

**TRANSPORT AND WORKS ACT 1992  
THE TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004  
THE PROPOSED ROTHER VALLEY RAILWAY (BODIAM TO ROBERTSBRIDGE JUNCTION)  
ORDER**

**PROOF OF EVIDENCE  
OF  
PETER HODGES**

**1.0 INTRODUCTION**

- 1.1 My name is Peter Hodges FRICS CAAV. I have been practicing as a Chartered Surveyor and Agricultural Valuer for over 40 years. I have, until recently, been a Partner/Director of Lambert & Foster Ltd for over 30 years. I now act as a Consultant. My areas of practice have, amongst other matters, included compulsory purchase and compensation work mainly on agricultural property in connection with utility, pipeline and electricity lines and highway improvement works.

**2.0 SCOPE OF EVIDENCE**

- 2.1 My evidence will consider a number of the paragraphs of the Secretary of State's Statement of Matters.

Paragraph 3 "The likely impact of the exercise of the powers proposed in the draft Order on landowners, tenants, local residents, business and statutory undertakers ...." My evidence considers the impact of the railway on the farming businesses either side of the railway including any impacts on access to farming properties and these are covered in paragraphs 7 and 8 of my Proof.

Paragraph 9(c) "Whether there is a compelling case in the public interest for compulsory powers for the purpose of the scheme" and 9(d) "Whether the purpose for which the compulsory powers are sought is sufficient to justify interfering with Human Rights for those with an interest in the land affected". My Proof of Evidence cover these two matters under paragraphs 4 and 6.

- 2.2 My evidence also covers work done on behalf of RVR and by Lambert & Foster under paragraph 3 of my Proof and compensation provisions under paragraph 5.
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### **3.0 WORK DONE ON BEHALF OF RVR**

- 3.1 Lambert & Foster have been acting on behalf of RVR since 2010 when the firm was asked to approach Mr A Hoad and Mrs de Quincy (the landowners) with a view to seeking to purchase the land that was required for the reinstatement of the railway. At that time there was a third landowner, Mr D Wilton, but his property has since been bought by RVR.
- 3.2 The approach to the landowners was made by my colleague, Alan Mummery in February 2010, and a copy of his letters and the response from Mr Hoad are appended (**RVR/W10/2-1** pages 1-2). As the response from Mr Hoad was that he would not consider any offer, no further dialogue was entered into with him. In respect of Mrs de Quincy, some discussions did take place to the extent that a formal offer was put forward in a letter to their Agent dated 15<sup>th</sup> April 2010 (**RVR/W10/2-1** page 3). However, the response was that Mrs de Quincy and her family were not interested in selling the land and this was confirmed in an email from their Agent dated 18<sup>th</sup> June 2010 (**RVR/W10/2-1** page 4).
- 3.3 Since 2010 Lambert & Foster have continued to advise RVR on land and valuation matters affecting the railway including the acquisition of further land. The firm has also been advising on potential compensation.
- 3.4 In January 2015 Alan Mummery again approached Mr Hoad's Agents (see email 23<sup>rd</sup> January 2015 (**RVR/W10/2-1** page 5) seeking to have meetings to fully understand the agricultural implication of the railway. However, no response was received from either Mr Hoad or his Agent to an invitation for a meeting.
- 3.5 In December 2018, I wrote to both Mr Hoad and Mrs Michell (Mrs de Quincy's daughter, Mrs de Quincy having died) to seek a meeting as I had been instructed by RVR to prepare an Agricultural Impact Report and therefore inviting them to have an input into preparing that report. Initially a meeting was agreed on 2<sup>nd</sup> April 2019 but this was subsequently postponed by the landowners agent (see email in **RVR/W10/2-1** page 6). Accordingly, I was instructed by RVR to proceed with the preparation of the Agricultural Impact Assessment based upon inspections from public roads, footpaths and information in the public domain.

### **4.0 POWERS SOUGHT BY ROTHER VALLEY RAILWAY**

- 4.1 The purpose of the proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order is to enable RVR to construct, maintain and operate the reinstated railway along the route of the former Rother Valley Railway between Bodiam and Robertsbridge. This will enable the Kent and East Sussex Railway to operate steam trains along the entirety of the historic route between the town of Tenterden and the mainline railway at Robertsbridge.
- 4.2 RVR have sought to acquire the land by Private Treaty which they have successfully done except in respect of the land passing through Parsonage and Redlands Farm and Moat Farm as shown on the plan at **RVR/W10/2-2**. B-C is Moat Farm and C-D is Parsonage and Redlands Farm. 43% of the land that is required to complete the reinstatement of the railway from Bodiam to Robertsbridge has already been acquired by RVR by Private Treaty. A schedule with plan (**RVR/W10/2-3**) shows the Land Registry titles and dates of acquisition.

