

Eur Ing Ian Raxton
HM Principal Inspector of Railways

Email: ian.raxton@orr.gov.uk

21 May 2021

Joanna Vincent
Public Inquiry Manager
Gateley Hamer Limited



By email only

For the attention of the Inquiry Inspector

Dear Sirs,

**Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order
Addendum to Statement of Case**

1. ORR provided a statement of case to the Department for Transport on 31 January 2020 based on the information submitted to ORR by the applicant, Rother Valley Railway (RVR), up to that time. That document is item REP/017 in the Inquiry library.
2. Subsequently in February and April 2021 ORR has received further information from the applicant to clarify their position. These further submissions have given enough new information to require ORR to modify some of the elements of the statement of case submitted on 31 January 2020.

The additional documentation

3. ORR received a submission of eight documents on 13 February 2021, the covering email is included as Appendix A and the documents are listed and provided as original attachments as received by ORR.
4. ORR made a response to this documentation in an email on 6 April 2021 and this is included as Appendix B.



5. The applicant then sent a further two documents by email on 29 April 2021 to offer further clarification, the covering email is included as Appendix C and the documents are listed and provided as original attachments as received by ORR.

Effect of the additional documents on ORR's position

6. The additional documents lead to a need to clarify our position in relation to the control arrangements of the public highway level crossings, the bridleway, and the user-worked crossings.

The public highway level crossings

7. In paragraph 35 of our 31 January 2020 statement of case we expressed reservations over what we saw as a non-standard and overly complex implementation of an obstacle detector protected crossing at the A21. The description appeared to show the involvement of a human signaller in the control process, which we believed introduced unnecessary scope for error, and which was inconsistent with practice on the mainline railway.
8. RVR have clarified that this was not their intent, and the revised description of the operation of the crossing is now consistent with those seen on the mainline railway and would appear to be an arrangement that reduces risks to as low as is reasonably practicable.
9. This removes ORR's previously expressed concerns in paragraph 35 of the statement of case.

The bridleway crossing

10. RVR have now provided ORR with a quote from Rother District Council dated 13 August 2020 making clear that it could not accept the visual intrusion of a bridge to carry the bridleway over the railway in planning terms given the location.

11. This leaves a consideration for the Inquiry as to whether such a specific objection constitutes a 'practicability' issue in the test of reasonable practicability which ORR would normally apply in health and safety considerations.
12. ORR has spent some time exploring the risk data that is available in relation to bridleway crossings. All of this comes from the UK mainline railway which operates at significantly higher speeds than those proposed for the RVR route, and across a diverse range of physical locations many of which will be very different to the proposed location on the RVR route where the line is straight, and sightlines would be good.
13. The mainline data itself is based on a degree of statistical estimation by the Rail Safety and Standards Board given that the root causes of events are not always clear. While it is possible to estimate the risk outcomes where trains and people do come together, what is difficult to estimate is the level of usage of such crossings, and hence draw and estimate of overall risk.
14. Attempting to extrapolate from the detailed data on precursors and events does not generate meaningful numerical outputs, and this underlines the position set out in appendix A of ORR's 31 January 2020 statement of case that wider qualitative factors are more important.
15. It seems likely that on a railway with a relatively straight alignment, good sightlines, properly set up and maintained warning equipment, and a good crossing surface, that a tolerably safe crossing arrangement could be created. It remains of course our view that not having a level crossing will always be a safer situation, but that does not mean that the residual safety risk of such a crossing cannot be delivered with risks reduced to as low as is reasonably practicable and at a tolerable level.
16. ORR's view remains that it is not calculated data that should be the deciding factor in these cases. A more holistic view needs to be taken of the surrounding issues, including for example the view of the local authority, and whether the wider public benefit of a crossing is acceptable for the related level of safety risk.

17. It is important to remember that the law does not prevent an increase to risk, provided that it can be demonstrated that the level of risk has been reduced to as low as is reasonably practicable.

User worked crossings

18. RVR have clarified that they will seek to minimise the number of any such crossings that need to be put in place to maintain access to severed land. They have agreed that the provision of alternative routes of access would be considered where situations are appropriate. Importantly they acknowledge that any decisions will still be subject to their overriding legal duties to undertake optioneering and risk assessment to deliver solutions that reduce risks to as low as is reasonably practicable.
19. RVR acknowledge the need to carefully consider the locations where any such crossings might be required relative to other railway features to minimize the risk of train crew distraction. They note the potential to limit train speeds on approach if required, and potentially providing locks on the gates to restrict use to authorised users.
20. Many crossings similar to those that might be required by RVR exist on other heritage railways, and on the mainline network, and these can be constructed and used in a tolerably safe manner. Many of those current crossings have little or no advice for users beyond signage warning them to look both ways before crossing; it is features such as this that lead to the incidents and accidents that do occur. RVR's documentation does now give commitments to providing appropriate instructions and advice to users and visual signals to approaching train crew of gate position as well as the measures indicated in paragraph 19 above.
21. ORR's position remains that we prefer that user-worked accommodation crossings are avoided by RVR and landowners coming to agreement on alternatives, but if this is not possible, for the number to be kept to an absolute minimum. RVR have stated that they will take a risk-based approach to this issue, by demonstrating that alternative access was not reasonably practicable and that risks have been reduced to as low as is reasonably practicable, which is the legal requirement.

