013;
 - The air quality assessment assumed a baseline assessment year of 2013 and completion of the project 2017;
 - The survey data for the ecological assessment was collected in July 2013 – the November 2016 Addendum acknowledged that this data (even at that time) was “on the limit of what might be considered as suitably up to date”.
 - The Flood Risk Assessment even as updated still dates from 2016. It is not clear whether it has taken into account the EA's revised allowances for climate change published in that year;
 - The traffic data informing the various Highways reports is derived from surveys undertaken between April and August 2010;
 - The reports from Manchester Metropolitan University reports underpinning the Socio-Economic Assessment are dated from 2007 and 2013;
 - The Environmental Statement in numerous places records that the Landowners did not provide access to enable surveys to be undertaken. However, no request to access the land for this purpose has been made since planning permission was granted in March 2017.
22. One consequence of the continued reliance on out of date assessments is that the analysis of the cumulative effects of the proposal is likewise out of date.
23. Given the lapse of time since the original surveys and assessment were undertaken, the Landowners consider that they are no longer sufficiently reliable to enable the Secretary of State to properly and lawfully assess the environmental effects of the Order.
24. The Landowners request that the Secretary of State reviews the submitted Environmental Statement and Addendums again, and where necessary, requires the submission of further updated information on all topic areas pursuant to Rule 8(8).

C. FUNDING MATTERS/CHARITABLE STATUS

25. RVRL has estimated the cost of the project at £5.3m. The Funding Statement confirms that the project will be funded by The Rother Valley Railway Heritage

Trust ("RVRT") – a registered charity. In contrast, elsewhere in the application documentation, it is suggested that the project is to be funded by anonymous private benefactors.

26. The Landowners consider that the cost estimate is wholly inadequate – in particular in respect of the proposed cost of the necessary highways works (see comments below). Likewise, no allowance has been made in the costs estimate for ongoing costs of maintenance of the track, the level crossings and the associated flood defence infrastructure, as well as the ongoing operation of the railway. It is likely that the costs of installation and ongoing maintenance will far exceed those estimated by RVRL.
27. The Secretary of State's guidance "A Guide to TWA Procedures" explains at paragraph 1.32 onwards that:

"the applicant should be able to demonstrate that the proposals are capable of being financed in the way proposed.....

the applicant may need to provide a financial appraisal of the scheme for the purpose of any public inquiry.....

the Secretary of State's concern is to establish that the scheme is reasonably capable of attracting the funds required to implement it.....An applicant should be able to provide evidence (whether at inquiry or otherwise) to enable the Secretary of State to consider this matter"
28. The charitable objects of RVRT are stated to be:

"To preserve for the benefit of the public of Kent and East Sussex and of the nation the historical, architectural and constructional heritage that may exist in and around Kent and East Sussex in buildings or structures of particular beauty or historical architectural or constructional interest" (our emphasis)
29. The Order specifically seeks authorisation for a "new railway" (as set out in the draft Order and Statement of Aims). It does not relate to an "existing railway". On this basis the funding of the Order appears to be outside the charitable objects of RVRT and would therefore be unlawful.
30. The latest published accounts of RVRT (for the year ended 31 December 2014) indicate that total unrestricted funds available to RVRT at that date were only £2.8m. There is no information in the public domain that demonstrates there is any reasonable prospect of RVRT being able to fund the costs of the project even on RVRL's inadequate estimate of the likely costs.
31. If any funding is to be provided by private benefactors it is incumbent upon RVRL to make clear who the benefactors are and to provide evidence that they have necessary resources to meet any shortfall. Absent such information the Secretary of State can place no reliance on unspecified promises from anonymous alleged benefactors.
32. Further, the Secretary of State will need to be satisfied that the future maintenance of the level crossings and the associated flood defence infrastructure will continue to be funded, in perpetuity. Unless it is properly secured, by binding legal

agreements, it is inappropriate that such funding should be dependent upon the goodwill of private benefactors.