- 4.3 Whilst it is unusual for compulsory purchase powers to be used to ensure that a heritage railway scheme can be implemented, it is not without precedent. The Welsh Railway Order 1999 authorised the Ffestiniog Railway Company to construct works and compulsory acquire land for the purposes of rebuilding the Welsh Highland Railway from Dinas to Porthmadog in the County of Gwynedd and includes the provision for level crossings and public highways in six places.
- 4.4 I have read the Economic Impact Report prepared by the Steer Group which concludes that *“the Rother Valley Railway is forecast to generate local economic benefits up to £35,000,000 over the two year construction period and subsequent ten years of operation”*. The report, therefore, supports the economic benefit of the railway being reinstated and if needed the justification of the use of compulsory purchase powers as a last resort in order to ensure that the scheme can proceed.
- 4.5 The scheme has been granted planning permission (Ref: RR2014/1608/P) by Rother District Council in accordance with the Local Plan and the (then) policy EM8.

## **5.0 REVIEW OF COMPENSATION PROVISIONS**

- 5.1 Whilst the amount of compensation payable is not a matter for the Inquiry, consideration will be given to the landowners being able to recover compensation for any property losses incurred as a reasonable and necessary consequence of the scheme.
- 5.2 Part 3 of the Order applies Part 1 of the Compulsory Purchase Act 1965 which through this application has the effect of requiring RVR to pay compensation to qualifying parties whose compensatable interest is permanently acquired under what is known as The Compensation Code. The Compensation Code is simply an amalgamation of numerous Acts of Parliament and legal precedents which have evolved over time.
- 5.3 In summary, the Code provides for the recovery of loss of the value of the interest taken, severance and injurious affection and disturbance losses where attributable to the scheme. In addition, the Code provides for the advance payment of compensation thereby ensuring the landowner is not out of pocket in the event that land interests are acquired and there is a dispute about the price level of compensation. At the heart of the Code is a principle of “equivalence”, which is that the landowner should through monetary compensation be placed in the same position it would have been had the scheme not been proposed and the relevant land interest not acquired.
- 5.4 The landowners upon whom notice is served will be entitled to claim compensation in accordance with this Compensation Code which provides a consistent approach to the assessment of fair compensation. Paragraph 23 of Part 3 of the Order provides compensation for any loss or damage arising from the exercise of the Temporary Possession Powers that are to be paid to landowners if they have taken land using the powers.
- 5.5 The total amount of any compensation to be paid is usually agreed between the parties. In the event that agreement between the parties cannot be reached then the amount of compensation can be independently determined. Where there is a disputed claim, both parties may choose to make a joint reference via the Alternative Dispute Resolution process or by one or both parties making a reference to the Lands Chamber of the Upper Tribunal.

- 5.6 Clause 25 of Part 3 of the Order provides for any person who suffers loss by the extinguishment or suspension of any private right of way to be compensated under Part I of the Land Compensation Act 1961.

## **6.0 HUMAN RIGHTS**

- 6.1 Paragraph 12 of the Department of Communities and Local Government (DCLG) Circular on Compulsory Purchase Process and the Crichel Down Rules states that the Compulsory Purchase Order should only be made where there is "a compelling case in the public interest" and that the purpose for which the Order is made must justify interfering with the Human Rights of the person (which may be business or other entity as well as an individual) with an interest in the land. In making this assessment, the person seeking to acquire the land should have regard, in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights which states that "Every natural or legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".
- 6.2 Article 1 is a qualified right in that no one shall be deprived of his possessions "except in the public interest and subject to the conditions provided for by law".
- 6.3 The compulsory acquisition of land for the railway purposes specified in the TWAO is authorised by, and subject to, the Transport and Works Act 1992 (the 1992 Act). By enacting the 1992 Act the Government has determined that, subject to procedural safeguards, it can be in the public interest for individuals to be deprived of their land for railway purposes. The procedural safeguards are provided by the 1992 Act, The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and the Transport and Works, (Inquiries Procedure) Rules 2004 which enable objections to be raised to compulsory acquisition and considered by an independent inspector. In addition, where land is authorised to be compulsorily purchased by the making of an order under the 1992 Act, compensation will be payable under the compensation code, as applied by that order (discussed in Section 5 above). Where disputes as to the amount of compensation arise, these may be referred for independent consideration by the Lands Chamber of the Upper Tribunal.
- 6.4 The TWAO is being pursued in the public interest, and this issue is considered in more detail in the evidence of others. The public benefits associated with the TWAO are set out in the Proofs of Evidence of David Gillett [RVR/W1/1] and Tom Higbee [RVR/W2/1] and section 4 of the Statement of Case (RVR 65). For these reasons, the railway purposes for which the TWAO powers are being sought are sufficient to justify interfering with the human rights of the landowners proposed to be affected. The TWAO, including the requirement to pay compensation, strikes a fair and proportionate balance between the private interests of the landowners and the public Interest in securing the benefits of the Scheme to the national railway network. Therefore, in my professional opinion, the interference with Convention rights is justified.

