

## **RVR comments on Mrs Eastwood's response – 26 July 2021**

### **1. Loss of access to a significant part of our business**

1.1. Mr and Mrs Eastwood explain that their family sold land to RVR for a future reinstatement of the railway. That transfer took place in 1992. The transfer preserved rights in respect of one of three former farm accommodation crossings of the original railway. In 2002, as part of a land swap, rights across the railway were granted at a second location, again responding to the location of one of the former railway farm accommodation crossings. In respect of the third (the most westerly) no rights were preserved out of the 1992 transfer or granted subsequently by RVR. It is therefore incorrect that Mr and Mrs Eastwood will lose an existing agricultural level crossing over the rail line running through Quarry Farm as a result of the Order scheme.

1.1.1. Whilst the right was never conveyed, the right of way was also never withdrawn. The crossing has been used for 30 years continuously and is a vital part of the running of the business. It has never been stated that rights to access the third crossing were unpreserved, therefore it is presumed that the rights are preserved. With agricultural rights you are entitled to 28 open days a year and therefore could be used by tourist business for 28 days of the year, as we are.

#### **RVR response:**

Mrs Eastwood accepts in her response that there has not been any conveyance of a right over the railway at this location. She suggests that, notwithstanding this, a legal right has subsisted since the original railway was built. This is wrong as a matter of law. Once the original railway corridor was sold to the farmer who owned the land on either side of the former rail corridor there ceased to be any historic private right whatsoever because the land was effectively merged in a single ownership. For there to be a right of access over the railway corridor now, it would have had to be reserved by the vendor when the land was sold to RVR or expressly granted at a later date. Neither is the case here.

The "28 day" camping exemption which enables farmers to permit camping on their land for 28 days per year without a grant of planning permission is irrelevant to the question of whether there is a private right of access over the railway.

1.2. It is also worth noting that it is currently entirely lawful for RVR to run trains on the line through Quarry Farm, as this track was reinstated under planning permission and is entirely privately owned with no public crossings.

1.2.1. We're under the impression that you cannot run trains on an unfenced railway as it is uninsurable, knowing that we have livestock on Quarry Farm. Both crossings are used by the general public and were granted when we received planning permission for the shepherd's hut site.

#### **RVR Response:**

The point made about insurance and fencing does not alter the legal position, i.e. that it is already lawful for RVR to operate trains on their private property without further consent. RVR already runs occasional work trains and specials with the driver proceeding at a speed commensurate with the conditions. RVR would not commence regular passenger operations

without notifying Mr and Mrs Eastwood and ensuring that the railway is appropriately fenced.

The two crossings over which RVR has granted private rights to the Eastwoods are used by visitors to the Eastwood's land. They are not public crossings.

1.3. As explained in their objection letter, Mr and Mrs Eastwood started a camping business at Quarry Farm in approximately 2011 (that is, almost 20 years after selling its land to the railway). Since then, and expressly in the absence of train operations, RVR has permitted the Eastwoods to allow their guests to cross the railway at the location of the third original railway crossing over which no legal rights were preserved or granted. The use of the crossing is therefore permissive and not as of right (a licence was offered by RVR to the Eastwoods, but not completed).

1.3.1. We understand a license was offered; however, the terms were unacceptable as the termination term of 3 months would prevent us from making advance bookings.

**RVR Response:**

Mrs Eastwood's statement that it was the terms of the licence that were unacceptable rather than that no licence was needed is consistent with there being no crossing "as of right".

1.4. The former crossing is located approximately 325m or so from the nearest of the two preserved accommodation crossings and it is worth noting that Mr and Mrs Eastwood constructed a track from their campsite along the line of the railway to that crossing in anticipation of its use by their guests.

1.4.1. We have not installed a track along the side of the field. This is a complete fabrication. The only vehicular access is driving on the field which is often wet/impassable, as this is well within the floodplain of Rother. When the field is flooded, the only access to the end of the farm is on the pedestrian third crossing.

**RVR Response:**

The attached two photographs show the track from the camping site towards the site entrance and the access to that entrance. The track is marked out with posts and is mown rather than hard-surfaced.