33. In this regard, the Landowners note that this was one of the reasons why, in 1967, the Secretary of State refused to make a Light Railway Order extending the line to Robertsbridge. In her letter dated 16 October 1967, Barbara Castle noted that she was:

"not convinced ... that the Light Railway Company would be sufficiently profitable to be able to sustain in perpetuity the heavy statutory obligations in respect of bridging and drainage which attach to the line" (our emphasis)

and that:

"it would clearly not be possible to regard the persona; financial resources of a single supporter however generous as overcoming the considerable doubts which emerged during the inquiry about the financial resources of the Company, and their likely ability to build up adequate reserves not only in the short term but in perpetuity. Protective clauses ... would of course be valueless if the Company went into liquidation."

34. The Landowners consider that these observations are as relevant today as they were when written. There is no evidence that, in the absence of funding from private benefactors, RVRL is itself sufficiently viable or profitable to fund the necessary works not only in the short term but in perpetuity.

D. IMPACT UPON PARSONAGE FARM AND MOAT FARM

Parsonage Farm

35. Parsonage Farm is a long-established family run farming business growing hops, arable crops and rearing cattle. The proposed railway would run through the heart of the farm and disrupt every aspect of the farming business.
36. The Order will have a significant detrimental impact in the operation of Parsonage Farm in a number of ways including:
- The permanent material loss of productive acreage;
 - It would result in smaller less commercially viable plots of land;
 - It would remove all access to two fields at the Robertsbridge end of the farm, leaving them incapable of being farmed;
 - It would cause considerable harm and disruption during the course of the construction given the proposed access roads through the middle of the farm. This is a particular concern as given the proposed funding strategy there is a genuine risk that construction will extend over a protracted period; and
 - The raised railway embankment would give rise to a number of detrimental impacts during flood events to both the arable and cattle parts of the farming business.
37. The previous line was closed in the 1950s. The railway line was subsequently purchased from British Rail in 1981. In order to eliminate problems associated

with having land trapped between the railway line and the River Rother, the embankment was removed at considerable time and cost to the Hoad family.

38. These works improved the efficiency of the farming business by reinstating commercially sized arable fields. The effect of the Order will be to undo these benefits. This is important given the development of farming technology and machinery since the embankment was removed. The Landowners have invested in such technology to complement their investment in the removal of the embankment. Modern larger tractors and associated machinery are designed to be used on large commercial arable fields. A return to smaller irregular shaped isolated fields between the embankment and the river will lead to considerable reduction in efficiency and therefore income.
39. Following the construction of the A21 bypass in 1988 the land immediately adjacent to the trunk road has been left as pasture as the road rendered it unsuitable for arable production. In 2002 these fields were also subject to the building of flood defences. When a threat of flood arises, there is a need to move the stock to higher ground. The railway would not only increase the risk of such flood events but also make it considerably harder to move the stock quickly in rising flood water.
40. Following the removal of the railway embankment, the land at the Salehurst end of the farm is currently used for arable crop production due to the alluvial soil. Again, in flood events, the Landowners are concerned that the embankment will impede water flow and increase the time taken for the water to recede. Any such delay will cause potentially fatal damage to any crops planted at that time, leading to a complete loss of harvest. In contrast without the embankment water will recede quickly which the crops are able to withstand.
41. In recent years the farm has invested heavily in its hop enterprise to cater for the increased demand from the craft beer industry. The Landowners have active plans to expand this operation, which for all the reasons set out above will be jeopardised by the proposed railway.

Moat Farm

42. Moat Farm was purchased by Mr and Mrs de Quincey in 1946. At that time the railway was still open but very run down. It was shut down shortly thereafter and the old derelict line was offered to and purchased by Mr de Quincey. This purchase completed the farm and returned it to what it had been prior to the construction of the railway at the turn of the 20th Century.
43. The railway bed and embankment were not removed, but were allowed to return to nature. This acts as a shelter for animals in wet, windy and hot weather. It is now covered by varied vegetation and hundreds of now mature trees including oaks and aspens.
44. The majority of Moat Farm falls within Natural England's Higher Stewardship scheme. This includes that part of the farm to the south of the old railway track bed known as the Water Meadows (used for grazing cattle and sheep) and the part to the north known as the Flower Meadows (used to grow a meadow hay crop and grazed by sheep).

