

**PROPOSED ROTHER VALLEY RAILWAY (BODIAM TO ROBERTSBRIDGE
JUNCTION) ORDER**

TRANSPORT AND WORKS ACT 1992

Ref: DPI/U1430 /18/21 (TWA/18/APP/02)

OBJ/1002/AH/1

PROOF OF EVIDENCE of

**ANDREW HIGHWOOD LLM FRICS FAAV
ON BEHALF OF THE HOAD FAMILY OF PARSONAGE FARM
AND THE TRUSTEES AND EXECUTORS OF
THE NOEL DE QUINCEY ESTATE AND MRS EMMA AINSLIE OF MOAT FARM**

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- iii. Rother Valley Accounts
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- vi. Moat Farm Statement and surveys

SECTION A: INTRODUCTION

1. PERSONAL QUALIFICATIONS AND EXPERIENCE

- 1.1. I am Andrew Highwood LLM FRICS FAAV, a Director of Savills (UK) Limited and based in our Head Office at 33 Margaret Street, London. A full note of my qualifications and experience is attached at **Appendix OBJ/1002/AH/2-1**.
- 1.2. I have been involved in matters relating to the valuation of property for in excess of 35 years. In particular, I have in the past carried out valuations of properties for various reasons including compulsory purchase and compensation, compulsory acquisition, divorce, tax, negligence, title indemnity and for finance purposes.
- 1.3. Of particular relevance to this Inquiry, I have known Parsonage and Redlands Farms since the 1980s when a road scheme to improve the A21 including a bypass for Robertsbridge was being promoted on a route that bisected the western part of the farm. At the time most of the railway embankment had been removed and the land brought back into farming. By the time that the road scheme was opened there was no longer any visible sign of the railway crossing the farm until the route reached Moat Farm where the trees growing either side of the route were already well established. I settled the compensation claim for the road scheme and over the years I have also provided advice in relation to a flood scheme, an improvement to the sewage works, a pipeline for raw water connecting to the Darwell Reservoir and various wayleaves for electricity and telecommunications.
- 1.4. My introduction to Moat Farm is more recent but I have walked the route on various occasions and I am now familiar with the lie of the land and how it is managed, particularly at times of flood when animals may need to be moved at relatively short notice. On every visit I have been struck with how nature has taken over the line of the abandoned railway and created a haven for wildlife.
- 1.5. I have met with various representatives of the RVR on numerous occasions between the early 1990's and more recently in my office, at the RVR offices at Robertsbridge and on site to discuss RVR's aspirations to build a railway from Bodiam to Robertsbridge.
- 1.6. I have been asked by the owners of Parsonage and Moat Farms to advise on, and subsequently to present evidence, in relation to their objections

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to the TWAO as submitted, and in particular to comment on whether there is a compelling case for the Order to be granted and whether there are impediments to the scheme proceeding as proposed with the support of a compulsory purchase order.

2. DOCUMENTS CONSIDERED

2.1. I have been provided with the following:

- 2.1.1. TWAO application and supporting documents.
- 2.1.2. The Statement of Matters issued by the Secretary of State pursuant to the Transport and Works (Inquiry Procedure) Rules 2004.
- 2.1.3. The Statements of Case submitted by the parties and various objection letters that are publicly available.
- 2.1.4. The proof of evidence of Chris Patmore from WSP on flooding impacts (OBJ/1002/CP/1).
- 2.1.5. The proof of evidence of Ian Fielding from WSP on highways impacts (OBJ/1002/IF/1).
- 2.1.6. The proof of evidence of Philip Clark from WSP on railway impact and safety issues (OBJ/1002/PC/1).
- 2.1.7. The proof of evidence of Ellie Evans from Volterra on economic impacts (OBJ/2001/EE/1).
- 2.1.8. A report on the "Agricultural Impact on the farms of the reinstatement of the Rother Valley Railway" from Peter Hodges of Lambert and Foster instructed by RVR together with a supplementary report (RVR 67/68).

2.2. I have, in this Proof of Evidence, referred to the following documents:

- 2.2.1. The TWA Guide to Procedures on the process for obtaining orders under the Transport and Works Act 1992, relating to transport systems, inland waterways and works interfering with rights of navigation. Department for Transport June 2006.

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2.2.2. Guidance on Compulsory Purchase Process and The Crichel Down Rules. Ministry of Housing, Communities and Local Government July 2019.

2.3. I have obtained copies of a number of Historical documents from the National Archives held at Kew. In particular the following which may be found at **Appendix OBJ/1002/AH/2-2** :

2.3.1. A letter dated 16th October 1967 from Barbara Castle as Minister of Transport.

2.3.2. A letter dated 4th August 1969 from Richard Marsh as Minister of Transport.

2.3.3. A letter dated 19th July 1970 from William Deedes.

2.3.4. A letter dated 13th October 1970 from the Treasury Solicitor's Department.

2.3.5. A letter dated 27th April 1971 from Sharpe Pritchard.

2.3.6. A letter dated 16th August 1971 from The Kent and East Sussex Railway Company Ltd.

2.3.7. A newspaper cutting from The Daily Telegraph dated 20th October 1971.

3. **INVOLVEMENT**

3.1. There are no matters of which I am aware which lead me to suppose that I have any conflicts of interest in accepting these instructions.

SECTION B – FACTUAL MATTERS

4. **THE KENT AND EAST SUSSEX RAILWAY**

4.1. A light railway was constructed to connect Robertsbridge to Tenterden and on to Headcorn at the beginning of the twentieth century. After only 49 years it closed to freight traffic between Headcorn and Tenterden. The final passenger train ran on 2nd January 1954. The line eventually closed in 1961. Dr Beeching is famous for his report "Reshaping of the railways" but that was not published until 27th March 1963, over two years later.

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- 4.2. Subsequently an application for a Light Railway Order was made by Rother Valley Railway Co Ltd. The Company was incorporated on 22nd February 1966 for the purpose and operation of the railway. Mr Heath Humphreys had applied to form the Company and later gave evidence at the public inquiry. The decision not to grant a Light Railway Order was made in 1967. Barbara Castle as Minister of Transport wrote summarising her reasons on 16th October 1967 and in particular said [OBJ/1002/AH/2-1]:
- 4.2.1. She was *“not convinced beyond reasonable doubt 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”*.
- 4.2.2. Furthermore she was *“not convinced that the local transport need which the Railway Company proposes to meet is of an order which would justify reviving level crossings over several important major roads”*.
- 4.2.3. She pointed out that *“It is for the Minister, in the light of all the information available, to decide where the balance of public interest lies...”*
- 4.3. Responding to points made in the Railways Company’s press release she said:
- 4.3.1. *“neither of the items of new evidence now brought forward by the Company is sufficient to alter the balance of public interest.*
- 4.3.2. *“It would clearly not be possible to regard the personal 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 sought by the drainage authorities would of course be valueless if the Company went into liquidation.*
- 4.3.3. *This is not as the railway promoters and supporters imply, a matter simply between them and the Minister. One must consider the landowners and drainage authorities whose protection would disappear if the Company got into serious financial difficulties. There are also the interests of the thousands*

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of motorists who use these coast roads, particularly in the summer; and even more there are the interests of the tax payers and ratepayers who might ultimately be called upon to provide the funds to build new carriageway overbridges.”

- 4.4. The Railway Company referred the decision to refuse the Order to the High Court but the Minister's decision was confirmed at appeal in 1970 and RVR was required to pay costs.
- 4.5. The Tenterden Railway Company Ltd was formed in May 1971 and superseded the Association and all its ancillary organisations. A more modest proposal was put forward which also started from Tenterden but ending at Bodiam thereby avoiding the need for railway crossings on the B2244 and the A21 and routing through the flood plain to the Rother which were the main issues identified by Barbara Castle in 1967.
- 4.6. Terms were agreed and the line was built in stages. The first stage opened in 1974 and ran as far as Rolvenden. In 1977 the line extended to Wittersham Road and then Northiam in 1990 and the final destination opened in 2000 at Bodiam.
- 4.7. In the meantime the balance of the line was sold back to the original owners by British Rail. In the case of Parsonage Farm the earth bunds were removed and the land incorporated into each field reinstating the land to how it was before the railway was built. At Moat Farm the abandoned route of the railway has established itself over 60 years or more as an avenue of deciduous trees providing a valuable habitat for a wide range of wildlife.
- 4.8. On 22nd May 1991 the Rother Valley Railway (East Sussex) Limited was incorporated and it dropped the reference to East Sussex in its name in 2004.

5. PROPOSALS TO EXTEND THE RAILWAY TO ROBERTSBRIDGE

- 5.1. A planning application (RR/2014/1608/P CD RVR/07) was made by RVR on 30th June 2014. Consent was granted three years later on 22nd March 2017 on a conditional basis. The document sets out 30 conditions and runs to 14 pages.
- 5.2. An application was made by RVR for the proposed Transport and Works Act Order (TWAo) on 19th April 2018. The purpose of the Order is to confer on RVR the necessary powers to construct, maintain and operate

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a railway along the route of the former Rother Valley Railway between Bodiam and Robertsbridge.