In respect of flooding, Capita was asked to consider the points made in Mrs Eastwood's response, and has concluded as follows:

The riverbank and land adjacent to the western camp site (see Figure 1) are at a similar level to the low points in the riverbank adjacent to the field to the north east. Based on the LiDAR shown in Figure 1, ground levels in the western camp site are generally between 3.5 mAOD and 4.25 mAOD, and the lowest points along the river bank are in the region of 3.8 mAOD.

Figure 1 also shows that the ground levels along the marked-out track vary between 3.4 mAOD and 4.25 mAOD. The raised riverbank along Field 1 to the north east (as shown on Figure 1) is at levels greater than 3.9 mAOD. These ground levels and the flood modelling suggest that both the camping site and Field 1 (including the track) would flood from the river

at broadly the same time and frequency. It is noted that Field 1 slopes down from the western camp site towards the east and therefore the elevation of the eastern part of Field 1 is lower than the camping area to its west.

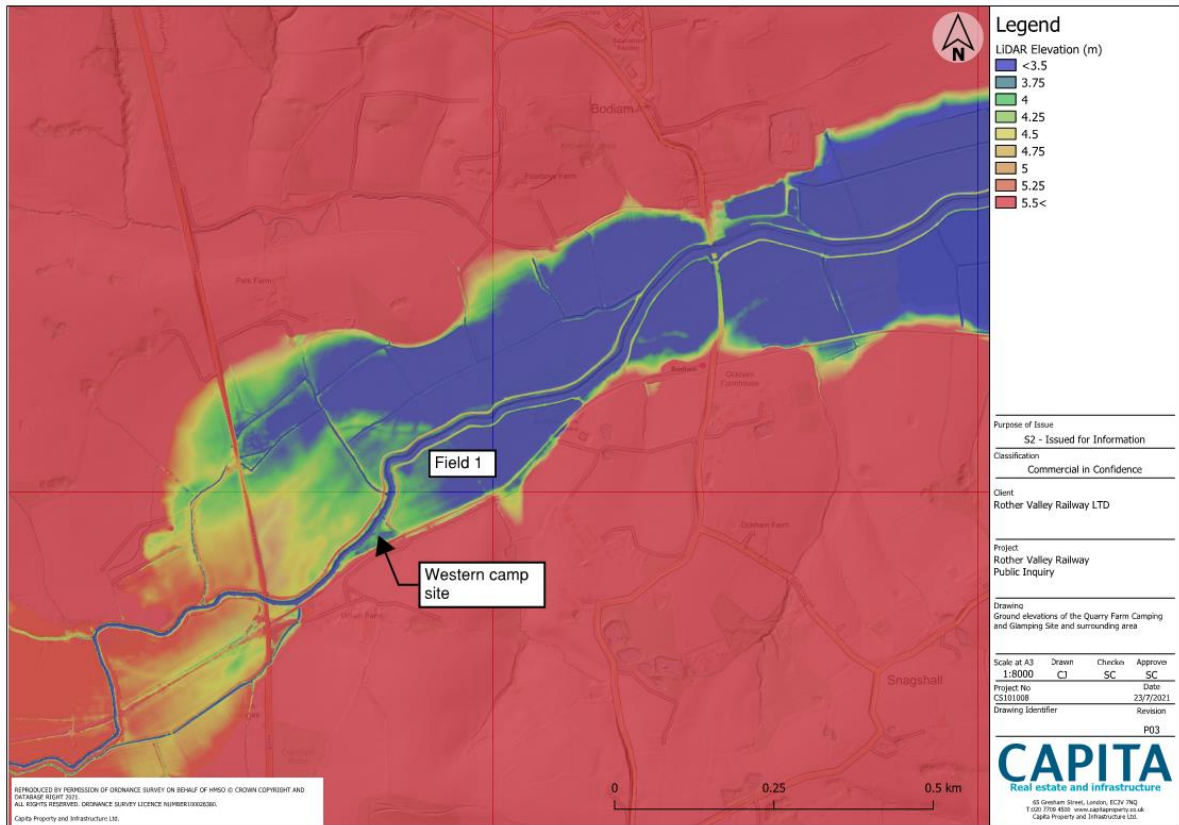


Figure 1 Ground levels based on LiDAR

The historic record of high river flows at Udiam river gauge indicates that flooding from the river is normally in the winter months between September and March. Although flooding could happen in the summer months the historical records indicate this is uncommon. It is assumed, therefore, that flooding is unlikely during the period most popular with visitors and, in particular, the period during which Mr and Mrs Eastwood are considered likely to take advantage of the 28 day rule (56 days this year).