45. There has been no nitrogen or chemical interference on the farm for over thirty years. As a result of which it is a habitat for a wide variety of unusual and significant flora and fauna including, bats, barn owls, nightingales, dormice, moths (including the Blue Underwing moth) and mosses.
46. The provision of the railway embankment would result in the loss of the existing habitats along the old track bed. In turn future maintenance of the track will inevitably involve weed killers and associated pollution, as well as pollution from sulphur and carbon arising from the operation of the trains (including diesel trains). This will have a considerable harmful impact on the many species of flora in the fields either side.
47. Operationally when the railway was previously running four crossing points were provided. The Order only proposes the provision of a single crossing way with an access road running parallel along the southern length of the track. This arrangement will make it impossible to continue to farm the water meadows to the south of the railway as driving stock long distances in order to use the single access bridge and along unfenced orchards is impractical.
48. RVRL have failed to investigate and therefore take account of the terms of Mrs De Quincey's Will. Under the terms of the will, the western part of the farm is to be left in trust for Miss Vanessa de Quincey with eastern part left to Mrs Michell. At this point in time the farm will effectively be sub-divided and the failure to provide more than one bridge means Mrs Michell will have no access to the land south of the railway line.
49. RVRL has failed to engage meaningfully in respect of either Parsonage Farm or Moat Farm to seek to understand the operational impact to both businesses.
50. This is illustrated in the Environmental Statement paragraph 15.7.2 which identifies that in order to adequately mitigate the proposals, they should avoid unnecessary severance of fields and disruption to operation movements of agricultural vehicles and equipment as well as the provision of alternative means of access to the land where necessary.
51. As set out above the Order would result in severance of two fields forming part of Parsonage Farm and following the grant of probate prevent access to part of Moat Farm. These issues were drawn to RVRL's attention a number of years ago but have not been addressed in the application. The conclusion in paragraph 15.8.2 of the Environmental Statement that "the provision of access arrangements has ensured that no parcels of land that can reasonably be accessed will be left isolated" is simply untrue.

E. IMPACTS ON HIGHWAY SAFETY

52. The Landowners have instructed WSP to review the highways impacts of the Order, focusing on the provision of three level crossings, including one across the A21 national trunk road.

53. WSP has undertaken a technical review of the application material in particular a review of the Mott MacDonald report "Highways & Traffic Assessment Report – A21". WSP has considered four key issues:
- i. The misalignment of the proposals with the policy position of Network Rail and the Officer of Rail and Road for the implementation of new level crossings;
 - ii. Assessment of the traffic flow and speed analysis on the A21 and the impact of level crossing closure timings and associated costs of delay;
 - iii. Analysis of Highways England and the local highways authority position on the planning application; and
 - iv. Analysis of the likely full costs of the implementation of the proposals and future maintenance.
54. In summary WSP have noted the following issues:
- The ATC traffic survey to support the application was undertaken in 2010 and is now significantly out of date (amongst other matters it does not therefore take into account the dualling of the A21 further north between Tonbridge and Tunbridge Wells);
 - the Office of Rail Regulation ("ORR") guidance published in December 2011 makes clear that the ORR will only support the creation of new level crossings in "exceptional circumstances". Likewise since 2009 Network Rail has undertaken a process to create a safer railway – this has led to the closure of 1100 level crossings throughout the country;
 - the Mott MacDonald report omits consideration of the trend of accidents occurring at level crossing with approximately 30% of accidents linked to the closure of barriers;
 - WSP has undertaken a high-level review of accidents in the proximity of level crossings on A roads in the South East of England. The review confirms accidents commonly increase around level crossings and the implementation of the level crossing is likely to induce a continuation of this trend leading to an increased level of accidents along the A21;
 - Mott MacDonald assessed a maximum closure time of 112 seconds (notwithstanding that the closures at Bodiam and Newenden on the existing railway exceed this timeframe), which would lead (on their analysis) to a maximum queue in the southbound direction of 27 vehicles. Assuming a PCU length of 5.75m per vehicle the queue will be over 150m long and will extend through the A21/Northbridge Street roundabout on a daily occurrence causing additional road safety and capacity concerns;
 - The Mott MacDonald report fails to recognize the impact of the closure of the level crossing and the interaction this will have on queuing through the roundabout and associated road safety issues;
 - The Mott MacDonald analysis does not appear to have taken any account of the fact that due to the irregular crossing closures drivers will not be expecting queuing traffic; and