## **7.0 THE FARMING IMPACT REPORT**

- 7.1 As part of the planning application an Agricultural Impact Assessment was made which is included in the Environmental Impact Assessment that was carried out prior to 2014. In December 2018, I was instructed by RVR to assess the possible effects of the reinstatement of the railway on farm operations and other income streams and to consider any mitigation

measures that would reduce the negative impact of restoring the railway line. There was an initial report in January 2020 (RVR 67) and a Supplemental Report in April 2020 (RVR 68).

- 7.2 I wrote to the landowners in December 2018 saying that in order to make a correct and a fair assessment would require a meeting. I did not receive a response from either of the landowners and accordingly, therefore, contacted their Agents and a meeting was arranged for 2<sup>nd</sup> April 2019 which was subsequently indefinitely postponed by the Agent.
- 7.3 I was then instructed by RVR to prepare the report without the benefit of inspecting the farms or obtaining information from the landowners first hand. Therefore, the information within the report is based upon that which is available in the public domain and my personal knowledge from working in this area for many years. This has included walking along footpaths, carrying out enquiries of the Land Registry, looking at Google Earth, making inspections from public highways and having regard to articles in the press and on-line information.
- 7.4 I completed the draft in June 2019 and sent it to the landowners Agents on the 27<sup>th</sup> January 2020, inviting comments in advance of the Public Inquiry. Subsequently, I walked the majority of the route of the RVR with the landowners and their Agents on 12<sup>th</sup> March 2020.
- 7.5 The issues covered in the original report are summarised as follows:

(a) **PARSONAGE/REDLANDS FARM**

Description of Farm

- Livestock
- Acreage
- Cropping
- Recent investments particularly with regard to hops
- Effect of reinstatement of the railway
  - (a) Temporary during construction
  - (b) Permanent

In respect of (a)

- The need for early provision of new river bridges and gateways to maintain access to the fields on the south side of the railway during construction which may become permanent features.
- The landowners' statutory entitlement to claim compensation for disturbance.

In respect of (b)

- Practical effects of dividing fields particularly relevant in the case of what are currently arable fields.
- Effect on the movement and inspection of livestock.
- Assessment of whether some arable fields would have to convert to pasture and whether this is viable in all instances.
- Lack of access to certain fields which can be improved by the reinstatement of a farm bridge.

The conclusion I came to in that report in respect of Parsonage Farm was:-

“The fields on Parsonage Farm lying north of the River Rother and in the immediate vicinity of the railway will be materially affected in terms of agricultural activity. There would be more small areas of pasture (or even smaller areas of existing pasture) with some areas that are currently arable becoming pasture. However, the overall effect on the farming operation (including Redlands Farm and, even more so when taking into account other land that is farmed by the landowner) will not be significant. There will be inconvenience in the immediate locality of the railway and it is likely that after adjustments have been made to the farming operation there will be a small reduction in income/profitability which will be addressed by compensation”.

(b) **MOAT FARM**

Description of Farm

- Livestock
- Acreage
- Cropping
- Distribution of Cropping
- Movement of Livestock
- Separation of land to south of railway
- Reduction in number of existing crossing points of River Rother
- Conservation/Stewardship and environmental farming policies
- Livestock movements given the reduction in the number of crossing points
- The provision of a new farm access track
- Effect of reinstatement of the railway
  - (a) Temporary during construction
  - (b) Permanent

In respect of (a)

- The erection of fencing
- The loss of grazing
- The landowners' statutory entitlement to claim compensation for disturbance

In respect of (b)

- The reduction in the number of crossing points across the railway
- The acquisition of 1.78 acres for compensation habitat

The conclusion I came to in that report in respect of Moat Farm was

“In respect of Moat Farm, providing that at least one further access can be provided the effects will be relatively minor. Moving livestock will be a little less convenient but as no land is being lost and no fields are being severed the impact on the farming activities will not be significant”.

