



The Planning Inspectorate

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# Report to the Secretary of State for Transport

by **I Jenkins BSc CEng MICE MCIWEM**

an Inspector appointed by the Secretary of State

Date: 19 January 2023

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**TRANSPORT AND WORKS ACT 1992**

**ACQUISITION OF LAND ACT 1981**

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

Inquiry opened on 6 July 2021

File Ref: DPI/U1430/18/21

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## CASE DETAILS

### Purpose

- The purpose of the *Rother Valley Railway (Bodiam to Robertsbridge Junction) Order* (the Order) is to enable the reinstatement of a section of railway track between Udiam and Robertsbridge, linking to existing sections of track and thereby completing the rail link between Bodiam and Robertsbridge Junction. The Order would provide statutory authority to construct the new railway and maintain the new and existing lengths of track as a heritage railway from Robertsbridge Junction to Bodiam, where it would join the existing heritage railway to Tenterden, and would authorise the crossing of the public highway in a number of locations. It would also authorise the acquisition of land and rights over land and the temporary use of land in connection with the railway in case it is not possible to acquire the necessary interests by agreement.<sup>1</sup>

### Rother Valley Railway (Bodiam to Robertsbridge Junction) Order

- The Order is drafted under sections 1 and 5 of the Transport and Works Act 1992. The application for the Order was made to the Secretary of State for Transport on 19 April 2018.<sup>2</sup>

**Summary of Recommendation: The Order, subject to modifications, should be made.**

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## 1. PREAMBLE

### 1.1. The Inquiry and site visits

- 1.1.1. I have been appointed by the Secretary of State for Transport (the Secretary of State) to conduct an Inquiry to hear representations regarding an application by Rother Valley Railway Limited (RVR) to the Secretary of State to make an Order, all as described in the case details above.
- 1.1.2. The Inquiry was originally scheduled to open on 26 May 2020 and an associated pre-Inquiry meeting was held on 24 February 2020. However, the Inquiry was postponed due to the emerging Covid-19 pandemic. The Inquiry subsequently opened on 6 July 2021 and was preceded by a second pre-Inquiry meeting held on 19 May 2021. The Inquiry, which sat under the terms of the *Transport and Works Act (Inquiries Procedure) Rules 2004* (Inquiries Rules), sat for 19 days.<sup>3</sup> The Inquiry was adjourned on 4 August 2021 until 2 September 2021, in order to allow interested parties to prepare to deal with new evidence

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<sup>1</sup> RVR/18.

<sup>2</sup> RVR/01 & 65.

<sup>3</sup> 6-9, 13-16, 19-21, 23, 27-28, 30 July, 3-4 August and 2-3 September 2021.

submitted by RVR concerning floodplain storage compensation. I closed the Inquiry on 3 September 2021.

- 1.1.3. The Programme Officers for the Inquiry were Mrs Joanna Vincent and Mrs Brenda Taplin (Gateley Hamer plc).
- 1.1.4. Before, during and after the Inquiry, I undertook unaccompanied visits to various locations which were the subject of representations. I carried out accompanied site visits on 27 and 28 July as well as 28 and 29 September 2021.
- 1.1.5. During my site visits a section of the public footpath Ewhurst 1, which runs along a bank of the River Rother to the west of Austen's Bridge (Bridge 26) and the old pill box, was closed as predicted by RVR at the Inquiry.<sup>4</sup> However, I had access to the land bounded to the south by that section of the river and to the north by the route of the proposed railway, during my visit to Moat Farm. Furthermore, I had access to the adjacent fields on the southern side of that section of the river when visiting the 'indicative areas for floodplain storage compensation' identified by RVR.<sup>5</sup> I consider that was sufficient for me to be able to put the evidence associated with that locality into context and that it was not necessary to walk the precise route of footpath Ewhurst 1 in order to do so.

## 1.2. **Purpose of the Order**

- 1.2.1. The Explanatory Note to the draft Order<sup>6</sup> indicates that the Order, as drafted, would authorise Rother Valley Railway Limited (RVR) to construct a new railway<sup>7</sup> and maintain the new and existing<sup>8</sup> railways in East Sussex from the point at which the Kent and East Sussex Railway (KESR) terminates at Bodiam to a new terminus at Robertsbridge Junction Station in Robertsbridge.
- 1.2.2. In relation to land, the draft Order and accompanying plans and Book of Reference provide for compulsory acquisition of the land required permanently for the railway and for temporary use of land for purposes of construction and for maintenance during the specified maintenance period. There is also a category of land where RVR's access is limited to surveys and investigations, necessary to ensure full compliance with the conditions of an associated planning permission<sup>9</sup>.

## 1.3. **Objectors to the Order, supporters and others**

- 1.3.1. Upon receipt of the Order application, the Department for Transport (DfT) invited representations from interested parties. In response 1,002

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<sup>4</sup> RVR/23 sheet 6.

<sup>5</sup> INQ/149.

<sup>6</sup> RVR/1.

<sup>7</sup> RVR/27 sheet 1-Railway No. 3.

<sup>8</sup> RVR/27 sheet 1 Railway nos. 1 and 2.

<sup>9</sup> RVR/7

objections were initially registered<sup>10</sup>, 219 letters of support<sup>11</sup> and 20 other representations<sup>12</sup>. Subsequently, 3 further letters of objection<sup>13</sup> and 4 letters of support<sup>14</sup> were received.

1.3.2. Before the Inquiry opened, 3 objections had been withdrawn<sup>15</sup>. During the course of the Inquiry, 5 parties withdrew their objections (OBJ/30, 31, 54, 46 and 53). The Environment Agency withdrew its objection in part<sup>16</sup>.

#### 1.4. **The Main Grounds of Objection**

1.4.1. The main grounds of objection relate to: the traffic and safety impacts of the proposed level crossings; environmental/ecology concerns; the use of compulsory purchase powers; the impact on flood risk; the effect on the economy; the demand for parking in Robertsbridge; and, the adequacy of the documents submitted in support of the Order scheme.

#### 1.5. **Statement of Matters**

1.5.1. The Secretary of State issued a Statement of Matters (SoM), dated 29 November 2018, pursuant to Rule 7(6) of the *Inquiries Rules*. This sets out the matters about which the Secretary of State wishes to be informed for the purposes of consideration of the draft Order. The matters listed provide the basis for my 'Inspector's Conclusions' presented later in this Report. The matters are:

- 1) The aims and the need for the proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order which would authorise RVR to construct, operate and maintain a re-instated railway along the route of the former Rother Valley Railway between Bodiam and Robertsbridge (Order scheme). The justification for the particular proposals in the draft Transport and Works Act Order (TWAO), including the anticipated transportation, environmental and socio-economic benefits of the project.
- 2) The main alternative options considered by RVR and the reasons for choosing the proposals comprised in the scheme.
- 3) The likely impact of the exercise of the powers proposed in the TWAO on landowners, tenants, local residents, businesses and statutory undertakers including any adverse impact on their ability to carry out their business or undertaking effectively and safely and to comply with any statutory obligations applying to their operations during construction and operation of the scheme. Consideration under this heading should include:

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<sup>10</sup> OBJ/: 1-199; 601-782, 784-787; 789-799; 1000-1034; and petitions 200-600 & 801-973 (146, 613, 635, 783, 788, 800 and 974-999 not used).

<sup>11</sup> SUPP/: 1-160; and 162-220.

<sup>12</sup> REP/: 1-20.

<sup>13</sup> OBJ/: 1035-1037.

<sup>14</sup> SUPP/: 221-224.

<sup>15</sup> OBJ/: 15, 680 & 1033.

<sup>16</sup> OBJ/178-0, 178-1 & 178.

- a) the impact of the three new level crossings on safety, traffic flows and congestion particularly in relation to the A21 and future plans for this road;
  - b) impact of the scheme on roads, footpaths and bridleways. including the impact on access to property and amenities;
  - c) the effects on flood risk, air quality, water and waste discharge and noise;
  - d) impact on heritage assets, the surrounding natural habitats, fauna and flora and the High Weald Area of Outstanding Natural Beauty; and,
  - e) impact from changes to parking provision.
- 4) The measures proposed by RVR to mitigate any adverse impacts of the scheme including any protective provisions proposed for inclusion in the draft TWAO or other measures to safeguard the operations of utility providers or statutory undertakers.
  - 5) The extent to which the proposals in the TWAO are consistent with the *National Planning Policy Framework* (the Framework), national transport policy, and local transport, environmental and planning policies.
  - 6) The adequacy of the Environmental Statement (including the data underpinning it) submitted with the application for the TWAO, having regard to the requirements of the *Transport and Works (Applications and Objections Procedure) Rules 2006*.
  - 7) Whether the statutory procedural requirements have been complied with.
  - 8) The purpose and effect of any substantive changes to the draft Order proposed by RVR or other interested parties, and whether anyone whose interests are likely to be affected by such changes has been notified.
  - 9) Having regard 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*, 28 February 2018 (since updated by *Guidance on Compulsory purchase process and The Crichel Down Rules, July 2019*)<sup>17</sup>:
    - 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;

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<sup>17</sup> INQ/8 (now renamed Department for Levelling Up, Housing and Communities *Guidance on Compulsory purchase process and The Crichel Down Rules, July 2019*).

- 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.

10) Any other relevant matters which may be raised at the Inquiry.

## 1.6. **Legal and Procedural matters**

### *Request for Further Environmental Information*

- 1.6.1. In June 2020, the Secretary of State directed RVR to provide Further Environmental Information (FEI) pursuant to Rule 17 of the *Transport and Works (Application and Objections Procedure)(England and Wales) Rules 2006*. That information was submitted on 8 March 2021 and placed on the Inquiry website, following which there was a period of 42 days for representations on it, ending 19 April 2021. One response was received by the Department for Transport, which was submitted by OBJ/1002, dated 19 April 2021, and has been taken into account.<sup>18</sup>

### *Inquiry format and programming*

- 1.6.2. As a result of the Covid-19 pandemic, the Inquiry was conducted for the most part in a virtual format, using Microsoft Teams. However, in order to accommodate a small number of interested parties who indicated that they wanted to give evidence but were unable to do so using Microsoft Teams, a blended session was held on 27 July 2021. That session, which I held at the Woodlands Enterprise Centre near Flimwell<sup>19</sup>, was conducted in a Covid-19 safe manner. The only other 'in person' attendees being the Programme Officer, the legal representatives of RVR and the small number of witnesses. All others, who wished to do so, attended remotely using Microsoft Teams.

### *Revised National Planning Policy Framework*

- 1.6.3. During the course of the Inquiry, the February 2019 version of the *National Planning Policy Framework* was replaced by the July 2021 version.<sup>20</sup> That change was announced at the Inquiry and interested parties were given an opportunity to comment on whether any associated revisions were relevant to their case. Responses were received from RVR, the Landowners and Robertsbridge Cricket Club<sup>21</sup>. Against this background, I consider that it would not prejudice the interest of anyone to base my findings on the *National Planning Policy Framework, July 2021* (the Framework) and therefore, I have done so.

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<sup>18</sup> RVR/66 para 1.5.

<sup>19</sup> Woodlands Enterprise Centre, Hastings Road, Flimwell, Wadhurst, TN5 7PR.

<sup>20</sup> INQ/91.

<sup>21</sup> INQ/120-122.



*Planning permission*

- 1.6.4. Planning permission Ref. RR/2014/1608/P<sup>22</sup> was granted on 17 March 2017 for the reinstatement of the Rother Valley Railway from Northbridge Street, Robertsbridge, to Junction Road, Udiam.

*Costs applications*

- 1.6.5. Prior to the close of the Inquiry, a costs application was made by the Landowners against RVR. RVR was provided with an opportunity to respond before the Landowners had a final say. All the submissions were made in writing. This application is the subject of a separate Costs Report to the Secretary of State.

1.7. **Scope of this Report**

- 1.7.1. The purpose of this report is to allow the Secretary of State to come to an informed view on whether it would be in the public interest to make the Order. This report contains a brief description of the scheme subject of the draft Order, the key points of the evidence presented and my conclusions and recommendations. Lists of Inquiry appearances, documents, and abbreviations used are attached as appendices. Proofs of evidence were added to at the Inquiry through written and oral evidence. References in the text given in square brackets, [ ], are to paragraphs elsewhere in the Report.

2. **THE PROPOSED SCHEME**

- 2.1. The former railway line between Robertsbridge and Tenterden was closed in 1961. In 1974, the line between Tenterden and Rolvenden was re-opened as the KESR. The line was further reinstated to Bodiam in 2000. The line between Tenterden and Bodiam is operated as a heritage railway and tourist attraction. Additional land has since been purchased at the Bodiam and Robertsbridge ends of the route, allowing some track to be re-laid, but leaving a gap between Junction Road in Udiam and Northbridge Street in Robertsbridge, the section of the route which is referred to by RVR as the 'missing link'.<sup>23</sup>
- 2.2. The proposed Order would authorise RVR to construct and maintain a new railway between Junction Road at Udiam and Northbridge Street in Robertsbridge. It would include a number of crossings of the public highway/rights of way: Northbridge Street (Robertsbridge); A21 (Robertsbridge); B2244 (Junction Road, Udiam); footpath S&R 31, South from Church Lane, Robertsbridge; and, bridleway S&R 36b, south of Salehurst. The Order would also provide statutory authority for RVR to maintain the two existing lengths of railway either side of the new railway. The first being the line, approximately 1.2 km long, between the KESR railway at Bodiam and the start of the new railway at Junction

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<sup>22</sup> RVR/7.

<sup>23</sup> RVR/66 paras 1.9-1.13.

Road, Udiam (Railway no. 1<sup>24</sup>) and the second being the line, approximately 0.8 km in length, between the Robertsbridge end of the new railway and the terminus at the new Robertsbridge Junction Station (Railway no. 2).<sup>25</sup>

### 3. **THE CASE FOR ROTHER VALEY RAILWAY LIMITED (RVR)**

#### 3.1. ***Introduction***

3.1.1. The Promoter, RVR, seeks an Order under the *Transport and Works Act 1992* to authorise the construction of a new railway and the maintenance of two existing stretches of railway lying between Robertsbridge and Bodiam in East Sussex. The Order would authorise, amongst other things, the compulsory acquisition of land and the creation of level crossings at the B2244 (Junction Road) at Udiam, Northbridge Street and at the A21 in Robertsbridge, as well as at a bridleway.

3.1.2. The scheme which underpins the Order is the completion of the restoration of a railway branch line which was lost in the 1960s. The line has been reinstated between Tenterden and Bodiam Castle, and it is operated as KESR. A section of track at either end of the route between Robertsbridge and Bodiam have also already been reinstated. RVR says that the Order would secure the completion of the 'missing link' between them, reconnecting the railway to its original mainline connection at Robertsbridge Junction. RVR confirms that it is and would continue to be a 'heritage' or 'touristic' railway.

3.1.3. RVR indicates that its submissions follow, broadly, the Secretary of State's Statement of Matters in the following order:

- a) SoM1)-Aims and benefits of the scheme
- b) SoM2)-Alternatives & 3)a)-Level crossing safety
- c) SoM3)a) & b)-Impact on roads and other public rights of way
- d) SoM3)c)-Flood risk
- e) SoM3)d)-Ecology
- f) SoM3)d)-Heritage
- g) SoM3)d)-Landscape
- h) SoM3)e)-Car parking
- i) SoM5)-Consistency with Local and National Policy
- j) SoM6) & 7)-The environmental statement and other procedural requirements

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<sup>24</sup> RVR/23 sheet 1 Railway nos. 1 and 2.

<sup>25</sup> RVR/66 paras 1.32-1.37.

- k) SoM8)-Proposed changes and
- l) SoM9)-The compulsory purchase case.

3.1.4. Each point is addressed below. SoM4)-Mitigation measures and protective provisions are not addressed separately, but were relevant under each topic.

3.2. ***SoM1)-The aims and the need for the proposed Order and justification for the particular proposals***

3.2.1. RVR indicates that the Order scheme would deliver a range of benefits, many of which are not in dispute. In providing a new connection to the mainline, at Robertsbridge, it would open up a direct public transport link to the heritage railway. This would both encourage more sustainable means of transport to existing attractions, that is the railway itself, Bodiam Castle, and Tenterden in particular, but would also open up these destinations to new visitors. In turn, this would generate economic benefits for the local and wider area. The existing KESR would be enhanced and made more efficient by the scheme, with passengers arriving at Robertsbridge to balance out the existing demand which is centred on Tenterden. RVR considers that the area and its attractions would be opened up to visitors in a sustainable way.

3.2.2. RVR considers that one of the risks in presenting any analysis of the benefits of a scheme such as this is that the true benefits to the people who would use the railway, volunteer on the railway, and work on the railway or in businesses supported by it, are lost in economic analysis. There are undoubted quantifiable economic benefits. But, RVR says, as Councillor Prochak (Rother District Council) asked, where is the 'joy' taken into account? It is important to remember that a primary purpose of the Order scheme is to deliver benefits in terms of recreation. It would allow a day trip from London (or Hastings or beyond in either direction) on the train to one of the most attractive parts of southern England; a trip on a steam train; and, a visit to one of the nation's best-preserved castles. The children and adults lifted up by such a trip are not just passenger numbers, or sources of economic expenditure. There is a public good in providing such opportunities which is not readily capable of quantification. Further, in opening up a heritage railway, and destinations such as Bodiam Castle, the proposals 'better reveal'<sup>26</sup> these heritage assets. These are distinct and weighty public benefits that exist regardless of any economic return.

*Economic benefits*

3.2.3. There is no dispute that the Order scheme would deliver real economic benefits. RVR considers it is instructive to properly understand the Landowners' position on economic benefits before turning to why their position is unrealistically pessimistic. Mrs Evans (OBJ/1002-Economic impacts witness) recognised in her evidence that there would be economic benefits, which she valued at £2.6m over ten years, with

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<sup>26</sup> Framework para 206.

12,700 new passengers in the first year of operation and 6,400 extra passengers in subsequent years.<sup>27</sup> This economic assessment excluded construction benefits, and any wider transportation benefits (which she did not dispute). Mrs Evans agreed, in cross-examination that if one were to assess the benefit to cost ratio of a proposal such as this, it would be appropriate to look to a 30 year timescale (as explained by Mr Higbee (RVR-Economics witness) in evidence in chief). On that basis, she agreed that the Order scheme would deliver benefits in excess of £7 million, i.e. greater than the current scheme costs.

- 3.2.4. Pausing there, it is notable that Mrs Evans agreed with Mr Higbee that in delivering a benefit to cost ratio of better than 1:1, the proposal would be regarded as being capable of being invested in if it were a government funded project. RVR suggests that the Secretary of State would be unlikely to need to be persuaded on this point, given the government funded transport schemes which they regularly consider. However, this is not a government funded scheme. The money would be provided by public donations, including from generous philanthropists who share the enthusiasm of many others for heritage rail. Consequently, these are public benefits which would be privately funded.

*Visitor numbers and spending*

- 3.2.5. RVR indicates that the careful analysis presented in the Steer Report and in Mr Higbee's evidence presents a 'central case' turning on an uplift in existing visitor numbers. There are two baselines. First, there is an existing level of demand for KESR, with a main terminus in Tenterden which has no realistic public transport connections. KESR demand has fluctuated around 80,000 to 90,000 visitors a year<sup>28</sup> pre-pandemic and a baseline of 88,400 has been assumed. Second, there is an existing level of demand for Bodiam Castle, a National Trust-owned treasure which, despite its relative inaccessibility and compromised parking arrangements, attracts upwards of 176,000 visitors each year.
- 3.2.6. Mr Higbee then applies an 'uplift' on those baselines, of 15% for KESR demand and in addition 5% for Bodiam Castle demand. This generates an additional 22,000 visitors per annum. In RVR's view, these are realistic, if conservative, assumptions. The proposal would open up both KESR and Bodiam Castle to the 'London rail market'. Just the southeastern boroughs of London have a population 1.86m people<sup>29</sup> ; the wider London market has many millions more potential visitors. There is also a sizeable 'South Coast rail market', which would be connected via Hastings and Robertsbridge to KESR and Bodiam. Further, the creation of a new terminus would expand the market for those that come by car.
- 3.2.7. RVR considers that Mrs Evans' 'catchment' analysis confirms, rather than undermines, these demand figures. She claims that the 90 minute public

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<sup>27</sup> OBJ/1002/EE/1 para 6.11.

<sup>28</sup> RVR/W9/1 para 9.1.

<sup>29</sup> RVR/W2/1 para 3.35.

transport catchment, and the 30 minute driving catchment, for KESR would increase by roughly 80%.<sup>30</sup> In RVR's view, it is wholly unclear why this is said to support a proposition that the level of demand for KESR would only rise by less than 10%. It says further, and in any event, her approach is plainly excessively pessimistic:

- a) It assumes that there is an existing public transport demand for KESR. In reality, there is not. Whilst some visitors arrive on organised coach trips, there is no convenient public transport connection to Tenterden. When scrutinised, it is apparent that Mrs Evans' public transport assumptions are made on the basis that visitors would make a taxi trip from train stations such as Headcorn. She confirmed after giving her evidence that she applies no such generous assumption of a mixed mode of public transport and taxi journeys when assessing the additional catchment created by the Robertsbridge connection<sup>31</sup>. The result is that the public transport catchment uplift is underestimated, because either the existing catchment is overstated, or the new catchment is not treated with the same generous assumptions.
- b) To seek to confirm her analysis, Mrs Evans sets a public transport catchment at 90 minutes. If the 90-120 minute public transport catchment is considered, then large amounts of London, a market of some 4 million people, is brought into play.<sup>32</sup> Only a very limited penetration of that market is required to deliver a significant uplift in visitor numbers. The London market is agreed to be one which has lower car ownership levels than elsewhere and is better disposed to public transport options (given lower car and higher public transport usage). It is unrealistic to think that visitors would be dissuaded from making the trip because it would involve a change of train, or from a tube to train, and a total journey of marginally over 90 minutes.
- c) Further, the pessimism about new rail demand repeatedly ignores the nature of the visitors in question. Those who want to take a trip on KESR are predisposed to taking the train: they are coming to East Sussex for that reason. Mrs Evans' suggestion that potential KESR passengers might be put off by the length of the journey from London by train, or the need to change, lacks common sense.

3.2.8. As Mr Higbee explained in his rebuttal, many attractive day trips from London involve journey times of up to 2 hours. RVR considers that part of the joy of a day out is the journey there and back, particularly when the purpose of the day out is to take a heritage rail trip. Further, the overseas tourist market is shown to be disposed to using the train to travel around England; again, visitors in that cohort would not be dissuaded from visiting KESR and Bodiam Castle by the train connection.

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<sup>30</sup> Evans proof Table 6 OBJ/1002/EE/1.

<sup>31</sup> INQ/97.

<sup>32</sup> Table 1 RVR/W2/4.

- 3.2.9. Robertsbridge offers a direct connection to four London stations: Charing Cross (Westminster), Waterloo East (LB Southwark), London Bridge (LB Southwark), and Orpington (LB Bromley). The journey time from the terminus at Charing Cross is 1 hour 19 minutes, or 1 hour 10 minutes from London Bridge. To the south, Hastings is less than 25 minutes away and there are connections to other settlements such as Bexhill and Eastbourne. As Mr Dewey explained in his evidence, departures from Robertsbridge Junction on KESR would undoubtedly be timed to ensure that passengers were able to make the train from London. In short, the Robertsbridge connection would provide excellent connectivity to a broad range of locations. In RVR's view, the Secretary of State can be satisfied that it would enable a significant uplift in demand.
- 3.2.10. Whilst Mr Brown was keen to emphasise in cross examination and in closing that morning departures from London may still be in 'peak' times: (a) there are no peak tickets at weekends, when much of the demand would arise; (b) costs of peak travel can be largely mitigated by booking ahead, as day trippers are likely to do; and, (c) it is contemplated that discounted fares on the mainline railway would be agreed in conjunction with ticketing for KESR, as has been done on other railways. In short, this point can go no way to justifying the pessimistic demand figures that Mrs Evans relies on, in the face of the connection to a huge rail market.
- 3.2.11. RVR indicates that Mrs Evans also set out views in relation to: (a) the interaction with other heritage railways; and, (b) the experience of the Bluebell railway. On the first issue, it is clear that there are other heritage railways. However, RVR says these are not simply alternative choices for the single consumer, akin to IKEA stores.<sup>33</sup> Each railway is distinctive in terms of the experience on the railway itself and what can be seen from it. The Bluebell, for instance, is a branch line railway, not a rural light railway. Only KESR provides a link to Bodiam Castle, for instance. Those who visit one heritage railway may be inspired to visit another the next year. There is no evidence, from Mrs Evans or others, that there are constrictions on demand for these attractions which mean that they play off against each other.
- 3.2.12. RVR identifies that, in terms of the experience of Bluebell, there was a massive uplift in visitor numbers when the rail connection was established. Whilst it is correct to note that visitor numbers for the railway as a whole dropped materially in subsequent years, a significant amount of rail demand remained. As Mr Higbee explained, it is very difficult to isolate the factors which would have affected visitor numbers for Bluebell. However, visitor demand accessing at East Grinstead has been retained in the long term: about 25,000 visitors each year. What is clear is that Bluebell, which is a similar length of railway, with a National Trust property accessible from it, commands higher visitor numbers than KESR. That is likely to be a factor of its larger catchment.<sup>34</sup> The very

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<sup>33</sup> RVR/W2/4 para 23.