- The assessment of the economic cost of delay has only taken account of half of the proposed crossings – therefore the cost will be at least double that stated.
55. In respect of ORR, the Landowners note the ORR's position in 2015 in respect of the proposed application for the Cambrian Railways Order, which amongst other matters contemplated the introduction of level crossings across the A5 and A483. ORR objected strongly in that case. Their letter of objection stated:

"Given that the proposed level crossing sites are on high volume/high speed carriageways. There would be significant (and potentially catastrophic) risks to the railway and we cannot envisage a situation where level crossings would be appropriate or permissible whatever protective arrangements were put in place"
 56. In the case of the Cambrian Railways Order this led to the removal of the provision for Level Crossings in the Order. The Landowners note that ORR's letter to RVRL was sent 3 and a half years before their objection to the Cambrian Railways Order.
 57. WSP consider that the material presented by Mott MacDonald to date does not adequately address the concerns raised by Highways England (previously the Highways Agency) and the local highway authority, East Sussex County Council.
 58. WSP note that the Highways Agency initially issued three successive holding objections and requested additional information to fully assess impacts on traffic flows and road safety matters in December 2013 and May 2014.
 59. In their e-mail 27 March 2015 the Highways Agency noted that following the re-organisation to Highways England they were no longer permitted to issue holding directions. This e-mail specifically records that they had still not at that date received all the information previously requested. This correspondence indicates that Highways England's clear preference would have been for options other than the level crossing to be considered.
 60. WSP conclude that RVRL has still not provided Highways England with the information and data it has repeatedly requested to allow an in-depth review of the scheme. They conclude that the lack of a holding direction resulted purely from a change in status of the Highways Agency to Highways England and was not based on a sound and robust technical analysis following consultation.
 61. It is instructive that there is no further correspondence with Highways England included in the Consultation Report accompanying the application for the Order.
 62. Similarly from the correspondence from East Sussex County Council (as local highway authority) dated 14 April 2015 it is clear officers felt they had no choice but to follow Highways England's lead and could not object in isolation.
 63. WSP conclude that at the planning stage RVRL fortuitously benefited from the change in status of Highways Agency/Highways England which has resulted in the local highways authority feeling that it was unable to object. Critically, that conclusion was not based on any sound or robust technical analysis, because

(notwithstanding the Highways Agency's repeated requests) the information needed to conduct that analysis has never been provided by RVRL. WSP do not consider that sufficient evidence has been presented to demonstrate that all necessary technical and safety concerns have been addressed.

64. The Landowners consider that the proposals will give rise to significant adverse impacts to both traffic flows on the major trunk road between London and Hastings and highways safety.
65. In respect of the Estimate of Costs, WSP note that they would ordinarily expect to see the following specifically identified:
- Preliminaries and contingencies;
 - Optimum bias;
 - Commuted Sums for maintenance;
 - A breakdown of costs for civils works; and
 - A specification and costs for each level crossing.
66. WSP consider a number of the cost estimates are too low – for example only £15,000 has been allowed for ground investigation. Given the number of bridges and culverts along the route WSP ground investigation is more likely to be in the region of £50,000.
67. Based on a civils works costs of £5m WSP estimate professional fees will be at least £250,000. Likewise depending upon the specification WSP anticipate the cost of a single level crossing to be between £0.25m and £0.75m. The total costs for all the highways works estimated at £700,000 is therefore too low. No allowance has been made for any traffic management costs.

Prejudice to future dualling of the A21

68. The Landowners note that Greg Clark (MP for Tunbridge Wells) and Amber Rudd (MP for Hastings) both objected to RVRL's planning application on the basis that it would jeopardise their aspiration to dual the A21 from Sevenoaks to Hastings. Mrs Rudd has also recorded her objection to the Order.
69. On 7 February 2018 Greg Clark, Sir Michael Fallon, Huw Merriman, Tom Tugendhat and Amber Rudd (being the MPs along the route of the A21) wrote to the Minister of Roads. The letter noted their aspiration to see the A21 dualled all the way to Hastings. It stated:

"...the rush hour or public holidays can see journey times from Tunbridge Wells to Hastings almost double on the twenty-five mile stretch, which takes an hour even in good conditions. This is quite simply absurd for what is a trunk road.