5.3. The Principal Powers are set out in Part 2 of the draft Order:

Power to construct new railway
Power to maintain existing railways
Power to deviate
Streets - Power to alter layout etc. of streets
Power to execute street works
Stopping up of street
Temporary stopping up of streets
Access to works
Agreements with street authorities
Level crossings
Supplemental powers - Discharge of water
Power to survey and investigate land

5.4. The Acquisition and Possession of Land is in Part 3

Power to acquire land
Application of Part 1 of the 1965 Act
Application of the Compulsory Purchase (Vesting Declarations) Act 1981
Power to acquire airspace only
Temporary possession of land - Temporary use of land for construction of works
Temporary use of land for maintenance of works
Compensation
Disregard of certain interests and improvements
Extinction or suspension of private rights of way
Time limit for exercise of powers of acquisition

5.5. The draft Order ends with an explanatory note which says:

This Order authorises the Company to construct the new railway and maintain the new and existing railways in East Sussex from the point at which the existing Kent and East Sussex Railway terminates at Bodiam to a new terminus at Robertsbridge Junction station in Robertsbridge.
The Order authorises level crossings across Northbridge Street and the A21 at Robertsbridge, the B2244 at Udiam and across one footpath and one combined footpath and bridleway.
The Order also authorises the acquisition of land and rights in land, and the use of land, for this purpose.

- 5.6. The scheme proposes limited crossings for vehicles over the railway and water under the railway. Detailed drawings required to demonstrate how they might be constructed and function have not been provided.

6. TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004 – STATEMENT OF MATTERS

- 6.1. The TWA Orders Unit, Department for Transport issued a Statement of Matters on 29th November 2018. The document sets out the matters about which the Secretary of State for Transport particularly wishes to be informed for the purposes of his consideration of the application.
- 6.2. Of these matters and on on behalf of the Landowners
- 6.2.1. Chris Patmore of WSP will deal with flooding and environmental issues.
- 6.2.2. Ian Fielding of WSP will deal with highway issues.
- 6.2.3. Philip Clark of WSP will deal with railway operational and safety issues.
- 6.2.4. Ellie Evans of Volterra Partnership will deal with issues relating to businesses and tourism
- 6.2.5. I will deal with issues relating to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the MHCLG Guidance on the “Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” (published on 29 October 2015 and updated on 28 February 2018):
- a) whether there are likely to be any impediments to RVR exercising the powers contained within the Order, including availability of funding;
- b) whether the land and rights in land for which powers are sought are required by RVR in order to secure satisfactory implementation of the scheme;
- c) whether there is a compelling case in the public interest for conferring on RVR powers to acquire and use land and rights for the purposes of the scheme; and

d) whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected.”

7. THE PROPERTIES AFFECTED

- 7.1. **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.
- 7.2. The Order will have a significant detrimental impact in the operation of Parsonage Farm in a number of ways including:
 - 7.2.1. The permanent material loss of productive acreage;
 - 7.2.2. It would result in smaller less commercially viable plots of land;
 - 7.2.3. It would remove all access to two fields at the Robertsbridge end of the farm, leaving them incapable of being farmed;
 - 7.2.4. 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
 - 7.2.5. 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
- 7.3. The previous line was closed in the 1950s. The railway line was 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.
- 7.4. 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

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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.

- 7.5. Following the construction of the A21 bypass in 1988 the land immediately adjacent to the trunk road has been put down to pasture as the road rendered it as no longer suitable 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 increases the risk of such flood events and makes it considerably harder and more time consuming to move the stock when there is rising flood water.
- 7.6. Following the removal of the railway embankment, the land at the Salehurst end of the farm is used for arable crop production. When there are flood events the Landowners are concerned that the embankment will impede water flow and increase the time taken for the water to recede. The time taken for the floods to disperse will be extended where debris blocks culverts and that position would become worse still if there was any shortfall in maintenance. Any such delay will cause damage to crops planted at that time that could be fatal leading to a complete loss of harvest within the affected areas. In contrast without the embankment water will continue to recede quickly which the crops are able to withstand.
- 7.7. 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.
- 7.8. **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.
- 7.9. 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.

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- 7.10. Attached as Appendix OBJ/1002/AH/2 - 6 is a Statement Prepared by Mr and Mrs Ainslie which explains the management and operation of Moat Farm in more detail.
- 7.11. The majority of Moat Farm falls within Natural England's Higher Stewardship scheme. An agreement has been in place since 2015 and in January this year an extension was approved for a further 5 years. Extensive discussions have been held with Natural England but it is important to recognise that Moat Farm had already in place many of the onerous management systems necessary to meet Natural England's criteria – many of which had been undertaken for over 30 years.
- 7.12. Large parts of the land included within the scheme are in the higher level of financial payment which reflects their significant ecological value. 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). I am told that Natural England has frequently commented that Moat Farm is a "jewel" in East Sussex.
- 7.13. 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 and mosses. As part of the Moat Farm Statement attached as appendix OBJ/1002/AH2 – 6 are the results of various ecological surveys undertaken in the context of discussions with Natural England or in response to RVR's planning application.
- 7.14. The surveys identified a number of bird species of High and Medium Conservation concern – including nightingales and sky larks. Of particular relevance is the Moss Report prepared by the Bryophyte Recorder for Sussex. It sets out the unique and pristine conditions at Moat Farm which allows for a large number of very rare and sensitive mosses to grow.
- 7.15. The moth survey identified the presence of the Clifton Nonpareil moth, otherwise known as the Blue Underwing. I understand that this is recognised as one of the largest and most spectacular moths native to the United Kingdom. I am told that this species is extremely highly regarded and known as the "holy grail" among moth enthusiasts.
- 7.16. It is important to recognise that these incredibly rich and diverse habitats did not arrive at Moat Farm by accident. They are the result of an intentional strategy by successive generations at the farm that recognised

the importance and value of biodiversity matters long before current trends. The provision of the railway embankment would result in the loss of these 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.

- 7.17. 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.

8. IMPACT ON THE FARMING BUSINESSES AS STATED BY RVR

- 8.1. RVR has commissioned a report that has been written by Peter Hodges of Lambert and Foster and certain sections relate to compensation. The report is dated January 2020 and is followed by a supplementary report dated April 2020 [RVR 67 and 68]. Copies of both reports were provided to me on 11th May 2021 having been provided to me in draft last year.
- 8.2. Prior to this I had reached out to Lambert and Foster as I wanted to discuss various points made by Mr Hodges only to discover that Mr Hodges was no longer dealing with this matter and that it had been passed on to Ted Handley, a director of Ted Handley & Co Limited who is instructed to cover this matter as a consultant to Lambert & Foster. I know Ted Handley and so left a message for him to call me and followed this with an email proposing that we should meet to discuss. I received an email in reply during the following week where he said: *"Whilst I understand the need and desirability of agents and surveyors meeting on these matters, I am always nervous of meetings that are without an agenda and I always wonder how big the "fishing line" is. In any event, I have no authority to have any meetings "tout sol" so will have to come back to you."*
- 8.3. I replied to that email and closed by saying: *"I look forward to hearing back from you with your availability if indeed we are able to meet."* I have not

heard anything more from Mr Handley. The reports prepared by Mr Hodges were distributed shortly after this.

- 8.4. I have just heard from Peter Hodges who tells me that Ted Handley is now not available and although retired Peter has agreed to return to work to help and I have arranged to meet with him shortly.
- 8.5. Although the calculation of compensation does not form part of this Inquiry Mr Hodges includes the assumption that hop growing, an important enterprise, would never expand to the point of crossing the line of the railway.
- 8.6. In terms of demonstrating a balanced approach it is important to understand the full impact that the railway line has on the farm. Hops have been grown north of the line of the railway in the past and so it is reasonable to expect that they will be grown there again. This is a good example of how the railway line bisects the farm and the severance created is detrimental to the various enterprises where the land used by that enterprise is cut off from the buildings serving it.
- 8.7. His report makes a reference to railway crossings and concludes that they are wide enough and so in his view adequate for agricultural machinery. There is no reference to the vertical alignment but that is probably because there are no drawings available to show that.
- 8.8. At 7.1.10 of his report Mr Clark says:

“Based on the evidence above, and absence of any engineering proposals that address the level differences, extent of earthwork, or guidance on the safe operational procedure for a farm access crossing, I find it difficult to comprehend that a satisfactory solution is achievable within the limitations of this application.”
- 8.9. Mr Hodges acknowledges the challenges faced at Moat Farm moving livestock with only one of the original 4 crossing points in the plan to be kept and says that

“In respect of Moat Farm, providing that at least one further access can be provided the effects will be relatively minor.”
- 8.10. RVR has not revised its plans and it follows that without at least one further access the effects, as expressed by Mr Hodges, cannot be judged as relatively minor.