Another potential source of flooding is surface water flooding. The extent of flooding from surface water is shown in Figure 2. This shows that the western camp site is at low risk of flooding from this source. It is also apparent that the track from the existing accommodation crossing to the western camp site is at a very low risk of flooding from surface water flooding.

Figure 2 Flooding from surface water map



1.5 For purposes of reference, the crossing referred to is located, albeit not marked specifically (for obvious reasons), on Sheet 8 of the Order plans (RVR/23).

1.5.1. For reference we have included a photograph of the historic map displayed in the Bodiam Railway Station, which shows where the third crossing is located.

#### RVR Response:

The parties are in agreement regarding the location; however, this does not alter the fact that there is no existing right of way over the railway.

1.6. OBJ/1014 states that the loss of the westerly crossing will have an impact on their business of a loss of up to 60% of camping revenue, though how this figure is arrived at has not been explained or substantiated since 2018. As noted in the objection letter, OBJ/1014 has the benefit of two of the three rights of access over the original railway and has constructed a track specifically for the use of their campers. It is understood that OBJ/1014 contends that the loss of business referred to, and consequent loss of revenue, is due to the reluctance of their campers to walk the extra few minutes to the nearest crossing provided over the railway. RVR does not consider that the short additional distance would give rise to “a very significant” effect on OBJ/1014’s camping business but, in any event, the Eastwoods have only enjoyed temporary permissive use of the westerly crossing to date because regular railway operations have not commenced.

1.6.1. Although Udiam and the Poplars site have only been open 28 days a year they have attracted a higher volume of guests than the Hop Pickers Wood site which only has

10 pitches. Therefore this has made up 60% of the turnover post-covid. With the opening of the 56 day rule this sales volume has dramatically increased on that side of the railway as we have opened camping around the perimeter of Gable Meads field to try and make up some of the losses endured in the period. Nowadays family campers expect to park on or very close to their pitches for convenience. The quantity of equipment and luggage brought far exceeds what anyone is willing or in the case of families, about to carry "an extra few minutes" (I'm sure it's longer); we are not running a fitness/hiking boot camp in the Brecon Beacons: it's leisure camping. To expect family campers to 'toughen up' will send them elsewhere.

**RVR Response:**

The position is that use of the westerly crossing by Mr and Mrs Eastwood has only ever been permissive pending the commencement of railway operations.

1.7. Finally, on this point of objection, Mr and Mrs Eastwood were not entitled to a landowners' notice – as no compulsory powers have been sought in respect of their interests – and they are not statutory objectors for the purposes of the application.

1.7.1. Although we are not statutory objectors, we believe we will suffer significantly increased flood water directly on the land used for camping and the mitigation for the work done further up the track which is on this piece of land, we are directly affected. There has been no flood modelling provided for the effects on our land of the railway reinstatement further west. Whilst RVR wish to show flooding can be managed in Robertsbridge and Salehurst, we are very concerned that flood risks will simply be pushed further down the valley to our land, over the Bodiam Road beyond and increase flood pressure and subsidence risk on Bodiam Bridge, which has only just been shored up and repaired due to previous subsidence.