In November 2017, a report by the Road Safety Foundation cited the A21 from Hurst Green to Hastings as on the highest risk road on England's Strategic Road Network.....This is sobering and should be cause alone for an upgrade to be approved but there is a practical impact on others too – the March 2017 South Coast Central Route Strategy recognized this stating "the lack of viable alternative

routes means this corridor has limited resilience to disruption". Accidents sadly can and do bring a halt to one of the country's most important roads.

Our ambition is to see a modern dual carriageway which befits the main link between the M25 and south coast.....We have every confidence the case for dualling the A21 from top to toe satisfies the five key aims of RIS2 as well as the four goals in the Transport Investment Strategy.

Ten years ago the A21 Reference Group was formed to bring together all the business, economic and political representatives down the route. Both we and the Group, of which we are part, would like to see the dualling of the A21 included in RIS2..."

70. Whilst dualling of the A21 through to Hastings has been discussed for many years (it was one of the reasons why, in 1967, the Secretary of State declined to extend the Light Railway Order to Robertsbridge) it is now increasingly likely. In particular, the opening of the A21 Lamberhurst Bypass in 2005 and the A21 Tonbridge to Tunbridge Wells last year, represent significant steps towards the fulfilment of this long held strategic goal, which will complement the recently opened Hastings-Bexhill bypass in bringing much needed regeneration to the Hastings area.
71. The proposed level crossing across the A21 contemplated by the Order would present a significant impediment to the completion of this programme, with associated detrimental impacts on the economic benefits that dualling would deliver. In particular, RVRL has recognized that it would not be possible for either the train line or the A21 to be placed in a tunnel beneath the proposed crossing, and that gradients would not permit trains to pass over the A21 on a newly constructed railway bridge. The only solution which is technically possible, therefore, would be for the A21 to pass over the proposed railway line on a flyover. However, that would have very significant effects on the High Weald AONB, on the setting of Robertsbridge and on the amenity of local residents, none of which have been assessed.
72. In the Landowners' view, those impacts would be unacceptable, in which case the impact on the regeneration of Hastings would significantly outweigh any economic benefits which might flow from the present proposal (as to which, see below). However, even if that were not the case, the public purse would have to carry the additional costs of construction, which would be significant.

Car Parking at Robertsbridge

73. RVRL estimate that the extension of the railway to Robertsbridge will generate anywhere between an additional 50,000 to 100,000 new visitors per annum. For reasons set out below the Landowners consider this estimate to be wholly unrealistic.
74. However, equally unrealistic is RVRL's suggestion that all of these visitors will arrive by train on the National Rail infrastructure. No analysis or assessment is

provided to justify this conclusion. The Landowners consider it is inevitable that a majority of visitors will arrive in Robertsbridge by private car (particularly given the regularity of engineering works or bus replacement to national rail services on weekends and bank holidays). This is important as the scheme proposes no new car parking at the station in Robertsbridge. No assessment has been undertaken of the impact on the already extremely limited car parking provision in Robertsbridge of this magnitude of visitors.