- 8.11. ORR's revised Statement of Case confirms that its position remains that user worked crossings should be avoided and that if alternatives are not possible they should be kept to an absolute minimum. On this basis Mr Hodges's reference to a further access at Moat Farm is directly contrary to ORR's position.
- 8.12. In his supplemental report Mr Hodges refers to ORR's original Statement of Case which suggests that the landowners *"be required to come to agreement on alternative methods of access that do not require at-grade crossings..."*. Mr Hodges then comments on the impact that this might have and for example suggests that livestock that was previously inspected by a stockman using a quad bike could continue on foot. He suggests that this will be less convenient and would take longer but does not comment on whether the additional time required is a solution that might take so much time as to be impractical. As Mr Hodges observes we met with him on site the month before and walked the route of the line and spent most of the afternoon doing so.
- 8.13. Mr Hodges refers to the Agriculture Bill that was published after his first report and says that: "Whilst there are currently no details....they will need to be able to deliver greater environmental and stewardship benefits under ELMS". He also predicts that it will: "mean more opportunities for using these areas for environmental purposes than under the current direct payment and stewardship system."
- 8.14. On 19th May 2020 the ORR wrote to RVR to confirm that: "If the railway can demonstrate that it is not reasonably practicable to either eliminate the need for a crossing, or construct a grade separated alternative to an accommodation crossing, and demonstrate that the use of an at-grade accommodation crossing is ALARP, and that the residual risks are tolerable, then at this point it is not clear on what grounds we could take action to prohibit the construction or use of such crossings under our HSWA powers." This letter, provided to me a year later on 10th May 2021, refers to a letter from RVR dated 7th May 2020 but I have not seen that letter and so I do not know whether it included designs, plans or any background information. From my discussions with Gardner Crawley in March 2020 it became clear that such details were not available then but he did say that he would commission the work so that they could be provided. The ORR letter appears to me to say that crossings will only be allowed where it is safe to do so and they are required and there are no other alternatives. This is also reflected in ORR's amended Statement of Case, which sets out its position that it would wish to avoid user crossings but provides no definitive conclusion on whether any such crossings will

be permitted in this case. It is therefore not possible for me to establish whether there is any prospect of agricultural crossings being provided.

- 8.15. The Agriculture Bill became law on 11th November 2020 and I enclose at [OBJ/1002/AH/2-4] two briefing notes on the matter. This is not straight forward but it appears to me that although converting arable to a form of compensation land may attract a grant, land already severed and even landlocked by the railway will no longer be arable and so there will not be the “headroom” to show a demonstrable change needed to attract financial support.
- 8.16. There are further challenges facing an applicant. The outgoing countryside stewardship scheme was for fixed periods of 10 years but the ELMS scheme, currently at the start of a pilot year, is understood to require a 25 year commitment.
- 8.17. The Office of Tax Simplification has issued a second report on Capital Gains Tax “*Simplifying practical, technical and administrative issues*” and I include a copy at [OBJ/1002/AH/2-5]. The report refers to some of the issues facing farmers threatened with a Compulsory Purchase Order and in particular (with emphasis added by me):
- 8.17.1. Para 7.16 *Several representatives of farming businesses who the OTS spoke to expressed concern that particular changes in land use, such as some of those set out in certain Environmental Land Management schemes, **could jeopardise their eligibility for Capital Gains Tax reliefs.***”
- 8.17.2. Para 7.24 “...in 2019 **less than 50,000 hectares were sold in the UK.** ¹¹ This is **out of a total farmed area of over 9,200,000 hectares in England alone.** The OTS has been told that finding land in a specific locality can be a once in a lifetime opportunity.”
- 8.17.3. Para 7.27 “In certain situations, the purchasing authority may also make a compensation payment to a landowner specifically to reflect the fact that the value of the land near to but outside of the actual compulsory purchase area will be negatively impacted by an infrastructure project.”
- 8.17.4. Para 7.28 “However, **because this neighbouring land is not actually disposed of, the compulsory purchase legislation cannot be applied,** and there is currently **no provision for the deemed gain arising from such a compensation sum received to**

be rolled over, say into expenditure to improve the remaining land and buildings in some way."

- 8.18. In the updated Environmental Statement [RVR 70] there is at chapter 14 a Land Use and Agriculture review undertaken by Peter Williams who is an Associate (and former Director) of Reading Agricultural Consultants Ltd. In simple terms it seeks to argue that the total area of land taken is small when measured against what is left. It suggests that severance is successfully managed by providing improved agricultural links. That may cater for the movement of vehicles and livestock if the concerns expressed by Mr Clark can be addressed but it still draws a line through areas of agricultural operation so that at best the field, bisected by the line, is managed as two discrete areas and more likely as suggested by Mr Williams part of the land will be lost from the farming business entirely.
- 8.19. If this scheme was widening an existing linear project, whether road or rail, then making reference to the land taken as a percentage of the whole may be a point to be taken into account. In this case it is the presence of the railway line itself which does the damage rather than the area of land required. If the crossing points are to be designed properly with suitable gradients the area of land to be removed from production will rise. Applying Mr Williams' model of comparing one area with another the percentage increase in land taken out of production will be significant.
- 8.20. Also within chapter 14 is a reference to the original ES from 2014 [RVR/65] which assessed the agricultural land classification. This desk based assessment was done by reference to the Soil Survey of England and Wales soil association maps (1:250,000 scale) and aerial photographs. Paragraph 4.10.4 states: *"The desk assessment has concluded that the likely agricultural land classification is subgrade 3b or worse, due to a combination of restricted drainage and clayey topsoil textures which together produce a limitation to soil workability. There is little possibility that any of the agricultural land along the route is of best and most versatile quality."*
- 8.21. The reference to clayey topsoil is odd as the area in question has benefitted from alluvial deposits from occasional flooding from the river and this area of the farm produces some of the best crops grown on the estate. At this point in the river it is currently very rare for a flood event to extend for long enough to damage the crops. Anything that slows down the flow and in particular extends the flood duration is a concern as the risk of damage to crops rises exponentially with time.

- 8.22. I met with RVR and walked much of the line in March 2020 shortly after a flood event. The ground conditions were not as predicted by the desk based assessment referred to above, in fact it was a pleasant and easy going walk for us all and as at least 3 members of the group were over the age of retirement that is a better guide to local ground conditions than extrapolating from a small scale map.

9. **POLICY AND GUIDANCE ON THE EXERCISE OF POWERS UNDER THE TRANSPORT AND WORKS ACT 1992**

- 9.1. There is guidance issued by DfT specific to TWA orders and guidance issued by MHCLG relating to the use of compulsory purchase and that includes where an application is made for a TWA order.
- 9.2. Guidance issued by the Department for Transport was last updated in 2006. A full copy of the guidance may be found at **CD No TBCx**.
- 9.3. A brief guide is also provided and was last updated in 2013 by the Transport Infrastructure Planning Unit (TIPU) in the Department for Transport.
- 9.4. I set out below some of the issues to be addressed with emphasis added in places. References to paragraph numbers relate to paragraphs within the guidance.

Planning Permission for TWA schemes

1.20 The granting of planning permission in advance of a TWA application would not, however, reduce the procedural requirements under the TWA; nor would it necessarily limit the issues that can appropriately be considered in the context of the TWA order. For example, the applicant must provide an environmental statement with the TWA order application, where this is required by the Applications Rules, even if one was submitted earlier with the planning application. The Secretary of State must still assess the environmental impact of the project where it comes within Annex I or II of the EIA Directive (see paragraph 1.22 below) even if the local planning authority has already carried out such an assessment in determining a separate planning application.

1.21 Therefore, the fact that particular land use planning issues relating to the scheme may have already been considered by the local planning authority in determining a planning application does not mean that the Secretary of State cannot appropriately address such issues in considering whether to make a TWA order.

Financial and Economic issues relating to TWA applications

1.31 Applicants for TWA orders are required by rule 10(3) of the Applications Rules to submit with their application their proposals for funding the cost of implementing the order, including the cost of acquiring blighted land; and an estimate of the cost of carrying out any works that would be authorised by the proposed order. As this statutory requirement suggests, the capability of a scheme to attract the funding necessary to implement it is a relevant factor in the Secretary of State's decision, and it may be especially significant where major new works are proposed.

1.32 Persons affected by proposed TWA projects, especially those whose land would be compulsorily acquired, would expect the applicant to have the necessary financial resources to meet all statutory or other liabilities arising from the promotion of the application. They would also expect the applicant to be able to raise the necessary finance to implement the project if the TWA order were made. The Secretary of State, in turn, would wish to be satisfied before making a TWA order that there was a reasonable prospect of the proposed powers being implemented. Consequently, in deciding whether to make a TWA order authorising works, the Secretary of State will wish to have regard to the applicant's prospects of funding the planning and construction of such works, including the payment of any statutory land compensation. This applies whether the project is to be financed entirely by the private or public sector or by a combination of the two.

1.33 It follows that, however the proposed works are to be funded, the applicant should be able to demonstrate that the proposals are capable of being financed in the way proposed. Depending on the size of the project and the nature and extent of the opposition to it, the applicant may need to provide a financial appraisal of the scheme for the purpose of any public inquiry and to be ready to respond to any questions about the project's financial viability.

1.34 The applicant will not however be expected to have secured the necessary funds to implement the proposed works before the TWA order is determined.

Therefore, in the context of a TWA order, the Secretary of State's concern is to establish that a scheme is reasonably capable of attracting the funds required to implement it, rather than expecting funding to have been secured. An applicant should be able to provide evidence (whether at inquiry or otherwise) to enable the Secretary of State consider this matter. If this appeared not to be the case, this would suggest that the making of the TWA application was premature.