<sup>34</sup> RVR/W2/4 para 42.

significant increase in catchment provided for by the scheme is therefore likely to produce increased visitor numbers.

- 3.2.13. RVR considers that the conservatism of Mr Higbee's assessment, and the unrealistic approach of Mrs Evans, is confirmed when one considers the assumed 'trip rate' or demand per in-scope population. Even using Mrs Evans' catchments, the 'trip rate' to achieve the passenger number uplift assumed by Mr Higbee would need to be only a third of the 'trip rate' which is currently achieved.<sup>35</sup> In RVR's view, it follows that the assumed uplift, overall, is prudent.
- 3.2.14. Mrs Evans also takes issue with the existence of separate Bodiam demand uplift. However, RVR indicates that this tends to ignore the great draw of destinations such as Bodiam, and the virtual absence of a public transport catchment at present. The strong support of the National Trust for the proposals indicates that Mr Higbee's 5% assumed uplift in Bodiam demand is, if anything, a conservative one. And again, as a sense check, the overall uplift in KESR demand is assumed to be less than 25% (taking both the KESR and Bodiam uplift together), despite (on Mrs Evans' own analysis) the catchment being increased by 80% and in fact by far more for all the reasons set out above.
- 3.2.15. RVR considers that, taken as a whole, the 'central case' prediction of an additional 22,000 visitors per annum is one which is prudent and that Mrs Evans' assumptions are unrealistically pessimistic.
- 3.2.16. Finally, Mr Brown (OBJ/1002-Counsel) took issue with the consequences of the mode shift assumptions for visitor numbers. RVR indicates that this is a point which goes against his client's case. As Mr Higbee explained,<sup>36</sup> the 1% 'mode shift' from existing Bodiam visitors would include, in part, visitors who do not currently use the KESR. Accordingly, these are additional visitors to the KESR. They have not, however, been treated as new visitors for the purposes of the economic assessment because they are not new visitors to the area<sup>37</sup>, or to the combination of the two attractions being considered in the Steer assessment (i.e. Bodiam and KESR). At best, Mr Brown's point is that there would be more new visitors to KESR than Mr Higbee's economic assessment gives credit for. This is all explained in INQ/57, and was explained by Mr Higbee at the Inquiry. Contrary to Mr Brown's submissions, there is nothing "astonishing" or to "beggar belief" in this explanation because the Steer Report expressly sets out these figures (Table 5-5, RVR/9) and separates new demand for KESR and for Bodiam from "modal" shift for existing users. The figures have been there throughout for the Landowners to consider, even if they needed further explanation.

*Visitor spend assumptions*

- 3.2.17. RVR indicates that the starting point for the visitor spend assumptions in Mr Higbee's assessment are the Visit Britain statistics for day trip

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<sup>35</sup> Table 3/para 43 of Higbee Rebuttal.

<sup>36</sup> INQ/57.

<sup>37</sup> INQ/162 paras 169-170.

expenditure, and indeed towards the bottom end of those figures. Mrs Evans agreed that there was no substantial dispute on the day trip spend figures, although she took a number of points about where the money should be spent. In short, it is absolutely clear that visitors would have both the time and inclination to spend the further £11.40 on top of the cost of the train whilst in the area. There are opportunities for expenditure in the range of facilities in Robertsbridge, including The Ostrich Public House whose proprietor addressed the inquiry, but the assumptions do not depend on Robertsbridge being the destination of visitor spending at all. Nor is there any need to assume that visitors would range far beyond the railway (although they may well do given the other attractions of the area). Money can be spent in the shop and café at Bodiam Castle, or in the attractive range of shops and facilities in Tenterden.<sup>38</sup> In RVR's view, it is little wonder that Tenterden Town Council are such strong advocates of the scheme; and their investment in the new footpath connection to the Town Centre would be borne out when new visitors arrive by steam train from Robertsbridge, and walk up it to the "Jewel of the Weald".

3.2.18. RVR considers that Mrs Evans' more substantive argument is on the overnight spend assumptions. However, it indicates that, in truth, the difference between Mr Higbee and Mrs Evans is a narrow methodological one. Mr Higbee says that if an overnight visitor is induced to visit the area because of the scheme, then their whole economic contribution to the area has been induced by the scheme. Thus a new overnight visitor is directly attributable to the scheme, even if they spend money over several days in several different places. This is a reasonable approach to assessment. The cohort being assessed is a relatively small proportion of new visitors, and the assumption is that these are not people who currently come to East Sussex for an overnight trip, but would do so because of the improved connectivity to, and via, KESR. Mrs Evans does not take issue with the split of overnight visitors, but treats the expenditure of such visitors as only being attributable to the scheme for one day of their trip. This ignores the true benefit of the Order scheme, namely that it has induced the visitor to the area rather than going elsewhere, or staying at home.

3.2.19. In short, RVR considers that Mr Higbee's spend assumptions are to be preferred.

*Use of multiplier*

3.2.20. RVR indicates that there is no substantive dispute as to the application of a multiplier<sup>39</sup> to the visitor expenditure figures. This reflects the fact that direct expenditure by visitors induces further expenditure in the area.

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<sup>38</sup> RVR/W2-4 paras 50-55.

<sup>39</sup> RVR/W/02 paras 3.56-3.59



3.2.21. Further, in RVR's view a different multiplier, that assessed by the All Party Parliamentary Group on Heritage Rail (APPG)<sup>40</sup>, provides a helpful benchmark. As Mr Higbee explains, the ratio of expenditure on the heritage railway to local economic benefits was found to average 2.31. Applying that ratio to the present case, an economic contribution of £1,080,000 per annum to the local economy could be assumed<sup>41</sup>. RVR says that whilst Mrs Evans argues that a higher outlying figure should be disregarded, there is in fact no basis for so doing,<sup>42</sup> and there is obviously no stronger case for doing this than for excluding the lower outliers. RVR suggests that the Secretary of State can thus take comfort from the fact that Steer's 'bottom up' assessment in the central case would suggest economic benefits of a level which reflects the average for heritage railways identified by the APPG.

*Other economic benefits*

3.2.22. RVR considers it is telling that a range of other economic benefits, not included in the 'central case' figure, are not in dispute. There are direct economic benefits from construction. Mrs Evans did not dispute Mr Higbee's conclusion that the local economic benefits of construction would be circa £6.5 million, and support around 34 jobs over 18-24 months. There is no dispute that the economic benefits would deliver jobs for the local area, and do so in an area which has relatively high levels of deprivation.

3.2.23. RVR indicates that Mrs Evans takes no issue with the assessment of economic transport impacts of the scheme.<sup>43</sup> It is worth dwelling on this for a moment. Mr Higbee explains that there is an economic benefit from reducing journey times (for car trips) and from achieving a modal shift to rail. This can be set against the economic impacts of delay on the A21 (the assessment of which is not disputed) and new car journeys to Robertsbridge. Those impacts are trivial.<sup>44</sup> Even on this assessment the economic benefits to the transport network outweigh the negative impacts.<sup>45</sup> Thus even ignoring the economic benefits derived from new visitors to the area, the transportation benefits outweigh in economic terms the impact of any delay on the A21. This important and unchallenged point cuts firmly across the unevidenced assertion of others (including Mrs Hart MP) that somehow the economy of East Sussex would suffer from the railway. That is not a credible dispute in circumstances when all of the economic disbenefits of delay are outweighed by just the economic benefits in transportation terms, without even considering new visitor expenditure. There are further

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<sup>40</sup> RVR/31

<sup>41</sup> Higbee Proof 3.64.

<sup>42</sup> Higbee Rebuttal 61.

<sup>43</sup> Higbee Proof 3.73-3.99.

<sup>44</sup> RVR/33, Table 31. Note that these impacts have been assessed to include a crossing down time of 112 seconds, more than that agreed with HE.

<sup>45</sup> Higbee Proof 3.93.

economic benefits for the national rail network, which are also not disputed.<sup>46</sup>

- 3.2.24. RVR indicates that whilst the Landowners do not dispute these figures, they close their eyes to them. RVR suggests that the Secretary of State would however wish to note that the economic benefits of the scheme in the local area include £6.5 million in construction benefits, and a small local economic benefit in terms of the operation of the transport network. Furthermore, they may also wish to note the absence of any challenge to the conclusion that any economic impacts from delay on the A21 are decisively outweighed, even just by the local benefits to the transport network.

*Investment in and viability of KESR*

- 3.2.25. RVR identifies that whilst in her proof Mrs Evans sought to argue that the Order scheme could undermine the viability of KESR, she did not pursue this point at the Inquiry. The evidence of Mr Dewey (RVR-Railway operations witness) and Mr Higbee<sup>47</sup> is that the Order scheme can materially improve the efficiency of KESR. Coupled with increased demand, the proposal would support the viability of KESR, not undermine it. In RVR's view, it is notable that KESR has been supported by the Culture Recovery Fund during the pandemic, recognising both its national significance and faith in its future viability.

- 3.2.26. RVR indicates it is not disputed that further investment in KESR is capable of delivering increased visitor numbers and increased economic benefits. On Mrs Evans' assessment this could deliver economic benefits of +50% over her own (unrealistically pessimistic) economic benefits case.<sup>48</sup> However, the economic case for the scheme is not dependent on a plan for such investment, which has necessarily been affected by the pandemic and the need for heritage railways such as KESR to focus on survival. Nonetheless, as Mr Dewey explained in his evidence, there is ongoing investment in KESR including in anticipation of the construction of the missing link.<sup>49</sup> There is an opportunity for further investment in the future, which would deliver yet further economic benefits beyond those assessed in the 'central case'.

*Conclusion on economic and wider benefits*

- 3.2.27. RVR says there is no dispute that the Order scheme would deliver economic benefits and, as to the scale of those benefits, the evidence of Mr Higbee contains a far more realistic, if prudent, approach than that of Mrs Evans. The creation of a rail connection at Robertsbridge opens a huge new catchment for both KESR and the attractions it serves, most notably Bodiam Castle. It would provide an attractive day trip for a market of millions of people in London and the South East. When that is seen, an overall uplift in visitor numbers of 22,000, circa 25% of

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<sup>46</sup> Higbee Proof 3.98.

<sup>47</sup> Higbee Rebuttal para 6-14.

<sup>48</sup> Evans Proof 6.15.

<sup>49</sup> Dewey Proof Section 14.

existing KESR demand, or 15% of KESR demand plus 5% of Bodiam demand, is demonstrably robust or even conservative.

- 3.2.28. RVR considers that the economic benefits need to be seen in the context of the scale of the Order scheme. This is not a huge infrastructure intervention of the type hinted at by Mr Highwood (OBJ/1002-Impact on farming witness) in his evidence. It is the reinstatement of a single track railway over a short distance. The scheme costs of less than £6m, funded privately, give a handsome return in terms of economic benefits to the local area, even on Mrs Evans' unrealistic assumptions. On Mr Higbee's analysis, the ratio of benefit to cost over a standard 30-year assessment period that would be used for publicly funded projects reaches around 3:1, and all at no cost to the public purse. These benefits represent only a component of the economic benefits, which include a short term boost of £6.5m to the local economy during construction. Thus applying a proper approach of considering the scale of the benefits derived from the scale of the project, this is a scheme of real and profound benefit, outweighing its costs on any measure.
- 3.2.29. RVR says that, whilst the economic benefits alone are sufficient to justify the making of the Order, they are only part of the benefits. The wider benefits, canvassed above, need also to be weighed into the balance and only serve to further confirm the strength of the proposition.

3.3. ***SoM2)-Alternatives & 3)a)-the impact of 3 new level crossings***

3.3.1. *Position of the parties*

- 3.3.1.1. RVR says that the case on level crossing safety is relatively straightforward. It indicates there is no dispute that a level crossing introduces a risk, it is inherent in the means of crossing the railway. However, the real issue is whether that risk is tolerable. RVR considers the position before the Inquiry is that the principle of such crossings is no longer disputed by the relevant authorities. The local planning authority considered the point in detail in deciding to grant planning permission in 2017, imposing conditions in respect of the proposed road crossings. Following the application for this Order, the Office of Rail and Road (ORR) considered whether it could support the proposed crossings, applying its (then) test of 'exceptional circumstances'. Rightly, it required RVR to submit detailed information to satisfy that test. It concluded that that test was met.<sup>50</sup> It does not object to the proposed crossings. Notwithstanding the protracted process of engagement with them, Highways England (HE) (now National Highways) also do not object to the principle of the crossing of the A21, and are now concerned solely with issues relating to safety mitigation measures on the road approaches (see further below).
- 3.3.1.2. RVR considers that its articulation of the case for the level crossings was given clearly and succinctly by Mr Keay (RVR- Railway Safety and Level Crossings witness). Whilst Mr Keay is an RVR Director, RVR indicates

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<sup>50</sup> REP-017. The "exceptional circumstances" test is no longer part of the ORR policy.

that he is also a man of great professional standing in the rail industry<sup>51</sup> and the former Deputy Chief Inspector of Railways. Thus for many years, he was the man responsible for level crossing safety on the railways of Britain. He speaks on these issues from a position of experience and authority. RVR suggests that his measured evidence was mirrored by the careful contribution of Mr Raxton, who now stands in Mr Keay's shoes at the ORR. Thus, this Inquiry has heard from both the former and current office holder responsible for level crossing safety. Their consistent evidence is that in the case of each crossing, a tolerably safe crossing can be achieved. The Inquiry also heard from Mr Dewey, who operates the current KESR railway and its level crossings, and from Mr Lewis (Local landowner) whose land is crossed by the railway and who uses accommodation crossings.

3.3.1.3. RVR indicates that Mr Clark's evidence (OBJ/1002-Level crossing matters witness), by contrast, is from the perspective of someone engaged as a contractor on schemes for the closure of level crossings on the mainline railway. As Sir Peter Hendy (Network Rail Infrastructure Limited) explained, the considerations for Network Rail (NR) are different, because of the nature of the railway system. In RVR's view, Mr Clark wrongly sought to transpose NR standards to the proposed heritage railway. For instance, Mr Clark sought to deploy 'ALCRM', a tool used by NR to grade the risk of crossings for the purposes of comparative assessment. As Mr Keay explained it is a tool which in fact is only used in respect of existing crossings, and cannot sensibly be deployed to proposals such as these. The whole point of risk management is to seek to design it out, in other words, to ensure that the risk is 'as low as reasonably practicable' through the design of the system. Mr Keay explained why, in each case, the design work to date had done precisely that, and that it would continue to do so as the designs are finalised.

### 3.3.2. *The principle*

3.3.2.1. RVR indicates that the threshold for deciding whether a level crossing is acceptable is whether there is a reasonably practicable alternative to it. This was previously phrased as 'exceptional circumstances' in ORR policy; that phrase has been removed, although the Inquiry heard that it was intended to refer to the same test of reasonable practicability which is now the only threshold in policy.<sup>52</sup> Even if the test remains the same, it is worth noting that the new policy recognises the potential need for new, or reopened, level crossings. That is a consequence of the growing interest in reopening railways, and the reality that the costs of so doing could be prohibitive if grade separation had to be achieved.

3.3.2.2. RVR says that on each of the highway crossings, the test of no reasonably practicable alternative has been met. At the A21, Mr Portlock's assessment of the costs of alternative means of crossing the road confirms:

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<sup>51</sup> As noted e.g. by Sir Peter Hendy.

<sup>52</sup> REP-017 and RVR-W8-5 Principles for Managing Level crossing Safety , 15 June 2021 para 27.

- a) The costs of crossing other than at the level are considerably higher.
- b) That is true even on a like-for-like comparison of costs, applying all of the same assumptions to the proposed scheme as for the alternatives.
- c) In fact, because the proposed scheme has been worked up in detail and can be delivered (in part) through RVR's proven more efficient construction methods (including through suitably skilled volunteers), the costs of the proposed scheme are very significantly less than any of the proposed alternatives which would require significant civil engineering.
- d) Any underpass proposal would encounter issues regarding flood risk and may require an expensive and complex drainage system. It would also require the reconstruction of the road and a temporary road whilst the 'top down' construction was carried out. In one scheme it would also require changes to the vertical alignment of the road.
- e) A bridge over the A21 is unlikely to be acceptable in planning terms, as well as being very costly. Since the A21 is elevated as it crosses the floodplain, a considerable height would be required to cross it. The vertical alignment of the section of the railway would also have to be raised, increasing wider visual impacts and land take.

- 3.3.2.3. RVR says it is thus no surprise at all that, following the detailed Arup assessment, the ORR was satisfied that there was gross disproportion in the costs of the alternatives, even assuming the RVR 'real world' costings were not used. That conclusion is not, in fact, seriously challenged in this Inquiry.
- 3.3.2.4. The same conclusions follow for the less trafficked roads at Northbridge Street and Junction Road. There is no suggestion, by Mr Clark or anyone else, that grade separation in those locations would be a realistic prospect.
- 3.3.2.5. Turning to the bridleway crossing, RVR considers it is right to note that ORR has been more circumspect on that issue. However, in answer to the Inspector's questions Mr Raxton properly accepted that one has "to be realistic as to what is achievable in the context". It is very clear that a bridge in that location would be a significant intrusion into the Area of Outstanding Natural Beauty (AONB). To meet bridleway standards it would require long approach ramps, with a further significant effect on the character of the area. The clear advice of the local planning authority is that a bridge is unlikely to be acceptable<sup>53</sup>. It is not necessary for that to be tested by pursuing an application for a scheme

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<sup>53</sup> RVR/W8/2-7.

which would not realistically succeed.<sup>54</sup> Mr Clark does not advocate a bridge solution in this location, and notwithstanding the ORR's circumspection, there is no serious case made for grade separation of the bridleway crossing. Indeed, in closing the Landowners accepted that a "tolerably safe" crossing could be constructed in this location.<sup>55</sup>

### 3.3.3. *Detail of highway crossings*

3.3.3.1. RVR indicates that the detail of the highway level crossings is a matter which would be settled with ORR through the making of Level Crossing Orders. These orders would govern, for instance, the detail of fencing and warnings. But in any event, the proposed crossings have been considered in detail already. The road crossings would have automatic full barriers with obstacle detection; the best road level crossing solution available. Despite the attempts by Mr Brown (and to a lesser extent Mr Clark) to suggest otherwise, this system manages risk to the lowest possible level. It ensures that the barrier system is automated so that the barrier closure sequence would not be followed if the crossing is obstructed. The train is held at a signal until the barrier is closed. This means that until the rail is clear and fully protected by the barrier, the train cannot cross the road.

3.3.3.2. RVR says that there were various attempts to cast doubt on this system. First, it was suggested that the presence of CCTV indicated that it was remotely controlled by a signaller. That was a misunderstanding: the purpose of the CCTV is to allow monitoring and if necessary to collect evidence of misuse. The purpose is not to control the crossing. Second, it was suggested that there was some sort of manual intervention in the crossing operation by the driver of the train. Of course there is a means of manually controlling the barriers should there be some unprecedented failure. But in its normal operation there is no manual intervention. Even where there is a fault, the fault position is for the barriers to be open and the train held on a red signal. The same goes for the presence of a signal for the train driver to confirm that the crossing has been cleared and the reopening sequence triggered. Such a mechanism does not suggest a manual intervention: it is a prudent further protection for the crossing. Third, it was suggested that earlier proposals for "red light" cameras on the crossings suggested that there was a need for them because of some safety risk. It is not the position that such cameras are needed, and nor are they proposed. Fourth, Mr Clark sought to argue that extensive lighting would be required because of the presence of CCTV cameras, but he confused the need for illumination of CCTV controlled crossings (where the operator must have good visibility to initiate the crossing sequence) and the requirements where CCTV is present simply for remote monitoring.

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<sup>54</sup> RVR indicates that it is nonsense to suggest that such an application should have been included in the TWAO application (INQ/162 footnote 77). RVR considers that it would have simply been refused by the Secretary of State on the same grounds, thus leaving the bridleway without a means to cross the railway.

<sup>55</sup> Paragraph 72.

- 3.3.3.3. In respect of the bridleway crossing, Mr Keay explained the anticipated system which would include interlocking gates with push button operation to allow a horse rider to open the gates without dismounting. There was no suggestion by anyone that this was anything other than the best system for the crossing. It undoubtedly creates a tolerably safe crossing solution.
- 3.3.4. *User worked accommodation crossings (UWCs)*
- 3.3.4.1. RVR considers that the position on accommodation crossings has been largely misunderstood by the Landowners. The effect of the Article 3 of the Order is to apply provisions of the *Railways Clauses Consolidation Act 1845* in respect of, amongst other things, accommodation works. The effect of the 1845 Act is summarised in INQ/11-1 and not repeated in full here. Section 68 requires the railway undertaker to make and maintain such accommodation works as 'shall be necessary' for the mitigation of severance. The nature of such works is not limited to level crossings: it could include for instance, the provision of new tracks alongside the railway. The requirement is based on need, but is subject to qualifications that the company shall not be required to provide accommodation works where this would prevent or obstruct the working or using of the railway, or in circumstances where the owners and occupiers of the lands have agreed to receive compensation instead. The provisions are therefore capable of mitigating any severance effects: if accommodation works are not provided, the Landowner is entitled to be compensated for such severance. Mr Highwood's evidence was predicated on a false assumption that RVR could simply decide not to provide accommodation crossings, in the face of a need for them. In fact, RVR must provide accommodation works where they are necessary, unless it would prevent or obstruct the operation of the railway.
- 3.3.4.2. RVR has expressly contemplated the provision of accommodation crossings, and identified locations on the plans where they might be provided. Whether they are provided in those locations, or elsewhere, and whether more or less are provided, is a matter to be settled with the Landowners. Their recourse, in the case of dispute, is to refer the matter to court (section 71). The same goes for works which are required in connection with such crossings, such as ramps. Their size and location are matters to be settled with the Landowners. It is nonsensical to say that the Order land does not include space for ramps, because ramps are only required where the Landowner in question requires that the railway provides accommodation works in a particular location. No doubt if the Order provided for vast swathes of land to be acquired speculatively on the basis that it might be required for accommodation works, the Landowners would object more vociferously.
- 3.3.4.3. The role of ORR in respect of accommodation crossings also needs to be properly understood. ORR's consent is not required, unless it finds that there is a need to require a level crossing order, which is said to be rare in the case of private UWCs. Thus whilst ORR would rather reduce the number of individual crossing points, it does not opine on the specifics. Its supervisory jurisdiction of course extends to the safe operation of the

railway more generally, and if the presence of crossings rendered the railway unsafe it could prohibit its operation. However, the present case deals with a heritage railway which in its current operational stretch includes 27 user worked accommodation crossings. The Inquiry has heard from Mr Dewey as to how these crossings are managed, and as to the good relations with the users. Mr Lewis' evidence, which carefully explains each of the crossings on his land and how they are used, supports this evidence. It is thus unsurprising that ORR observes '*Many crossings similar to those that might be required by RVR exist on other heritage railways, and on the mainline network, and these can be constructed and used in a tolerably safe manner*'.<sup>56</sup> It has further stated '*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 (as low as reasonably practicable), 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 (Health and Safety at Work Act ) powers*'.<sup>57</sup>

3.3.4.4. Whilst there is an operational impact for farm workers using a crossing, it is something which is readily capable of being managed. Operational impacts on farming which affect the value of the land holding would be the subject of compensation. So far as risk is concerned, the presence of UWCs on the proposed railway needs to be seen in context of the low frequency and slow line speeds of the services – a point agreed by Mr Highwood in cross-examination. There is no reason to think that accommodation crossings cannot be constructed and operated safely, and Mr Keay explained in his evidence how he would envisage them operating.

3.3.4.5. For those reasons, RVR considers it can be concluded that:

- a) Accommodation crossings can be provided where necessary,
- b) That they can be operated safely and
- c) That they can mitigate the impact of severance to the landowners.

3.3.5. *Potential for a level crossing at Footpath S&R 31*

3.3.5.1. Without prejudice to its position that the proposed diversion of footpath S&R 31 beneath the railway is suitable and convenient (see further below), RVR has demonstrated that there are alternative provisions, capable of being delivered without a further order, that would enable the footpath to cross the railway on the level. In answer to the Inspector's questions, Mr Raxton did not convey any substantial concerns about a footpath crossing in this location, save to note that it should be consolidated with any accommodation crossing in that location. That is

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<sup>56</sup> REP/017-1, paragraph 20.