E. FLOODING IMPACTS

75. The Landowners have commissioned WSP to review the flooding impacts of the proposed railway and to examine the material submitted by Capita on behalf of RVRL.
76. The Order proposes the introduction of a railway track on a raised embankment into Zone 3 Flood plain in immediate proximity to the River Rother.
77. RVRL's own Flood Risk Assessment ("FRA") concludes that the scheme will give rise to significant flood risk due to an increase in flood water levels as a consequence of the loss of flood plain and restriction of flood water flows. In any event the FRA only considers impacts up to the edge of B2244. No assessment is made regarding flooding impacts further down stream.
78. The FRA goes on to acknowledge that a number of properties could be flooded more frequently and at greater depth than they currently experience.
79. WSP has identified a number of issues that do not appear to have been assessed by Capita and which have not been considered by the Environment Agency or Rother District Council when granting planning permission.
80. In summary WSP have concluded as follows:
 - The Capita modelling plans show large areas potentially benefiting from the introduction of the railway. This is misleading and does not accord with the text of the Flood Risk Assessment. More detailed resolution on the mapping is required to confirm that the mapping represents the findings of the tabulated "reductions";
 - No assessment has been made of likelihood and impact of blockage events on any of the bridge structures (either proposed or existing);
 - There is no qualification or explanation for the level information used to build the flood model. In particular, consideration has not been given to the presence of trees at some of the key locations either along the route or within the flood zone in general. This may result in inaccuracies in the levels, potentially in excess of 150mm, well above the stated beneficial changes in flood depths;
 - The original 2013 FRA states that a climate change allowance of 20% has been used. The late 2016 report does not clarify whether account has been taken of the EA's revised allowances published in 2016. The revised climate change allowances are considerably more than the 20% considered and accepted by the EA in 2013;

- The FRA does not address the proposed lifetime of the scheme. The revised EA allowances (2016) are based not only on the scheme type but also on how long it is likely to be in place;
- The FRA does not address the impact of the movement and mobilization of the track ballast and other materials during a flood event. The proposed overtopping will increase the risk of structural failure of the track and its embankments. This also has the potential to lead to blockages and disruption to the watercourse flows. The access requirements for repairs could be significantly different from those proposed for construction;
- The impact of surface water and groundwater flooding on the viability of the farmland adjacent to the route has not been considered. The report acknowledges that some changes may be expected but no analysis has been carried out to determine if more regular storm events will render the areas of farmland unusable or inaccessible – for example by virtue of being waterlogged;
- During a flood event safe access will not only be required for emergency vehicles but also for the management and movement of livestock. The scheme significantly reduces the number of crossing points. No assessment has been made of this detrimental effect;
- The FRA does not include a clear management or access programme for the majority of the 27 culvert/bridges along the route. It is unclear whether the Landowners are expected to maintain these structures or whether they will be required to allow free access to RVRL to maintain them;
- The Environmental Statement, which sets out a number of mitigation measures in respect of impacts on water quality, states that petrol oil and chemicals will be stored out of the floodplain. However no indication is given of the location of this store. The distance from the works to any area outside the flood plain is considerable. The Site Compound shown in the ES Vol 4 fig 2.4 is at the eastern end of the scheme within Flood Zone 3 and immediately adjacent to the River Rother. This is an inappropriate location, but no other storage locations are included or shown within the scheme; and
- The Environmental Statement suggests that the construction of the railway will be carried out in a single construction operation whereas elsewhere in the application it is indicated that it will be carried out by volunteers over a protracted period. It is therefore unlikely that the site management activities and measures proposed by the EA to control pollution and protect the environment will be familiar to the volunteers. This presents an increased and on-going risk to the environment not fully assessed or commented upon within the submitted documentation.

F. ECOLOGICAL AND LANDSCAPE IMPACTS

81. The Order land is situated within the High Weald Area of Outstanding Natural Beauty ("AONB") which is to be given the highest status of protection in relation to landscape and scenic beauty in accordance with the requirements of the NPPF.
82. As set out above the Order would authorise the removal 50% of all woodland and scrub along the route. This will have dramatic impact upon the landscape and scenic beauty of the AONB. Likewise these areas are currently the existing habitat for varied and highly unusual flora and fauna including European protected

species, currently within the Natural England Higher Stewardship scheme. After the initial removal of woodland and scrub any remaining habitats will continue to be harmed by the ongoing operation of the railway and its future maintenance requirements.

