

Secretary of State for Transport
C/o Transport and Works Act Orders Unit
Department for Transport
Zone 1/18
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Our ref: KT/2018/124176/04
Your ref: TWA/18/APP/02/OBJ/178
Date: 26 March 2019

Dear Mr. Chris Grayling MP

Transport and Works Act: Application for the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order

Current Position – March 2019

We have had meaningful discussions with the applicants since submitting our Statement of Case in September 2018 and have agreed wording for the Protective Provisions for Schedule 8, Part 3 – *For the Protection of Drainage Authorities and the Environment Agency* of the above order application. These are appended to this letter. As such we are now in a position to **remove our objection** to the above Order, save for one outstanding point, outlined in our Statement of Case in section 3.5 (reiterated here).

3.5 Rother Valley Railway seek to include deemed approval within the protective provisions of the draft Order. This is contradictory to current legislation. Section 5, paragraph 15 of the Environmental Permitting (England and Wales) Regulations 2016 states:

“If the regulator has not determined an application within the relevant period and the applicant serves a notice on the regulator which refers to schedule 5 paragraph 15 then the application is deemed to have been refused on the day on which the notice is served.”

In light of this we request that the protective provisions are amended as per our submitted version to include deemed refusal as set out in Part 3(17) of Schedule 8 of the draft Order.

We will be pleased to offer further information in support of this position to assist the Inspector with the Inquiry in 2020. The decision of the Secretary of State for Transport on this issue will be written into the Protective Provisions for the Order and both parties agree to abide by that decision.

Please note that whilst we are able to remove our original objection, we reserve the right to raise further objection if future amendments to the Order application are detrimental to our interests in connection with, or to the discharge of, our statutory duties.

We note the date of the Inquiry has been postponed for 12 months to allow the applicants more time to discuss outstanding objections from other statutory consultees and affected parties. Please do contact us with any updates using the email kslplanning@environment-agency.gov.uk.

Please do not hesitate to contact me should you wish to discuss the above.

Yours sincerely

Sophie Page

Mrs Sophie Page

Planning Specialist

Direct line 020 8474 8030

Direct e-mail sophie.page@environment-agency.gov.uk

Enc Schedule 8, *Protective Provisions Part 3 – For the Protection of Drainage Authorities and the Environment Agency* – Amended

Cc Richard Penn – Environment Agency
Rother Valley Railway
Winkworth Sherwood

STATUTORY INSTRUMENTS

201X No.[XXXX]

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Rother Valley Railway (Bodiam to Robertsbridge Junction)
Order**

SCHEDULE 8

Article 40

PROTECTIVE PROVISIONS

PART 3

**FOR THE PROTECTION OF DRAINAGE AUTHORITIES AND THE
ENVIRONMENT AGENCY**

16.—(1) The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed in writing between the Company and the drainage authority.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as consists of—

- (a) erecting any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river;
- (b) the carrying out of any work of alteration or repair of any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to affect any drainage work;
- (c) erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of any part of a main river; or
- (d) any work or operation that is in, on, under, over or within 8 metres of a drainage work which is or includes a main river or is otherwise likely to affect any such drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (e) any work likely to affect the flow, purity or quality of water in any watercourse or other surface waters or groundwater;
- (f) any work or operation likely to cause obstruction to the free passage of fish or damage to any fishery;

“a category 2 specified work” means any of the following—

- (a) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (b) erecting a culvert in any ordinary watercourse;
- (c) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (d) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010(a);

“construction” includes execution, placing, altering, replacing, relaying, excavating and removal and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

- (a) in relation to a category 1 specified work, the Agency;
- (b) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(b).

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and the spawn, habitat or food of such fish;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991(c) and the Land Drainage Act 1991;

“plans” includes but is not limited to sections, drawings, specifications and method statements;

“specified work” means a category 1 specified work or a category 2 specified work.

17.—(1) Before beginning to construct any specified work, the Company must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 27.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) is deemed to have been **refused/given** if it is neither given nor refused within 2 months of the receipt of the plans for approval or where further particulars are submitted under sub paragraph (1) within 2 months of the submission of those particulars and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, fishery, aquatic wildlife, water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

18. Without limitation on the scope of paragraph 17, the requirements which the drainage authority may make under that paragraph include conditions requiring the Company at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work;

(c) to provide environmental protection for aquatic wildlife.

19.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 18, must be constructed—

(a) Without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction and operation of such works.

(2) The Company must give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the Company at the Company's own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 23, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Company.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

(6) If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Company must, within a reasonable period provide such alternative means of access to allow the Agency to maintain the flood defence or use the equipment no less effectively than before the obstruction.

20.—(1) Subject to sub-paragraph (5) the Company must from the commencement of the construction of any protective works and the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Company for the purposes of or in connection with such protective works and the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Company is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the Company to repair and restore the work, or any part of such work, or (if the Company so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to paragraph 24 if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under subparagraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of an emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

21. Subject to paragraph 24, if by reason of the construction of any protective works or specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Company to the reasonable satisfaction of the drainage authority and if the Company fails to do so, the drainage authority may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

22.—(1) The Company must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any protective or specified work.

(2) If by reason of—

- (a) the construction of any protective work or specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Company requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 24, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 23, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

24. Nothing in paragraphs 19(4), 20(3), 21, 22(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of the Company's undertaking without the prior consent in writing of the Company such consent not to be unreasonably withheld or delayed.

25. The Company must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction or operation of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

26.—(1) Without affecting the other provisions of this Part of this Schedule, the Company must indemnify the drainage authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands;
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater, or
- (f) any damage to aquatic wildlife;;

which is caused by the construction of any of the specified works and protective works or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the work.

(2) The drainage authority must give to the Company reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Company which agreement must not be unreasonably withheld or delayed.

27. The fact that any work or thing has been executed or done by the Company in accordance with plans approved by the drainage authority, or to the drainage authority's satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Company from any liability under the provisions of this Part of this Schedule.

28. Any dispute arising between the Company and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the Company or the drainage authority, after notice in writing by one to the other.

EXPLANATORY NOTE

(This note is not part of the Order)

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.

Copies of the Order plans and sections and the book of reference referred to in the Order may be inspected at the offices of Rother Valley Railway Limited at Robertsbridge Junction Station, Robertsbridge, East Sussex, TN32 5DG