<sup>57</sup> RVR/69.



precisely what the alternative provisions would achieve. If there is a need for specific measures to deal with the relationship between the footpath and accommodation crossing, and the A21 crossing (e.g. interlocking), then this could be achieved through the Level Crossing Orders that would be necessary for the footpath and A21 crossing points. It follows that, if necessary, a safe level crossing for footpath S&R 31 could be delivered.

3.4. ***SoM3)a) & b)-Impact on roads and other public rights of way***

3.4.1. *The A21*

3.4.1.1. The impact on the A21 had very significant prominence in objections to the Order, and in the written evidence to the Inquiry. However, RVR considers that in fact, the concerns in respect of the A21 level crossing have largely not been substantiated.

*Congestion etc.*

3.4.1.2. RVR says that none of the parties to the Inquiry now makes any argument that the Order should be refused on the grounds of congestion on the A21, or any economic impact on the strategic road network. This concession was confirmed by HE in its oral and written evidence and, belatedly, by Mr Fielding for the Landowners (OBJ/1002-Highway impacts witness). It was agreed that by all highways witnesses that the relevant test is found in the Framework: whether the residual cumulative impacts on the road network would be severe.<sup>58</sup> The impact of the proposed level crossing comes nowhere near meeting that threshold.

3.4.1.3. RVR considers it is important to bear in mind that even on the busiest day, there would only be 20 occasions during the course of a day that the crossing closure sequence would be initiated. For the purposes of assessment, HE and RVR agreed that a 72 second closure sequence should be assumed. The Landowners had no reason to challenge that closure period for these purposes, save to argue (strenuously) that it should be regarded as a minimum.<sup>59</sup> The railway is only expected to operate on less than half the days of the year. Further, by planning condition the operation of the crossing is prevented during weekday peak hours.

3.4.1.4. It follows that the actual interference with the free flow of traffic on the A21 is extremely limited, far more limited than a signalised junction or pedestrian crossing. Any slight delay caused by a level crossing closure would not have an effect on overall journey times on the A21. Concerns in this regard from other objectors (e.g. from Sally Ann Hart MP) were misplaced.

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<sup>58</sup> Framework para 111. A similar test is set in HE's licence conditions for refusing to permit a "connection": "a presumption in favour of connection, except where a clear case can be made to prohibit connection on the basis of safety or economic impacts."

<sup>59</sup> RVR indicates that, even if it was slightly longer, which is not anticipated, the conclusions of all of the assessments would not materially change.

- 3.4.1.5. RVR nonetheless assessed an 'extreme' worst case for the purposes of identifying queue lengths. This was to assume that the closure occurred in the busiest 15 minutes of the most heavily trafficked day of the year. The traffic data used was from a busier part of the A21. Whilst a closure in that period is of course possible, since the busiest days on this part of the network fall on bank holidays when the train may well be operating, it is not a regular event. Even then, whilst relatively long queues would be caused, no driver would be delayed by more than the closure sequence, i.e. 72 seconds. Drivers joining the back of the queue would only be delayed momentarily before the queue moved off. Whilst such ultra-precautionary analysis may be appropriate for assessing safety impacts (see below), it does not fairly represent the impact of the development on the road network in normal circumstances. In most closures, relatively few drivers would be delayed for a relatively short period of time. On most days, there would be no closures at all.
- 3.4.1.6. RVR indicates that the absence of any material impact on the network is confirmed in the economic analysis of delay (see above)<sup>60</sup>. The financial impacts are insignificant, and indeed are outweighed simply by the transport benefits of the scheme. In those circumstances, it is unsurprising that HE withdrew its objection to the scheme on the grounds of the impact on the flow of traffic on the A21 in the Statement of Common Ground, INQ/60.
- 3.4.1.7. RVR says that the Landowners' position on this issue was somewhat confused. Mr Fielding readily accepted that it was appropriate to apply the Framework test; and he readily accepted that there was no case for withholding consent for the Order scheme having applied that test. However, the Landowners (through Mr Brown) persisted with an argument that the delay caused by level crossing closures was an adverse effect of the Order scheme that nonetheless weighed against it. Such an approach undermines the clear direction given in the Framework that highway impacts such as delay should not hold back development unless the residual cumulative impacts reach a level of severity. Accordingly, RVR considers that the Secretary of State should give little weight to those arguments that such lesser impacts weigh materially against the Order scheme. In any event, as the detailed traffic assessment and economic analysis confirms, the impacts are occasional, short lived, and minor.
- Highway safety*
- 3.4.1.8. Both HE and the Landowners maintain an objection on the grounds of highway safety. However, RVR considers that on proper scrutiny, those objections were simply not substantiated at the Inquiry.
- 3.4.1.9. RVR says that HE's painstaking approach to the design of the A21 might be applauded, but it was wholly unnecessary for it to pursue an objection to the Order. HE has wholly failed to identify any reason in principle why a safe crossing of the A21 in this location could not be

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<sup>60</sup> And see RVR/33, Table 3.1.

achieved. Indeed, if it had done so, it is inconceivable that it would have withdrawn its holding objection to the planning application and expressed itself content with conditions which prevented the development from occurring until necessary 'departures' had been approved. For reasons which remain difficult to fathom, HE has elected to deal with the Order in a different way, namely to maintain an objection until a "departure" has been approved. It has done so in the face of protective provisions which prevent the crossing from being constructed until the detailed design (which includes/requires the departure) is approved by it.

- 3.4.1.10. The chronology of the engagement with the departure process does not need to be repeated in these submissions. In RVR's view, it suffices to note that a position has now been reached where HE and RVR are discussing further mitigation measures. As Mr Bowie (OBJ/782-HE technical matters witness) confirmed in his evidence, these matters are capable of being satisfactorily resolved. There is no "showstopper". Indeed, the points of concern to HE were not even fully enumerated by Mr Bowie in his evidence and he could not speak for the panel that were dealing with the departure, HE's Safety, Engineering and Standards Division (SES). In RVR's view, the Order process should not be concerned with such levels of detail.
- 3.4.1.11. RVR considers it follows that HE has failed to substantiate any safety objection to the principle of the A21 crossing, which is what would be settled by the Order. The detail, including mitigation measures, are for subsequent agreement between RVR and HE. If HE's objection on paper is maintained at the time that the Inspector reports to the Secretary of State, RVR considers that it should be viewed in the context that all of HE's concerns can be addressed through the departure process (agreed by Mr Bowie), that they do not present impediments to the scheme (again, agreed by Mr Bowie), and that the terms of the protective provisions (and indeed the planning conditions) ensure that the crossing cannot be constructed until these matters have been settled to HE's satisfaction (again, agreed by Mr Bowie and by Mr Harwood).
- 3.4.1.12. In RVR's view, the Landowners' evidence on highway safety had even less substance to it. Despite his lengthy written evidence, in cross-examination Mr Fielding was bound to concede that he had only two points: compromised Stopping Sight Distance (SSD) on the northbound approach to the crossing, and lack of visibility across the A21 roundabout. Both of these points describe existing highway conditions; any deficiencies exist regardless of whether the scheme comes forward. More fundamentally, both are readily capable of being addressed through minimal interventions within the highway boundary to clear vegetation. If HE does not procure those works in any event, then they can be secured in the approvals under the protective provisions.
- 3.4.1.13. Mr Fielding also appeared to be concerned in respect of pedestrians crossing queuing traffic near the A21 junction. However, the junction is fenced in this location, forcing pedestrians to walk to the signalised crossing just to the north of the junction. Accordingly, to pass between

queuing vehicles in the vicinity of the A21 roundabout other than at the crossing, it would be necessary to climb over the pedestrian barrier.

3.4.1.14. RVR says accordingly, despite the vigour of the Landowners' attention to the A21, and their repeated demands to interrogate the detail of submissions made to HE on matters of detailed design which could have no bearing on the principle of the level crossing, their case has come up entirely short. Furthermore, it indicates that belatedly, Mr Brown recognised as much in closing: "the Landowners recognise that these risks do not reach the Framework threshold of being "unacceptable""<sup>61</sup>. The crossing does create a new stopping point on the road, but it is capable of being delivered in a way which meets all relevant safety requirements.<sup>62</sup>

3.4.1.15. RVR considers that it follows there is no highway safety objection of substance just as there is no objection of substance on the grounds of congestion. There is nothing that cannot be addressed under the well-established mechanisms in the protective provisions and in the planning permission. The protective provisions establish, amongst other things, a 'detailed local operating agreement' which would govern the management and maintenance of the crossing once built.

#### 3.4.2. *Northbridge Street and Junction Road*

3.4.2.1. RVR indicates that with respect to Northbridge Street and Junction Road, there is no objection from the relevant highway authority. There is no suggestion from any party that the crossings would cause material impacts on the flow of traffic. Like at the A21, any delay would be occasional and minimal. On Junction Road, Mr Fielding sought to pursue an argument about the road speed. However, RVR considers that the argument was without substance. RVR has agreed with the highway authority that a speed limit change should be introduced, and indeed agreed a traffic regulation order to which no objections were made. This would deliver wider safety benefits as well as ensuring that the crossing can be introduced without any safety objection. For those reasons, there is no highways case against these two crossings, in RVR's view.

#### 3.4.3. *Footpath and bridleway users*

3.4.3.1. RVR identifies that, aside from a temporary diversion during construction, the bridleway would not be diverted by the proposals. The proposed crossing is addressed above, and it can be constructed and operated in a 'tolerably safe' way. The impact on users of the bridleway would not be material.

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<sup>61</sup> INQ/162 para 60

<sup>62</sup> RVR indicates that, for instance, queues would not be "sudden and unexpected" given the presence of signage, etc. Furthermore, there are many junctions on the A21, including at the Robertsbridge roundabout. Stationary traffic is thus expected in places on roads such as this in its view.

- 3.4.3.2. The Order provides for the stopping up and replacement of part of footpath S&R 31. By virtue of section 5(6) of the Transport and Works Act (TWA):
- “(6) An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied— (a) that an alternative right of way has been or would be provided, or (b) that the provision of an alternative right of way is not required.”*
- 3.4.3.3. Annex 2 of the TWA Guide, INQ/5, provides commentary on Schedule 1 to the TWA. In respect of paragraph 4 it states: *‘If an alternative is to be provided, the Secretary of State would wish to be satisfied that it would be a convenient and suitable replacement for existing users’*. RVR considers it is important to recall that this is a statement of policy; it is not a condition precedent for making the Order. It says that, in other words, the Secretary of State may approve a diversion, even if they had concerns about its convenience, if it was concluded that the public interest justified such an approach. Furthermore, the only legal condition is in section 5(6), namely that the Secretary of State must be satisfied that, if required, an alternative right of way would be provided.
- 3.4.3.4. The diversion proposed here would take the footpath under the railway adjacent to the River Rother. RVR considers that it is a short diversion which would have no material effect on journey times. The highway authority has not objected to the proposal, nor has any user of the footpath or representative bodies such as the Ramblers Association. Further, the proposed diversion has the benefit of planning permission, demonstrating that the local planning authority is satisfied with what is proposed. The issue raised by the Landowners relates to the risk of flooding of that footpath. As explained in INQ/81, the proposal as shown on the planning drawings would mean that the footpath would flood more frequently than it does at present (2-3, rather than 1-2, times per year). However, RVR indicates that a solution is proposed which would allow a split-level footpath, the higher level being flooded no more frequently than the existing path. Whilst the upper path would have limited headroom, it would be passable when the lower path was flooded. Both levels of footpath would be relatively narrow (1.2 metres in the lower level, 0.85 metres in the upper level) but the context is a rural footpath which is already constrained e.g. where it meets Church Lane. Further, even when the footpath does flood (as happens now), there are diversionary routes available to ensure that users can reach their destination<sup>63</sup>.
- 3.4.3.5. RVR’s clear view is that this solution is a convenient and suitable replacement, and it can be provided to meet the section 5(6) test. This is not a comparable situation to that relied on by Mr Clark (in Ely), where: (a) there was no existing risk of flooding; (b) the frequency of flooding had not been assessed; and (c) the diversion route, if a flood was encountered, would be substantial. The situation is far closer to a scheme which Mr Clark himself worked on, namely the Gipsy Lane level

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<sup>63</sup> See INQ/81 at Figure 6.

crossing diversion. There, a footpath was diverted from level crossing to a river culvert running beneath the railway, with 2m headroom, constrained width, and a propensity to flood at certain times of the year. Notwithstanding these constraints, it was considered an appropriate diversionary route.

- 3.4.3.6. Further and in any event, RVR has indicated that if the Secretary of State is not satisfied as to the underbridge route, then provision could be made within Order limits for the diversion of the footpath over the railway at the level, adjacent to the indicative accommodation crossing. This would be a short diversion, crossing on a level crossing. The acceptability of that crossing is addressed above. In short, this provides an acceptable alternative if it is considered that the proposed diversion is not suitable and convenient for users. Without prejudice to its primary case, RVR has supplied to the Inquiry plans and a draft order which would secure this alternative solution.

3.5. ***SoM3)c)-Flood risk and hydrology***

3.5.1. *The planning tests*

- 3.5.1.1. RVR says that whilst the extent of the debate at the Inquiry might suggest these proposals were somehow breaking new ground, the basic policy tests on flood risk are well-established and familiar to the Inspector and the Secretary of State.

- 3.5.1.2. The first test is the Sequential Test (ST). The purpose of the ST is to drive development to areas of the lowest flood risk<sup>64</sup>:

*'The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.'*

- 3.5.1.3. That test was in place at all material times in the determination of the planning permission. RVR indicates that there is a simple answer to the application of the ST here: there is no other location in which the railway can be reinstated, other than in the floodplain where it was originally instated. It is for that reason that the principle of development in the floodplain was found to be acceptable by both the EA and the local planning authority.

- 3.5.1.4. The application of the ST is further explained in the national Planning Practice Guidance (PPG).<sup>65</sup> RVR says that importantly the PPG states: *'The Sequential Test does not need to be applied for individual developments on sites which have been allocated in development plans*

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<sup>64</sup> Framework para 162.

<sup>65</sup> INQ/9 Flood Risk and Coastal Change, March 2014.

*through the Sequential Test*'.<sup>66</sup> The development is proposed on a site allocated for that purpose by Policy EM8. Again, it is thus unsurprising that the ST was not a basis for resisting the grant of permission. Despite his attempts to evade them, Mr Patmore in truth had no answer to these points in cross examination.

- 3.5.1.5. RVR indicates that the Landowners' case on the ST, set up by Mr Patmore (OBJ/1002-Flood risk matters witness) and then renewed again by Mr Brown in closing, turned on Table 3 in the PPG. Table 3 is not part of the ST. Indeed to make their case, the Landowners are driven to ignore the 'Notes to table 3' which state '*This table does not show the application of the Sequential Test*'. Mr Brown argues that this "does not mean that [Table 3] cannot show the limits to which [the ST] can be taken". But that is precisely what it does mean: it is not about the ST at all. Table 3 is about the application of the Exception Test (ET) ('*The Exception Test should only be applied as set out in Table 3 and following application of the Sequential Test*')<sup>67</sup>.
- 3.5.1.6. RVR considers that in truth, therefore, the ST does not mandate any particular answer. If it did, the Framework would say so. The Landowners' arguments seek to take a table which is not part of the Framework, but rather a hyperlink from the PPG, and suggest that it imposes a deterministic policy test on how the ST should be concluded. This novel argument is unsupported by any previous decision. If it had any credibility, it is highly likely that it would have been noticed and pursued by the local planning authority, or the EA.
- 3.5.1.7. In summary therefore, the ST is met in this case because there is no other place in which the railway can be reinstated. The test has already been 'passed' because the site has been allocated in the plan making process for precisely this development. Even if the ST is applied again, there is only one answer to it. Thus on a proper analysis the extensive arguments presented by the Landowners on this point are wholly misconceived.
- 3.5.1.8. The second test is the ET. The ET is also summarised in the Framework:  
*'To pass the exception test it should be demonstrated that: a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.'*
- 3.5.1.9. As to limb (a), the wider benefits of the Order scheme are addressed above, and not repeated here. As to limb (b), Mrs Callaway's evidence was that the development would remain safe for its lifetime without increasing flood risk elsewhere. The Landowners' contrary arguments are based on two points, neither of which has merit.

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<sup>66</sup> INQ/9 para 033.

<sup>67</sup> PPG paragraphs 27 and 35.

- 3.5.1.10. First, they observe that the railway itself may flood, and suggest that this means that the proposal would not be 'safe for its users'. However, such an analysis is removed from reality. As Mr Patmore accepted in cross examination, many developments may contemplate them being flooded. For example, a proposal for sports facilities which might properly be located in an area of high flood risk would not be regarded as unsafe just by reason of it being occasionally flooded. The football match would simply be cancelled. The risk of flooding of the railway is addressed through: (a) not operating the railway in times of flood; and, (b) a suitable maintenance regime to ensure that the railway infrastructure is not damaged when it is inundated.<sup>68</sup> As Mr Dewey explained in his evidence, such measures are already applied to the existing operations of KESR. The existing railway is already operated safely notwithstanding the risk of flooding of the line. The same, in fact, is true of many railways.
- 3.5.1.11. Second, the Landowners argue that there 'would be areas where the scheme could increase flooding'. The Flood Risk Assessment Addendum, March 2021, which, importantly, is not challenged, in fact shows that the Order scheme would cause small changes in flood water levels. The flood extent predicted with the scheme is very similar to the baseline scenario for all modelled flood events. No new receptors would be affected by flood with the Order scheme beyond those that are currently affected by the same flood event. Flood depths may be reduced to the south of the railway. Accordingly, the Landowners' case fails to address the actual test. It is not whether water levels would change, but whether flood risk would be increased. There is no increase in risk from the minimal changes in flood levels; and the propensity of the land to flood does not change. All of this is confirmed in the unchallenged FRA, the assumptions of which have been considered and accepted by the EA.<sup>69</sup>
- 3.5.1.12. RVR considers it follows that the proposed railway would be 'safe for its lifetime' and would not increase 'flood risk elsewhere'. The ET is therefore met.
- 3.5.1.13. RVR says thus, contrary to the Landowners' case, there is no flood risk policy objection to the proposals. The impacts on flooding are minimal and are essentially concerned with flood depth in areas which would already flood in the modelled events. It can scarcely be said that the EA would not raise concerns if a proposal to construct a railway in a floodplain did fail either of the planning tests. But there has been no objection on flood risk grounds from the EA, the local lead flood authority, or the local planning authority. That is notwithstanding the fact that the EA has pursued a minor objection to the terms of the Order, and attended the Inquiry accordingly. Contrary to the Landowners' submissions, statutory bodies do not need to attend proceedings such as these to explain why they do not object: the fact

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<sup>68</sup> RVR-W7-1, Section 4.6; and RVR-W9-1.

<sup>69</sup> RVR indicates that, in fact, the updated FRA has been proved to be excessively precautionary by applying a 105% climate change allowance. The now published allowances show that this was overly pessimistic in its view.



that they do not object is in itself a matter to which the Secretary of State may wish to give weight and importance. Moreover, for the reasons explained above, RVR considers that it is obvious why the EA does not object to these proposals on the grounds of either the ST or the ET.

3.5.1.14. RVR indicates that the FRA also provides a complete answer to the flood objections from third parties, including the Cricket Club and Professor Leigh. None of those objectors disputed the findings of the updated FRA on any technical level. Those findings demonstrate that the risk of flooding is not increased by the Order scheme. The only changes are minor changes to depths.

### 3.5.2. *Compensation storage*

3.5.2.1. In its representations on the planning application, the EA sought the imposition of a condition regarding flood compensation storage.<sup>70</sup> This requires that a '*satisfactory scheme for compensatory flood storage*' must be submitted to the local planning authority for its approval in consultation with the EA. The condition goes on to state that the applicant '*would need to demonstrate that there would be no loss of floodplain storage post development with any loss of floodplain storage to be compensated for on a volume by volume, level by level basis and in a suitable location*'. The purpose of the condition is to 'prevent flooding elsewhere'. RVR indicates that in fact, recent and ongoing engagement with the EA suggests the need for compensatory storage would depend on the final assessment of the impact of the scheme on flood risk.<sup>71</sup> Thus it is possible that the EA would not seek compensatory storage at all. If such storage is not needed to prevent flooding elsewhere, then such an outcome can be expected.

3.5.2.2. The Landowners have seized upon this condition as an alleged impediment to the Order scheme. They have done so despite being told by the EA that they were not concerned about the prospect of suitable compensation being provided if required. RVR's position is that it is premature to propose a detailed flood compensation storage scheme when the EA would not agree to it until final design work is carried out. It is for that reason that it did not present such a detailed scheme to the Inquiry: it would have been speculative.

3.5.2.3. Nonetheless, RVR considers it has demonstrated that even on pessimistic assumptions it can deliver a scheme for flood compensation storage. It has land in its control to do so; additional land which can be used for compensatory storage is within the Order limits; and further parcels of land are available for such storage through agreement with a neighbouring landowner to the south of the railway. Taken with the fact that such storage may not be required at all, and the satisfaction of the EA on this issue, RVR suggests that the Secretary of State can be

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<sup>70</sup> RVR/07 condition 11.

<sup>71</sup> As explained in INQ/150. RVR indicates that, contrary to Mr Brown's closing at INQ/162 para 124, the EA has not been discussing possible sites for compensatory storage with RVR.

satisfied that compliance with condition no. 11 presents no impediment whatsoever.

3.5.2.4. The detail of the potential need for compensation and how it could be met therefore sit, in RVR's submission, beyond that which it is necessary to resolve in this Inquiry. However, on scrutiny of the detail:

- a) Mr Patmore has materially overstated the potential need for compensatory storage in his assessment of volumes. He has assumed that the embankments extend to rail level. He has not accounted for the flood levels, rather just assuming the whole embankment is within those levels. He failed to consider areas of cut. He missed some of the culverts. He did not use the LIDAR ground level data but rather spot heights.
- b) Capita's calculations demonstrate that even on pessimistic assumptions (including the 105% climate change allowance, which is not now required) the volumes are significantly less than those claimed by Mr Patmore. When challenged on this by the Inspector, Mr Patmore's essential (if begrudging) answer was that he could not dispute Capita's calculations.
- c) The potential areas for compensation storage show volumes which vastly exceed that which would be required. As Mr Southon explained in the round table session, even taking Mr Patmore's flawed estimates, only about 35% of the available volume would be required.
- d) On the areas presented, Mr Patmore could not identify any reason why they could not provide compensatory storage as indicated. The only point he appeared to pursue was the area at the Salehurst "Halt" may not be suitable if the Halt was constructed. But as RVR has explained, provision is simply made for land to accommodate a halt.<sup>72</sup> A suitable scheme for flood compensation storage must be provided under condition no. 11. If that included this land, and it prevented it from being used as a halt, then obviously the planning condition would take precedence.

3.5.2.5. Finally, it is necessary to consider whether anything would prevent these compensation areas from being used for that purpose if so required. The potential compensation areas to the south of the railway are the subject of an agreement in principle with the landowner, if they are required for that purpose. RVR says it is not necessary, for the purposes of showing that there is a solution which is capable of addressing these concerns, to show a binding contract to construct the compensation areas in those locations. Indeed, that would be premature for the reasons canvassed above. Whilst works to alter ground levels and create channels might not meet the threshold of engineering operations, and may be carried out under permitted development rights, in certain

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<sup>72</sup> See e.g. RVR/W/1/1, paragraph 7.7

circumstances the provision of flood compensation storage may require a further grant of planning permission. However, if it did:

- a) It would be to establish a 'satisfactory scheme' under condition no. 11, and thus highly unlikely to be objectionable.
- b) It would serve the purpose of mitigating flood risk, and thus again highly unlikely to be objectionable.

3.5.2.6. For those reasons, if compensatory storage is needed it can clearly be delivered. There is no impediment to the scheme in this regard. The EA agrees.

3.5.3. *Protective provisions and conditions*

3.5.3.1. Finally, it is important to note that these matters are the subject of both planning conditions and protective provisions for the EA. The protective provisions require the EA's approval for "specified works", which includes the works within the vicinity of the River Rother and its flood defences and any works designed to contain or divert floodwaters. Accordingly, the statutory authority granted by the Order would still require the approval of the EA to the detail of the works.

3.6. ***SoM3)d)-Ecology***

3.6.1. The ecological impacts of the Order scheme were considered in detail at the planning application stage.<sup>73</sup> Subject to detailed conditions requiring the submission of relevant management plans, those impacts were found to be acceptable. RVR indicates that there is no evidence before the Inquiry to suggest that any different approach should be taken when considering these matters in the context of the Order.