83. The Landowners have commissioned WSP to review the ecology and nature conservation impacts of the proposed railway and to examine the material submitted by RVRL
84. The submitted Environmental Statement has concluded that the construction of the railway will result in both temporary and permanent loss of habitats and that a number of protected species including European Protected Species, bats, dormouse and great crested newts as well as other species, namely badger, birds, water vole and invertebrate fauna could be affected.
85. In summary WSP conclude as follows:
 - The biodiversity baseline underpinning the Environmental Statement and associated Addendums was drawn from information collected and collated in 2013/14 from readily available sources including Sussex Biodiversity Information Centre, Natural England and the Environment Agency; through consultation with local councils, wildlife trusts and relevant conservation groups; and from an Extended Phase 1 Habitat Survey of the accessible areas of the proposed Scheme impact corridor and surrounding area. No field survey apart from the Phase 1 Habitat Survey was undertaken due to access restrictions. This information is now several years old and requires review and updating. This particularly applies to EPS such as bat species, dormouse and great crested newt, as well as badger;
 - The ES is based on a worse-case scenario and precautionary approach. As a result, it is uncertain how the value and level of importance of specific ecological receptors has been arrived at without detailed (Phase 2 type) information. It has been noted by the County Ecologist that as a result, it is difficult to assess the level of confidence in the conclusions;
 - The reliance on the above information and the lack of field surveys has led the County Ecologist to propose and the District Council to impose a Grampian condition when granting planning permission. This prevents the start of a development pursuant to the planning permission until the ecological surveys have been completed on land not controlled by the applicant. However, no request to access the land for this purpose has been made since planning permission was granted in March 2017;
 - An extensive period of survey will be required as a result of the above approach. In this respect, it is important to reiterate the conclusions of the Environmental Statement ecology chapter and note that ecological surveys are seasonally and time constrained and this particularly applies to great crested newts, dormouse and bats. For example, in relation to dormouse the acknowledged approach involves a significant survey effort during the period April to November with monthly visits being required throughout this time. For great crested newt the prime survey time is restricted to the breeding period March to June inclusive. It would be expected that full survey information will be required on which to base the update of the Environmental Statement and the mitigation package proposed, as well as for any EPS mitigation licence applications to Natural England;

- The lack of detailed information is a particular constraint to satisfying the requirements of the Habitats Directive when a EPS mitigation licence is applied for. The three tests required under the Habitats Directive cannot be properly applied unless appropriate survey information is included in the application;
 - There is limited biodiversity baseline information on the aquatic elements of the River Rother apart from riparian mammals. The potential impact on the aquatic ecosystem of the River Rother, which flows alongside and underneath the route of the scheme, has not been considered in the Environmental Statement. Aquatic macro-invertebrate and fish surveys would ordinarily be a minimum requirement;
 - The loss of wetland (Floodplain grazing marsh) habitat has only been briefly addressed in the Environmental Statement and associated Addendums; and
 - It is understood that the construction of the railway will be carried out by volunteers over a protracted time period. No consideration of this construction period and the potential consequences of prolonged impacts on species has been made in the Environmental Statement. This is critical in determining the nature and magnitude of effects and the necessary mitigation measures.
86. The documents record that by way of mitigation it is proposed, amongst other matters, that RVRL will plant a minimum of 1.5ha of native broadleaved woodland and 1 ha of scrub habitat in a linear block alongside the railway line. However, no provision for this mitigation appears to have been made in the Order documentation.

G. ECONOMIC BENEFITS OF THE ORDER

87. RVRL places great weight on the alleged economic benefits the new railway will provide. On its website and associated press-releases it refers to a report prepared by Steer Davies Gleave ("SDG") which it is said identifies benefits to the economy of 75 jobs.
88. However, this report does not form part of the application for the Order and has not been made publicly available. The Landowners have requested sight of the report from RVRL but to date have not been provided with a copy.
89. On the basis that the SDG report does not form part of the application for the Order and is not in the public domain no weight can be attributed to it by the Secretary of State in his consideration of the Order.
90. Absent the SDG report, the only documents relating to the economic impacts of the railway are those set out in the studies of Manchester Metropolitan University ("MMU") and the Socio-Economic chapter of the Environmental Statement.
91. The Landowners have commissioned Volterra (economic consultants specialising in the economic benefits of infrastructure and development) to review RVRL's economic case for the Order. Volterra consider that based on the information publicly available the benefits appear to have been significantly overstated.
92. Volterra have identified the following relevant points:

- The MMU Study identifies that passenger numbers have been in decline from 2000-2012. The most recent figures for the existing railway show 86,000 annual passengers – see the Steam Railway Magazine 5 January 2018. However a baseline figure of 100,000 of current passengers is taken forward in the analysis. This figure has only been exceeded twice between 2000 and 2012;
- The existing Kent and East Sussex Railway currently supports 50 FTEs and the MMU Study suggests this includes a significant number of volunteers. The Socio-Economic chapter of the Environmental Statement states that the proposed link would only support an additional 14 FTEs, but acknowledges that it is conjectural whether these jobs would be taken by residents of Rother. The planning application form states that the proposal would support just 7 FTEs;
- The MMU Study estimates that in the future passenger numbers could rise to 150,000. It acknowledges that to reach 200,000 visitors significant capital investment in KESR would be required. However, it is only with 200,000 visitors that the alleged £10m economic benefits will be generated. This would require an increase from the latest published figures of 86,000 to 200,000 – an increase in visitor numbers of 132%;
- By way of comparison Volterra have examined benchmarks of other railways (which are also referred to in RVRL's own case so are considered to be fair comparisons) – including the Bluebell railway, the North Norfolk Railway and the North Yorkshire Moors Railway. Each has been extended within the last 11 years – including the provision of linkage to the Network Rail infrastructure. The restored links at these three railways increased passenger number by between 14% and 33% as a result of their extensions. This suggests the RVRL estimates for likely passenger increases are grossly over-optimistic;
- The MMU Study confirms it is only with 200,000 visitors that the railway will generate the top end £10.8m of economic benefit. Even the MMU Study acknowledged that this is only a possibility;
- In any event the £10m figure reflects the current operation as well as any potential increases. A maximum of £6m (on RVR's assessment of a doubling of passenger numbers) would be additional benefit deriving for the new railway;
- From the brief extracts of the SDG report in the public domain they claim that 75 additional permanent jobs will be added as a result of the extension of the railway. Given that the existing railway supports 50 FTE's this seems extremely high. In reality the figure is likely to be significantly lower given the seasonality of the proposals and the proposal to rely on volunteers;
- The multipliers used in the assessments appear high by comparison to industry standard;
- There is no assessment of additionality. To the extent to which users are attracted from a wider catchment, their associated economic activity needs to be fully additional in order to claim the sale of benefits included; and
- In conclusion Volterra consider that the economic benefits are likely to have been at least threefold overstated.

93. The conclusions of the Socio-Economic chapter of the Environmental Statement are highly informative. In particular:

- 14.4.9 – there is no clear evidence that the majority of local tourist attractions will directly benefit from the extension;
- 14.4.11 – the scale of employment generation is only a small positive in the context of the very robust local market and very low local unemployment numbers. Increased visitor numbers and the introduction of level crossings may have negative economic impacts;
- 14.6.2 – “the clear neutrality of the Scheme...”
- 14.7.2 – “the local socio-economic impacts of the Scheme would be minimal...though very marginally positive.....in terms of additionality this increase in employment is insignificant”; and
- 17.7.4 – “Overall the Scheme in terms of socio-economic impacts is neutral to minimal positive”

On RVRL's own analysis the proposals will have a neutral to minimal positive impact.

H. CONCLUSION

94. The proposals will give rise to a multitude of negative or detrimental impacts, which are not in any way outweighed by the by the alleged “neutral to minimal” positive benefits.
95. In these circumstances there is simply no compelling case in the public interest to justify the compulsory acquisition of the Landowners’ land and interference with their human rights.

The Landowners reserve the right to raise such other objections as they see fit following receipt of RVRL's Statement of Case.

Signed: Richard Max & Co

Dated: 31.05.2018

RICHARD MAX & CO ON BEHALF OF:

- (i) Mr Andrew Hoad, Mrs Lynn Hoad, Mr Thomas Hoad and Mr William Hoad of Parsonage Farm, Church Lane, Salehurst, Robertsbridge, East Sussex TN32 5PJ; and
- (ii) The Executors and Trustees of the Noel de Quincey Estate (Miss Vanessa de Quincey, Mrs Cherida Michell and Mr Michael Conroy c/o Moat Farm, Salehurst, Robertsbridge, East Sussex, TN32 5PR