Land Acquisition and Blight

1.39 ...Before confirming such powers, the Secretary of State will wish to be satisfied that there is a compelling case in the public interest for taking away a person's land or rights in land, and that all the land in question is required for the scheme.

1.40...the applicant must be prepared, and able, to justify all compulsory land acquisition.

1.41 Applicants should ensure therefore that they have adequate financial resources to fund land compensation payments. The Secretary of State may refuse to make an order if the applicants were unable to demonstrate they were able to meet their statutory obligations in this matter.

2.13 Where the project would involve the compulsory acquisition of land or rights in land, the prospective applicant should normally consult the owners, lessees, tenants and occupiers of such land at an early stage. The timing and nature of such consultation will need careful consideration according to the particular circumstances of the project. In many cases this should best be undertaken prior to any public announcement of the intended location or alignment of the project. Before the TWA application is made it will almost certainly be necessary to make direct contact with the owners, lessees and tenants of land proposed to be compulsorily acquired, for the purpose of compiling the book of reference.

2.23 The provisions contained in Part 1 of the Land Compensation Act 1973 also apply to TWA orders. In summary, these provisions enable property owners to claim compensation for injurious affection where no part of their property is required for the development but its value is depreciated by physical factors caused by the use (but not the construction) of the works. These are noise, vibration, smell, fumes, smoke, artificial lighting and the discharge on to property of any solid or liquid substance. Depreciation is assessed by reference to prices current on the first claim day, which is 12 months and 1 day after the completed works are first used.

Plans, Sections and Book of Reference

2.56 The applicant must prepare plans, sections and cross-sections of any proposed works. Where the draft order is to include a power to make lateral deviations from a centre line of any proposed works (other than within the boundaries of a street) the limits of deviation must be shown on the plan.

2.57 Where the order would authorise the compulsory acquisition of land, or the right to use land, or to carry out protective works to buildings, or the

compulsory extinguishment of easements and other private rights over land (including private rights of navigation over water) rule 10(4) requires the applicant to provide a land plan, as prescribed by rule 12(5), and a book of reference as prescribed by rule 12(8) (see paragraph 2.60 below).

2.58 *Where the proposed order provides for works to accommodate an owner or occupier of land adjacent to a proposed transport system or inland waterway, or for works ancillary to the construction of a transport system, inland waterway or works interfering with rights of navigation, such works need not be shown in detail on the plans and sections required under rules 12(1) and 12(3). Applicants must however give such indication of these works as is reasonably practicable (rule 12(9)) and the works must be shown on the plans and sections required under rules 10(3)(b) and 12(1) and (3).*

2.59 *It is important that the information provided on all plans and sections is accurate and clearly presented. Although there is no requirement to provide these documents in colour, the applicant should ensure that they can be readily interpreted. Key features, such as any limits of deviation of the works and the precise boundaries of each plot of land to be compulsorily acquired, should be clearly delineated on the relevant plans.*

2.64 *The order, if made, will set out in a statutory instrument what precisely has been authorised (and, either expressly or by implication, what has not been authorised). If it were subsequently wished to add to, or amend, those statutory provisions, a further order would probably be required (unless this could be achieved by other legislative means). It is vital therefore that applicants consider very carefully, before making an application, what powers they require to enable them to implement a proposed scheme.*

3.6 *Applicants must also submit with an application their proposals for funding the cost of implementing the provisions in the draft order and, in particular, for funding the cost of acquiring any land which is blighted within the meaning of section 149 of the TCPA. The proposals need only provide a broad indication (rather than a precise breakdown) of how the cost of implementing the project, including land compensation payments, would be financed.*

An extract from Annex 2: Commentary on Schedule 1 to the TWA

Paragraph 3 *provides for orders to sanction the acquisition of land, whether by agreement or compulsorily. Where land is to be acquired compulsorily, the Secretary of State would wish to be satisfied that the public benefits outweighed any private disbenefits. This is especially important in view of provisions in the Human Rights Act 1998 which provide (amongst other things) that no one shall be deprived of his*

*possessions except in the public interest. **Paragraph 4** provides for orders to authorise the creation or extinguishment of rights over land, including rights of navigation over water, either compulsorily or by agreement. "Over" includes in or on land. This power is widely drawn because of the multitude of rights and interests in land that may be affected by a works proposal, especially one of a linear nature. Where, for example, a proposed railway crosses a public right of way, it may be necessary to stop up the right of way or to divert it (by the construction of a bridge or underpass). The power to extinguish a public right of way is however restricted by section 5(6). This provides that a section 1 or 3 order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or will be provided, or that one is not required. If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users. **Paragraph 5** provides for orders to authorise the abrogation or modification of agreements relating to land. Works proposals will often have implications for private agreements about the use of land, such as the location and use of statutory undertakers' equipment or the use of private accommodation crossings over railways for access purposes.*

10. COMPULSORY PURCHASE POWERS

10.1. The TWAOs application includes within it a reference to the power necessary to acquire land compulsorily and in addition to the guidance relating to TWAOs. The Ministry of Housing, Communities and Local Government (MHCLG) has produced and subsequently updated guidance on Compulsory Purchase Process and the Crichel Down Rules, published in July 2019.

10.2. By way of introduction it says:

***2** When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues.*

***3** In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively*

with claimants about relocation issues and mitigation and accommodation works where relevant.

12 *It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts.*

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

13 *The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.*

If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire; and*
- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale*

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.

14 *What information about the resource implications of the proposed scheme does an acquiring authority need to provide?*

In preparing its justification, the acquiring authority should address:

a) **sources of funding** - *the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required.* *If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide*

ROTHER VALLEY RAILWAY

The Hoad family of Parsonage Farm, and the Trustees and Executors of the Noel de Quincey Estate and Mrs Emma Ainslie of Moat Farm



an indication of how any potential shortfalls are intended to be met. This should include:

- *the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and*
- *the basis on which the contributions or underwriting is to be made*

*b) **timing of that funding** - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.*

Evidence should also be provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

How does the acquiring authority address whether there are any other impediments to the scheme going ahead?

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- *the programming of any infrastructure accommodation works or remedial work which may be required; and*
- *any need for planning permission or other consent or licence*

Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious reasons why it might be withheld. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is required for the scheme, then, under section 38(6) of the Planning and Compulsory Purchase Act 2004, the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations might include, for example, a local authority's supplementary planning documents and national planning policy, including the National Planning Policy Framework.

SECTION C – MY OPINION

11. IMPACT ON THE FARMING OPERATIONS (SECRETARY OF STATE'S MATTER 3)

- 11.1. As noted above, I have met with various representatives of the RVR on numerous occasions in my office and at the RVR offices at Robertsbridge between the 1990's and today. Each of these meetings was about RVR's aspirations to build a railway from Bodiam to Robertsbridge. Although concerns were expressed in relation to the severance issues there was no one within the RVR team who understood them well enough to act on them.
- 11.2. More recently, I met with Gardner Crawley from RVR on Thursday 12th March 2020 together with his agent Peter Hodges who is a consultant at Lambert and Foster and we walked the route of the proposed railway line. We were accompanied by the landowners and Nick Young who is a partner of Watsons Chartered Surveyors and he acts for the Executors and Trustees of the Noel De Quincey Estate. This was my first meeting with anyone representing RVR who could demonstrate any understanding of how land and buildings are used for the production of food.
- 11.3. Prior to this visit, there was very limited information about the detailed impact of the proposed works on the operation of the farms. We were not provided with any maps or plans at the meeting. We used our own copies of the plans prepared by JC White, dated 2016 and available to view at **[CD RVR23]**, to help visualise the railway crossing the various fields. We stopped at each crossing point as shown on the plans and Gardner Crawley explained how he thought that they might work. When asked for clarification of various points he was not able to add anything more as the level of detail necessary to demonstrate how they might be constructed does not exist. Peter Hodges said that it would be helpful to have the details and Gardner Crawley confirmed that he would arrange for the drawings to be prepared. Although he was hoping to produce the drawings "in a week or so" nothing has arrived to date.
- 11.4. Without the more detailed drawings it would appear that:
 - 11.4.1. The width of the access from Northbridge Street into Brook Field is unknown and so may be unsuitable for agricultural vehicles.
 - 11.4.2. The design of the various crossing points is lacking any details and so it is not possible to establish whether it is possible for

them to be built within the Order Limits. For example, the current schematic plans show agricultural crossings starting from a ditch but without explaining how the ditch is also crossed. Nor is it possible to identify the additional areas of land located outside of the Order Limits required to form a safe gradient either side of the crossing as referred to by Philip Clark.