3.6.2. The Landowners and others have emphasised the high ecological value of the area around the railway. As Mr Coe (RVR-Ecology witness) confirmed in his evidence, that is not in dispute. However, the impacts on ecological receptors are limited and capable of being mitigated, and where necessary any loss can be compensated for. His evidence was virtually unchallenged at the Inquiry.

3.6.3. In terms of the sufficiency of ecological data, it is openly recognised that further survey work is required. That is a consequence of the Landowners' refusal to permit surveys to be carried out. However, the approach in the ecological appraisal and Environmental Statement (ES) has been to adopt a precautionary approach. The assessment has been borne out by the survey work which has been possible, between Junction Road and Austen's Bridge. That section also demonstrates the workability, and benefits of, the mitigation measures established by the grant of planning permission.

3.6.4. Insofar as the ES anticipates the provision of replacement planting, as part of the objective of ensuring no net loss and seeking to achieve a net gain in biodiversity, Mr Coe explained how that planting can be

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<sup>73</sup> See e.g. RVR/56, paragraph 6.8.

delivered within the railway corridor, and on other parcels of land controlled by RVR. Any such compensatory planting would be secured through the approval of a landscape and ecology management plan (LEMP) under planning conditions. Mr Coe explained that there is sufficient land to achieve this. As an aside, there is no inconsistency between using land for habitat replacement, and the same land being available as flood compensation storage (Area 1 being a case in point).<sup>74</sup> It is perhaps ironic that the Landowners who pray in aid the ecological value of Rother floodplain, refuse to accept (without any expert evidence on the point) that an extended floodplain could also be of ecological value. Mr Brown suggests that there has been "last-minute scrabbling around" to present ecological mitigation land as flood compensation storage but this is simply a misrepresentation. Land which is, or would be, in RVR's control can serve either or both purposes. The extent of land and its use would be determined through the discharge of planning conditions.

3.6.5. RVR indicates that, in summary, the ecological impacts of the scheme have been assessed in accordance with best practice, a point confirmed by Mr Coe and not disputed at the Inquiry. Appropriate mitigation measures have been secured by the imposition of planning conditions, which would necessarily have to be complied with in the implementation of the scheme. These measures are capable of being delivered and can avoid any net loss of biodiversity and seek to achieve net gains. Specific provisions for protected species would be made through the licensing process, as they have been for the section of the railway where works have already been undertaken.

### 3.7. ***SoM3)d)-Heritage***

3.7.1. RVR considers that the impacts on heritage assets were fully assessed in the ES, and no serious issue is taken with that assessment. The proposals would have an impact on the setting of Robertsbridge Abbey, but the railway would run on an existing embankment, and there is substantial existing intermediate vegetation. As Bodiam Castle, one of the highest value scheduled ancient monuments in the area, demonstrates, the railway is capable of both being accommodated in the setting, and better revealing the significance of the asset.

3.7.2. In policy terms, whilst there is 'less than substantial'<sup>75</sup> harm to the setting of the Robertsbridge Abbey which should be given significant importance and weight, there are countervailing heritage benefits of the scheme, as noted above. That explains the National Trust's strong support for these proposals: allowing visitors to get to Bodiam Castle, in a sustainable way, and then experience its rich heritage is a clear and compelling benefit of the scheme. Thus any heritage harm caused by the reconstruction of the railway within the wider setting of Robertsbridge Abbey is outweighed by the heritage benefits of the Order scheme

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<sup>74</sup> See further INQ/150, Appendix A, and section 3.4 in particular.

<sup>75</sup> In terms of Framework paragraph 202.

alone, and decisively outweighed by the further public benefits set out above.

3.8. ***SoM3)d)-Landscape***

- 3.8.1. The reinstatement of the railway is in a protected landscape, the AONB. However, RVR identifies that the presence of the historic railway in this location is expressly recognised for the positive contribution it makes, and can potentially make, to landscape character and visual amenity. As noted in RVR/W5-2<sup>76</sup> the *'Kent and East Sussex Steam Railway [which] runs from Bodiam to Tenterden in Kent'* is one of County Landscape Character Area (CLCA) 13's stated Key Positive Landscape Attributes. Similarly, the 2019-24 High Weald AONB Management Plan notes that the *'89 km of historic railway line'* within the AONB contributes to the area's natural and cultural capital.
- 3.8.2. The impacts on the landscape have been the subject of detailed assessment, both at the planning stage and then through further work in the context of this application. This included, specifically, considering the impact on the AONB's objectives as sought by the AONB Unit and as directed by the Secretary of State in the scoping decision. Those assessments have been revisited in detail by Ms Tinkler (RVR-Landscape and visual impact assessor)<sup>77</sup>, who gave reports in April 2020 and again in May 2021, following a site visit. Those assessments confirm that the Order scheme would not give rise to significant effects on landscape character. The detailed re-assessment in RVR/70-02 supports, through thorough assessment, the proposition that the railway itself would not give rise to significant effects on views, although there would be potential adverse effects from moving trains. Whilst there would be slight conflict with the AONB management plan objectives of *'maintaining existing extent of woodland'* (W1) and *'secure agricultural productive use of fields'* (FH1), the proposals otherwise accord with those objectives.<sup>78</sup>
- 3.8.3. The Inquiry heard from Mr Webster who took issue with aspects of the landscape and visual impact assessment (LVIA) methodology. In fact, many of his comments were also reflected in Ms Tinkler's work. As explained in INQ/39, Mr Webster's comments did not affect Ms Tinkler's overall conclusions.
- 3.8.4. RVR says it is important to note that there is no objection on landscape and visual grounds from the planning authority, the AONB Unit, or Natural England. Policy EM8, which supported the reinstatement of the railway, identified the impact on the AONB as a key issue to be resolved. The local planning authority concluded that the impacts of the scheme would be acceptable in that context: *'it is considered that the limited impact of the proposal with the proposed mitigation measures would*

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<sup>76</sup> See paragraph 3.4.

<sup>77</sup> RVR/70-02

<sup>78</sup> See RVR/70-02 at 5.7.20-35.

*have an acceptable impact on the High Weald AONB.*<sup>79</sup> Accordingly, RVR considers that the impacts of the scheme on landscape and on visual amenity have been properly assessed, including against the objectives of the AONB, and found to be acceptable.

### 3.9. **SoM3)e)-Carparking**

3.9.1. The provision of a connection at Robertsbridge serves the direct purpose of avoiding car travel. The mode shift assumptions which underpin Mr Higbee's assessment were not challenged by Mr Fielding or Mrs Evans or anyone else. It is assumed that 85% of the new customers would use the rail link, that being the key to opening up new catchments and inducing new demand. However, it is recognised that there would be some new customers who drive to the Robertsbridge Junction terminus. It is also assumed that some of the existing demand, which arrives by car, would drive to Robertsbridge rather than Tenterden or Bodiam. As a result, the mode share of arrivals at Robertsbridge is in fact assumed to be 43% by train and 57% by car, very close to the 50/50 split advanced by Mr Brown in cross-examination of Mr Hamshaw (RVR-Highways witness). It follows that the anticipated maximum parking demand at Robertsbridge would be around 33 cars per day.<sup>80</sup>

3.9.2. RVR considers that it is readily apparent that the existing station car park has more than adequate space to accommodate such a level of demand. The Landowners' parking survey, undertaken on a weekday morning in March 2019, recorded that only 47 of the 73 marked car parking spaces were occupied.<sup>81</sup> On that basis, there would clearly be sufficient space to accommodate this additional parking demand when account is taken of the substantial areas of unmarked bays within the car park. Parking controls have already been deployed on surrounding streets in Robertsbridge, and if problem parking did occur that would be the obvious solution. The planning permission is subject to a Travel Plan condition through which appropriate measures can be agreed with the local planning authority to address parking at Robertsbridge, if required. Accordingly, there are no parking issues which undermine the case for the Order.

### 3.10. **SoM5)-Consistency with Local and National Policy**

3.10.1. RVR indicates that the starting point here is to repeat the fact that this is a scheme which benefited from express policy support in the Development Plan. Policy EM8 stated that the extension '*will be supported*' along the route identified in the Proposals Map<sup>82</sup>, i.e. the route of the Order scheme. The policy was subject to three criteria relating to the integrity of the floodplain and flood defences at Robertsbridge, the impact on the AONB, and '*appropriate*' arrangements for crossing the A21, B2244 (Junction Road), Northbridge Street and the

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<sup>79</sup> RVR-56, para 6.6.4.

<sup>80</sup> RVR-09, Table 5-4 (page 51).

<sup>81</sup> OBJ/1002/IF/1 section 7.5.

<sup>82</sup> RVR/02.

River Rother. The policy was subject to independent examination, where the Landowners' objections were considered. The examining Inspector noted that the use of compulsory purchase powers could be considered should those objections be maintained.<sup>83</sup> This express Development Plan support is clearly a matter to be given significant weight. It is right to observe that through recent changes to the Development Plan the policy has not been saved, but that is because the permission it envisaged has been granted.

3.10.2. RVR considers that accordingly, the local planning authority's conclusion that the proposal is in accordance with the Development Plan should be followed by the Secretary of State. The proposals are also consistent with the now made Salehurst and Robertsbridge Neighbourhood Plan: see the review at RVR/W1/5-2. Mr Gillett's evidence on these points was not challenged at the Inquiry.

3.10.3. In terms of the Framework, RVR considers that the Order scheme aligns with a range of objectives in national planning policy.<sup>84</sup> Paragraph 84(c) states that planning decisions should enable '*sustainable rural tourism and leisure developments which respect the character of the countryside*'. The reinstatement of a heritage railway, providing sustainable access to Bodiam, Tenterden and the wider area through a mainline connection, is the paradigm example of such a development. The Order scheme also promotes sustainable transport, in accordance with paragraph 104 of the Framework. For the reasons addressed above, the proposal is also consistent with paragraph 111 (highways impacts). Similarly, for the reasons recorded above the Secretary of State can note that the proposals are consistent with Framework policies on flood risk (section 14), heritage (section 16), landscape (174) and AONB protection (176), and biodiversity (180). In those circumstances, the proposal should be regarded as being for "sustainable development", and benefit from the presumption in favour of such development in paragraph 11 of the Framework. Notably, the Landowners do not argue to the contrary.

### 3.11. ***SoM6)-Adequacy of the Environment Statement***

3.11.1. RVR indicates that the adequacy of the ES was extensively scrutinised prior to the Inquiry. First, the local planning authority concluded that it was adequate for the purposes of determining the planning application. Second, the Secretary of State issued a scoping opinion which confirmed its adequacy for the purposes of the application for the Order, subject to one issue (relating to the AONB, see above). Unusually, that scoping had the benefit of a full Environmental Statement since it had already been accepted for the purpose of the planning application. Third, the Inspector gave a direction under rule 17 requiring Further Environmental Information (FEI) on various matters which was complied with in March 2021. The FEI was consulted upon. No further requests were made. Fourth, the ES 2014 was reviewed and revalidated at the same time as

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<sup>83</sup> RVR/16.

<sup>84</sup> See RVR/W1/1, 6.4 and following.

the rule 17 request was complied with. Although the Landowners made various submissions at that time, none of them went to the legal adequacy of the Environmental Statement.

- 3.11.2. RVR's *Environmental Statement and supporting information guide (Explanatory Note)*<sup>85</sup> (Essig) sets out the suite of environmental information produced in support of the Order application prior to the Inquiry. Since the preparation of the Environmental Statement 2014 (ES 2014), the additional environmental work has been undertaken in order to address a number of stakeholder requests and to ensure that the findings of the Environmental Impact Assessment remain valid, included:
- a) *Environmental Statement Addendum 2016*-provided supplementary ecology information and considered whether proposed changes to the scheme design would have a material effect on the findings of the ES 2014.
  - b) *Environmental Statement Addendum 2017 (ESa)*-in response to the Secretary of State's Scoping Opinion, provided an assessment of the scheme against High Weald AONB Management Plan.
  - c) *Air Quality Statement-Level Crossings and Rolling Stock Emissions, 2018*-provided in response to concerns raised by a number of stakeholders with respect to air quality impacts related to traffic queues at the proposed level crossings and general air quality impacts from diesel and steam emissions from locomotives.
  - d) *Environmental Statement (ES) 2021 Update (ESu)*-Having had regard to the concerns raised by a number of interested parties with respect to the adequacy of the Environmental Statement a request for Further Environmental Information (FEI) was issued on behalf of the Secretary of State, dated 8 June 2020. It indicated that RVR's statement of environmental information should contain additional identified information in order to constitute an Environmental Statement for the purposes of the application, the further information being necessary to verify the findings of the Environmental Statement and to enable the Secretary of State to reach a reasoned conclusion. In response to the request, the ESu provided the FEI and revalidated the findings of the Environmental Statement where necessary in the light of relevant changes in the intervening period. The ESu was accompanied by an updated *Non-Technical Summary, 2021*, which includes a schedule of proposed mitigation and residual impacts. The Essig identifies where the requested FEI can be found.

Together with the ES 2014, these documents comprise the Environmental Statement for the Order scheme (ES)

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<sup>85</sup> RVR/72.



- 3.11.3. RVR considers that the Landowners have had a full opportunity to take any issue on the adequacy of the ES at this Inquiry, including through questioning Mr Slatcher (who gave his expert view that the ES was, as a whole and with the benefit of the revalidation and further environmental information, adequate). They have not done so, and thus can be taken to have dropped the points previously pursued in correspondence.
- 3.11.4. Therefore, in RVR's view the environmental information necessary to determine the application was before the Inquiry, and was adequate for the purposes of determining the application.
- 3.12. ***SoM7)-Statutory procedural requirements***
- 3.12.1. RVR has confirmed that all relevant procedural requirements have been met. No objection has been taken by others on such grounds. Accordingly, the Inspector can report to the Secretary of State that the application has been made in accordance with the Rules and there is no procedural objection to the Order being made.
- 3.13. ***SoM8)-Proposed changes to the draft Order***
- 3.13.1. The only change to the Order proposed by an objector is from the EA. The change sought is to allow for a deemed refusal, if a decision is not made within the required period. It remains open to the EA to refuse an application, including on the basis that insufficient information has been provided. The approach here is wholly consistent with standard protective provisions applied in many cases. The EA explained that there was nothing in particular in this Order which would mandate a different approach, but the EA was "lobbying to get the standard protective provisions changed".
- 3.13.2. It is not for RVR to change the established approach to protective provisions, or to address the EA's 'lobbying' on the point. It would be surprising if this were the case where precedent was not followed on this issue. In those circumstances, RVR submits that the Order should be made as proposed.
- 3.14. ***SoM9)-the case for compulsory purchase***
- 3.14.1. *The compelling case: general approach*
- 3.14.1.1. There is no dispute that the land which is the subject of compulsory acquisition is needed for the Order scheme. RVR has been able to acquire some of the land required for the Order scheme by agreement and indeed has constructed part of the railway on the land which it controls. However, two Landowners whose land was crossed by the original railway oppose its reinstatement and oppose the acquisition of their land. Recent correspondence confirms that their objection is to the principle of the Order scheme, as Mr Highwood also confirmed in his evidence. There appears to be no prospect of acquiring the land in question by agreement.
- 3.14.1.2. In those circumstances, RVR considers that the authorisation of compulsory acquisition of the land is both necessary and appropriate to

deliver the Order scheme and the benefits it brings. Those benefits amount to a compelling case in the public interest for the use of compulsory purchase order (CPO) powers. There is no alternative means by which those benefits can be delivered without the use of the land where the original railway ran. RVR recognises the interference with the landowner interests, and the impacts that such an interference would have on the farming operations. It has carefully assessed those impacts.<sup>86</sup> However, those impacts can be largely mitigated through working together to agree accommodation crossings. Compensation would be payable to put the Landowners in the position they would have been but for these proposals.

- 3.14.1.3. RVR considers that the Landowners' approach to the 'compelling case' is a slightly odd one. Perhaps realising that the benefits of the scheme decisively outweigh the acquisition of land which until 1961 was part of an operational railway, and which until 1981 was owned by the British Railways prior to its sale to the current owners, Mr Highwood (and Mr Brown) seek to pray in aid a range of claimed 'disbenefits' of the Order scheme which are unrelated to the interference with the Landowners' rights. Such an approach is not supported in the CPO Circular or elsewhere, despite Mr Brown's arguments to the contrary. It involves, on the facts of this case, sweeping up a series of notional 'disbenefits' which are not said to reach a threshold which justifies withholding consent for the Order scheme on those grounds, and putting them forward as a reason to resist the Order through the back door. Put another way, the Landowners appear to suggest that if the Secretary of State finds, for example, the highways impacts of the Order scheme to be acceptable, he should nonetheless find that highways impacts undermine the 'compelling case' for the acquisition of land.
- 3.14.1.4. In RVR's view, this approach risks creating absurd results, as demonstrated by the way it emerged through the Landowners' evidence. RVR indicates that the Landowners' highways expert largely conceded the highways case, but Mr Highwood felt that he could reinvigorate the arguments as a 'subjective sense check' based on his 'perception' of impacts which the experts have found to be acceptable. The impacts on the A21 are nothing to do with the Landowners, who use the roads only as members of the public. If the impacts are judged to be acceptable, applying well-established planning tests which are not disputed in this Inquiry and on the basis of objective expert evidence, the point cannot be resurrected as an objection to compulsory purchase. As Mr Highwood (and Mr Brown) should have recognised, this is not a proper approach to the determination of the issues arising from this Order, nor to his own expert evidence.
- 3.14.1.5. In fact, and in any event, RVR considers that the disbenefits of the Order scheme are limited, for the reasons set out above. Therefore, even taking Mr Brown's approach of revisiting every possible disbenefit, no matter how minor or how comprehensively outweighed by benefits of

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<sup>86</sup> RVR/67 and 68.

a similar kind, the disbenefits do not undermine the compelling case. They do not cut across the substantial benefits articulated above. This point is perhaps best demonstrated on the highways case, which Mr Brown seeks to resuscitate in closing submissions. Mr Brown contemplates and dismisses a 'complex calculation'<sup>87</sup> of weighing benefits and disbenefits, but in highways terms that is precisely what has been done. The quantified economic disbenefits of delay on the A21 are trivial. As noted above, they are outweighed by the transport benefits of the Order scheme alone, without having to consider the benefits to the local economy from new visitors.

3.14.1.6. RVR considers therefore, that Mr Brown's core argument in both opening and closing should not be allowed to disguise the true position that the Landowners have failed to substantiate at this Inquiry actual objections to the Order scheme itself. RVR suggests that is unsurprising given the decisions of the local planning authority to: (a) support it through a specific policy in the development plan; and, (b) thereafter to grant permission for it.

3.14.2. *Impacts on Landowners*

3.14.2.1. Mr Highwood agreed in cross-examination that it is right to consider the relative cost and benefit of the Order scheme in assessing whether there is a compelling case. The scale of the interference with the Landowners' rights thus needs to be weighed against the benefits of the Order scheme. It is recognised that there would be impacts on the Landowners' farming operations. However, none of those impacts would undermine the viability of the farm enterprises. They would continue to operate, with the loss of the areas taken for the railway and with the consequential impacts on severance. In the case of Moat Farm, the land to be acquired largely remains as it was when the railway closed but overgrown in the intervening years. It is not in productive use. The loss of land, even where the embankment is removed, is in fact limited.

3.14.2.2. The impacts of severance are firmly recognised and were carefully assessed by Mr Hodges in reports with which Mr Highwood did not substantially take issue. Those impacts can be mitigated through accommodation crossings. That such crossings can be delivered in a way which is reasonably convenient and tolerably safe has been explained above. It is also borne out by the experience of other farmers, whose operations coexist with crossing the railway. Losses would be compensated in full.

3.14.2.3. The promoter of an Order seeking compulsory purchase powers must take care to ensure that any impacts on landowners are given their proper weight, recognising the compulsion with which their property would be acquired. But the Secretary of State must be alive to the true impacts. As is perhaps reflected in the amount of time spent by Mr Highwood, and by Mr Brown in closing and cross-examination, on those actual impacts as against other issues which do not concern

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<sup>87</sup> INQ/162 para 10e.

the farm operations, the impacts are relatively limited. None of the Landowners saw fit to give evidence themselves as to the impacts on their farming operations, presumably because they did not take issue with Mr Hodges' assessment.

3.14.3. *The prospects of funding*

3.14.3.1. The CPO Guidance explains that 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 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.'*

3.14.3.2. RVR considers it is clear from that Guidance that certainty as to funding is not required. What is required is an 'indication' of how shortfalls in funding would be met; the basis on which contributions would be made; and that funding would be available 'early in the process' or within the statutory period. Heritage railway schemes are supported by charitable donations and grant funding. That is established practice, and it is not suggested that a scheme such as this could be funded in any other way. Accordingly, the Secretary of State should consider the prospect of funding in that context. Charitable donations cannot be taken back. Thus no scheme funded by such donations would be reasonably able to show that such funding existed before the authority to construct the scheme has been granted.

3.14.3.3. On the facts here:

- a) RVR has been substantially supported to date by both public contributions and by the generosity of two significant benefactors;
- b) Those benefactors have confirmed their commitment to the Order scheme. Whilst it was not necessary for him to do so, Mr Broyd has put that commitment in writing to the Secretary of State. There is no doubt whatsoever that Mr Broyd has the means to meet that commitment, as Mr Brown accepted.
- c) The record of funding schemes such as this is very good. Mr Broyd has explained that the Welsh Highland Railway (WHR) was funded by his own generosity to the tune of £10 million, but also by wider public donations to the same amount.
- d) The Order scheme also has benefited from a recent substantial legacy, as confirmed by Mr Gillett.
- e) There is no better of evidence of the commitment to fund the Order scheme than the construction of the Robertsbridge Junction Station and associated track, together with the works between Austen's Bridge and Bodiam Castle. The donors have already paid for those parts of the Order scheme, and would inevitably fund the remainder of it.

3.14.3.4. RVR says it follows that, if authorised, the Order scheme would be fully funded in the manner that its promotion and construction has been funded to date, no doubt with the charitable support of many others. The prolonged commitment to the Order scheme, and its partial construction, puts this beyond reasonable doubt.

3.14.4. *Impediments*

3.14.4.1. RVR considers that a very large proportion of the Landowners' case is based around what they suggest amount to impediments to the delivery of the Order scheme. These turn, essentially, on matters relating to planning permission. The test is in the CPO Guidance: *'The acquiring authority would also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation'*. The primary test is therefore one of likelihood, not certainty. The potential impediments identified in the Guidance include *'any need for planning permission or other consent or licence'*. Further guidance is then given:

*'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.'*

3.14.4.2. Here, of course, planning permission has been granted. That in itself is the strongest indication of the absence of any planning impediment to the Order scheme. Given that planning permission is not required in advance of the promotion of an order which acquires land, it would be surprising if such an order could be resisted on the grounds that planning permission had already been granted but where the implementation of that permission was questioned. The inexorable conclusion must be that the fact that permission has already been granted is the strongest possible indicator that, if necessary, permission would be granted again. In any event, the Landowners' objections on these grounds are exaggerated for the reasons set out below.

*a. Discharge of planning conditions*

3.14.4.3. First, a planning condition can only be imposed if it is reasonable.<sup>88</sup> A planning condition which cannot be complied with is not reasonable. It can therefore be properly assumed that if the local planning authority saw fit to impose conditions, it must have regarded them as capable of being complied with. The PPG expressly notes that Grampian style conditions should not be imposed where there is no prospect of them being met. RVR considers therefore, the Secretary of State should assume that the conditions were judged by the planning authority, and by the statutory consultees who requested them, to be capable of being discharged.

3.14.4.4. Second, the conditions in issue relate to matters which have been addressed in detail above. The restrictive condition on the development of the A21 crossing would inevitably be discharged when HE approves the departure. For the reasons explained above, that can be expected to be soon. The EA's requested conditions are also, clearly, capable of being met for all the reasons set out above. There is no doubt that a satisfactory scheme for flood compensation storage can be achieved on the identified land if such compensation is required at all. The same goes for ecological mitigation and the approval of the relevant management plans. The land is available to provide replacement habitat in the form and to the extent required.

3.14.4.5. For those reasons, and the detailed reasons explored above, there are "no obvious reasons" why the conditions cannot be discharged.

*b. Time limit on planning permission*

3.14.4.6. The 2017 permission contains a five year time limit which would pass in March 2022. RVR has explained, in INQ/52, the ways in which this issue can be addressed. First, RVR submits that the permission has in fact been implemented.

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<sup>88</sup> See Framework paragraph 56 and the PPG.

