

## THE ROTHER VALLEY (BODIAM TO ROBERTSBRIDGE JUNCTION) ORDER

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### FURTHER RESPONSE TO LANDOWNERS' COSTS APPLICATION

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1. In “reply” to a 27 paragraph response prepared by RVR to the Landowners’ costs submissions, the Landowners have submitted a 44 paragraph document which raises a number of points which were not made in the application itself. For that reason, it is necessary for RVR to file this further response. In the interests of brevity, these points are made in short form.
2. Paragraphs 5-9: HE was consulted at pre-application stage, and indeed there was detailed engagement with HE starting in 2010. See paragraph 3.3 of the Consultation Report. HE did not respond to the pre-application letter. In any event, since HE had not objected to the grant of permission, and directed that certain planning conditions be imposed, it was reasonable to expect that the same highway authority would not object to the principle of the application for the statutory powers required to implement that planning consent; particularly given the presumption in its licence that it will allow the formation of a new “connection” unless there are economic or safety grounds for not doing so. Notably, the Landowners do not address the point that, in any ordinary course of events, matters of detailed design relevant to highway design would be settled *after* the making of a TWAO, pursuant to protective provisions for the highway authority. HE’s approach to this application was exceptional. There was no reason to think that HE would not be satisfied with protective provisions, in the same way it had been satisfied with conditions on the planning permission.
3. Paragraphs 10-12: the Landowners suggest that various matters are not explained in RVR’s response. Those points were not put to RVR’s witnesses, nor were they addressed in terms on the costs application. The points could also have been raised with HE’s witnesses. It is unreasonable for the Landowners to take new points of fact

in their Reply on the costs application which have not been tested at the Inquiry. In fact, HE's position in its objection and in its Statement of Case was considered in detail by RVR, and discussions were held to establish whether protective provisions and/or a side agreement would suffice. If those discussions had proved fruitful HE's objection would have been resolved in short order. Regrettably they were not, hence the joint application to adjourn the Inquiry, which was also supported by ORR and found to be appropriate by the Secretary of State.

4. Paragraphs 13-19: the Landowners misrepresent RVR's position. RVR's response explained that there was little evidence of any actual "abortive" costs and, given that the request was made before the PIM and more than 3 months before the Inquiry date, the costs application should have explained exactly what work had been done in preparation of proofs and why the work that had been done was abortive. The consultants and leading counsel instructed at the time were presumably the same ones who were instructed for the Inquiry. The explanation of *what* abortive work was carried out in 2018-2019 is still missing.
5. Paragraphs 20-22: it is not "incumbent" on an applicant to keep objectors informed of negotiations with other objectors, nor to inform objectors of procedural matters. The latter task falls to the Orders Unit and PINS.
6. Paragraphs 23-37: these paragraphs seek to supplement the original application for costs rather than to form a proper reply. They do so in a way which is incomplete. The suggestion that "numerous changes" were made to the proposals is just wrong. What has happened is that further detailed design, at a level of detail which is unnecessary for the purposes of establishing the principle of a level crossing of the A21 through the Order, has been carried out. The Order scheme (i.e., the proposal as described in the draft Order and as shown within its limits of deviation) has not been changed.
7. Paragraph 24: the Reply omits from this summary the point that the Landowners did not have any sustainable highways grounds on which to oppose the making of the Order, as was clear at the Inquiry and from the fact that the Landowners' own Closing Submissions acknowledged that the Order should not be refused on the grounds of either congestion on the A21 or highway safety.

8. Paragraph 32 inaccurately summarises the email of 15 July 2020. The email did not say that the material was required for the Landowners to prepare their evidence. It explained why the material would not be provided at that stage. It read:

“I understand that regular meetings are being held between HE and the RVR team, which have been drilling down into the detail of those elements of the proposed scheme that affect the A21.

The sharing of draft technical material that is subject to ongoing discussion would be premature at this stage. It has potential to complicate and delay the resolution of what are essentially detailed engineering and SRN issues.

I am instructed that material resulting from the meetings will be shared more widely – as a package - once HE has everything it has asked for in a final form. The RVR team is working hard to develop the detailed additional information requested by HE, and hope that this will be finalised within a matter of weeks.”

9. In fact, the material was not finalised for many more months, during which time there was extensive engagement with HE prior to the Departures submission.

10. Paragraph 35 also inaccurately summarises correspondence from RVR in suggesting that there was an assurance as to what information would be provided in March 2021. The letter of 29 January 2021 in fact stated:

“The detailed drawings relating to the level crossing affect the Highways England land only – apart from the two small parcels where we now understand your clients assert prescriptive rights. In relation to the rest of the line where it crosses your land, the detailed design will be worked up once statutory powers have been obtained in the usual way. The HE drawings are to be submitted with the rest of the Further Environmental Information on 8 March. However, I must stress how eager the RVR team is to co-operate with your clients to reduce adverse impacts on their farming operations and that any progress regarding accommodation crossings and other matters that can be made in the coming months would be regarded as without prejudice to your clients’ ongoing objection to the scheme. The RVR team also remains ready and willing to treat with your clients for the acquisition of land.”

11. Similar points were reiterated by RVR to the Landowners in February 2021. On 26 February 2021, RVR wrote to the Landowners stating: “The salient point here is that you are requesting detailed design information at the pre-authorisation stage of this scheme. You must surely be aware that there is a long-established principle that only outline design is required for the purposes of statutory authorisation of railway schemes”. The same point holds good today.

12. Paragraph 38: there is, again, no explanation of what work was done and why it proved to be abortive. The Order scheme did not change.
13. Paragraphs 39-44: the Landowners confirm these matters do not form part of the costs application, so RVR will not respond to them. The matters are addressed in Closing Submissions in any event.

Richard Turney

Landmark Chambers

2 September 2021