- 11.4.3. The design of the various culverts running under the railway is lacking any details and so it is not possible to predict the extent of additional flooding area and duration due to water being held up on one side of the line by the embankment and the reduction in flood capacity caused by the mere presence of the embankment occupying space that would otherwise have stored water.
- 11.4.4. The diversion of the bridleway may require a bridge which has not been designed and so it is not possible to see how that might be delivered within the Order Limits or at all. If a level crossing is proposed there will need to be a ramp up to the crossing point and back down to the route of the bridleway either side. Without a drawing it is not possible to see whether the works required are within the Order Limits.
- 11.5. Although the farms lose a relatively small amount of land to the line of the track itself that area increases dramatically where the line is raised to cross the A21 leaving areas of field severed either side. The increase in frequency and duration of flooding will lead to some land being demoted to rough grassland from what is at the moment good quality land. The fact that we were able to walk the route of the line the week after a flood event is testament to the free draining nature of the soil and the soil type – staying in the field rather than building up on one's boots.
- 11.6. In conclusion the scheme will have a detrimental impact on both farms which is made worse if RVR is unable to provide the proposed user crossings or further land take is required to provide for those accesses and or appropriate siting to the crossings as described by Mr Clark. This disbenefit of the scheme which is understated by various consultants on behalf of RVR needs to be weighed in the overall balance as to whether there is a compelling case in the public interest or not in favour of the application.

12. HIGHWAYS IMPACTS

- 12.1. I have reviewed the Proof of Evidence prepared by Ian Fielding of WSP OBJ/1002/IF/1 which reviews the proposals submitted by RVR and summarises a number of issues and inconsistencies.
- 12.2. At the end of each section of the report there is a summary and the a consistent theme relates to the use by RVR of old reports which are misleading because they are no longer current.
- 12.3. In concluding he says:
 - 12.3.1. RVR has failed to demonstrate any highways mitigation following the implementation of the level crossings that delivers either improvements or minimises the safety risks. The proposals will give rise to additional pressure on car parking provision in Robertsbridge which the village is unable to accommodate.
 - 12.3.2. RVR has not demonstrated that sufficient analysis has gone into reviewing alternatives.
 - 12.3.3. The proposals conflict with NPPF paragraph 109 due to the unacceptable impact on highway safety, particularly on the A21 and the congestion caused at the A21 Northbridge Street roundabout. It has also not reflected the requirements of Circular 02/13.
 - 12.3.4. The proposals also disregard the Rother District Council Local Plan Core Strategy policies TR1-3.
 - 12.3.5.
 - 12.3.6. The proposals as set out in the TWA order will result in a scheme that does not meets local and national planning policy, increases the safety risk for all users of the A21, Northbridge Street and the B2244 and will result in operational constraints to the A21 and the local network.
 - 12.3.7. The inherent danger and increased accident risk resulting from the installation of a level crossing on one of the busiest sections of the Strategic Trunk Road Network in the south east far outweighs any benefit of extending a heritage railway line by 3.42km.

12.3.8. He concludes that the TWA order should not be granted.

12.4. The Proof of Evidence makes compelling reading and is a comprehensive review of the position on safety, traffic flows and potential prejudice to future dualling of the A21 at this location.

12.5. The problems identified by Mr Fielding compare closely to the issues identified by the Minister in her letter in 1967 as referred to above.

13. RAILWAY IMPACT AND SAFETY ISSUES

13.1. I have read the Proof of Evidence prepared by Philip Clark of WSP OBJ/1002/PC/1 which reviews the proposals submitted by RVR and summarises a number of issues and inconsistencies.

13.2. He considers that the proposals for the scheme are inappropriate as they present a risk to the railway and public highway network. In particular he points out that:

13.2.1. The application contains numerous technical discrepancies that undermine the accuracy and integrity of the proposals.

13.2.2. The proposals lack a full appreciation of safety risk to all users of the level crossings,

13.2.3. The barrier closure durations are underestimated

13.2.4. The proposals fail to give adequate consideration to agricultural land access and land take requirements for adequate approaches and visibility envelopes

13.2.5. The proposals do not meet ORR policy requirements.

13.2.6. Level crossings, whether over public highway, public right of way, or private access, provide a point of interaction between members of the public and railway, creating a potential point of conflict resulting in an increased risk to all users.

13.2.7. The applicant has substantially underestimated the construction and whole life costs for a fully informed assessment of 'gross disproportionality' when considering alternative grade separated options that would eliminate risk.

13.3. He concludes by saying:

13.3.1. *I consider the proposals for this application to be inappropriate as they present a risk to the railway and public highway network as, in my opinion, this scheme would introduce a disproportionate level of risk to potential users within the surrounding network.*

13.3.2. *I am concerned by the lack of consideration of sighting distances to all level crossings, and access provisions to UWC on an elevated embankment. Based on the evidence provided, and the absence of any engineering proposals that address the level differences, extent of earthwork, or guidance on the safe operational procedure for a farm access crossing, the proposed works are not achievable within the extents of this application boundary.*

13.3.3. *Precedent from the Cambrian Railways TWAO application, and Network Rail Wells Engine footpath diversion, demonstrate that the Inspector should refuse this application on grounds that the introduction of a level crossing on the strategic road network, and diversion of a public footpath without proper assessment of flood risk, are inappropriate and present an unnecessary risk.*

13.3.4. *I have formed this conclusion by drawing on my extensive experience working with Network Rail on over 90 level crossing projects seeking to minimise risk to all users; furthermore, I find it wholly unacceptable that a project that seeks to introduce new level crossings should be permitted to proceed without full and adequate consideration of level crossing operations and user safety, particularly those on the public highway.*

13.3.5. *I am of the opinion that this scheme, if granted, will introduce a disproportionate level of risk to all users of the level crossings, and unacceptable imposition on my clients as landowners directly affected by the proposals.*

14. **FLOODING IMPACTS**

14.1. I have read the Proof of Evidence prepared by Chris Patmore of WSP [OBJ/1002/CP/1] which reviews the proposals submitted by RVR and summarises a number of issues and inconsistencies.

- 14.2. The report identifies a series of shortfalls particularly in relation to the modelling which seeks to argue that constructing a railway on an embankment in the functional flood plain will introduce such a small change to flood risk that there is no need for any compensation to reinstate the capacity of the flood plain.
- 14.3. It would appear that there is no evidence at all to address events introduced where detritus within the flood water impedes flows through culverts and under bridges.
- 14.4. There are no details presented to outline how the line of the railway will be maintained and without this maintenance, the integrity of existing structures is at risk along with the potential to cause additional flooding of areas not currently identified in the modelling.
- 14.5. I note that Mr Patmore considers that there is currently insufficient information available to discharge the conditions attached to the planning permission relating to Flood Risk matters.
- 14.6. In conclusion there is insufficient mitigation to adequately deal with any adverse flood risk and nor is there provision for access to repair the railway in the event of a flood induced failure. Mr Patmore is clear that the proposals are in breach of national planning guidance that such development should not be permitted in the functional floodplain (Floodzone 3b)

15. ECONOMIC IMPACTS

- 15.1. I have read the Proof of Evidence prepared by Ellie Evans of Volterra [OBJ/1002/EE/1 which reviews the proposals submitted by RVR and summarises a number of issues and inconsistencies.
- 15.2. Mrs Evans identifies 3 overarching concerns with the economic benefits that it is alleged the proposals will deliver.
 - 15.2.1. First, that the predicted increase in visitor numbers has been inflated.
 - 15.2.2. Secondly, that the likely daily spend figure of visitors on which RVR's case is based is too high.
 - 15.2.3. Thirdly that the persistence of the alleged benefits is overly optimistic.

- 15.3. She identifies several issues with the approach taken by Steer in its report on behalf of RVR [RVR/09].
- 15.4. Mrs Evans notes that the alleged £35m benefit figure referred to within RVR's Statement of Case is based on an "investment" case scenario, which assumes a wider programme of investment and marketing by the Kent and East Sussex Railway. She notes that very little information and no commitment been provided as to the investment programme and that in recent Environment Statement Update 2021 [RVR/70] no assessment is made of the investment case. She considers that the investment case increase in passenger numbers is highly unrealistic.
- 15.5. Mrs Evans assesses the central non-investment case benefit to amount to £2.6m over 10 years – as against Steer's assessment of £10.8m. For the investment case scenario, Mrs Evans considers that a benefit of £3.8m over 10 years would arise – as against Steer's assessment of up to £35m over 10 years.
- 15.6. Mrs Evans notes that Rother is not a deprived area and on her analysis the proposals would generate an additional 0.1% in tourism value to the area and less than 0.1% of additional jobs. She notes that in Environmental Impact Assessment terms, RVR's own assessment considers the benefits are not considered to be significant. She agrees with this assessment.
- 15.7. Mrs Evans also notes that The Kent and East Sussex Railway (KESR) makes a loss year on year and only survives by relying on legacy and donations which Mrs Evans calculates to be, on average, £283,000 per annum between the years 2013 and 2018. Extending the railway is likely to mean that the costs incurred running and maintaining the railway will increase and so the need to rely on such donations and legacy payments may also increase. This is highly relevant to the overall consideration of the public benefits of the proposals as if the donations and legacies are insufficient to make up any shortfall there is a very grave risk that KESR will be unable to meet its ongoing obligations regarding maintenance of very significant infrastructure, with impacts for the public highway, public purse and the landowners.

16. **FUNDING ISSUES**

- 16.1. I consider there are three important questions when assessing the robustness of funding proposals for the application..