## 8.0 ACCOMMODATION CROSSINGS

- 8.1 On Parsonage and Redlands Farm the former railway embankment has been removed and therefore there is currently free access across all of the fields that will be affected by the reinstatement of the railway, subject only to the constraints of the river Rother.
- 8.2 On Moat Farm the railway embankment still exists with 3 crossing points over which livestock are able to move freely from one side of the railway embankment to the other.
- 8.3 Once the railway is reinstated, seven fields on Parsonage and Redlands Farm will be divided by the railway line with the potential for significant adverse effects in the absence of some form of crossings. On Moat Farm, 25 acres to the south of the railway line will be land locked unless crossing points are provided.
- 8.4 RVR fully acknowledge the need for accommodation crossings to be provided to the highest standards of safety and this is fully addressed in David Keay's Proof of Evidence (RVR/W8/1). To mitigate the adverse effects of the railway line, RVR has proposed four at-grade accommodation crossings on Parsonage and Redlands Farm and one crossing on Moat Farm. The agricultural impact of the reinstatement of the railway and how any adverse effects were mitigated by the provision of the accommodation crossings are considered in my Agricultural Impact Assessment Report (RVR 67).
- 8.5 Since the report was originally prepared, the Office of Rail and Road ("ORR") has submitted a Statement of Case to the Department of Transport in which it states, in relation to accommodation crossings generally *"we recommend that the railway and landowners be required to come to agreement on alternative methods of access that do not require at-grade crossings of the railway route"*.
- 8.6 I was therefore instructed to prepare a supplementary report (RVR 68) to assess the agricultural impact of the scheme were no accommodation crossings to be provided.
- 8.7 The supplemental report considers the agricultural impact and the effects on access to fields that are severed by RVR in the absence of accommodation crossings. It also considers the alternative means of access and what impact there might be on the practicalities of farming particular fields and the effects on farm income.
- 8.8 The conclusion of the supplemental report is that:

"The absence of accommodation crossings to mitigate the effects of severance caused by the re-instatement of the railway would significantly worsen the impacts of the railway on Parsonage and Redlands Farm. As described above, there are several fields where accessibility would be reduced and the potential for some otherwise useful land to be rendered inaccessible.

In respect of Moat Farm, without the proposed accommodation crossing there would be 25 acres of land that is entirely severed. This could have a material effect on the financial viability of what is already a small farm".

- 8.9 It is worth noting that the supplementary report was predicated on an unrealistic worst case of no accommodation crossings whatsoever. In reality, it is to be expected that an appropriate number of suitable accommodation crossings will be provided following agreement with the landowners as to the minimum necessary, optimum locations and associated matters. To the extent that there are any losses associated with severance, the landowners will be compensated. In an addendum to its Statement of Case, the ORR stated (paragraph 21) that:

*“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.”*

## **9.0 AGRICULTURE ACT 2020**

- 9.1 The Agriculture Act 2020 includes proposals for the future payments of farming subsidies. The emphasis is to direct payments more towards environmental land management and stewardship schemes, although the detail of these changes is yet to be settled. The proposals are also considered in my supplemental report.
- 9.2 Insofar as Parsonage and Redland Farm, I conclude there will be small areas of land that cannot be farmed for arable purposes, it will mean there will be more opportunities for using these areas for environmental purposes than under the current direct payment and stewardship system.
- 9.3 Insofar as Moat Farm, I conclude where the farming system is already focused on environmental and stewardship farming policies, future farming policies through ELMS are likely to be of greater benefit than with the existing system.

## **10.0 DECLARATION**

- 10.1 I hereby declare as follows.
- 10.2 This proof of evidence includes all facts which I regard as being relevant to the professional opinion which I have expressed and I have drawn the Inquiry’s attention to any matter which would affect the validity of that opinion.
- 10.3 I believe the facts which I have stated in this proof of evidence are true and that the opinions are correct.

**P R B HODGES FRICS**

**June 2021**