- 3.14.4.7. The Landowners' response to this makes the ambitious submission that the principles relied on depend on 'Agecrest' which is "no longer good authority".<sup>89</sup> However, in doing so they ignore the endorsement of the principles in 'Greyfort', which is the most recent Court of Appeal authority before the Inquiry concerned with the exceptions to the 'Whitley principle'. The question is not simply one of waiver, but whether if works are carried out pursuant to a permission with the approval of the local planning authority it would be reasonable for that authority to take enforcement action against them. As noted by the Court of Appeal in 'Greyfort' (at paragraph 11), the Court of Appeal endorsed the view that '*irrationality of enforcement action falls with the public law exception to the Whitley principle*' in 'Prokopp', as well as in 'Greyfort'.<sup>90</sup>
- 3.14.4.8. Standing back from that, in this case the approval of the local planning authority to the Junction Road to Austen's Bridge works would clearly make it irrational for the authority to enforce against those works. It follows that the permission has been implemented.
- 3.14.4.9. In any event, and as explained in INQ/52, RVR does not intend to rest on this matter. It proposes to seek to the 'amend' the permission to identify the works which have taken place as a first phase. This can undoubtedly be achieved under section 73, even if it cannot be achieved under section 96A. Doing so would mean that the permission has been implemented in accordance with its terms.

*c. Need for further permission or non-material amendments*

- 3.14.4.10. As confirmed at the Inquiry, certain scheme changes related to the developed design proposals at the A21 would mean that the 2017 permission either needs to be amended (under section 96A) or an application for a section 73 permission or other further permissions would be required. There is no reason to think that such minor changes would not be approved by the local planning authority, especially since they would be the product of RVR's continued engagement with HE to agree satisfactory detailed design for the A21 crossing. It would be absurd to suggest that such minor variations, to ensure that the safest solution for the design of the A21 crossing is achieved, have any obvious reasons why they would not be approved. A similar issue arises in respect of flood compensation storage areas, if required (see above). In reality, these are just further steps through the implementation of the scheme, and not impediments at all.
- 3.14.4.11. Given that the Order scheme has been supported in a local plan, granted planning permission, supported by the relevant local authorities, approved by the ORR, and is not the subject of any in principle objection by any statutory consultee save for HE, RVR says that the Secretary of State can be confident that any further approvals or consents required for its delivery would be forthcoming. As for HE, it is clear from Mr Westmoreland Smith's closing submissions that HE finds itself very

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<sup>89</sup> INQ/104-0.

<sup>90</sup> INQ/52.

close to being satisfied on any outstanding mitigation issues. There is no longer any dispute of principle. Once the mitigation points are resolved, HE has confirmed in closing that it would withdraw its objection.

3.15. **Conclusions**

- 3.15.1. The Order scheme would complete the reinstatement of a railway line that would bring significant benefits to the local area and beyond. It would reconnect an existing heritage railway and a number of important visitor destinations to the national rail network, promoting both tourism and sustainable travel. In completing a 'missing link' it would generate significant economic and social benefits, funded by private donations. These are public benefits, from private generosity.
- 3.15.2. The Order scheme comes with the express approval of the local authority, including through its Development Plan, and with the ringing endorsement of the National Trust, NR and many others including the local MP. The benefits of the proposal have already been recognised and endorsed through the planning system, and this Order would enable their realisation.
- 3.15.3. As they are entitled to do, the Landowners have fought hard to resist the Order scheme. But in reality, the grounds for doing so are not there. Planks of the Landowners' case have simply fallen away. All relevant issues have been addressed by RVR.
- 3.15.4. RVR has been forced to go to a level of design detail that is unprecedented for a TWAO of this nature to meet the requirements of HE. Contrary to the Landowners' submissions it has engaged fully with statutory consultees for a decade. It could never have imagined that, before the Order establishing the principle of the Order scheme was made it would be required to descend to a level of detail on matters such as road markings. Contrary to the Landowners' submissions, none of those matters changed the Order scheme.<sup>91</sup> But it has gone into that detail, repeatedly and protractedly, and has shown the Order scheme to be workable and compliant with all statutory and policy requirements.
- 3.15.5. In all the circumstances, RVR considers that the Secretary of State should now firmly endorse these proposals. The Inspector is therefore invited to recommend that the Order is made.

4. **THE CASES FOR SUPPORTERS WHO APPEARED AT THE INQUIRY**

4.1. ***SUPP/186-Councilor Susan Prochak*** (SP)

- 4.1.1. SP indicates that since she was elected as the District Councillor for the Parish of Salehurst and Robertsbridge in 1989, she knew of officer and member support for the restoration of the heritage railway line between Tenterden and Robertsbridge. Subsequent policies and plans, which all

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<sup>91</sup> Despite Mr Brown suggesting a "parade of changes", the only changes actually proposed have been minor and inconsequential corrections relating to Order plans.



went out to public consultation confirmed the support of the Local Authorities. The present Member of Parliament (MP), Huw Merriman and previous MP, Greg Barker, have both supported the project.

4.1.2. *SoM5)-The Rother District Local Plan, 2006*

4.1.2.1. The *Rother District Local Plan (2006)* included a specific policy (EM8) safeguarding a route westward from Bodiam to link with the mainline services at Robertsbridge (on the Hastings to London line). The inclusion of the policy set out Rother District Council's (RDC) support, in principle, for the extension of the KESR to Robertsbridge, subject to satisfactorily addressing environmental and road crossing issues.

4.1.2.2. SP indicates that regular updates have been provided by the Charity Trustees of Rother Valley Railway on the progress of this project. There has been considerable work done, including the reconstruction of the track to Junction Road from Bodiam. RDC awarded a grant of £25,000 in support of this. In 2012, the then Chief Executive of RDC, responded to recent RVR developments writing how pleased the Council was with the impressive reconstruction of the bridges from Robertsbridge to Northbridge Street recognising the importance of tourism to the economy of the District.

4.1.2.3. The 'Options and Preferred Options' version of the *Development and Site Allocations Local Plan (DaSA)* was published for a 10-week public consultation between 12 December 2016 and 20 February 2017. During that early consultation version, the DaSA recognised the work being undertaken at Robertsbridge Station in implementing planning permission RR/2012/1357/P, and the advanced state of planning application RR/2014/1608/P (which included significant technical work in relation to the highway crossings, environmental issues and flood risk matters) and the significant commitment of the RVR to pursue that scheme; consequently, the DaSA contained a draft policy (Policy RVR1) supporting the continued allocation for the re-instatement of a railway link from Robertsbridge to Bodiam along its original route.

4.1.2.4. On 22 March 2017, planning permission was granted for the reinstatement of the Rother Valley Railway from Northbridge Street, Robertsbridge, to Junction Road, Bodiam. The Planning Committee supported this unanimously. Consequently, there was no need for the proposed allocation at this site (Policy RVR1) to be taken forward and it was therefore not included within the DaSA which was adopted in December 2019.

4.1.3. *SoM1)-Economic benefits*

4.1.3.1. In 2018, RDC and Hastings Borough Council commissioned a comprehensive report: *Economic Impact of Tourism on 1066 Country*. This research estimated that around £557 million was spent on trips to 1066 Country in 2018 by overnight and day visitors. Around £519.2 million directly benefited local businesses from hotels and restaurants to cafes, shops and attractions in 1066 Country. However, further 'additional expenditure' spent by visitors on second homes or boats and

by friends and relatives, whom visitors are staying with or visiting, needs also to be accounted for as this represents a significant additional source of income for local businesses. It is estimated that this 'additional' expenditure generated a further £19.9 million in direct turnover for local businesses in 2018.

- 4.1.3.2. This income is estimated to have supported 10,830 full-time equivalent jobs in the local economy. These jobs are spread across a wide range of service sectors from catering and retail to public service jobs such as in local government, and not just tourism. According to the Office of National Statistics, there are 75,000 employee jobs across 1066 Country. Based on estimates, total tourism related expenditure supported 20.2% of these jobs in 2018.
- 4.1.3.3. Rother District is an area of 200 square miles with 80% designated as a legally protected AONB. There is little scope for significant new tourist attractions. A previous Chief Planning Officer stated there were only two projects possible in rural Rother, the Military Canal and the Rother Valley Railway. The restoration of the Rother Valley Railway line would expand the tourism offer of this part of SE England and support the tourism economy locally, sub-regionally and regionally, creating jobs and building on the already established railway, currently terminating at Bodiam. Connection to the main line to London would attract new visitors.
- 4.1.3.4. Once the Covid19 pandemic is over, the greatest challenge to all areas will be the support of jobs and incomes. SP considers that investment and support in this project would benefit and support the economy enormously.
- 4.1.4. *SoM1)-Accessibility*
- 4.1.4.1. SP indicates that the Rother Valley Railway would be, if completed, one of the few heritage railways with a direct connection to a mainline to London and south to Hastings. Most visitor attractions depend on access by car. The National Trust at Bodiam Castle has visitor numbers of over 300,000, but shows how partnership ticketing with KESR can reduce car travel. However, many visitors still arrive at the castle by car. The completion of the link to the main line would be an enormous opportunity to reduce existing car travel. This would be in line with RDC's commitment to carbon reduction through its Climate Emergency Motion passed in 2019 and subsequent Environment Strategy.
- 4.1.4.2. In SP's view, new users, once the line is open, can be further encouraged to arrive by train with attractive combined ticket pricing. With any passengers arriving by car, there is available parking at the station, especially at weekends. On-street car parking in Robertsbridge is in the near future to be controlled by the introduction of Civil Parking Enforcement across Rother. Plans for this have gone through consultation and is awaiting implementation by the County Council.
- 4.1.4.3. Sir David Attenborough in his recent TV series reported that 69% of the population feel they are losing touch with non-urban surroundings and

one in eight children have never seen a cow. The completion of the Rother Valley Railway link would open up Rother Valley's very special countryside to many, many more from urban areas right up the line to central London. SP considers that the restored link would hugely amplify the heritage, recreational and educational value of the line through improved accessibility.

4.1.5. *SoM1)-Heritage railway attractions*

4.1.5.1. Over the world, heritage railways are popular attractions not only for railway enthusiasts, but also for the wider public, especially children. When RVR gave the community free rides from Robertsbridge Station to Northbridge Street, SP couldn't help noticing the excitement and pleasure this gave to not only children, but adults too.

4.2. **SUPP/121-Tom Lewis (TL)**

4.2.1. *Introduction*

4.2.1.1. TL indicated that, having floated his business on the London Stock Exchange in 1999, for the last 20 years, he has been the 'hands-on' proprietor of the Morghew Park Estate, a 2,000-acre mainly arable farm at Tenterden, doing the job successfully, notwithstanding the absence of any formal farming qualifications.

4.2.1.2. Two-miles of the KESR, between Rolvenden and Wittersham, passes through Morghew Park, so TL has experience of dealing with the railway's managers and operating the four accommodation crossings, which he indicates allow him to farm the land as one unit. Between the ages of 13 and 22, TL was a volunteer at the KESR. Towards the end of his involvement, he worked as a fireman on passenger trains, which he says gave him experience of accommodation crossings from the perspective of the train crew.

4.2.2. *SoM3)-Relations between Morghew Park Estate staff and the KESR*

4.2.2.1. TL indicates that when he took over Morghew Park in 2001, he was apprehensive about the railway's potential to interfere with the operation of the Estate, not least because none of the managers he'd known 25 years previously were still in post. His concerns related primarily to lineside fires caused by sparks from the steam engines and the maintenance of fencing.

4.2.2.2. On the subject of lineside fires, the railway has never managed to set a field of wheat on fire during his time at Morghew. There have been a couple of very minor fires immediately adjoining the track, and where these have crept through onto his land, railway staff have been quick to extinguish them, which has sometimes involved a train waiting for 15 minutes while the crew attended to the fire. On one occasion, a member of staff was left behind for several hours in case of any new outbreak of fire.

4.2.2.3. TL says that he has also enjoyed great cooperation from the railway on the subject of fences. The most notable occasion was about four years

ago, when he started to let grazing on a field called Tom's Marsh to a neighbouring farmer. The cattle very quickly found numerous weak spots in the fencing, and TL had to ask the railway to replace approximately one mile of fence. He indicates that, to his delight, there was no debate about this, and the job was done within weeks. Finally, there was an occasion when an oak tree standing on his side of a lineside fence fell over and blocked the line. The last train of the day could not finish its journey, and he expected to receive a claim for damages, but never heard another word about it. He recognises that these are no more than anecdotes. However, he says they illustrate that the railway's managers he deals with are sensible, friendly and pragmatic people. He says they have treated him with respect, and have told him that they regard farmers as the custodians of the scenery that their passengers pay to enjoy.

4.2.3. *SoM3)b)-Layout and operation of TL's accommodation crossings*

4.2.3.1. TL has four accommodation crossings over the course of two miles, which is a comparable situation to the one proposed by RVR at Salehurst. These crossings are all named to avoid misunderstandings.

*Harvester crossing*

4.2.3.2. TL indicates that most of his traffic uses a crossing called Harvester, which has more than 1/3 mile visibility on either side. He says this gives his staff confidence in the use of the crossing, as they can see the trains coming, and the train crews can see them. Furthermore, in the absence of outright negligence, it is difficult to imagine farm traffic being surprised by the arrival of a train.

4.2.3.3. At the crossing, the rail-top level is approximately 1 metre above the surrounding field level, and on either side, the two are connected by ramps averaging 20m in length and 8m in width, giving a gradient of 5%. However, on either side of the crossing, the first 8m of the ramps nearest the rails are located on land that would be inside the railway's boundary fence if there were no crossing. For this reason, the amount of productive land lost to the ramp on either side of Harvester Crossing is 12 metres x 8 metres = 96 m<sup>2</sup>. Multiply this figure by two to cover both ramps, and Harvester Crossing accounts for 0.05 or 1/20 of an acre.

4.2.3.4. TL considers that these dimensions provide him with a crossing that is adequate to enable his combines and 14-tonne grain trailers to cross.

4.2.3.5. TL indicates that whenever he is crossing with a combine or larger vehicle, he uses mobile phones to call the signaller to ask permission, and he or she would usually reply with something like: "There will be a southbound train in ten minutes, and after that, nothing for 35 minutes. Please call me back when you have crossed". If it's just a tractor and trailer, then the driver checks for trains, opens both gates, drives across and then closes them again.

4.2.3.6. A week before the beginning of harvest, TL notifies the signaller that the harvest and drilling season, which lasts from July to October, is about to begin, and he activates an arrangement that warns train crews

at the beginning of a shift to take particular care at the crossing. Finally, during harvest time, TL sometimes employs a student to act as a crossing keeper to operate the gates.

- 4.2.3.7. During his time at Morghew, TL says that he has never had to herd sheep or cattle over the line, preferring to use a cattle trailer behind a tractor. If herding cattle over Harvester Crossing were to become necessary, he considers that the railway would be obliged to install cattle grids to prevent straying, and before herding cattle across the line, he would liaise with the signman as described above.

*Willows Curve Crossing*

- 4.2.3.8. TL indicates that this crossing is not as good as Harvester. As the name implies, it is on a curve, and although the visibility is good for farm traffic, it is less good for the train crews, as on a curve, a good view forward is only afforded from one side of a steam locomotive. The crossing is not used very often, and it has a single ten foot gate on either side. Rail-top level is again approximately 1 metre above field level, and here the ramp is shorter and steeper, but entirely adequate for the limited 4x4 and tractor traffic that uses it.

*Pope's Cottage Crossing*

- 4.2.3.9. TL says that this is his most problematical crossing, with excellent visibility to the south, and very limited visibility to the north due to a tight curve in the track. Again, this crossing is rarely used and has to be approached with great care.

*Newmill Channel Crossing*

- 4.2.3.10. This crossing has double gates and is almost exclusively used by the Environment Agency (EA) to move its excavators and reed-cutting machinery over the railway to permit maintenance of the Newmill Channel, formerly the River Ashbourne. This crossing has great visibility to the north, but to the south, the view is partly obscured by the ironwork of the adjacent Bailey bridge over the Newmill Channel.

- 4.2.4. TL indicates that the main point he is trying to make by listing the deficiencies in his own accommodation crossings is as follows. Over the course of two miles, he considers that he has only one good accommodation crossing. This contrasts substantially with the RVR's proposal, as he understands it, to provide the Salehurst Landowners with four or five crossings, most if not all of which would have fantastic visibility over straight track in both directions, not least because four of them would be located on the new formation which, if managed appropriately from the outset, would never have trees to obstruct the view for farmers or train crew. For the obvious reason of visibility, these should be optimal examples of the safety that can be achieved in an accommodation crossing.

- 4.2.5. *SoM3)-The Level of Disruption to TL's Farming Operations Caused by the Railway*
- 4.2.5.1. TL says that he could take a lead from the Salehurst Landowners and become melodramatic. He could use emotive language of the sort that's been attributed to them in the press, and complain bitterly that the railway 'slices' through the middle of his land, because it does. He could point out that like the Salehurst Landowners, he too has fields that have been chopped into pieces, bisected and trapped between the railway and in his case not the River Rother, but the River Ashbourne. He too could hope to convince people that the railway which crosses his Estate has 'a materially detrimental impact on his farming business', but it isn't true.
- 4.2.5.2. He acknowledges that he cannot comment on subjects such as any disruption caused by the railway reconstruction work, or the cost, presumably covered by compensation, of a small acreage of Parsonage Farm being lost, and another small acreage downgraded from arable to grazing. However, what is of greater impact is the long-term damage to the Salehurst Landowners' farming operations if and when the railway is reinstated. Given the paucity of detailed farming information contained in the Landowners' Statement of Case, TL says he assumes that the 'materially detrimental impact' of which they speak relates substantially to the fact that they would, on occasions, need to cross a railway line to move cattle, produce and machinery between the various areas of their farms.
- 4.2.5.3. TL indicates that, from his own experience of farming on both sides of the same railway, what the railway actually delivers to Morghew Park is no more than a 'very minor level of inconvenience'. And even that 'minor inconvenience' needs to be measured against the backdrop of a farming industry that routinely suffers massive 'detrimental impact' from the wrong sort of weather, ever-changing subsidy regimes and the difficulties caused whenever more agrochemicals are removed from the permitted lists of pesticides. These are real 'detrimental impacts', alongside which the inconvenience of occasionally crossing a railway is, he says, no more than an unwelcome but entirely trivial consideration.
- 4.2.5.4. In financial terms, occasionally having to cross a railway line would never make the difference between a good year and an average year on his farm, or an average year and a poor year. It is one of the more trivial challenges that some farmers have to take into account when they decide whether or not to farm a piece of land. TL indicates that there is no doubt in his mind that the railway which crosses Morghew Park is infinitely less problematical than a country lane following the same course. It takes up no more land than a lane, and it is less likely to be littered with burnt-out stolen cars or the remains of fly-tipped kitchens and bathrooms. Moreover, railway formations are fantastic wildlife habitats and corridors, which cannot be said for narrow lanes.
- 4.2.5.5. One final piece of anecdotal evidence. When he was considering purchasing Morghew Park 20 years ago, TL took advice on his plans from land agents, lawyers and others. None of them mentioned that the presence of the railway and its accommodation crossings would exert a

'materially detrimental impact' on his proposed farming operation, or even mentioned it as a negative factor to be considered.

4.2.6. *Conclusion*

4.2.6.1. TL considers that his experience suggests the Salehurst Landowners have nothing to fear from the KESR's managers, who are competent, pragmatic people. The RVR's proposed accommodation crossings would be vastly superior in terms of visibility and safety to his. Compared to the other threats that regularly bedevil farming, primarily climate change, he believes that occasionally needing to cross a railway would introduce no more than a trivial level of inconvenience into the Landowners' farming operations.

4.2.6.2. Finally, he has not the slightest doubt that if the railway were to be reconstructed, Parsonage Farm would continue to thrive handsomely, and make its owners even more wealthy than he presumes they are today.

4.3. **SUPP/223-Huw Merriman MP (HM)**

4.3.1. *SoM1)-Benefits of the proposal*

4.3.1.1. HM confirmed that, as the MP for the Bexhill and Battle constituency, he has taken a keen interest in the aspirations of RVR to restore the railway line from Robertsbridge to Bodiam, which would complete the KESR heritage route from Robertsbridge to Tenterden.

4.3.1.2. The proposal, which would be paid for entirely by voluntary contributions, would link the KESR heritage line to the Southeastern London to Hastings mainline railway at Robertsbridge. This gives it added benefit of encouraging more visitors to the area by rail rather than road.

4.3.1.3. HM indicates that East Sussex is a relatively poor area, with around a third of workers on the minimum wage and some areas with high levels of deprivation. The financial benefits of the Order scheme to the local economy are estimated to be substantial and long-term; in the region of up to £35 million over the two-year construction period and the first ten years of operation, and up to £4.6 million per annum from 2030. It would generate approximately 34 jobs during the construction phase, and up to 85 in the operational phase.<sup>92</sup> Additional revenues of up to £330,000 per annum would accrue to the mainline operator. That would represent a significant boost to the local rural economy. Furthermore, the growth in leisure travellers would help to offset the foreseeable reduction in commuters as a result of more people working from home, thereby making the line more viable. There are clear additional benefits to the wider tourism and hospitality sector from opening the area up to better visitor experiences. That is not just a question of attracting those from further afield but enhancing the quality of lives for the individuals and families who live in the constituency.

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<sup>92</sup> RVR/66 Statement of Case para 1.43.

- 4.3.1.4. Nonetheless, HM considers it is understandable that the proposal has generated local objections and concerns. As the local MP, he believes that his role is to ensure that everyone has an opportunity for their voices to be heard in this process. To that end, he indicated that he has sought to help with the concerns raised by liaising with the appropriate statutory agencies as well as with RVR.
- 4.3.2. *SoM3)-Impacts on the A21, Flood risk and amenity*
- 4.3.2.1. Local residents have been concerned about the impact of the proposal on the local road infrastructure (A21), flooding and their quality of life.
- 4.3.2.2. With regards to the A21, HM indicates that he has been heavily involved in a wider ambition to improve the safety of the A21 by seeing the road rebuilt to accommodate a dual carriageway over its entire length. He does not believe, looking at the sheer scale of such a road scheme and all other logistics, that the Rother Valley Railway extension, and the A21 level crossing in particular, would make or break the aim of road redevelopment. The level crossing would be a relatively minor issue. As has been seen via the works at Pembury, the dualling redevelopment would be a vast engineering project with many technicalities to overcome. With regard to other safety enhancements, he indicates that he and neighbouring MPs, have succeeded in pressing the government and HE to bring forward a package of safety measures into the current Road Investment Strategy (RIS) period. HM indicated that he has carefully considered the impact of a new level crossing on journey times for those using the A21. Given that the railway would only operate outside of peak times, and modelling has demonstrated a negligible impact on traffic on the A21 at other times of day, HM does not consider the installation of a level crossing to be a reason to object to the proposal. No businesses have told him that the proposed level crossing on the A21 would deter them from investing in the area.
- 4.3.2.3. With regard to flood risks, HM indicates that he is acutely aware that this is a problem for Robertsbridge village. He has recently been involved in a case of flooding of some village properties due to issues relating to the A21 road. He says it has therefore been very important to him that the high requirements set by the EA to mitigate flood risk have been met. The necessary modelling and FRA has been undertaken and it has been agreed with the EA that the design of the RVR proposal would have no significant effect on the depths or extent of the flooding, including when taking account of the latest guidelines for climate change.
- 4.3.2.4. HM is aware that Robertsbridge village has suffered in the past from inconsiderate parking by those accessing rail services from the village station who do not wish to use the station car park. Increasing visitor numbers to the village due the RVR proposal is therefore an understandable concern. However, he considers that the introduction of civil parking enforcement (CPE) in Rother District in September 2020, means that dangerous, illegal and inconsiderate parking issues can now be dealt with by traffic wardens. Prior to CPE, Sussex Police did not have the resources to enforce parking problems in the village, except on an



ad hoc basis, which was insufficient.

4.3.2.5. To summarise, whilst HM understands and sympathises with the objections to the TWAO by the Landowners who do not wish to sell their land to RVR and the concerns of some others, he fully supports the proposal, as he believes that the economic benefits to the local area present an unrivalled opportunity to deliver long-term jobs for local residents as well as wider economic benefits to the local tourism and hospitality sector. It also supports sustainable tourism by rail to towns and villages along the KESR line and surrounding areas. HM is satisfied that the statutory agencies dealing with environment and infrastructure concerns have been stringent in their demands of RVR to ensure that the proposal would not adversely impact the local area or its infrastructure.

4.4. **SUPP/221-Anthony Robins (AR)**

4.4.1. *SoM1)-Benefits of the proposal*

4.4.1.1. AR is the proprietor and licensee of The Ostrich Hotel and has lived there since he purchased the property in November 1993.