- 16.1.1. First, whether RVR's estimate of the costs of the project is accurate.
 - 16.1.2. Secondly, whether there is sufficient certainty regarding the funding of the project.
 - 16.1.3. Thirdly whether the extension will be sufficiently profitable to enable the Secretary of State to be confident that the ongoing costs of operation and maintenance of the railway and associated infrastructure can be met in perpetuity.
- 16.2. In respect of the first question, RVR's Estimate of Costs [RVR/21] estimates the total costs of the project as £5.3m (based on 2018 figures). However, it is based on a number of assumptions that are unrealistic. The Estimate of Costs includes an estimate of £700,000 for "highway works including level crossings". In 2019 as part of its submission to the ORR, RVR commissioned Arup to undertake a Feasibility Study of the various options for crossing the A21 [RVR/76]. In this Feasibility Study Arup assess the costs of the at grade level crossing over the A21 to be £6.8m. It is important to note that this estimate was based on 2019 figures. No allowance was made for inflation. Likewise no allowance was made for utility diversions or for operational maintenance. This estimate was solely for the A21 crossing. The additional costs of the Northbridge Street and Junction Road crossings are not included in the £6.8m figure and will therefore be additional to these costs.
- 16.3. Appended to the Arup Feasibility Study is an alternative worked up cost estimate prepared by RVR. This estimates the costs for the A21 at grade crossing to be £1.539m. Again, as a starting point, this only relates to the A21 crossing so does not include the costs associated with the Northbridge Street and Junction Road crossings. My understanding is that one reason for the discrepancy between the Arup estimate and RVR's own estimate is RVR's intention to rely on a volunteer workforce.
- 16.4. In its response to RVR's Departures Submission, Highways England state:
- "The costed figure of £1.5m for the level crossing option appears to be as a result of RVR using volunteer labour to construct the level crossing. The submission documents show that the cost of the crossing if no volunteer labour was used would be £6.8m. HE has approved partners in place who provide construction and maintenance services on the SRN. RVR appointed contractors, for both the initial construction and future*

maintenance, must have suitable experience and expertise, including experience of installing a level crossing on the SRN. RVR contractors or volunteers who undertake works on the SRN, will be required to apply to HE for approved supplier status, and provide the appropriate training and competence certificates. Utilising HE approved partners may result in a greater overall cost, affecting the BCR, and a different procurement and construction timetable for the proposed level crossing”.

- 16.5. For these reasons I consider that there is, at best, considerable uncertainty regarding the actual true costs of the project.
- 16.6. In addition to the above issues I understand Highways England will require RVR to provide a commuted sum or bond to cover the costs of restoration of the highway. It does not appear that this sum has been included within the Estimate of Costs. Even on RVR’s analysis the likely cost of the A21 crossing will be more than double the originally estimated costs for all three level crossings and associated highways works. If Highways England (or indeed East Sussex County Council) do not permit RVR to utilise volunteer workforace for the works over the public highway, the total costs of the project would more than double based on the Arup estimate. Again it is important to restate that the Arup estimate only relates to the A21 level crossing, and does not include an allowance for utilities, inflation or operational maintenance. No equivalent analysis has been undertaken in respect of the other two public highway level crossings.
- 16.7. The significant uncertainty regarding the actual costs of the project emphasises the need for greater certainty regarding the funding of the scheme. The application includes a funding statement [RVR/20] which says that the anticipated final cost of implementing the whole scheme will be funded by The Rother Valley Railway Heritage Trust. The latest public accounts of both Rother Valley Railway Limited and the Rother Valley Railway Trust may be found at **Appendix OBJ/1002/AH/2-3**. They show their current assets and set out their cash holdings at December 2019 as £406,415 down from £763,114 in December 2018. No evidence is provided in the statement to support whether the Trust will be able to meet the costs.
- 16.8. RVR’s original Statement of Case [RVR/65] states at paragraph 1.39 that RVR has “commitments from two major benefactors”. They are not named and no evidence of their commitment has been provided. RVR’s amended Statement of Case [RVR/66] states:

“Throughout the restoration of the railway to date, RVRHT has benefited from consistent and generous philanthropic donations. The implementation of the Order Scheme will be funded in this way. The most significant individual benefactors are wealthy private individuals who wish their privacy to be respected”

- 16.9. I consider this is wholly unsatisfactory given that their money is seeking to fund the compulsory acquisition of my clients’ land. There is no evidence as to the extent of the benefactors’ commitment, no evidence that they are willing to meet the full and significantly increased costs of the project, and no evidence that they have the means to meet these costs. The updated statement of case suggests *“the donors’ commitment is genuine and their ability to fund the project is beyond doubt.”* What the Promoter is really saying is that as there have been philanthropic donations in the past, the project is relying on further donations in the future without saying when that might be or conceding that such donations cannot be relied upon with any degree of certainty. It cannot be ruled out that due to unrelated personal circumstances such as death, debt or divorce a benefactor may no longer wish or even be able to stand by personal and informal assurances provided earlier however well meaning they were at the time.
- 16.10. RVR seeks to argue that its ability to fund the works undertaken to date and the costs of the application demonstrate that it has the ability to secure sufficient funds for the full costs of the project in the future. I do not consider that such an approach is in any way compliant with the relevant Government guidance regarding funding of TWAO schemes and the use of compulsory purchase powers. The costs incurred to date are of a different scale to those yet to be incurred. In the absence of confirmation of the identity of the benefactors, evidence of their unequivocal commitment to funding the full realistic costs of the project, and evidence of their means to meet that considerable obligation, I do not consider that the Secretary of State can be satisfied that it has been demonstrated that:
- 16.10.1. RVR has the capability to attract all the necessary funding in a timely fashion;
- 16.10.2. RVR has the necessary financial resources to meet all statutory and other liabilities arising from the promotion of the application,
- 16.10.3. there is a reasonable prospect of the proposed works being implemented in full; or

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16.10.4. the proposals are capable of being financed in the way proposed.

16.11. In respect of the costs of ongoing maintenance, as identified by Mrs Evans, the existing KESR railway runs at a loss from year to year and with the overall track increasing in length as proposed the requirement for additional maintenance increases the burden on fundraising to meet the shortfall. This point is also referred to by the Minister in her letter of 1967 when she considers whether a limited service, perhaps weekday only and she says

“This would surely have reduced the potential revenues of the company, which on their own evidence would only just be sufficient, even without such restrictions, to cover the very considerable operating costs of the line.”

16.12. If KESR is unable to fund the ongoing costs of operation and maintenance there is a risk that the railway will be required to close. Amongst other matters this could require the removal of the level crossings over the public highways. No allowance has been made relating to decommissioning the works if at some stage in the future RVR is no longer able to meet the costs of ongoing maintenance.. In her letter referred to above Barbara Castle says: *“One must consider the landowners and drainage authorities whose protection would disappear if the Company got into serious financial difficulties.”* In these circumstances my clients would be left with the imposition of the disused railway track across their land. Although RVR is hopeful about raising funds to build the railway and to subsidise the future running of the railway (which for the reasons set out above are extremely uncertain) I doubt whether the benefactors or any other supporters would be prepared to contribute anything to the cost of any decommissioning works. .

17. OTHER IMPACTS

17.1. In addition to the issues address above there are a number of other factors that I consider the Secretary of State needs to take into account in assessing whether there is a compelling case in the public interest to justify the authorisation of compulsory purchase matters. These I set out below:

18. PREJUDICE TO FUTURE DUALLING OF A21

- 18.1. Greg Clark (MP for Tunbridge Wells) has objected to the application. In his letter of objection he records the A21 Reference Group of MP's ambition to see the A21 dualled in its entirety between London and Hastings. In his letter of objection he states:

"I am extremely concerned about the proposed installation of a crossing across the A21 as it would not only risk further congesting an already busy road (particularly during the peak tourist periods such as public holidays, when motorists are driving to the South Coast, and the railway would presumably run most frequently) but also jeopardise the potential for dualling the road in the future, thus putting at risk the economic development of the South East."(emphasis added)

- 18.2. These concerns have been echoed by Sally-Ann Hart in her Statement of Case OBJ/0091.
- 18.3. I consider these concerns to be well founded and the potential risk to the future dualling of the A21 is a significant factor against the approval of the application.

19. IMPACT UPON THE HIGH WEALD AONB

- 19.1. I am not a landscape architect but I have reviewed the original Environmental Statement and LVIA, as well as the Landscape and Visual Review undertaken by Carly Tinker and appended to 2021 Environmental Statement additional information [RVR/70]. If approved the application would lead to the removal of the established woodland areas along the Moat Farm section of the route and the reintroduction of a new raised railway embankment over the Parsonage Farm land (where all visible signs of the old railway have largely been removed).
- 19.2. I note that Ms Tinker identifies a number of concerns with the methodology undertaken as part of the original LVIA (see paras 5.5.8 and 5.5.14 for example). Ms Tinker identifies the High Weald AONB as being of Very High Sensitivity (5.4.17) which echoes the requirements of the NPPF that it be given the highest degree of landscape protection.
- 19.3. I note that Ms Tinker assesses additional land take of 0.08ha of permanent land take (para 5.5.19) and an increase of 0.8ha (5.5.20) of temporary land take. She also notes the additional requirement for

additional street lighting along the A21 approaches to the level crossing, which had not been previously assessed.

