

TRANSPORT AND WORKS ACT 1992

THE TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

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

REBUTTAL PROOF OF DAVID GILLET

1. This rebuttal addresses certain points in the evidence given on behalf of OBJ/1002 where a response in writing may assist the inquiry. It also confirms that the Order scheme complies with certain Neighbourhood Plan policies cited in the evidence of REP/11. The fact that other points are not specifically responded to does not mean that they are agreed.

REBUTTAL OF THE EVIDENCE OF ANDREW HIGHWOOD (OBJ/1002/AH/1)

FUNDING OF THE SCHEME

2. At paragraph 16.1, Mr Highwood raises three questions that he says are important when considering the robustness of the funding proposals for the scheme, which he then goes on to address in the rest of the section. RVR accepts entirely that the capability of a scheme to attract the funding necessary to implement it is a relevant factor in the Secretary of State's decision. The Government's 2006 Guidance on TWA Procedures (paragraph 1.34) states that an applicant will not however be expected to have secured the necessary funds before the Order is determined and "It is accepted that the private sector may be unwilling to commit funds until the necessary statutory approvals have been granted." It goes on to say that "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." Mr Highwood does not actually dispute that the test in the Guidance is met and it is RVR's case that this test has been met.
3. Regarding paragraph 16.2, the Estimate of Costs was submitted with the application and complied with the relevant statutory requirements. It is not agreed that the assumptions on which it was based were unrealistic – although it is accepted that figures have changed since 2018 as the result of the very considerable work that has been done with interested parties, in particular Highways England and the ORR. An updated Estimate of Costs is appended to this rebuttal (**RVR/W1/5-3**). It should be noted that the updated figures do not affect the assessment of gross disproportion for the purpose of establishing an exceptional case for the highway crossings. It should also be noted that RVR already has in stock, all the bridge units, the sleepers and rail lines need for the project. The updated estimate includes an allowance for inflation of 3.81% for 2020, and 3.79% for 2021 to 2023.
4. In respect of the estimated costs of the level crossings including installation, details are given in Appendix D of the Arup A21 crossing options report (pages 90 and 91) together with quotations for the key component suppliers. Although the original estimate provided an amount for re-surfacing of the A21, the more detailed designs agreed with Highways England recently have included longer approach modifications, and additional amounts have

been allowed for this in the updated estimate of costs. Similarly, increases have been made to reflect other items requested by HE, including anticipated further design and site investigation work.

5. Paragraph 16.3 - Mr Highwood states that he understands that one reason for the discrepancy between the Arup estimate and the RVR estimate is RVR's intention to rely on a volunteer workforce. This is not the case. The RVR estimate for the A21 level crossing referred to by Mr Highwood was based largely on quotations from specialist firms. These are also included in Appendix D to the A21 Crossing Options report.
6. Paragraph 16.4 – Mr Highwood refers to the need to use Highways England (HE) approved partners for any works on the SRN. As will be seen from the details in Appendix D of the A21 Crossing Options Report, the quotes are from well recognised and experienced contractors, and if not already approved by HE, then no difficulty is anticipated in obtaining the necessary approvals. However, it is also worth noting that the form of protective provisions agreed with HE provides (paragraph 3(7) that: “In its approval of the contractor pursuant to sub-paragraph 3(1)(c)(iv), Highways England shall be entitled to take into consideration the experience and expertise of the proposed contractor, including previous experience of level crossing installation over the public highway. Highways England shall not be acting unreasonably if, in Highways England's reasonable opinion, the proposed contractor does not have sufficient experience and expertise, but shall not be entitled to refuse to approve a contractor merely on grounds that the contractor is providing services to the Company in a volunteer capacity, or intends to use suitably experienced volunteer workers to carry out all or part of the HE works.”
7. Paragraph 16.5 – Mr Highwood suggests that there is considerable uncertainty about the costs of the project but Appendix D to the Arup report contains a detailed breakdown of the likely costs which includes estimates for most key components. As mentioned above, RVR already owns many of the materials and components needed to construct the Missing Link.
8. Paragraph 16.6 – it is worth noting that KESR has significant and recent experience of carrying out level crossing works on ESCC highways, and ESCC has not raised any objection to the proposed Order. HE and RVR have come to terms on arrangements for the crossing of the A21 subject to approval of the Departures submission. The cost of providing the requisite security expected to be covered by the allowance for contingencies in the Estimate of Costs. Mr Highwood's assertion that “the cost of the construction will be more than double the originally estimated costs” is demonstrably unfounded.
9. Paragraphs 16.7 to 16.10 – the Funding Statement submitted with the application explained the applicant's proposal for funding the cost of implementing the Order. It is not the purpose of the Funding Statement to set out the evidence for that proposal. The Statement of Case explains the principal source of funding that lies behind the funding statement and the ability of the charitable Trust to implement the Order, once made. Mr Highwood disregards the support of numerous bodies including all the relevant local authorities, Network Rail and the National Trust. The Economic Impacts Report (RVR/09) and evidence of Tom Higbee (RVR/W2/1) support the compelling case in the public interest for compulsory acquisition of the small area of land required to complete the Missing Link. The Secretary of State is entitled to take into account the context and background of this application,

including inter alia the succession of planning consents that have been implemented to a high standard in a timely fashion and financed by the Trust, that all liabilities to date have been met, the proven experience and success of KESR and the capability of its workforce to construct the railway and crossings, and, of course, the money spent to date on the application, including the appointment of world class consultants to inform the Inquiry and Secretary of State about all aspects of the scheme. In addition to the philanthropy of principal donors, there is a multiplicity of funding sources available to support the railway including grant funding, appeals, donations, legacies and subscriptions all of which demonstrate that the proposals are capable of being funded in the way proposed in the Funding Statement. Appended to this rebuttal is an email from one of the principal donors, (RVR/W1/5-4) describing his own commitment to the scheme to date, and that of another principal donor, and confirming his commitment to the scheme going forward.