**RVR Response:**

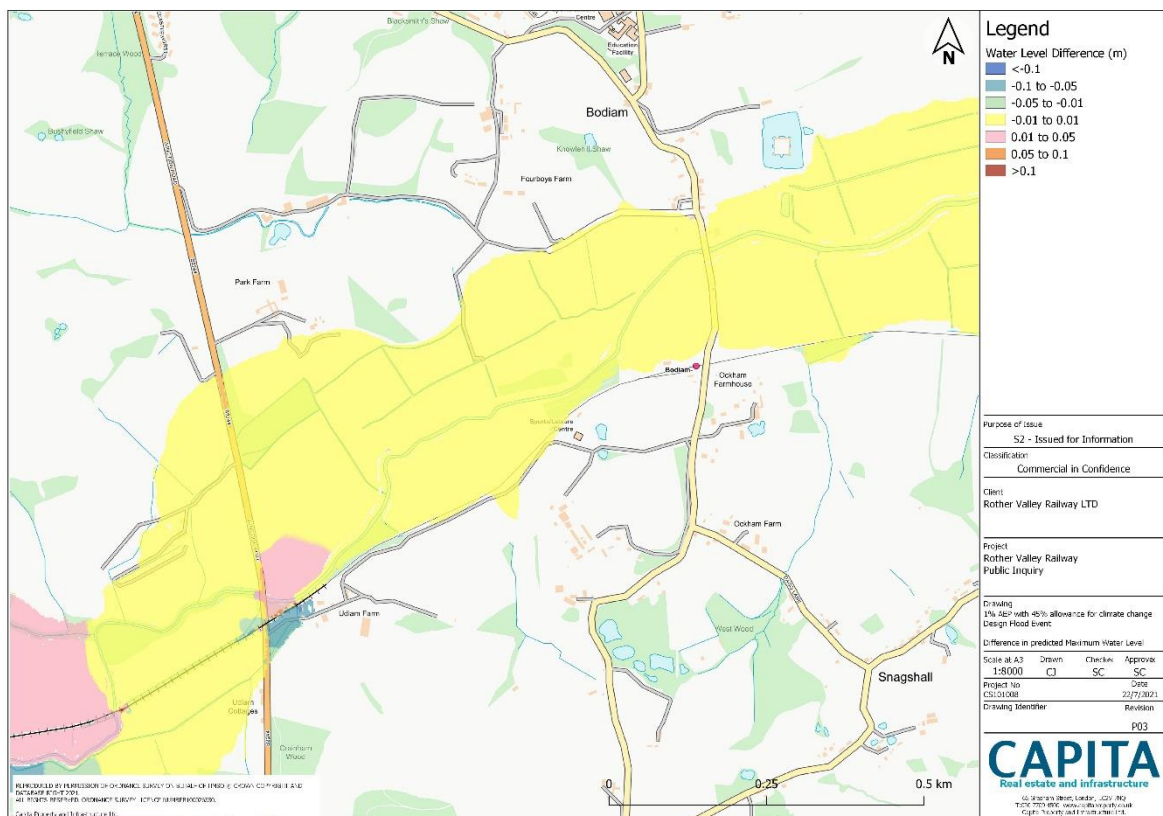
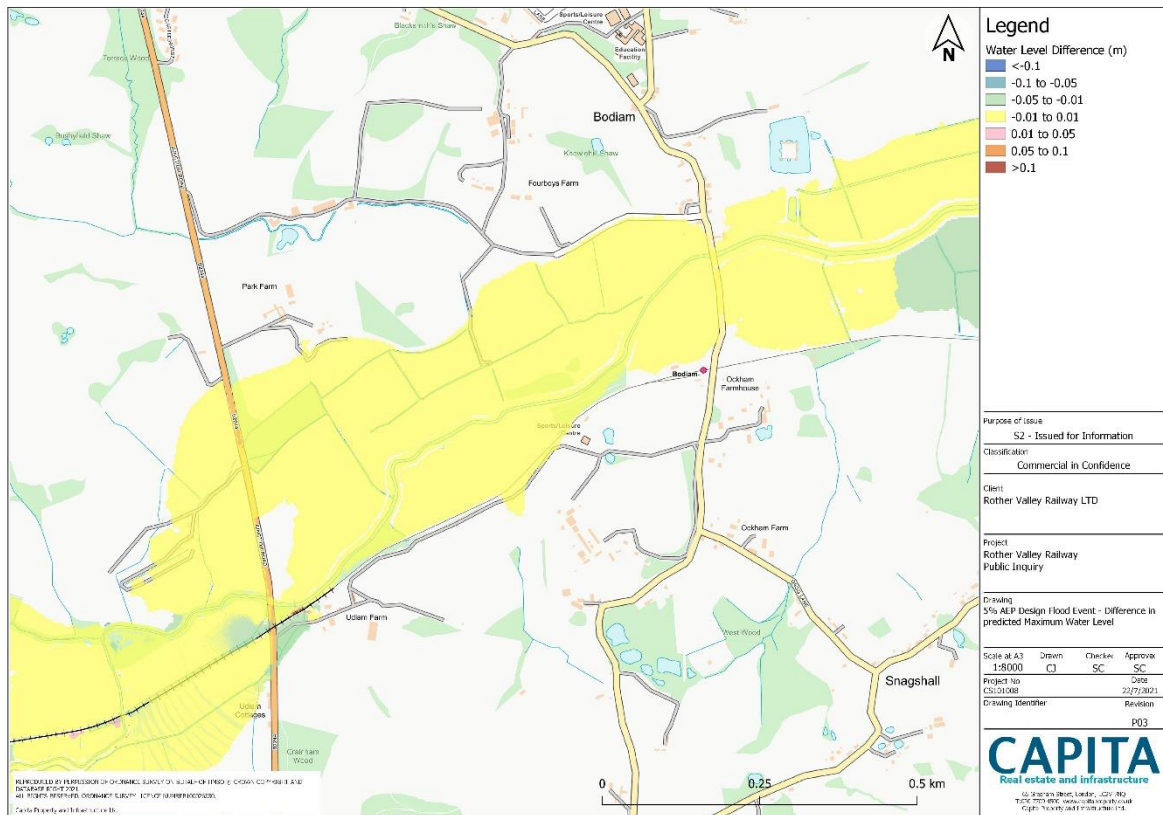
This is a legal point and we note that Mrs Eastwood now accepts she is not a statutory objector.