- 19.4. Ms Tinker identifies slight to moderate negative impacts to Landscape Character within certain defined areas. Whilst Ms Tinker does not consider that the overall impact on landscape character would be significant she does identify slight to moderate negative effects.
- 19.5. Ms Tinker does identify negative visual effects along Church Lane looking south (5.6.12) which she classes as moderate negative and thus significant.
- 19.6. Ms Tinker goes on to identify slight conflicts with the High Weald AONB Management Plan objectives W1 (which seeks to maintain woodland) and FH1 Ecological Impacts (which seeks to secure agricultural productive use of fields as part of sustainable land management). The conflict with W1 is identified as being temporary but this is due to the proposed replacement planting – which I discuss below
- 19.7. Ms Tinker concludes that the ability of RVR to provide any landscape enhancements is largely outside its control.
- 19.8. Again I consider that these effects and conflicts with the High Weald AONB to be important factors for the Secretary of State to take into consideration when assessing whether there is a compelling case in the public interest to justify the authorisation of compulsory purchase powers.

20. HERITAGE IMPACTS

- 20.1. I am not a heritage consultant or architect but I note that the original Environmental Statement [RVR/25] and the March 2021 update [RVR/70] both assess the impact of the proposals on heritage assets.
- 20.2. I note that the Original Environment Statement identifies the value/sensitivity of the setting of Robertsbridge Abbey as a Scheduled Monument to be very high and of national importance. It assesses that proposals will have a negative impact on the setting of the Abbey which is described as “large” (12.4.10). It advises that this impact would be generated during construction and would continue throughout the operation phase. The chapter goes on to record that mitigation of the impact on the setting will be difficult to achieve by direct means and that whilst the negative impacts are likely to lessen they will not completely disappear.

- 20.3. The March 2021 Update [RVR/70 Chapter 11] again records that the proposals would have a moderate to large adverse effect during construction and slight to moderate effect (11.3.6) during the operational Phase. I note that in the Table at Appendix E simply records a “?” in the Mitigation column and leaves the residual effect column blank. I consider that the Secretary of State needs to consider this harmful impact upon Robertsbridge Abbey as a Scheduled Monument in assessing whether there is a compelling case in the public interest to justify the authorisation of compulsory purchase powers.

21. ECOLOGICAL IMPACTS

- 21.1. I am not an ecologist but have set out above my observations of the current character and composition of Moat Farm. The old railway line has been returned to nature. It is covered by a wide variety of vegetation, and hundreds of now mature trees including oaks and aspens. I understand it is a habitat for a wide variety of unusual flora and fauna including, bats, barn owls, dormice, moths (including the Blue Underwing moth) and extremely rare mosses. Emma Ainslie’s statement indicates that nightingales nest there.
- 21.2. The Original Environmental Statement [RVR/25] identifies that 1.56km of the dismantled railway is under cover of woodland. It advises that 50% of this area would be removed – amounting to a 1.55ha loss [9.3.25 as well as a 0.46ha loss of continuous scrub]. The ES identifies the existing Woodland, Scrub, Hedgerow, Wetland, Ditches and Watercourses, Ponds, Great Crested Newts, Reptiles, Bats, Dormouse, Water Vole, Otter, Badger, Bird habitats as important at various levels up to regional in the case of the Otter population.
- 21.3. The construction of the scheme is predicted to have major adverse effects on Woodland, Ponds, Great Crested Newts, Reptiles, and Bats. It predicts Minor and Moderate Adverse Impacts on Birds, Dormice, Otters and Badgers. The operation of the development is predicted to have a major adverse impact on Ditches and Watercourses.
- 21.4. The ES identifies a series of proposed mitigation measures to seek to address these identified adverse impacts. These are summarised at Table 9.8 and include: 3ha of planting of additional woodland (including 1.5ha alongside the railway line and 1.5ha as a single block within an approved area of grassland), and 1ha of scrub to be planted along the railway line.

- 21.5. The March 2021 ES [RVR/70 - paragraph 8.8.5] records that 1.5ha of additional woodland is intended to be planted alongside the railway line and 1.5ha in a single block within adjacent arable fields. It records that 50% of the total scrub planting has taken place within the Austen's bridge section of the railway whilst under 10% of the total woodland planting has also taken place.
- 21.6. Paragraph 8.10.6 of the ES Update records that:
- "With a scheme with a finite footprint and not yet fully quantified habitat creation being required, there could have been a risk that when fully determined the final volume of land required to off-set the impacts of the scheme may not be able to be accommodated within the existing footprint. However, there is now more land available for ecological compensation than was the case when the ES was originally drafted, and 2/3 of the previously calculated scrub habitat has already been planted off-site"*
- 21.7. This paragraph appears to recognise that the ability of the scheme to mitigate the identified major adverse ecological impacts is entirely dependent upon the volume of land being available for replanting – and that there was a concern that insufficient land may not be available. However, this risk remains. Even taking account the 50% of required scrub planting and under 10% of woodland planting that is alleged to have taken place (8.8.6) it is unclear to me where the necessary additional planting will take place.
- 21.8. It is proposed that half the required woodland planting and the remainder of the required scrub planting will take place along side the reinstated railway line.
- 21.9. The land proposed to be acquired represents the proposed track restatement, the majority of which will be filled by the raised embankment, which will need to be kept clear for operational safety reasons. There may be some small slivers of land alongside the track but no evidence has been produced to demonstrate that it is possible to accommodate 1.5ha of woodland planting and additional scrub planting within this land.
- 21.10. In addition to the requirement to keep the track clear to prevent hazards, it will also be necessary to ensure that appropriate site lines are provided to the user crossings, which will limit the ability of parts of the land adjoining the track to accommodate additional planting. In turn no location is offered for the required "off site" 1.5ha of woodland planting other than

a vague reference to unspecified “adjacent arable fields”. Whilst the order seeks authority to acquire 7,194sqm (0.72 ha) of land within Moat Farm for ecological mitigation, this does not meet the identified 1.5ha commitment. It falls short by a factor of more than two times the area necessary.

- 21.11. It is not yet clear whether the applicant will be able to carry out this planting and therefore whether the identified necessary mitigation can be delivered. The Estimate of Costs provides a £60,000 contribution for Environmental Mitigation. No breakdown of these costs has been provided and it is therefore unclear whether they will cover the full costs of the extensive mitigation proposed – not least the costs of acquiring additional land for the offsite woodland planting.
- 21.12. If, as appears the case, additional land is required to fulfil this requirement it will fall outside of the Order Limits and so cannot be acquired compulsorily.
- 21.13. Against this background it cannot be guaranteed that the relevant conditions attached to the planning permission regarding ecology matters will be capable of being discharged in full nor that in substance the accepted major adverse ecological impacts can be properly mitigated.
- 21.14. I consider that all the additional harmful impacts and concerns listed in this section of my Proof need to be taken into account by the Secretary of State when considering whether there is a compelling case in the public interest to authorise the use of compulsory purchase powers.

22. STATEMENT OF MATTERS RELATING TO COMPULSORY PURCHASE

- 22.1. **a) whether there are likely to be any impediments to RVR exercising the powers contained within the Order, including availability of funding;**
- 22.1.1. For the reasons set out in section 16 of my proof I consider that the costs of the implementing the Order may have been considerably underestimated. In turn I do not consider that the purported reliance on two anonymous private benefactors can be relied upon by the Secretary of State. RVR has not provided any evidence of the commitment of these benefactors and their means for meeting the funding liability – particularly if the costs exceed the original estimate. Against this background I consider

that the considerable uncertainty regarding the funding of the project is a clear impediment to the delivery of the scheme. Furthermore, the existing KESR railway operates at a loss and is dependent year or year on ongoing donations and legacies. This is not a sustainable robust basis on which the Secretary of State can be satisfied that the scheme can be operated and maintained in perpetuity.

22.1.2. In addition to funding issues I consider that there are other impediments to the delivery of the scheme including the ability of RVR to discharge significant pre-commencement conditions attached to the 2017 Planning Permission

22.1.3. In respect of ecological issues, for the reasons set out in sections 17 of my proof, I consider that there is insufficient information before the Secretary of State to be satisfied that Conditions 5 (Ecology Management), 6 Construction Environmental Management Plan) and 7 (Protected Species Plan) can be discharged.

22.1.4. In respect of Flooding matters, as set out in the evidence of Mr Patmore, there remains a risk that Conditions 4 (Buffer zone condition), 9 (Flood Risk Condition) or 11 Flood plain storage compensation are capable of being discharged.

22.1.5. In respect of highways matters, as set out in the evidence of Ian Fielding, Highways England has returned RVR's Departures Application and identified some 32 matters that remain to be resolved.

22.1.6. For these reasons I consider that there remain considerable impediments in relation to both funding and non-funding matters to the delivery of the proposals underlying the application. Against this background the application should be dismissed.