Summary

22. *Public road crossings:* ORR is now satisfied that the public road crossings would be in line with mainline railway practice and the reservation in paragraph 35 of our 2020 statement of case is no longer applicable.
23. *Bridleway crossing:* ORR has noted the objections of the local authority to the creation of a grade-separated crossing of the railway and bridleway, which appears to affect the practicability position that ORR took previously. If it is necessary for the bridleway to remain, we believe that a tolerable safe crossing using appropriate technology could be created, but it is for the Inquiry to decide if the residual risk of an at-grade crossing is outweighed by the benefits of the creation of the railway.
24. *User worked crossings:* RVR have acknowledged that alternatives to crossings would be considered first and only where not reasonably practicable would at-grade crossings be considered, and that they will apply a risk-based approach to any crossings that are required, which is what the law requires.

Yours faithfully

A handwritten signature in blue ink, which appears to read 'I. Raxton'.

Eur Ing Ian Raxton
HM Principal Inspector of Railways

cc. Mr M Hart
Rother Valley Railway

Appendix A

The 13 February 2021 email and attached documents.

- 1. RVR Level Crossing ORR 12.02.2021 MH.pdf
- 2. A21 NRA Update 10.02.2021.pdf
- 3. A21 Risk Assessment Update 10.02.2021.pdf
- 4. Bridleway and UWC Risk Assessment Update 10.02.2021.pdf
- 5. Junction Road NRA Update 10.02.2021 from 31 January 2021.pdf
- 6. Junction Road Risk Assessment Update 10.02.2021 comp 29 January 2021.pdf
- 7. Northbridge St NRA Update 10.02.2021 from 01 Feb 2021.pdf
- 8. Northbridge Street Risk Assessment Update 10.02.2021 from 29 January 2021.pdf

Raxton, Ian

From: Mike Hart [REDACTED]
Sent: 13 February 2021 13:04
To: Raxton, Ian
Subject: Rother Valley Railway Crossings - Further Submissions
Attachments: 1. RVR Level Crossing ORR 12.02.2021 MH.pdf; 4. Bridleway and UWC Risk Assessment Update 10.02.2021.pdf; 3. A21 Risk Assessment Update 10.02.2021.pdf; 5. Junction Road NRA Update 10.02.2021 from 31 January 2021.pdf; 2. A21 NRA Update 10.02.2021.pdf; 6. Junction Road Risk Assessment Update 10.02.2021 comp 29 January 2021.pdf; 7. Northbridge St NRA Update 10.02.2021 from 01 Feb 2021.pdf; 8 Northbridge Street Risk Assessment Update 10.02.2021 from 29 January 2021.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: e-mail
mxheroSync: YES

Dear Ian

I hope you are keeping well during these difficult times.

Please find attached our further submissions concerning the level and at grade crossings.

Please do let me know if you require any additional information. Meanwhile perhaps you could kindly confirm safe receipt of this email and the attachments (comprising covering letter plus seven other attachments)

With thanks and kind regards

Mike Hart OBE
Vice Chairman & Trustee
Rother Valley Railway Heritage Trust

Appendix B

ORR's 6 April 2021 email

Raxton, Ian

From: Raxton, Ian
Sent: 06 April 2021 14:24
To: Mike Hart
Subject: RE: Rother Valley Railway Crossings - Further Submissions

mxheroSync: YES
SaveAndSharePath: <https://orr.box.com/s/1wes6ajnwm7dzihrne21pl123ligzm7>

Mike,

Apologies that it has taken longer than I hoped to get back to you on the revised documentation. In the covering letter you asked if we could discuss the potential response to DfT/Inquiry before sending it, to clarify any issues.