4.4.1.2. The Ostrich Hotel was built in 1851 in anticipation of the main line London to Hastings route passing through and stopping at Robertsbridge. AR estimates that it is only around 90 metres from the main line station and he indicates that it is exactly opposite the end of the proposed Rother Valley Railway. The proposal would reinstate a branch line which he understands was originally built by a Colonel Stephens.

4.4.1.3. AR describes himself as a small business owner employing full time, part time and casual workers in the village of Robertsbridge and he considers that the reinstatement of the Rother Valley Railway would be of major economic benefit to this area.

4.4.1.4. AR indicates that, in the time that he has lived there, he knows of at least 10 small businesses that have closed including a jewellers, an antique shop, a hairdressers, a cycle shop, a motor bike business, a drapers, a dress agency, a TV and electrical shop, a body repair workshop, a mill and a garage. Most have not been replaced by other small businesses. In his opinion, Robertsbridge is rapidly becoming a dead commuter village with little or no work opportunities for anybody let alone young people who, as a general rule, have to leave the village in order to find work.

4.4.1.5. AR believes that the reintroduction of the line would lead to an influx of visitors to the village, which would be of immediate benefit to those businesses that are still here (including his own) and could well lead to the introduction of others e.g. cafés, souvenir and craft shops. He considers that there are plenty of talented people in Robertsbridge, which he says is evident at the village market which takes place monthly on the first Saturday of each month, most of whom he imagines would be pleased to have a much larger outlet for their goods. In fact, the village market itself would benefit.

- 4.4.1.6. AR indicates that there would be full and part time jobs available in connection with the running of the railway itself. Not everything can or would be run by retired bank manager volunteers with a penchant for steam trains. AR considers that there is probably potential for apprenticeships at some future date which would give young people the chance to remain in the village and forge a career without having to leave the village as they all do now.
- 4.4.1.7. AR thinks that most traffic would come from London on the railway as the Bodiam to Robertsbridge Junction line would enable visitors to travel to Bodiam Castle (one of the most visited National Trust sites in the country), the famous gardens at Great Dixter, Tenterden Town and Sissinghurst. AR indicates that he has personal experience of the frustration of visitors hoping to visit either Bodiam or Great Dixter when, upon arrival at Robertsbridge mainline station, they discover that they still have to make a journey of an additional three miles to get to Bodiam with no taxi service nor any other means of transport being available. Unfortunately, he is frequently held responsible for their problems.
- 4.4.1.8. AR considers that travel by rail is far better for the environment than the pollution caused by motor vehicles.
- 4.4.1.9. RVR has already reconstructed three quarters of a mile of rail at the Bodiam end and half a mile in Robertsbridge also creating a terminus station adjacent to the NR main line station. Essentially, this means that London passengers would only have to cross from the mainline stop straight over to the new terminus station and hop on a steam train. AR indicates that he has seen some of the building work that has already taken place and considers it to be of the highest quality and entirely in keeping with its Victorian heyday. It is, after all, the way the hop pickers used to journey there annually to pick the hops on the local farms. AR acknowledges that this is taking place directly opposite The Ostrich Hotel and he would hope that he, and those who come after him, would benefit. It was why the hotel was built in the first place and, with a bit of luck, would ensure that The Ostrich Hotel would remain here a part of village life for many years to come.
- 4.4.1.10. Then there are, of course, the economic benefits to RDC and Ashford Borough Council which, he is advised, would be in the region of £4.1 million per annum. All councils are desperately strapped for cash and this can only mean a boost to their income and, indirectly, a boost to services in the area. Neither the Councils nor the inhabitants and ratepayers in the area that would benefit would be expected to contribute, as all the funding is coming from private philanthropists.
- 4.4.1.11. Overall, AR believes that the proposal would bring significant benefits and employment to the area as well as bringing huge pleasure to a very wide cross section of people who would have access from London and the South Coast. The project has been thoroughly researched and developed with wide consultation using some of the country's leading professionals in the field. AR also believes that the fullest consideration has been given to the ecology of the area with considerable studies of

the local flora and fauna. Amongst other things he says he has learned, for example, that dormice can only be relocated during a period of about 8 weeks in any one year. He recognises that the needs of this rare little animal have been respected and planned for accordingly.

4.4.2. *SoM3)e)-Impacts of car parking*

4.4.2.1. In AR's view, there has been a lot of quite unnecessary panicking about a massive influx of traffic to the area. Traffic has been considered by the planners from Day 1. With AR's private car park directly opposite the station, he envisages that he would be a prime target for unauthorised parking. However, he hopes that the situation would not arise as he knows that access from London would be via the mainline railway and provision has already been made for car parking on land immediately behind the station for those who would drive there<sup>93</sup>.

4.5. **SUPP/222-Campaign for Better Transport (CFBT)**

4.5.1. CFBT supports the TWAO application to extend the Rother Valley Railway so as to link with the main line at Robertsbridge, in line with the already approved planning application.

4.5.2. *SoM1)-Benefits*

4.5.2.1. The Department for Digital, Culture, Media & Sport's document entitled '*The Tourism Recovery Plan*' indicates that the government is committed to supporting the sector to emerge from the pandemic to become more resilient, more sustainable and more innovative.<sup>94</sup> CFBT considers that the extension would make the KESR and Bodiam Castle accessible to significant numbers of visitors by sustainable modes of transport from major centres of population, including London and Brighton, as well as the 'near continent'. It would expand the tourism offer of this part of southeast England and support the tourism economy locally, sub-regionally and regionally, creating jobs. The restored link would hugely amplify the heritage, recreational and educational value of the line through improved accessibility.

4.5.2.2. Furthermore, in CFBT's view there would be a boost to the public transport market, including the local rural bus network, encouraging innovative combined ticket offers and a bigger role for public transport in general. This would help to redress the decline of public transport in local villages and towns and improve accessibility for all. It would also reduce pressure on country lanes which currently experience inappropriately high volumes of traffic.

4.5.2.3. Bus routes 304/5 (currently 6 days a week service) and 349 (7 days a week) link East Sussex and Kent towns and villages of the High Weald AONB, as well as Hastings, Tunbridge Wells and Maidstone to the

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<sup>93</sup> Inspector's note: In direct response to this evidence on day 9, RVR stated that the land it has purchased to the rear of the station is intended to be used for ecological planting, not car parking. Furthermore, it considers that the existing station car park has sufficient capacity to cater for the demand resulting from the proposal.

<sup>94</sup> INQ/79 page 4.

railway at Bodiam/Robertsbridge. Increased tourism could see a case made to restore the 304/5 Sunday service. These routes are also a lifeline to local populations needing access to services and workplaces – health, education, recreation.

- 4.5.2.4. CFBT considers that the extended railway would perform a 'public transport' role which could be expanded in future.
- 4.5.3. *SoM3)-Perceived problems*
- 4.5.3.1. The necessary level crossings are cited as presenting problems, but CFBT feels that these are exaggerated.
- 4.5.3.2. A21:
- a) Traffic is already slowing for the roundabout very close to the proposed level crossing, so safety and 'time penalty' concerns may not be justified.
  - b) Passage of trains over the crossings would be nowhere near frequencies on the national network, and estimates and practical demonstrations show that the period in which the crossing would be occupied by trains is brief.
- 4.5.3.3. B2244:
- a) The presence of the level crossing and accompanying traffic calming measures would create a far safer situation for all road users in what is currently a threatening and intimidating environment characterised by speeding cars and motorcycles in the road space with little or no refuge for pedestrians. The level crossing would remove a big deterrent to those walking the footpath between Robertsbridge, Udiam campsites and Bodiam Castle. In the view of CFBT, this would represent a major benefit in terms of increased amenities in the immediate area.
- 4.5.3.4. Northbridge Street:
- a) Traffic is light enough to suggest no serious delay would occur to pedestrians, cyclists, bus users or motorists.
- 4.5.3.5. CFBT considers that in the valley itself, passage of trains would create intermittent noise over a very short period and not seriously affect the tranquillity and character of this beautiful valley.
- 4.5.3.6. On parking, the station at Etchingham has 185 spaces and is around 3-4 minutes by train from the Robertsbridge terminus of KESR. This might help those travelling by car from the west on the A265 and reduce pressure on parking at Robertsbridge station.
- 4.5.4. *SoM1)-Visitor numbers*
- 4.5.4.1. The major draw of Bodiam Castle (National Trust) and KESR together achieve visitor numbers of over 300,000 each year (National Trust Annual Report/KESR figures). Many come by car using lanes ill-suited to high volumes of traffic. CFBT believes that the re-instated railway link

would provide an attractive alternative and through the extra passengers attracted by the railway, even make local bus service links commercially viable. This would benefit non-users of the railway and strengthen village communities whose young are often stranded and denied a full social life. To some degree, 'car dependency' could be reversed, a worthwhile policy objective itself with added mental and physical health benefits, while those without access to a car, or who do not wish to drive would be 'included'.

4.5.5. *SoM1)-Other attractions*

4.5.5.1. CFBT consider that, vineyards, nurseries, hop gardens, windmills, picturesque towns and villages, country pubs, campsites, footpaths, links with all these would be strengthened by a reinstated rail link which is the subject of the draft Order. Moving to, from and within the High Weald AONB could become much easier for many more people.

4.6. **SUPP/120-Rother Valley Railway Supporters Association (RVRSA)**

4.6.1. RVRSA has 200 members, around 20 of whom live in the TN32 postcode area which includes Robertsbridge.

4.6.2. *SoM1)-Benefits of the proposal*

4.6.2.1. RVRSA firmly believes that the proposed reinstatement would greatly benefit this part of East Sussex and Kent. When the regular KESR heritage train services run through Robertsbridge once more, it can only bring additional visitors and spending to the area, which increasingly relies on its rich heritage for much of its employment and future prosperity. Easy interchange to the Hastings line would make places like Bodiam Castle, Sissinghurst and Tenterden rail-accessible to a huge regional population, especially with strong coordinated marketing by the various operators involved. This would be in addition to the railway's own visitors. Furthermore, new passenger flows to Rother Valley Railway would help to secure the future of the London to Hastings main line, which is costly to maintain.

4.6.2.2. If the draft Order is made, 9 people would be required to run Robertsbridge Station.

4.6.3. *SoM3)-Perceived harm*

4.6.3.1. Being based in Robertsbridge, RVRSA is aware of some recent ill-informed comment about the road traffic implications of the proposed level crossings. However, all the evidence shows that the brief, well-spaced closures of the crossings would not cause a build-up of traffic queues of the kind claimed by opponents of the project. On a low speed railway they are not much different to pelican crossings; perhaps a minute or so closure time. The comments also ignore the fact that the planning permission already granted by the local authority, following extensive debate and consultation, restricts the operation hours of the crossings and also provides for monitoring of traffic effects. RVRSA believes that the various authorities involved should be trusted to make sure that there is no significant impact on journey times or

accident rates.

4.6.3.2. In RVRSA's view, other criticisms also seem equally ill-founded. On the question of amenity, one only has to visit the operating section of the line between Bodiam and Tenterden, or almost any other heritage railway, to see how well these single track lines are integrated into their surroundings, while at the same time allowing many thousands of people each year to enjoy views currently seen by only a few. Again the relevant public authorities have concluded that the proposals are acceptable in environmental terms including ecological impacts, and there are many safeguards and conditions designed to achieve that.

4.6.4. *SoM9)-Compulsory purchase powers*

4.6.4.1. Although compulsory purchase powers are included in the draft Order, this only comes after the railway's best efforts over many years to get agreement from the two large landowners involved, and RVRSA sincerely hopes that agreement can still be reached on an offer which would undoubtedly prove generous. It is clear that the project cannot proceed without the relatively small strips of land involved, and regrettably this does make these controversial powers essential as a long stop, if no agreement can be reached before the draft Order is made.

4.6.4.2. RVRSA considers that the inclusion of compulsory purchase powers is fully justified by the public benefits. In particular the Order scheme would help secure and enhance the future of one of the area's most successful visitor attractions with very little adverse impact locally. This is plain from the very professional expert assessments, from the decisions already made by the Inspector who took the local plan Inquiry some years ago, and by the local authority in granting planning permission with the agreement of all relevant public authorities.

4.7. **SUPP/8-Martin Bates**

4.7.1. MB is a local resident who supports the application as a result of the potential economic benefits and as an enthusiast for heritage projects. MB believes that the following anecdotal evidence supports the proposals and counters the exaggerated concerns raised by local Landowners and their supporters.

4.7.2. *SoM3)a)-Level crossings*

4.7.2.1. The railway service would be infrequent or not running at all during the working week, so the crossing of the A21 would be open for most of the time. Some delays may occur on Bank Holidays when the A21 is usually busy. However, MB does not believe this would add significantly to existing delays at traffic lights on the same route.

4.7.3. *SoM3)c)-Flooding*

4.7.3.1. The main source of flood risk would be the River Rother. However, the rebuilt railway embankment would be between the river and most of the independently owned properties deemed at risk, which, in MB's view

would actually reduce the risk of flooding.

4.7.4. *SoM3)e)-Car parking*

4.7.4.1. There is a large car park in Robertsbridge, which would serve the proposal. MB considers that it is rarely full, even during the working week. On street parking, which annoys local residents, is caused by the excessive daily charge (nearly £5), which commuters understandably try to avoid. Most visitors to the railway would come at the weekend, when the parking charge is only £1. At Tenterden there is a large free car park. In any case, it is expected that, being railway enthusiasts, many users of the proposal would arrive at Robertsbridge by main line train.

4.7.5. *SoM1)-Economic benefit*

4.7.5.1. Objectors claim that, as the Rother Valley Railway would be largely operated by volunteers, that there would be no employment or economic benefits. However, that ignores employment of contractors during construction and jobs supported indirectly by visitors and staff using local businesses, such as shops, cafes and pubs. MB believes that the economic benefits to the locality of heritage railways in general are well established.

4.7.6. *SoM3c)-Environmental damage*

4.7.7. Objectors claim that infrequent steam and diesel engines would cause excessive noise and pollution. MB considers that this is an exaggeration when compared with the impact of constant motor traffic on the roads which would intersect the line. Where wildlife has colonised the abandoned railway, the loss would be regrettable. However, most of the line has been converted to agricultural use by the Landowners themselves, with no special regard to wildlife.

4.8. **SUPP/80-Network Rail Infrastructure Limited (NR)**

4.8.1. *SoM1)-Benefits of the proposal*

4.8.2. NR supports connectivity by rail because there is ample evidence that connectivity enables economic growth, jobs, housing and social cohesion. NR considers that this applies as much to tourist railways as other railways, and is particularly relevant to one that seeks to remake a connection with the main line railway, which this scheme does. The wider economic benefits of the Order scheme to the Rother District and surrounding areas have been independently assessed by Steer Davis Gleave in 2018 as being worth up to £4.1 million per annum.

4.8.3. The present government has an explicit policy to reopen closed railways<sup>95</sup> for the reasons set out above. The government sets out why it has that policy on the Restoring Your Railway public website. The RVR project is exceptional as it would deliver a Restoring Your Railway project at no cost to the British taxpayer.

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<sup>95</sup> INQ/87-Department for Transport guidance 'Restoring Your Railway Fund, June 2021'.

4.8.4. *SoM3)a)-Level crossings*

- 4.8.4.1. The applicants are professional, knowledgeable and with great experience of rebuilding closed railways; Mike Hart OBE and David Keay are respected figures not only in railway preservation but in the railway industry more generally. Mr Hart was the leader of the successful project to rebuild the WHR, 40 km long, and was awarded the OBE for his part in that project. Mr Keay, as a former Deputy Chief Inspector of Railways for the ORR, has extensive experience of the operations and safety of both main line and preserved railways. The WHR rebuild involved a unique rail/rail crossing of the WHR with NR's main Cambrian Coast line, which is unique, and was accomplished with little difficulty because of the professional way the project was approached; it also involved a number of road crossings. Both Transport for London and NR staff have participated in the rebuilding of the Rother Valley Railway Robertsbridge terminus for training purposes and to support these professional leaders.
- 4.8.4.2. NR does not generally support new level crossings and generally seeks to close as many as it can of those it has, because the national railway network is increasingly busy with trains weighing up to 3,000 tons that travel at speeds of up to 125mph, up to 24 hours a day; NR is principally concerned about the risk of a catastrophic train accident as a result of a road/rail collision. In that it has the support of the ORR, the rail safety regulator. However, NR has no substantive lines like the proposed Rother Valley Railway, where the trains would be short, their numbers low, the service seasonal, and the speed of trains on crossings would be as low as 10 mph. In this case, NR supports the RVR proposals, as the risks would be insignificant compared with those on the national network; as do the ORR. NR notes the verbal suggestion by others at the Inquiry that it has sought to close crossing(s) of a similar nature, but has seen no evidence that is in fact the case.
- 4.8.4.3. In any event, the Restoring Your Railway schemes the government are pursuing do involve reopening crossings; the Exeter to Okehampton line which NR are in the course of reopening to passengers has several disused crossings which it is reopening as the only practicable method of restoring the railway. It is clearly unusual to look to open a crossing on a trunk HE road, because there are far fewer of them. However, NR notes that:
- a) The Highways Agency (HA), HE's predecessor body, was content to sign off the proposal in principle.
  - b) The 'departures submission' process that HE rightly requires to validate its own road safety procedures is proceeding, and following a supportive conversation between Sir Peter Hendy and the Chair of HE, from a recent email from their Regional Director to Mr Hart it seems that many concerns have been resolved and only a small number remain, and are in active course of



resolution.<sup>96</sup>

- c) Acting in his role as an assessor of all the Restoring Your Railway schemes, for the Secretary of State, Sir Peter Hendy indicates that he knows of another scheme in northwest England that has a strong case which would involve a similar crossing of a single carriageway HE road. That scheme would likely be supported by Government so he is sure HE will want to perfect the departures submission on the Rother Valley Railway, as it will form the basis of another future case on the A5.

4.8.5. *SoM9)c)-the public interest*

4.8.5.1. Given all the above, and particularly given the explicit government policy to reopen closed railways (including lines for tourist travel), and the economic growth, jobs, housing and social cohesion prospects which result from better rail connectivity, and the remarkable prospect of this reopening without taxpayer funding, NR fully supports the application, and warmly welcomes the prospect of a reduction of car travel in the vicinity of the line created by the travel opportunities of the future connection with the main line railway at Robertsbridge.

4.9. **SUPP/177-Ian Hollidge (IH)**

4.9.1. *SoM3)-Perceived harm*

4.9.1.1. IH supports the proposed construction of the railway and offers the following counter arguments to what he has seen are likely objections:

- a) '*Damage to the environment*'-he believes that the proposal involves the replacement of a previous railway with fewer movements and so it would not be any worse than before 1961.
- b) '*New level crossing over the A21 would cause congestion and act as a barrier to growth in Hastings*'-there are so many roads and pedestrian crossings over the A21 that this extra occasional minimal stoppage would not impede journey times or progress over a longer journey.
- c) '*That the new level crossing would mean future dualling would be unlikely*'-with the current RIS 2 from 2020-2025 focussing on Kippings to Lamberhurst, with Flimwell to Robertsbridge likely in 2025-2030, it would be at least 2030-35 before dualling would be considered. Even then, IH considers that a business case would be poor, as major growth in the South East would be likely to

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<sup>96</sup> Inspector's note: Contrary to my instructions to the parties, Sir Peter Hendy's closing statement introduced new evidence. Therefore, other parties were given an opportunity to respond to the closing statement. The responses included, amongst others, INQ/141 by Highways England- '*The Highways Agency did not object to the proposal in principle and that is also the current position of Highways England. The current Departures application and the Protective Provisions will determine whether Highways England is able to 'sign off' the proposal.*' and '*The Departure submitted by the applicant is not a bulk departure and does not cover any location other than the crossing of the A21 proposed in the Draft Order. Any proposed level crossing of the SRN at another location will need to be the subject of a separate Departure application, which will be considered on the merits of that particular case.*'

come around the Thames Estuary area. Economic growth along the coastal area can be organic, i.e. coastal communities working together with High Speed Rail being a sustainable transport driver.

4.9.1.2. IH indicated that his view is not based on a personal opinion as an occasional user or an informed opinion as one who has used this road over the last 34 years, but as an expert opinion with experience of reducing congestion in London during the 1960s and 1970s. As part of that work, it was shown that if you hold traffic up allowing platoons through to catch up with those in front, you actually reduced congestion by negating the buffer effect. This too can improve road safety by allowing free flow rather than drivers constantly trying to overtake and brake in a group.

4.10. **SUPP/187-Heritage Railway Association (HRA)**

4.10.1. *SoM1)-Benefits of the proposal*

*Introduction*

4.10.1.1. The HRA has reviewed the economic impacts report from Steer<sup>97</sup> and the Proof of Evidence of Mrs Evans from Volterra, both of which state, to varying degrees, that the Rother Valley Railway project would bring economic benefits. The HRA indicates that its own evidence provides a wider briefing on the value and importance of heritage railways to local, regional and national economies.

*The Heritage Rail Sector*

4.10.1.2. There are some 211 operational heritage and minor railways in the UK, running trains over almost 600 miles of track, with 460 stations. Heritage railways deliver on, or abide by, many aspects of government policy:

- a) Department for Digital, Culture, Media & Sport– heritage, culture and tourism, car free access to the countryside.
- b) Department for Transport- sustainable transport, safety (ORR), links with Great British Railways, use of redundant railway formations, level crossings.
- c) Department for Environment, Food and Rural Affairs– environmental issues, sustainability, coal policy, access to the countryside.
- d) Department for Work and Pensions– employment, apprenticeships and skills training.
- e) Department of Health and Social Care- healthy lifestyles and mental wellbeing, particularly for volunteers.

4.10.1.3. Heritage rail is predominantly part of the tourism sector. It supports

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<sup>97</sup> RVR/9.

local hospitality sectors and provides skilled jobs and training in the rural economy. Individual heritage railways compete for visitors from the general tourist and visiting friends and relatives' market and from the indigenous population. Their primary income is normally centred on fares, prices of which are competitive against other local visitor attractions.

- 4.10.1.4. The majority of heritage railways are organised as trusts supported by commercial operating arms. As trusts, they have a significant educational role, with many being educational charities. Several have secured Arts Council England status as fully accredited museums.

*Links to the National Rail Network*

- 4.10.1.5. 33 heritage railways are currently linked to the national network with main line connections or interchanges<sup>98</sup>. 19 of these serve specific tourist destinations<sup>99</sup>.

*Economic value of heritage railways*

- 4.10.1.6. Attracting 13 million visitors each year, employing 4,000 people, and with asset values extending to hundreds of £millions, the heritage rail sector is conservatively estimated to be worth £400 million to the nation's economy.<sup>100</sup> Additionally, the national and international public relations value to the nation of the 'Flying Scotsman', 'the Hogwarts Express', and other film and TV icons and locations is virtually incalculable
- 4.10.1.7. Whether the North Yorkshire Moors Railway (NYMR) attracting 300,000 visitor per year, the Isle of Wight Steam Railway attracting 110,000 visitors per year or the Talyllyn Railway attracting 60,000 visitors per year, in terms of visitor numbers a heritage railway often tops the list (or is within the top five) of most visited attractions in an area.
- 4.10.1.8. The HRA considers that all of this provides a powerful stimulus to the wider economy, supports the local hospitality industry, and can be the economically important catalyst for sustaining the attractiveness of the tourist offer. When, last summer, the Ffestiniog Railway chose not to operate into Blaenau, a number of local hospitality businesses remained shut. A Leeds Beckett University study showed that, as well as around £2 million per annum direct income brought into its area, the Keighley and Worth Valley Railway creates further indirect economic impact equating to 150 jobs.
- 4.10.1.9. Accordingly, their importance is recognised by tourism bodies, local authorities, and funding organisations. This is demonstrated by the award of substantial public funds. In recent years this has ranged from a £1.5 million Coastal Community Fund grant awarded to the Swanage Railway to around £20 million of public funding received by the

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<sup>98</sup> INQ/84 Appendix 1.

<sup>99</sup> INQ/84 Appendix 2.

<sup>100</sup> RVR/31 'Report on the Value of Heritage Railways' by the All-Party Parliamentary Group on Heritage Rail.

Ffestiniog and Welsh Highland Railways. In the past year some 60 heritage railways have received more than £30 million of funding from the governments' Cultural Recovery Fund.