22.2. b) whether the land and rights in land for which powers are sought are required by RVR in order to secure satisfactory implementation of the scheme;

22.2.1. The land and rights in land over which powers are sought is incomplete for a number of reasons. First, as set out in Mr Patmore's evidence there remains a risk that additional flood compensation land will be required. No provision for flood

compensation land has been included within the Order. Secondly, as set out above there remains doubt as to whether sufficient land has been identified for ecological mitigation in particular for woodland and scrub planting. Thirdly, insufficient land has been identified to provide safe crossing of the railway where it is crossed by a bridlepath. Mr Clark's proof of evidence highlights that it is not clear if users of the public footpath will be required to share the User Worked Crossing with farm vehicles or if a separate footpath gate is proposed. Fourthly in respect of user worked crossings, Mr Clark's evidence sets out that insufficient land to accommodate the required vehicles and suitable gradients on approach to the crossings, has been provided for. Any additional land to enable such accesses to function will result in further loss of land for cultivation or any other productive use.

22.3. c) whether there is a compelling case in the public interest for conferring on RVR powers to acquire and use land and rights for the purposes of the scheme;

22.3.1. In order for the Secretary of State to properly consider this matter it is necessary to properly establish the public benefits that the scheme will generate and to balance those benefits against the harms that the scheme will cause.

22.3.2. In respect of the first limb of the balancing exercise, as set out in the evidence of Mrs Evans and summarised in Section 15 above, the economic benefits of the proposal have been considerably overstated. Mrs Evans assesses the central non-investment case benefit to amount to an economic benefit of £2.6m over 10 years – as against Steer's assessment of £10.8m. For the investment case scenario, Mrs Evans considers that a benefit of £3.8m over 10 years would arise – as against Steer's assessment of up to £35m over 10 years. As set out in Mrs Evans' Proof of Evidence no information or commitment is given as to the 'investment case' and it is not even assessed in the March 2021 updated Environmental Statement Socio Economic Chapter [RVR/70]. Given the economic status of the area, Mrs Evans concludes that these benefits are not significant. I agree with this conclusion.

- 22.3.3. Even before taking into account the disbenefits of the scheme, I do not consider that benefits of this level (even if the Steer figures are taken at face value) remotely constitute a “compelling case” to justify the authorisation of compulsory purchase powers. I have over 30 years experience in promoting and objecting to applications for compulsory purchase. I have never been involved with an application seeking such powers of expropriation based on such insignificant public benefits.
- 22.3.4. In any event it is also necessary to consider and take into account the disbenefits of the application as part of the assessment of whether a compelling case in the public interest exists.
- 22.3.5. First, as set out above the application will harm two longstanding local agricultural businesses.
- 22.3.6. Second, as set out in the evidence of Mr Fielding and Mr Clark, the proposals will give rise to additional safety risks where none currently exist and impede upon the free movement of traffic on the Strategic Road Network. They will cause increased parking pressure in Robertsbridge which it is unable to accommodate. Even if both the ORR and Highways England conclude that in their opinion the proposals are tolerably safe, this does not mean that they do not give rise to additional risk or delay. By definition the proposals will increase the risk of accidents and impede the flow of traffic on the Strategic Road Network. They will also prejudice the longstanding ambition as articulated by Greg Clark MP to dual the A21 from London to Hastings. These are considerable disbenefits of the proposals for which there is no counterveiling highways benefit.
- 22.3.7. Third, the proposals will introduce inappropriate development into the functional floodplain. It will give rise to unnecessary additional flood risk and flooding of my clients’ land.
- 22.3.8. Fourth, the proposals will result in the removal of a very significant area of established woodland and scrub. This will have adverse impacts on a wide variety of important habitats. As set out above there is considerable uncertainty regarding the delivery of the necessary mitigation to address these accepted harmful impacts.

- 22.3.9. Fifth, the removal of the trees and reintroduction of a raised railway embankment will, as set out above, cause harmful visual effects on the High Weald AONB and be in conflict with the High Weald AONB Management Plan.
- 22.3.10. Sixth, as set out above the proposals will cause harm to the setting of Robertsbridge Abbey, a Scheduled Monument of national heritage significance.
- 22.3.11. When taken together these harmful impacts in my view demonstrably outweigh the insignificant public benefits of the proposals.
- 22.4. It is important to stress that the Secretary of State must not simply be satisfied that the benefits outweigh the disbenefits of the proposals as part of a broad balancing exercise. In order to authorise compulsory purchase powers the case must be “compelling”, which is a significantly higher test. The justification for the interference with my clients’ rights must be “compelling”. I do not consider that on any analysis that there is any case to justify the authorisation of compulsory purchase powers let alone a compelling one.
- 22.5. **d) whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected.**
- 22.5.1. The MHCLG guidance set out above makes clear that : An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.
- 22.5.2. Article 1 of the First Protocol makes clear that all legal and natural persons are entitled to peaceful possessions of their property and that no-one should be deprived of their property unless in the public interest. In England and Wales the Compensation Code (including that part of the MHCLG guidance referred to above) is clear that the interference is only ever justified where there is a compelling case in the public interest. For the reasons set out above I do not consider that there is a compelling case in the

public interest. Therefore the authorisation of the use of compulsory purchase powers would unlawfully infringe upon my clients Article 1 Human Rights..

- 22.5.3. I would also note that this application has been severely delayed. The public inquiry will take place over three years after the application was submitted. Whilst I accept that the COVID pandemic has been responsible for some delay, the main reason for the majority of the delay was due to the fact that the application material was substandard and incomplete at the point of submission. The public inquiry was delayed in part to enable the application to hold discussions with ORR and Highways England that should have taken place pre-submission – this was the reason for the 2019 cancellation. In turn notwithstanding the COVID pandemic, the reason for the extended delay following the 2020 cancellation was due to the applicant needing to update its Environmental Statement which was demonstrably out of date at the point of submission of the application. This update could have happened in parallel with the 2019 cancellation. As a result my clients have not been granted a fair and public hearing in a reasonable timeframe in conflict with their Article 6 rights.
- 22.5.4. If built the railway will destroy a beautiful part of the country at Moat Farm where over the last 60 years what was the line of the railway has become a haven for many forms of wildlife. Any form of grazing needed to maintain the land will be impossible because of the lack of adequate crossing points.
- 22.5.5. At Parsonage Farm the land is bisected disrupting the farming operations and the significant volume of material required to form the raised embankment will directly reduce the capacity of the floodplain for which there are no proposals to compensate for that loss with works elsewhere. The drainage under the railway connecting one flood area to another, however well built and maintained will reduce flows and therefore introduce further flooding in some areas.
- 22.5.6. Each of the three road crossings will disturb the traffic and cause delays, particularly on the A21 which is a road already used to such an extent that Greg Clark has written a formal email alongside Amber Rudd and Huw Merriman to the Chairman of Transport for South East (TfSE), urging him to back their bid for

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the length of the A21 to be dualled between Tunbridge Wells and Hastings. Closing the road at any time will introduce delays and increase the danger facing road users.

- 22.5.7. Other than the opportunity for a select few with deep pockets to enjoy their own hobby it is difficult to identify any other reason to build and operate this line which over its history has never been successful.

SECTION D – MY CONCLUSION AND DECLARATION

23. MY CONCLUSION

- 23.1. In my opinion, and with the benefit of reading the comprehensive reviews of the application as made and modified on several occasions since the TWAO application was first made over three years ago I have reached the conclusion that there are considerable impediments to the delivery of the scheme and demonstrably no compelling case in the public interest.

24. DECLARATION

- 24.1. I confirm that I understand that my duty to the court as an expert witness overrides any duty to those instructing or paying me and that I have complied with that duty and will continue to do so in giving my evidence impartially and objectively as required.
- 24.2. I confirm that my report includes all facts which I regard as being relevant to the opinions which I have expressed and that attention has been drawn to any matter which would affect the validity of those opinions.
- 24.3. My report includes or reflects all relevant facts of which I am aware. Where I have made specific or important assumptions these are set out or included as an Appendix. If there are material matters of which I am unaware or if the assumptions are incorrect or inappropriate for any reason of which I am currently unaware it could have a material effect upon my stated opinion.
- 24.4. I confirm that I am not instructed under any conditional fee arrangement nor have I entered into any agreement by way of funding this litigation either directly or indirectly.
- 24.5. Conflicts of interest:
- 24.5.1. I am not aware of any conflicts of interest of any kind other than those already disclosed in my report.
- 24.5.2. I do not consider that any of the matters set out affect my suitability to act as an expert in this matter.

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24.5.3. I undertake to advise those instructing me if, between the date of this report and the trial, there is any change in circumstances which will impact on this declaration.

24.5.4. It is my intention and belief that the contents of this report should comply with the requirements of the:

- Royal Institution of Chartered Surveyors – “Surveyors acting as expert witnesses” RICS Practice Statement.
- Royal Institution of Chartered Surveyors – “Surveyors advising in respect of compulsory purchase and statutory compensation” RICS Professional Statement.
- Part 35 of the Civil Procedure Rules 2010.
- Code of Guidance on Expert Evidence prepared by the Expert Witness Institute dated December 2001.
- CPR Code of Guidance for Experts and those instructing them prepared by the Academy of Experts dated July 2004.
- Protocol for the Instruction of Experts to give Evidence in Civil Claims.

25. STATEMENT OF TRUTH

25.1. I confirm that I have made clear which facts and matters in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