10. Paragraphs 16.11 and 16.12 – in his rebuttal proof (RVR/W2/4), Mr Higbee explains why the evidence of Volterra on the profitability of KESR is flawed and why it is not reasonable to suggest that the railway, once extended, would go out of business. The heritage railway market in 1967, some 54 years ago, was very different from today and the points made by Barbara Castle at that time are of no relevance to the current application. It is also worth noting, as mentioned by Mr Higbee, the recent Government grant to KESR in recognition of its cultural significance.

COMPULSORY PURCHASE

11. In paragraphs 22.3.1 to paragraph 22.5.7, Mr Highwood seeks to cast doubt on the case for compulsory powers. It is worth recalling that the Inspector who heard the Inquiry into the Rother District Plan wrote to Rother District Council on 13 December 2005 in terms suggesting that this might be a case where the local authority could consider exercise of compulsory powers to facilitate the development:

*“Impact on farming operations and on the living conditions of adjoining occupiers
9.56 Subject to detailed consideration at the planning application stage, I consider that the proposed route is likely to be sufficiently remote from residential property that the noise or other emissions from the railway would not be unacceptably harmful to the living conditions of the occupiers.*

9.57 Sections of the original railway embankment were removed by the farmer who now owns much of the route in order to improve access and drainage on the farm. The restoration of the embankments and the other necessary new works could have disadvantages in this respect. The present landowner opposes the scheme, as apparently do some other current landowners. However these landowning interests are a matter primarily for negotiation and have little bearing on the planning considerations. Were the landowners to remain opposed to the scheme, the Council could consider whether it wished to seek the use of compulsory purchase powers and would have to weigh up the planning issues and other relevant considerations. Landowners could pursue any objections through the formal statutory processes.”

A copy of that letter is appended as **RVR/W1/5-1**.

REBUTTAL OF THE EVIDENCE OF IAN FIELDING (OBJ/1002/IF/1)

12. Paragraphs 7.9.1 to 7.9.9 - like Mr Highwood, Mr Fielding makes a number of assertions about the estimate of the costs of implementing the project, which are not accepted and are

largely answered above.

13. Paragraph 7.9.16 – Mr Fielding does not appear to appreciate that it is made clear in Appendix D that the majority of work will be undertaken by experienced third party contractors who provided the written estimates referred to in that report. The specialist volunteers are mainly experienced, qualified professionals from Network Rail and other organisations, details of which are also provided in Appendix D. As referred to above, the proposed protective provisions provide for arrangements for HE to approve the personnel who will be carrying out works on the A21. It is also worth noting that, although not part of the Strategic Road Network, the A28 is crossed on the level by the KESR, and its volunteer workforce has recent experience of level crossing installation of that road. RVR was able to draw on costs already incurred by the Trust for implementation of works, which has provided confidence in the estimates provided to Arup.

REBUTTAL OF THE EVIDENCE OF PHILIP CLARK (OBJ/1002/PC/1)

14. Paragraph 10.1. 4 – the figure of £1.5m relates to the cost from Northbridge Street to beyond Mill Stream Bridge – this being the length of railway that needed to be considered for the purposes of the option appraisal.
15. Paragraph 10.1.5 – Mr Clark appears to be under a misapprehension that the costs cited by Arup in 2020 for the purposes of the option appraisal exercise should necessarily be identical to those in the Estimate of Costs submitted with the application in 2018. He then seeks to conclude that this means the calculation of gross disproportion must be flawed. The overall project estimate is consistent with the costs set out in Appendix D to the Options report. In fact, even a very significant increase would not affect the conclusion of gross disproportion. The Arup figure of £6.8m assumes a large multidisciplinary Contractor with all the set-up, on-costs and profit that would be included. Finally, it is worth re-iterating the point that the RVR workforce could not provide the alternative options of a bridge or tunnel, hence there could be no equivalent RVR costing for those options. This is explained in the Arup report. It is not clear that Mr Clark has appreciated this point.

SALEHURST AND ROBERTSBRIDGE PARISH COUNCIL (REP/11)

16. Salehurst and Robertsbridge Parish Council (REP/11) has requested the Inquiry to consider the extent to which the Order scheme is compatible with certain policies in the Salehurst and Robertsbridge Neighbourhood Development Plan (June 2018). The appended note at **RVR/W1/5-2** confirms that this is the case and explains why.

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LIST OF APPENDICES

RVR/W1/5-1	Letter to Rother District Council from Inspector hearing inquiry into Rother District Plan, dated 13 December 2005
RVR/W1/5-2	Note on compliance with policies in Salehurst and Robertsbridge Neighbourhood Development Plan
RVR/W1/5-3	Updated Estimate of Costs, as at June 2021
RVR/W1/5-4	Email from Richard Broyd to David Gillett dated 21 June 2021