I think there are three areas to cover;

- 1) The three road crossings. I think the descriptions given of the obstacle detector crossings and the method of operation are now consistent with the forms we see on the mainline railway and remove the concerns we had about a human signaller having a role in an otherwise automated process. This addresses the concerns that led us to include some of the elements of paragraph 35 in our Statement of Case. I think we should now be able to delete the penultimate sentence reading "The form of crossing controls suggested by the railway is unusual and perhaps not the ideal solution."
The documents have raised a question though; the assessments for Northbridge St and Junction Road both refer to the local authority as part of the stakeholders consulted which is good, but the A21 assessment makes no reference to consultation with Highways England as a stakeholder. Is this correct? It would seem an omission not to have consulted HE as part of the assessment.
- 2) The Bridleway. The issue that seems to have been clarified is that the local authority have made a recent statement that they will not give consent to a bridge over the railway. No new information has been given on potential costs of creating such a bridge for the bridleway. The question appears to rest now on whether an objection from a planning authority is a basic practicability issue that feeds into a H&S consideration of reasonable practicability.
ORR has gone around some ever-decreasing circles of thought on this location and have come to the conclusion that concentrating too much on the calculation side of risk and cost is not helpful given the underlying statistical data from the mainline railway is both sparse and unclear; our Statement of Case had been quite strong I think in saying that the mathematics is only one of the range of factors that has to be taken into account. So, while we might consider that a bridged crossing is 'reasonable' in cost terms we have already said that this cost element is only one factor and that many others have equal roles to play.
I have spent some time looking back through the documents we have been sent to try and track down an estimated accident frequency for the bridleway crossing but I can't immediately see one; I am fairly sure you sent a document that included the Network Rail FWI rates you were using as a baseline but I just cannot track it down. It would be helpful to have an understanding of the level of estimated risk which we can set against the limits of tolerability. I would want to set this against the HSE's suggested boundary between unacceptable and tolerable risk of fatality of 1 in 10,000 for members of the public (<https://www.hse.gov.uk/managing/theory/r2p2.pdf> section 128 etc).
We can't change our view that a bridge would be reasonable in cost terms, we can be clearer that it is the job of the Inquiry to consider practicability, and knowing the projected safety performance

would allow us to make a statement on whether we agree that a level crossing could have a tolerable risk level.

- 3) User Worked crossings. The new document has still not been able to clarify where or how many of these crossing there will be. In document 4, section 11 begins with the sentence "RVR is required to provide private user worked crossings over the line where property is severed by the reinstated railway." I think this could be misleading to an uninformed reader, since of course the relevant part of the Railway Clauses Consolidation Act 1845, section 68, requires "Such and so many convenient gates, bridges, arches, culverts, and passages, over, under, or by the sides of or leading to or from the railway". So a user worked crossing is only one of a range of alternatives that the Act considers in the case of land severance, and there is no commitment in section 11 of your document to seeking any of these types of alternative access routes, which remains an issue for us as any of those alternatives is inevitably safer than a crossing.

I think if you could commit to seeking alternatives to crossings wherever possible, and that if any crossings are required that they would be A) spaced and located relative to other crossing points to reduce operational confusion, and B) subject to any necessary operational controls deemed necessary such as speed limits on approach, then I would be more comfortable with this part of the document and we could re-work the relevant part of the statement of case.

Regards,

Ian Raxton



Eur Ing Ian Raxton
HM Principal Inspector of Railways

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orr.gov.uk | Follow us [@railandroad](https://twitter.com/railandroad)

ORR protects the interests of rail and road users, improving the safety, value and performance of railways and roads today and in the future.

Appendix C

RVR's 29 April 2021 email and attached documents

- A21 NRA April 2021.pdf
- bridleway and UWC risk assessment April 2021.pdf

Raxton, Ian

From: Mike Hart [REDACTED]
Sent: 29 April 2021 16:22
To: Raxton, Ian
Subject: Rother Valley Railway Crossings
Attachments: A21 NRA April 2021.pdf; bridleway and UWC risk assessment April 2021.pdf

mxheroSync: YES
SaveAndSharePath: <https://orr.box.com/s/1wes6ajnwmd7dzhrne21pl123ligzm7>

Dear Ian,

Thank you for your email of the 6 April responding to the revised documentation that the Rother Valley Railway Ltd submitted to enable ORR to clarify points made in the ORR Representation to the Public Inquiry.

In response to your points, we have the following comments and observations:

1. Thank you for your confirmation that you will be able to withdraw the sentence "The form of crossing controls suggested by the railway is unusual and perhaps not the ideal solution." As you are aware we have held extensive consultation with Highways England, and we have amended the A21 Narrative Risk Assessment to reflect this. The revised document is attached.
2. I have attached an amended Bridleway and UWC risk assessment. I trust the additional information within the document, specifically chapter 10, will enable you to be able to provide a more positive Representation, reflecting that an at grade Bridleway has a tolerable risk level for the very slow speed operation combined with the latest warning technology.
3. We have revised chapter 11 of the risk assessment to reflect your comments and trust that you will be able to re-work the relevant section of the ORR Representation relating to User Worked Crossings.

Please do let me know if you require anything further to enable a positive re-work. Happy to discuss via telephone or Teams if needed.

Kind regards

Mike Hart OBE
Vice Chairman & Trustee
Rother Valley Railway