- 4.10.1.10. MPs and parliamentarians of all political persuasions recognise the value of heritage railways in their constituencies. From Lord Hague, Baroness (Nicky) Morgan, Lord Faulkner and Lord Berkeley to Richard Drax (MP South Dorset), Liz Saville-Roberts (MP, Dwyfor Meirionydd) and Robert Goodwill (MP, Scarborough and Whitby) and many more, all provide support and advocacy for their local railways. For example, currently, Clwyd South MP Simon Baynes is engaged with local authorities to support the revival of the Llangollen Railway, to prevent long-term damage to the area's tourism and hospitality sector.
- 4.10.1.11. Local authorities are similarly supportive. After awarding Seaton Tramway an Additional Restrictions Grant, East Devon District Council's Economic Development Officer, Rob Murray, stated: "*This grant award is in recognition of the value of Seaton Tramway to East Devon's economy, actively supporting our growing visitor economy ... It is sent with the Council's warmest regards in the hope that it helps the business to recover swiftly and continue to contribute so strongly to East Devon's economy.*"
- 4.10.1.12. Heritage railways are important contributors to their local economies and often have a policy presumption to spend on local services. The Swanage Railway contributes an estimated £2 million per annum in that way and the Lakeside and Haverthwaite Railway (Cumbria) spends some 75% of its income on purchases from local suppliers, paying local sub-contractors and on wages to staff all living within 10 miles of the railway, contributing over £1.2 million to the local community in 2019.
- Employment and skills*
- 4.10.1.13. Most heritage railways are located in rural or semi-rural areas. For example, with 53 employees, Seaton Tramway is the second biggest employer in its area after Tesco.
- 4.10.1.14. The Bluebell Railway recognises it has an important role in promoting job opportunities, apprenticeships and work experience in a rural area. The railway supports the local councils, schools and offers work experience in all areas of the business throughout the year. Like many railways across the country, its locomotive department currently employs apprentices and continues to offer further apprenticeship opportunities.
- 4.10.1.15. Heritage railways provide a wide range of skilled and semi-skilled roles. Importantly, this provides opportunities for the indigenous population and, where skills are not available locally, brings new people into the locality adding new spend and economic impact to an area. For example, the North Norfolk Railways' (NNR) full-time staff of 43 includes 6 managerial posts; 18 skilled engineering staff; 2 in finance; 1 in marketing; 1 in health and safety; and 8 in infrastructure roles. The Bluebell Railway has 45 paid employees and also employs professional

chefs, skilled events and digital marketing personnel and a Human Resources professional.

4.10.1.16. In addition, the productive use of the time of some 22,000 volunteers, who devote their own time and money to running, maintaining or developing their railways, offers a sense of achievement, the health benefits of steady exercise, wellbeing and social interaction for the retired or those struggling to find work. At the Lynton & Barnstaple Railway a regular volunteer lost his wife. He continued to volunteer and work on the railway and stated that this "saved his life". Similarly, through the Covid lockdown most railways had a steady demand for regular volunteers to continue working on essential maintenance jobs, enabling them to get out of the house, exercise and generally benefit from the activity.

4.10.1.17. For some younger volunteer staff, heritage railways provide a valuable training ground and springboard for subsequent jobs on the main line network or in industries and businesses elsewhere.

*Heritage steam's environmental responsibilities*

4.10.1.18. Heritage railways enable access to the countryside for people without using a car, enjoying the wildlife and natural environment without disturbing it. Across the country, national park authorities recognise the importance of those railways which are located within their authority areas. Railways such as the NYMR, the WHR and the Lynton and Barnstaple Railway are all supported by their national park authorities and encouraged to transport visitors into and through national parks by heritage rail, rather than by car.

4.10.1.19. Increasingly, where opportunities exist, railways wish to see more people visit using a sustainable means of transport. An opportunity for car-free access through connections to the national network, means a much wider catchment can be served and more cars kept off the road. There are 19 railways that serve major tourist attractions and are linked to the national network with a further two where extensions of the heritage railway are proposed to create that link.<sup>101</sup>

4.10.2. *Summary*

4.10.2.1. The HRA considers that there is strong irrefutable evidence of the power of heritage railways to drive economic growth, create new jobs, and provide skills training.

4.11. **SUPP/192-Kenneth Hammond (KH)**

4.11.1. *SoM1)-Benefits of the proposal and SoM3)-Perceived harm*

4.11.1.1. KH considers that a number of the claims set out in the leaflet circulated in 2018 by objectors were emotive and misleading:

a) 'To plough a railway between Robertsbridge and Bodiam'-the aim

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<sup>101</sup> INQ/84 Appendix 2.

is merely to reinstate what was actually ploughed up by the farmer, to the annoyance of local people.

- b) '*A21 'blocked' by level crossing'*- actually automatic crossings, actuated by train proximity. Delays would be minimal.
- c) '*Increased accidents on the A21-one of the most dangerous roads in Sussex'*- actually a crossing would slow traffic, which would be likely to have the opposite effect;
- d) '*Flood risk'*- the cause of flooding in the past was backing-up behind the inadequate bridge put in when the bypass was built in the 1990s.
- e) '*Any economic benefit away from Robertsbridge'*- No. The benefit of the Ffestiniog Railway to the local economy was estimated by Bangor University to be around £25 million a year. That is why RDC granted planning permission.
- f) '*Environmental damage'*- the EA has been satisfied. This was established in the preparation for the planning application.
- g) '*Farmers forced to sell land and livelihood held for generations'*- the railway was there in the previous generation's lifetimes. The loss of a limited strip of land would not adversely affect livelihoods.
- h) '*land grab'*- hardly, if the purchase is part of proper due process, i.e. under UK legal process.

4.11.1.2. KH considers that the reinstatement of the old line would be of major local benefit.

#### 4.12. **SUPP/125-John Jenkins (JJ)**

##### 4.12.1. *SoM1)-Benefits of the proposal*

4.12.1.1. JJ considers that having the proposed re-connection to a national railway station would provide a valuable boost to the utility of the KESR, with consequent tourism and economic benefits to East Sussex and Kent. The experience of other heritage railways in the South East re-connected to national rail (such as the Bluebell Railway extension to East Grinstead and the Spa Valley Railway extension to Eridge) support this contention. JJ also believes that re-connection with national rail services from London would allow less well-off people from London and elsewhere to be able to access the Kent countryside entirely by train. Further, it would encourage those who might otherwise travel by car to make the journey and experience the Kent countryside and Bodiam Castle entirely by train.

4.12.1.2. JJ also considers that the increasing number of these railway connections of previously closed lines (whether heritage or national rail) is bound to have a multiplier effect in relation to sustainable transport inter-connections.

4.13. **SUPP/113-Tenterden Town Council (TTC)**

4.13.1. *SoM1)-Benefits of the proposal*

4.13.1.1. TTC's support for the proposal is based on the following:

- a) The link would provide access to Tenterden from the national rail network.
- b) Tenterden would become a 'day-trip' destination from London.
- c) Tourism and the local economy would benefit, both in Tenterden and Robertsbridge.
- d) Research suggests that the link would annually bring in over £4 million into the area.
- e) The environmental benefits in the use of public transport over private cars would be major.
- f) Significant employment opportunities would be generated, particularly in the hospitality sector (estimated at over 70 new jobs).
- g) The railway is largely volunteer run. The intangible benefits provided by additional volunteer positions would be significant.

4.13.1.2. TTC acknowledges that a scheme as innovative and ground-breaking as this is always likely to encounter opposition. However, there is strong and continued support for the Order scheme in Tenterden.

5. **THE CASES FOR SUPPORTERS WHO DID NOT APPEAR AT THE INQUIRY**

- 5.1. Key areas of support cited in the letters of support relate to: economic, tourism and job creation benefits; transport benefits, including modal shift; minimal impact on traffic and level crossing safety; minimal environmental and flooding impacts; and, adequacy of parking at Robertsbridge Station.
- 5.2. Where the submissions made by other supporters reflect matters raised by those who appeared at the Inquiry, I do not repeat them in detail here.
- 5.3. **SUPP/224-Richard Broyd OBE (RB)**
  - 5.3.1. RB's evidence is given not as a trustee, but in his capacity as a long-standing supporter and funder of the restoration, as a matter of charitable endeavour.
  - 5.3.2. Since 2011, RB has donated an equal share with another donor of £4.1 million towards the reconstruction of the Rother Valley Railway as it from Bodiam Station to Robertsbridge Station, and associated costs. This represents a long-term commitment, the final phase of which would

be the completion of the 'missing link' from Junction Road to Northbridge Street in Robertsbridge.

- 5.3.3. Further funding from the existing donors will be made available as necessary to complete the scheme, together with funding from other sources such as, for example, a recent and very generous legacy of approximately £1 million. Once the Order is made, RB fully expects his own philanthropy would be endorsed and expanded on by others and he would also be involved in co-ordinating an appeal for funds to enable the participation of interested individuals and communities, including the membership and supporters of KESR, of which RVR would be the western extension.
- 5.3.4. This involvement represents for RB the second occasion when he has enabled the reconstruction of a closed railway line. The first, during 15 years up to 2011, was the rebuilding of the 25 mile line from Caernarfon to Porthmadog in north Wales (known as the Welsh Highland Railway) to which he donated a third of the construction cost of £30 million. After the completion of that railway, and to enable associated restorations, RB chaired a successful appeal to raise £1 million per annum for five years.
- 5.3.5. RB adds that the other established donor to the reconstruction of the Rother Valley Railway is an individual of very substantial wealth who wishes to preserve his anonymity in respect of his charitable donations to this project. Whilst RB would have preferred to retain his anonymity, he understands that the ability of the promoter to fund the Order scheme is a concern which continues to be pursued, and he hopes that, by coming forward, such concerns may be allayed.
- 5.3.6. RB regards himself as a heritage philanthropist of the built environment including, especially, country houses, gardens, landscapes, as well of the industrial revolution. He indicates that he has been told that his gift of three country houses that he restored and donated to the National Trust in 2008 represented the largest gift the National Trust has ever received.
- 5.3.7. RB indicates that he supports the preserved railway movement because it is volunteer and donor driven by particularly dedicated individuals and communities, and it gives much pleasure to the public through what have become well-established and substantial tourist attractions.
- 5.3.8. Bearing in mind the very significant economic benefits of the Order scheme which can be provided without expense to the public purse, RB considers that the Order scheme should be supported.



6. **THE CASE FOR OBJ/1002-THE HOAD FAMILY (PARSONAGE FARM) AND THE TRUSTEES AND EXECUTORS OF THE NOEL DE QUINCEY ESTATE AND OBJ/767-MRS EMMA AINSLIE (MOAT FARM)** (the Landowners)

6.1. **Introduction**

6.1.1. The case on behalf of the Landowners is structured as follows:

- a) The test for making the CPO, and its relationship to the other powers sought- SoM9);
- b) The harm/disbenefits which the Scheme would cause:
  - i. To the Landowners- SoM3) & 9)
  - ii. The level crossings-generally- SoM3)a)
  - iii. The level crossing on the A21- SoM3)a)
  - iv. The level crossing on the B2244- SoM3)a)
  - v. Impacts on public rights of way- SoM3)b)
  - vi. Flood risk- SoM3)c)
  - vii. Heritage- SoM3)d)
  - viii. Landscape- SoM3)d)
  - ix. Biodiversity- SoM3)d))
- c) Impediments to implementation- SoM9)a):
  - i. The need for planning permission
  - ii. Discharge of the flood-related conditions on the existing planning permission
  - iii. Discharge of the highways conditions on the existing permission
  - iv. Land needed for the worker crossings
  - v. Land needed for ecological mitigation
  - vi. Funding.
- d) The alleged benefits of the scheme- SoM1):
  - i. Economic;
  - ii. Other
- e) The overall balance/conclusions

6.2. **SoM9)-The Test for Making the CPO and its Relationship to the Other Powers Sought**

6.2.1. The Landowners indicate that, as noted in opening, under this TWAO, RVR seeks statutory authority to do a number of things.<sup>102</sup> If taken in isolation, the question whether each or any of these powers should be granted is one which would be the subject of a separate test. Where necessary, these submissions make reference to those more specific

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<sup>102</sup> The Landowners indicate that, in particular, to construct and maintain a section of railway between Junction Road and Robertsbridge; to provide three new level crossings over existing highways, and a fourth level crossing over a bridleway; to divert an existing footpath; and to compulsorily acquire the land and rights required for the above.

tests, applicable to particular elements of the Order scheme in isolation, but they are directed primarily to the test which is applicable to that part of the Order which is of greatest concern to the Landowners, namely the application for compulsory purchase powers.

- 6.2.2. As is common ground, that test is whether there is a compelling case in the public interest. Since the Order scheme as a whole is dependent upon the grant of compulsory purchase powers, it is that test which, the Landowners submit, provides the overarching framework within which all the various elements of the TWAO application must ultimately be considered.
- 6.2.3. In opening, the Landowners touched on exactly what, in their view, the test means. In particular, they pointed out that:
- a) Compulsory purchase is a draconian measure, which involves the expropriation of private rights to land and property which have been guarded by the common law of this country for centuries, and have more recently been enshrined in Article 1 of the First Protocol of the European Convention on Human Rights.
  - b) As Lord Denning MR observed in *Prest v. Secretary of State for Wales* [1983] JPL 112, compulsory purchase powers should only be granted where "the public interest decisively so demands."<sup>103</sup>
  - c) The words "decisive" and "compelling" are important. It is not enough that the scales are evenly balanced. "Compelling" means there needs to be clear blue water between the public benefits and any harm caused. If there is any reasonable doubt, the balance "must be resolved in favour of the citizen" (see *Prest*).
  - d) These arguments are not dependent upon the impact which the Order Scheme might have on the operation of either Moat or Parsonage and Redlands Farms: the fundamental constitutional principle to which Lord Denning referred in *Prest* is engaged simply because it is the Landowners' property which RVR proposes to take.
- 6.2.4. In closing, the Landowners make the following additional submissions about the way in which the test of a 'compelling case in the public interest' should be applied.
- 6.2.5. First, although compensation would be payable to the Landowners for the loss of land and any incidental loss of profit, that cannot and does not of itself justify the use of compulsory powers.<sup>104</sup> Rather, it is a basic requirement, without which compulsory purchase would not even make it to first base.<sup>105</sup> The 'compelling case' must be something over and above the payment of financial compensation.

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<sup>103</sup> INQ/104-1

<sup>104</sup> As agreed by Mr Hodges in cross-examination.

<sup>105</sup> The Landowners indicate that, if this were not the case, the "compelling case in the public interest" test would be redundant

- 6.2.6. Second, the test is one which cannot be answered simply by balancing any claimed public benefits against the impacts on the Landowners alone. Rather, the public interest involves a weighing of all relevant factors, including any aspects of the Order scheme which (whether or not they affect the Landowners) are not in the public interest.
- 6.2.7. Third, in weighing the wider impacts of the Order scheme, it is not enough to consider only the conclusions that might be reached on the tests which would apply to other elements of the Order scheme, if those aspects were considered in isolation: it is necessary to weigh all the factors which were the inputs into those tests.
- 6.2.8. The Landowners say that this is important, because it appears from Mr Turney's cross-examination of Mr Fielding and Mr Highwood that RVR intends to argue (for example) that if the highway impacts of the Order scheme satisfy para 111 of the Framework (i.e. the impact on safety is not 'unacceptable' and the impact on congestion is not 'severe') this means that any actual impacts of the Order scheme on the A21 which fall short of the tests of unacceptability or severity should be set at nought for the purposes of the 'compelling case in the public interest' test. The Landowners anticipate that similar arguments would be advanced in relation to the safety of the proposed level crossings and flood risk.
- 6.2.9. The Landowners consider that if this Inquiry were simply concerned with the right to operate a level crossing, there might be some merit in that argument, but in the context of compulsory purchase it is simply and obviously wrong. The simplest way to illustrate why is by reference to the impact of the scheme on heritage assets, and the extent to which the Order scheme is consistent with national policy on development in the floodplain. The Landowners make more detailed submissions on these matters below, but for present purposes the point is this:
- a) In relation to Robertsbridge Abbey, it is common ground that the Scheme would have an adverse impact on the setting of the Scheduled Ancient Monument. Under paras 200 and 202 of the Framework, that harm requires 'clear and convincing justification', in which context the impact has to be weighed against the public benefits of the Order scheme;
  - b) Similarly, on RVR's approach<sup>106</sup> to the location of the development in Flood Zone 3(b), the Order scheme is acceptable because it passes the ET. However, the first limb of the ET requires the development to 'provide wider sustainability benefits to the community that outweigh the flood risk'.
  - c) The 'public benefits' and the 'wider community benefits' on which RVR relies to address these two tests are the same: the impact of the Order scheme on tourism and the local economy. However,

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<sup>106</sup> With which, for the avoidance of doubt, the Landowners do not agree.

those are also the benefits on which RVR relies in order to justify the use of compulsory purchase powers.

- d) Even on RVR's own case, it is self-evident that some part of those economic benefits would be 'spent' in overcoming the heritage and flooding objections. In those circumstances, it would plainly be wrong for RVR to argue that, if the Order scheme can satisfy para 202 of the Framework or pass the ET in isolation, the heritage and flooding impacts should be set at nought, leaving RVR free to rely on the full extent of its claimed economic benefits to counter the interference with the Landowners' property rights. At the very least, a deduction would need to be made from the economic benefits to reflect what had already been 'used up' in order to overcome the heritage and flooding objections.
- e) In theory, it might be possible to address this by carrying out a complicated calculation in which that part of the alleged economic benefits which is needed to overcome each of the heritage and flooding issues is deducted from the total, and only the remainder is placed on the scales when considering the 'compelling case in the public interest'. However, that would be extremely complex.
- f) The only sensible solution, therefore, is that all the benefits and all the harms are placed on the scales at the same time, and the 'compelling case in the public interest' is assessed by deciding where the overall balance lies. This includes weighing any harms which might not be sufficient to warrant refusal of a particular aspect of the Order scheme, if that aspect was viewed in isolation.

6.2.10. In the Landowners' submission, the same is true in relation to the highway impacts and the risk to rail safety. In particular:

- a) In relation to highway impacts, para 111 of the Framework is the test which is prescribed for the grant of planning permission. The test itself represents a judgement on where the balance should lie in cases where the state is restricting the manner in which individuals are allowed to deal with their own land. However, the fact that that particular balance is weighted in favour of the grant of permission says nothing about the very different situation where a TWAO applicant is seeking authority to do something with somebody else's land, to which that somebody else objects.
- b) In relation to rail safety, as Mr Raxton made clear, while the ORR starts from the position that it would prefer there are no new level crossings, it is heavily constrained in its ability to bring that about. In practice, its function is limited to ensuring that there are no reasonable alternatives which are not disproportionately expensive; and that any risks have been reduced to the lowest practicable level. If those criteria are met, the ORR has no statutory basis for refusing to agree to a new crossing. Critically, the 'alternatives' placed before the ORR do not include a 'no scheme' option, and it is no part of the ORR's function to ask why

a new crossing is being proposed – it draws no distinction in that regard between a private hobby railway and HS2 – nor does the ORR undertake any assessment of whether the increased risk is outweighed by any public benefits. Those matters are simply beyond its remit.<sup>107</sup>

- c) The significance of the latter point was expressly acknowledged by Mr Keay when, in response to the Inspector’s question whether there was a separate test for the Secretary of State to apply, he said:

“It has to be in the public interest – do the societal benefits far outweigh the disbenefits of putting the crossings in?”

and

“The overriding test is the public interest.”

- 6.2.11. The Landowners could not agree more. However, that is not a question which the ORR, the EA or HE has asked. Consequently, it cannot be answered by pointing to the lack of objection from these bodies.<sup>108</sup> It can only be picked up through the ‘compelling case’ test.
- 6.2.12. In those circumstances, the argument that, if any one part of Order scheme can pass the test which the relevant regulatory body is required to apply to that part in isolation, the ‘compelling case in the public interest’ test should then ignore the wider adverse implications, simply does not stand up to scrutiny. All factors which are relevant to the public interest must be brought to bear.
- 6.2.13. Fourth, it is necessary to say something about the weight to be attached to the fact that the Order scheme was previously supported by the Local Plan and has since obtained planning permission. Understandably, these are matters on which RVR relies, but in the Landowners’ submission, neither answers the questions which fall to be decided in these proceedings.
- 6.2.14. In particular, although former Local Plan Policy EM8<sup>109</sup> expressed support in principle for the extension of KESR to Robertsbridge, that policy:
- a) Clearly did not provide support for the Order scheme as it now stands, not least because the accompanying text<sup>110</sup> expressly recorded that:
- “The Highways Agency has advised that a level crossing where the track would traverse the A21 would be unacceptable”
- and

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<sup>107</sup> Further, in the present case the ORR’s assessment is limited to the impact on rail safety: it has formed no judgement on safety impacts on the wider highway network, or on the impacts on congestion and traffic flows.

<sup>108</sup> HE does, of course, still object.

<sup>109</sup> RVR/02

<sup>110</sup> Ibid, para 9.26

"The Local Highway Authority has similarly indicated that it does not favour a level crossing of the B2244."

- b) Was subject to 3 significant conditions – namely that the Order scheme must not compromise the integrity of the floodplain and flood protection measures at Robertsbridge; that it must have an acceptable impact on the AONB; and that it must incorporate appropriate arrangements for crossing the A21, the B2244, Northbridge Street and the River Rother. As para 9.26 observed, these were 'major issues' that would need to be addressed.

6.2.15. Critically, it is clear from the Local Plan Inspector's Report<sup>111</sup> that, at the time Policy EM8 was adopted, there was a complete dearth of information as to the likelihood of those criteria being satisfied. Hence:

- a) Para 9.55 notes the problems associated with crossing the A21 and the B2244, and concludes that 'the actual impact on the AONB cannot be predicted without a designed scheme'.
- b) Para 9.57 notes that, if the Landowners remained opposed to the Order scheme, the Council might have to consider the use of compulsory purchase powers, in which case it

"would have to weigh up the planning issues and other relevant considerations. Landowners could pursue any objections through the formal statutory process."

- c) Para 9.58 notes the opposition of the Highways Agency and the local highway authority to level crossings over the A21 and B2244;
- d) Para 9.61 refers to the requirement not to compromise the integrity of the floodplain, and comments that:

"A flood risk assessment would be needed once a scheme had been designed".

- e) Para 9.63 draws these threads together, noting that there are "substantial technical and other issues to be resolved", but that it would be "premature to conclude that the matters are incapable of resolution or that the finance could not be raised."

6.2.16. The Landowners indicate it is clear from the Report that the Inspector was not prejudging the likely outcome of any of those issues. In that regard, it is worth bearing in mind that this was an old-style Local Plan examination, which predated the Framework and the tests of soundness. In view of the uncertainties identified by the Inspector, it is difficult to imagine that Policy EM8 would have passed the test of deliverability if it was being examined today.

6.2.17. They say that similar observations apply to the grant of planning permission. Leaving aside the fact that the "Guide to Transport and

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<sup>111</sup> Gillett Rebuttal: RVR/W1-5

Works Act Procedures” expressly states that the grant of planning permission in advance of a TWAO application does not limit the issues that can appropriately be considered in the context of the TWAO,<sup>112</sup> the 2017 Permission was subject to numerous conditions precedent relating to both flooding and the level crossings which have yet to be discharged.

- 6.2.18. In cross-examination of Mr Patmore, Mr Turney suggested that these conditions should not have been imposed unless the Council was satisfied that it would be possible to discharge them. However, the Landowners indicate what para 21a-009 of the PPG actually says is that Grampian conditions should not be used where there are ‘no prospects at all of the action in question being performed within the time limit of the permission’. That is a very different thing, and carries with it no implication that it would, in fact, be possible to satisfy the condition. It certainly does not demonstrate it is likely that the condition will be satisfied.
- 6.2.19. In the Landowners’ submission, it is obvious that, when RDC granted permission, there was no clear evidence on the basis of which the Council could have concluded that the Order scheme was deliverable or that Conditions 4, 9, 11 or 20 were capable of being met. In particular:
- a) In relation to the proposed level crossing on the A21, the then Highways Agency (HA) had previously issued a direction precluding the grant of permission because it had not received the information it required in order to be satisfied that the level crossing would be safe and would not have an adverse impact on the flow of traffic. At the point when the HA became HE, and lost the power to direct, that information had still not been provided but, in what it has since described as an attempt to be helpful<sup>113</sup>, HE simply agreed to allow that to be dealt with by condition. As Mr Harwood’s evidence to this Inquiry has since made clear, this was a mistake:<sup>114</sup> applying the guidance in the Design Manual for Roads and Bridges (DMRB)<sup>115</sup> the HA/HE should have required a stage 1 RSA before planning consent was even applied for. In the absence of that information, there was no basis for concluding that a solution was possible. HE agreed to a condition because they knew that there would be a further stage (the TWAO) at which they could still object. In essence, condition 20 simply ‘kicked the can down the road’.
  - b) Like the HA, East Sussex County Council had previously objected to the proposed level crossing on the B2244. However, when the

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<sup>112</sup> INQ/005 para 1.20; see also para 1.21 “the fact that particular land use planning issues relating to the scheme may already have 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.”

<sup>113</sup> OBJ-782/W1/1 para 34.

<sup>114</sup> OBJ-782/W1/1 para 34.