This response introduces a new assertion regarding increased flood risk directly onto the camp site as a result of RVR construction works to the west. Again, Capita has been asked to confirm the position and advises that such concern is unfounded.

The flood modelling undertaken for the Rother Valley Railway extends to approximately 2.7 km downstream of Bodiam. It therefore includes the reach of the River Rother adjacent to Quarry Farm between the B2244, Junction Road and the Main Road through Bodiam. As stated in the Flood Risk Assessment (2021), flood risk is not increased elsewhere by the proposed railway. This is demonstrated by the flood modelling. The difference in predicted maximum water level between the baseline and 'with railway' scenario is shown in Figure 3 below for the 5% AEP design event and the 1% AEP with climate change allowance of 45% respectively. The predicted water levels at Quarry Farm are within the -0.01 m to 0.01 m band indicating no change in flood risk.



Figure 3 Difference in modelled water levels between baseline and 'with railway' scenario



## **2. Illegal appropriation of our farmland**

2.1 Quite separately OBJ/1014 asserts that the land shown (shaded green on Sheet 8 of the Order plans (RVR/23)) as being in the ownership of RVR is not accurate and that the 1992 transfer was limited to 4m either side of the track bed of the railway.

2.2. This assertion is also incorrect. RVR acquired the freehold title to ESX186187 and ESX187801. The land transferred to RVR on 9 April 1992 was, in places, wider than 4m either side of the track bed. (Office Copies for these titles are included at Appendix 3.)

2.3. Consequently, there is no issue of illegal appropriation nor did RVR register an interest in more land than was actually transferred to it in 1992. Although it is suggested in the objection letter that Mr and Mrs Eastwood instructed solicitors in respect of this matter (in 2018) this does not appear to have been pursued, as it could have been.

Regarding land ESX187801, this was registered by the RVR without completing the lawful notifications to the adjoining landowners, therefore RVR have not followed the correct process of land registry.

### **RVR Response:**

Conveyancing was carried out by reputable solicitors on behalf of RVR, including registration of the transferred land. Mrs Eastwood's assertion, which is not evidenced or otherwise substantiated, is not accepted and would require RVR's solicitors to have acted in breach of their professional and regulatory obligations. It is also noted that the above claim is a departure from the Eastwoods' objection letter dated 30 May 2018 to the effect - also unfounded - that RVR registered, and therefore illegally appropriated, more land than was transferred to it by OBJ/1014 in 1992.

## **3. Blocking a legal right of way**

3.1. The objection letter refers to an apparent private right of passage over land belonging to Udiam Farm. RVR does not have an interest in Udiam Farm, nor is it seeking to acquire an interest in, or rights over, Udiam Farm under the Order. Consequently, this matter is not relevant to the proposed Order nor to the inquiry.

3.1.1. Although the Udiam Farm House driveway was moved by Mr Broyd (the previous owner), Quarry Farm retains the right to access Junction Road via the original driveway. This retained access is directly beside the level crossing and has not been considered in the RVR Planning Application or drawings of the level crossing. We are concerned this was deliberately left out as RVR understood this could be problematic for the level crossing scheme.

### **RVR Response:**

This matter is outside the scope of the application with which the Inquiry is concerned.

Planning permission RR/2011/922/P was granted on 21 July 2011 for the relocation of the former access to Udiam Farm House, further from the proposed Junction Road level crossing. A planning condition required the original access to be stopped up. The permission was

implemented in accordance with the planning condition. Accordingly, it would be a breach of condition to re-create the former access and would require a further planning application in any event. Were such application to be made, the local planning authority would have to consider the impact of the level crossing (which has planning permission) on allowing the access to be moved further north. Any claimed right of way would not affect the planning position. The dispute, if there is one, would be a private law dispute between the Eastwoods and the current owners of the property who are unrelated to either RVR or the RVR Heritage Trust.

#### **4. Exclusion of the right of way from TWA0 and previous planning approval**

4.1. Mr and Mrs Eastwood's complain is that the (alleged) right of way referred to in the third limb of their objection is not shown on sheet 7 of the Order plans. However, as noted above, this matter relates to property not in the ownership of RVR and is outwith the Order limits. Consequently, this matter is not relevant to the proposed Order nor to the Inquiry.

4.1.1. The above comment demonstrates RVR deliberately overlooked this. This matter is relevant as it makes the crossing on Junction Road unusable, and needs addressing with Highways. We therefore object to the TWA0 as important information has been excluded.

#### **RVR Response:**

Please see response to 3.1.1 above

#### **5. Conclusion**

5.1. On receiving OBJ/1014, RVR wrote to the Eastwoods on 11 August 2018 inviting them to explain the legal grounds of their assertions and providing an assurance that it was not their intention to obstruct the Eastwoods' legal rights. That invitation has not been taken up.

5.1.1 We have not received any invitation to explain the legal grounds of our points, and therefore reject this comment. Regarding the flooding issue, flooding cannot end on the edge of the planning application because we will be the recipients of the increased flood water. It is entirely unreasonable and self-serving that RVR have used land outside the planning application to mitigate actions they are taking inside of it. We believe the flooding risks must be looked at by the EA as it directly impacts our farmland and tourist operations.

#### **RVR Response:**

RVR wrote to Mr and Mrs Eastwood in 11 August 2018 (see Appendix 2 of **INQ/043**) and received no formal reply. For the sake of completeness, it is noted that a meeting was subsequently held on 31 July 2019 at which John Eastwood and Nick Eastwood were present with representatives of RVR but no conclusions were reached.

As remarked above, this is the first time that flooding has been raised as an issue by this



objector and Capita has confirmed that the concerns raised are unfounded.

5.1.2. Restricted access to our site would force closure of a significant part of our business, restricting the number of guests we accommodate. We would be forced to make a significant number of redundancies. On our last payroll (June 2021) we had 22 PAYE employees for the Hub and The Original Hut Company, with a total wage bill of £23,893.15. The Hub acts as a platform to support and promote numerous other small local partner businesses, some of which are mentioned on our website [www.thehubquarryfarm.co.uk](http://www.thehubquarryfarm.co.uk) These companies work on the site offering a wide range of activities to enhance the experience for our guests. They benefit greatly from the volume of guests staying with us. Epic Life for example run water sports and other activities with low environmental impact from the riverbank. Restricted access over the railway would impact them severely. The current success of their business has meant they have recently increased their employee numbers to 10 over the summer to meet the demands of our campers. The knock-on effect from closing our business would be far greater reaching than just redundancies from our own team. RVR claim to be supporting local businesses and tourism, The Further development of an out dated and polluting railway would seem to be at the expense of a successful, environmentally sound dynamic young business through which community and inclusion run as a core value.

**RVR Response:**

Mr and Mrs Eastwood started their camping business relatively recently and in contemplation of the railway extension along its original alignment.

There is no evidence to support the claims made by Mrs Eastwood and, of course, the camping business will continue to benefit from the two existing railway crossings where they do have rights of access.

RVR remains happy to talk to Mr and Mrs Eastwood to see whether there is scope for working with them to restore the very good relationship they have previously enjoyed.