<sup>115</sup> See in particular para 5.46 as quoted at para 31 of Mr Harwood’s proof

HA modified its position, East Sussex County Council simply rolled over and did the same. It had not received any evidence that its objection was capable of being addressed.

- c) Similar considerations apply to the flooding conditions where the EA had at least received RVR's FRA, but as Mr Gillett confirmed, had been presented with no information to indicate where, whether or how RVR would be able to provide any compensation which might be required.<sup>116</sup>

6.2.20. It follows that, like Policy EM8, the planning permission did not carry with it any necessary implication that the conditions precedent were capable of being satisfied. Still less did it make any judgement on whether there would be a compelling case in the public interest for the exercise of CPO powers.

6.2.21. Finally, the Landowners consider that it is necessary to say something about the position of the ORR, the EA and HE. Each of these bodies views the TWAO through the prism of its own particular powers. The Landowners have already commented on the fact that the ORR's position does not involve any assessment of the need or justification for the scheme. Like ORR, neither the EA nor HE has undertaken a holistic assessment of the Order scheme as a whole. Hence:

- a) HE approaches its task through the prisms of para 111 of the Framework and para 5.36 of its Licence.<sup>117</sup> Like the ORR, it has carried out no assessment of whether any adverse effects which fall short of 'unacceptable impacts on safety' or 'severe congestion' are justified or outweighed by the alleged public benefits.
- b) The EA is (understandably) concerned solely with the impact on flood risk. In that regard, it has consistently taken the view that its interests are protected by criterion (ii) of Policy EM8, the conditions attached to the planning permission, and (now) the Protective Provisions. However, (and as returned to below) at no stage has it explained how it reconciles its position of "no objection in principle" with the government's guidance on development in Flood Zone 3(b).<sup>118</sup> Moreover, while the protective provisions may be enough to satisfy the EA, they provide cold comfort to the Landowners, whose land can be taken from them under the TWAO, irrespective of whether the EA has been satisfied or the conditions attached to the planning permission have been discharged.

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<sup>116</sup> This point is highly relevant in the light of para 166 of the Framework: "the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-making stage"

<sup>117</sup> OBJ-782/W1/1 para 48

<sup>118</sup> Indeed, it has positively refused to attend this Inquiry to answer questions so as to provide any such explanation.



- 6.2.22. The Landowners say in summary, this Inquiry is the first occasion on which all these matters have been brought together. It is the first time that any decision-maker has been asked to grapple with the question whether the global package of powers sought by TWAO is justified. And it is the test for the making of the CPO – whether there is a compelling case in the public interest – which brings all those things together.
- 6.2.23. With those observations in mind, the Landowners turn to the balance, beginning with the respects in which the Order would cause harm.
- 6.3. **SoM3) & 9)-The Impact on the Landowners**
- 6.3.1. The Landowners indicate that the first, and most important point to make in this regard is that they would be adversely affected simply because it is their land which would be taken from them. Of itself, that is an interference with the fundamental property right protected by Article 1, First Protocol, and to which Lord Denning referred, in 'Prest'<sup>119</sup>. It is significant, adverse, and not overcome merely because they would be compensated financially.
- 6.3.2. Beyond this, although it is common ground that (if adequate worker crossings are provided<sup>120</sup>) the Order scheme would not render either farm unviable, they say it would nevertheless impact on day-to-day operations. In particular, in addition to the loss of what Mr Turney may describe as a "sliver of land" beneath the line of the new railway (and, at Moat Farm, that taken for mitigation works):
- a) The enforced division of existing fields would render unusable some existing areas of productive land,<sup>121</sup> while restricting the future use of others to pasture.<sup>122</sup> In so doing, it would reverse the work undertaken by the Hoads at Parsonage Farm, where the old embankment was removed specifically in order to improve the productivity of the land.
  - b) The limited number of crossings would make it more difficult for the Landowners to move stock quickly in times of emergency.
  - c) The crossings would expose farm workers to inevitable delays, every time they need to cross the line. And this would be true, irrespective of where the gates are located.<sup>123</sup> The Inquiry will note that, while Mr Lewis (of Morghew Park Estate) insists that this is a minor inconvenience, at harvest time even he has to hire additional staff to open and close the gates<sup>124</sup>. Inconvenience has consequences.

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<sup>119</sup> INQ/104-1

<sup>120</sup> If crossings were not provided, Mr Hodges recognises the potential for significant adverse effects: RVR/W10-1 para 8.3

<sup>121</sup> RVR/67 paras 2.6.1 – 2.6.4

<sup>122</sup> RVR/67 paras 2.6.6, 2.6.8

<sup>123</sup> See sub-para (d)

<sup>124</sup> SUP-121-0

- d) Significantly, farm workers would also be exposed to the daily risk of having to use the crossings. If these are designed in the same way as the existing crossings at Morghew Park Estate, workers would have to cross the line 5 times for every vehicular crossing. RVR's solution to this (which would still require a driver to dismount from the vehicle four times to open and close gates) would require the Landowners to surrender areas of land which, although not included in the Order lands, would effectively become fenced off from the farms and included within the boundaries of the railway.

In all these respects, the effects of the Order scheme would be greater than just the land taken.

6.3.3. RVR argues that this would do no more than return the farms to the position they were in between 1900 and 1961, but:

- a) There is no evidence that this was a burden which the farms happily accepted, even in 1900.
- b) There is no guarantee that the farms would be supplied with the crossings which existed when the line was last in use. For example, at Moat Farm (contrary to Mr Hodges' (RVR-Land and agriculture witness) advice that at least two crossings are necessary) RVR is proposing to reduce the previous four crossings to one.
- c) In any event, farming methods have changed dramatically since 1900. Things that may have been acceptable or bearable then would have a very different impact today.

6.3.4. The Landowners consider that ultimately, the scale of the actual impacts would depend upon the number of crossings which are actually provided. While this would be a matter for discussion between the Landowners and RVR under the terms of the *Railway Clauses Consolidation Act 1845*, the Inquiry will note that this is not a "silver bullet" which solves all problems. In particular:

- a) In those discussions, RVR would inevitably be seeking to balance the needs of the Landowners against their commitment to the ORR to try and reduce the number of crossings to a figure which is as low as possible. The implications of this can readily be seen from RVR's own position on this issue: in its effort to placate ORR, RVR has already reduced its initial proposal to provide 8 farm-worker crossings to 5, (only one of which would serve Moat Farm, notwithstanding Mr Hodges' clear evidence<sup>125</sup> that Moat Farm requires at least two).
- b) Under the somewhat antiquated provisions of the 1845 Act, the resolution of any dispute is left to the local magistrates – a

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<sup>125</sup> RVR/67 para 3.2.2; RVR/68 para 1; Hodges cross-examination.

jurisdiction with which they are unlikely to be familiar, and in which their expertise is doubtful.

- c) In addition to the inconvenience of having to use the crossings, the Landowners would be required to provide the land necessary for the ramps which would be needed to allow vehicles to negotiate the crossings without grounding. They would also be required to decide whether to give up the additional productive area in order to obtain the safer, and marginally less inconvenient form of crossing proposed by Mr Keay,<sup>126</sup> or follow the example of Mr Lewis at Morghew Park.

6.3.5. The Landowners indicate that what these points demonstrate is there is an adverse impact on them, either way. The reason why the ORR seeks a reduction in the number of crossings is because of the inherent risk in using them. In essence, the Landowners must either accept that risk, or accept a further reduction in the land which is available to them to farm. Either way, they lose.

6.3.6. In terms of the loss of productive land, Mr Hodges argues that the UK's exit from the EU and the Agriculture Act 2020 may provide opportunities for the Landowners to obtain subsidies for turning those parts of their land which are rendered unusable by the Order scheme to environmental management.<sup>127</sup> However, as Mr Highwood points out,<sup>128</sup> these subsidies may not be available for land which has already been severed and is no longer capable of productive use. In any event, as Mr Hodges accepted,<sup>129</sup> the details of the new scheme are still to be settled. In those circumstances, this is simply not a matter on which any weight can be placed.

6.3.7. Further, the fact that some adverse impacts might be reflected in financial compensation does not detract from the point that these would be permanent, adverse impacts on the day-to-day lives of the Landowners. As Mr Hodges recognises<sup>130</sup>, a number of the impacts are simply not susceptible to financial compensation. In particular, money can never address the personal risks which farmers would have to take, the simple inconvenience they would suffer, or the heartbreak (poignantly expressed by Mrs Ainslie) of seeing something one loves taken away and destroyed.

#### 6.4. **SoM3)a)-The Level Crossings-generally**

6.4.1. The ORR's recently replaced '*Guide for managers, designers and Operators*'<sup>131</sup> begins with the words,

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<sup>126</sup> RVR/W8-4 para 12

<sup>127</sup> RVR/W10-1 section 9

<sup>128</sup> Highwood Proof, OBJ/1002/AH/1 para 8.15

<sup>129</sup> Hodges cross-examination.

<sup>130</sup> Hodges cross-examination

<sup>131</sup> Appended to ORR Statement of Case, REP/170

*'Level crossings account for nearly half of the catastrophic train accident risk on Britain's railways.'*<sup>132</sup>

6.4.2. Although Mr Raxton indicated that this figure had since reduced to about a third,<sup>133</sup> that figure is still soberingly high. It is not for nothing that NR has observed that:<sup>134</sup>

*'If we were to build the railway from scratch today, we wouldn't include level crossings ... Simply put, the safest level crossing is a closed one'.*

6.4.3. Against that backdrop, the Landowners consider it is scarcely surprising that the ORR's position remains<sup>135</sup> that it does not support the creation of new level crossings where there is a reasonably practicable alternative. It is why NR is currently spending hundreds of thousands of pounds trying to close existing level crossings up and down the country.

6.4.4. The Landowners say in stark contrast to that endeavour, the Order scheme presented to this Inquiry involves the creation of nine new level crossings.<sup>136</sup> As the ORR has made abundantly clear,<sup>137</sup> each and every one of these would introduce a risk of (potentially fatal) accident which the ORR would prefer to avoid.

6.4.5. In the circumstances, the Landowners consider that all the proposed new crossings are problematic. The Landowners deal with the particular implications for the A21 and the B2244 separately, below, but for the moment focus on the proposed worker crossings, which the ORR has described as "the most significant issue" because:

*"experience on other railways suggests that user compliance with safety procedures can be extremely poor leading to collisions with serious consequences."*<sup>138</sup>

6.4.6. Mr Clark's evidence explains why those concerns are well-founded in this case. Based on comparisons with crossings which have been assessed by Network Rail using the ALCRM tool, he concludes that, even with low train speeds and low frequency, the user worked crossings required in the present case would pose an Individual Risk in the High to Very High category.<sup>139</sup>

6.4.7. On behalf of RVR, Mr Keay criticises Mr Clark's use of ALCRM, arguing that this is an internal tool for NR of no relevance to a heritage railway. However, Mr Keay did not challenge the conclusions Mr Clark reached,

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<sup>132</sup> Para 1

<sup>133</sup> Raxton questions

<sup>134</sup> Quoted in Clark proof, OBJ/1002/PJC/1 para 9.3.1.2

<sup>135</sup> RVR-W8-5 Principles for Managing Level crossing Safety , 15 June 2021 para 27

<sup>136</sup> Three new road crossings, one crossing for the bridleway, and five uncontrolled private accommodation crossings, without which the impacts on the two farms would be much more significant.

<sup>137</sup> And as RVR's own evidence to the Inquiry accepts: see RVR-W3-1 para 5.4.3

<sup>138</sup> ORR REP/017-0 para 44

<sup>139</sup> OBJ/1002/PJC/1 section 8.6

merely the relevance of the exercise. As to that, Mr Clark's point was not that ALCRM itself is a mandatory assessment tool, but that it is a useful way of understanding the scale of the risks inherent in the crossings which RVR propose – an exercise which RVR has not carried out.

- 6.4.8. In the present case, Mr Clark's concerns are compounded by issues relating to the Level Crossing Sighting Distances achievable at the proposed farm worker crossings.<sup>140</sup> The importance of good visibility was confirmed by Mr Lewis, whose evidence indicates that the Morghew Park Estate rarely use three of their four crossings precisely because of the limited visibility. The point is significant in view of RVR's position that, on a heritage railway, "removal of trees and hedgerows is not a solution".<sup>141</sup> Mr Keay's answer is that, if necessary, the trains would simply travel more slowly, but if that were the case, it would inevitably place further limitations on KESR's schedule.<sup>142</sup>
- 6.4.9. Ultimately, RVR's response to all these concerns is that it has now satisfied the ORR, to the extent that the ORR does not object to the Order scheme. However, RVR's tactic throughout has been to play one objector off against the other. In dealing with the Landowners, it has argued that the impact would be minimised through the provision of worker crossings where necessary; while in its dealings with the ORR, it has promised to seek to reduce the number of crossings and to explore alternatives.<sup>143</sup>
- 6.4.10. The Landowners consider that RVR cannot have this both ways. In view of Mr Hodges' evidence to this Inquiry<sup>144</sup> that all five farm crossings are necessary (and indeed, that there should be a sixth at Moat Farm), and of RVR's wider position that tunnels beneath the embankment are not feasible and bridges over it are prohibitively expensive, one can only wonder at the value of the undertaking given to the ORR. The practical reality, on the basis of Mr Hodges' evidence, is that at least 6 worker crossings would be "necessary" for the purposes of the Railway Clauses Consolidation Act, and that these would need to be level crossings.
- 6.4.11. In any event, the fact that ORR does not now object overlooks the fundamental point that, as the Landowners have already observed, the regulator is constrained in what it can do. In particular, once the ORR is satisfied that there is no reasonable alternative, and that the risks have been reduced to the lowest level reasonably practicable, it has little choice other than to approve. At no stage in the process is there any room for them to ask "why do this at all?"<sup>145</sup>

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<sup>140</sup> OBJ/1002/PJC/1 paras 7.2.1-7.2.5

<sup>141</sup> RVR-W8-4 para 35

<sup>142</sup> As to the importance of which, see discussion of economic impacts, below

<sup>143</sup> Indeed, the latter was an undertaking which the ORR specifically sought from RVR before updating its Statement of Case: see e-mail of 6 April 2021, appended to Addendum to Statement of Case REP/017-1 p. 7

<sup>144</sup> Hodges cross-examination.

<sup>145</sup> Or, as Mr Raxton put it in questions, the ORR "don't consider 'just don't do it'"

- 6.4.12. However, as Mr Raxton observed, that question arises squarely in these proceedings. This is not a situation where the Inquiry is dealing with the legacy of Victorian infrastructure which there is little choice but to accept. It is dealing with a proposal to create a new risk.
- 6.4.13. In the Landowners' submission, it is no answer to this to say "there is no more cost effective way of extending KESR to Robertsbridge". It is common ground that this scheme would introduce risks to the users of all of the proposed level crossings, which do not exist at present. These risks are not insignificant. Somewhere, somebody needs to ask the question: so why create them? That "somewhere" is here, and now, through the assessment of the compelling case in the public interest.
- 6.4.14. The fact that this Order scheme would introduce a previously non-existent risk at 9 (or more) separate points along the line of the railway is a clear disbenefit of the Order scheme, and it is one to which significant weight should be attached in the Landowners' view.
- 6.5. ***SoM3)a)-The A21***
- 6.5.1. The Landowners say that if all the level crossings are problematic, none is more so than that over the A21. In particular, the A21 forms part of the Strategic Road Network; it is the major strategic connection between London and Hastings; it carries between 16,000 and 18,000 vehicles per day; and, as HE explain, it is a "critical national asset". And it is across this nationally significant road that RVR proposes to introduce a new level crossing which all parties agree would introduce delays to users, and a new safety hazard.
- 6.5.2. *Delays*
- 6.5.2.1. The Landowners consider that although condition 21 seeks to prevent use of the level crossing between 5pm and 7pm on weekdays and Bank Holidays, these are not, in fact, the times when traffic flows on the A21 are at their highest: peak flows on the Bank Holidays tend to occur earlier in the day, and are significantly higher than the normal week-day peaks;<sup>146</sup> while flows throughout the rest of the Bank Holiday are often of the same order as the weekday peaks, but are again not caught by Condition 21.<sup>147</sup>
- 6.5.2.2. Against that backdrop, it is common ground that the Order scheme would introduce delays to traffic. In particular, when the level crossing is in use, I-Transport's Technical Note:<sup>148</sup>
- a) Shows southbound queues ranging from 143m on a March weekday to 178m on an April weekday, and northbound queues of

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<sup>146</sup> OBJ/1002/IF/1 Table 3-1 at p. 17: the Bank Holiday peak (which occurred between 11am and 12) was 1,567, some 180 vehicles more than the weekday PM peak. The same conclusion emerges from I-Transport's 2019 data, as summarised at Table 3-3 on p. 18

<sup>147</sup> Ibid. The Bank Holiday average of 1,382 compares with the weekday PM peak of 1384.

<sup>148</sup> RVR/W3-2

109m (increasing to 144m in the March weekend).<sup>149</sup>

Despite previous assertions that this would be a rare event, RVR's original Departure from Standards Application (DSA)<sup>150</sup> recognises that queuing of southbound traffic is "expected to regularly extend through the [Robertsbridge] roundabout when the barrier is lowered".

- b) Shows southbound queues on the busiest Bank Holiday of up to 420 metres and northbound traffic predicted to tail back for up to 500 metres, with corresponding queues of 236 metres and 276 metres on the April Bank Holiday.

6.5.2.3. Mr Hamshaw accepted that these would be adverse impacts,<sup>151</sup> but argues that these queues arise only in the worst 15 minute periods. However, while that may be true, it does not mean that they would be infrequent, or that there would not be more queues which are nearly as long:

- a) On weekdays, traffic flows remain high on either side of the worst 15 minutes, and in particular in the late afternoon before 5pm, when RVR would necessarily be seeking to get visitors back to Robertsbridge Station to catch a train home.<sup>152</sup> Queuing back through to the Robertsbridge roundabout is therefore likely to be a daily occurrence.
- b) On bank holidays, flows are high throughout the day, and only marginally below the PM peak hour flows on a normal weekday. These are precisely the days when RVR is likely to be running a maximum service. On the basis of the current "Gold service"<sup>153</sup> (but assuming KESR can "squeeze up" its timetable to avoid the 5pm cut-off) this would mean 16 closures in the 6 hour period between 11am and 5pm – producing significant queues of vehicles virtually every 20 minutes.

6.5.2.4. The Landowners indicate further, it needs to be borne in mind that the I-Transport figures are based on a predicted delay of 72 seconds. RVR argue that this should be treated as a maximum, but for the reasons set out by Mr Clark,<sup>154</sup> 72 seconds should, if anything, be regarded as a minimum:

- a) That was the conclusion of Atkins in their assessment of the level crossing closure times on behalf of HE: Atkins describe 72 seconds as a '*minimal timing*' at which '*specific consideration*

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<sup>149</sup> Table 2.2 at RVR/W3-2 p. 289

<sup>150</sup> INQ/31.

<sup>151</sup> Hamshaw cross-examination.

<sup>152</sup> For example, the southbound peak on a March weekday occurs at 1645-1700 hours, when a queue of 26 cars (149.5m) is predicted. However, an hour earlier (at the time of the northbound peak) the southbound queues are only marginally lower, at 25 vehicles or 144m: see Table 2.2 at RVR/W3-2 p. 289

<sup>153</sup> RVR/W3-2 p. 45

<sup>154</sup> See in particular Table 2 at OBJ/1002/PJC/1 p. 27

*must be given to increased level crossing risk and lower functionality*.<sup>155</sup>

- b) RVR's argument that it could be less is premised on the ability of trains to accelerate away from the crossing once the locomotive has passed.<sup>156</sup> However, this is:
- i. Contrary to RVR's own updated (Feb 2021) Narrative Risk Assessment, which states<sup>157</sup> that *'the highest permissible line speed of trains over the crossing would be 10mph'*.
  - ii. Contrary to the Updated ES;<sup>158</sup>
  - iii. Explicitly rejected by Atkins, whose Technical Note<sup>159</sup> describes it as a *'non-standard driving technique, as drivers should not typically accelerate until the rear of the train has passed the speed restriction'* and *"would require the track sections ... to be categorised and maintained for the higher line speed"*.
  - iv. Impossible in the case of westbound trains, which would have to negotiate the Northbridge Street crossing shortly after the A21 and are most unlikely to accelerate away from the A21, only to have to decelerate shortly thereafter.
  - v. Improbable in the case of eastbound trains, given the Scheme drawings which show that, shortly after the A21 level crossing, the line would cross the proposed farm worker crossing. Again, if that is the case, trains would need to be moving at 10mph.<sup>160</sup>
- c) For the reasons outlined by Mr Clark in relation to situations in which the train crew or the signal box may be required to intervene, or where there are degraded operations, the 'barrier down' time could be very much longer.

6.5.2.5. The Landowners consider that in the circumstances, 72 seconds should be regarded as a minimum. However, although Mr Hamshaw accepts that a longer barrier closure would result in longer queues,<sup>161</sup> there has been no sensitivity testing using LINSIG which demonstrates what the consequences might be; nor has there been any analysis of the implications of future growth in background traffic levels.<sup>162</sup> As with

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<sup>155</sup> RVR/HE/05 section 2 (Executive Summary)

<sup>156</sup> RVR-W8-4 para 9

<sup>157</sup> Clark Appendices, OBJ/1002/PJC/2 p. 107

<sup>158</sup> RVR/70-01 para 16.5.5

<sup>159</sup> RVR/HE/05 p. 7

<sup>160</sup> The Landowners consider that it is no answer to this to say that the precise location of the crossing has yet to be determined: it is clear from Mr Hodges' evidence that there will need to be a farm crossing in this vicinity.

<sup>161</sup> Hamshaw cross-examination.

<sup>162</sup> Unlike the earlier work by Mott McDonald, which did include an assessment based on growth to 2027.



longer barrier times, should background traffic increase, the impact of a closure would result in longer queues through both peak periods and day to day conditions. Combined with the potential for longer barrier closures, this could result in a greater impact on the highway network. The lack of an updated future year assessment is contrary to Department for Transport (DfT) Circular 02/13 and downplays the potential impacts that could occur under forecast traffic conditions.

- 6.5.2.6. In any event, even with only a 60 second closure, I-Transport predict southbound queues of up to 120m (extending right up to the exit from the Robertsbridge Roundabout) on a weekday afternoon.<sup>163</sup>
- 6.5.2.7. Having regard to the evidence of Mr Fielding and HE, the Landowners recognise that the delays predicted by I-Transport would not meet the Framework standard of "severe congestion". Mr Turney will doubtless argue that Mr Fielding's position means you should strike a line through all the arguments set out above. However, as Mr Highwood pointed out, Mr Fielding was considering a different question. Like HE, he (Mr Fielding) was looking at the Order scheme through the prism of para 111 of the Framework, and was considering the question whether, viewed in isolation, the level crossing was acceptable. He was not commenting on what could or should be placed on the scales when deciding whether there is a "compelling case in the public interest".
- 6.5.2.8. In that context, Mr Hamshaw agreed that congestion does not need to be 'severe' before it is adverse.<sup>164</sup> He also agreed that the increased delays on the A21 were an adverse effect. Both these concessions are common sense. It is also common sense that, when considering the public interest, an adverse effect should not be ignored, simply because it falls short of the Framework threshold of being "severe".
- 6.5.3. *Safety*
- 6.5.3.1. The Landowners indicate that similar arguments apply to the issue of safety. Again, the Landowners start from the point that RVR's own evidence recognises that the crossing on the A21 would introduce a new point of conflict which would increase the overall risk of accidents on the Robertsbridge bypass.<sup>165</sup> RVR's Costs Benefit Analysis indicates<sup>166</sup> that the accident rate on this stretch of the A21 would increase by a factor of four. Although Mr Hamshaw has subsequently sought to distance himself from this calculation on the basis that it was an overly cautious assessment based on comparison with a signalised junction, Mr Bowie for HE disagreed, and considered the Cost Benefit Analysis was "more or less right".<sup>167</sup> Whether or not it is 'unacceptable', a fourfold increase in risk is plainly a significant disbenefit of the Order scheme.

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<sup>163</sup> Table 2.3 of Hamshaw App E in RVR/W3/2 @ p.37

<sup>164</sup> Hamshaw cross-examination.

<sup>165</sup> RVR-W3-1 paras 5.4.3, 5.5.5

<sup>166</sup> RVR-W3-2 App F p. 298

<sup>167</sup> Bowie cross-examination

- 6.5.3.2. Further, when dealing with the A21, the safety implications are not limited to the risks of a car colliding with a train, because the queues would themselves increase the risk of accidents elsewhere on the A21. In particular, the Order scheme would result in both north and southbound traffic facing sudden and unexpected queues of stationary traffic. In so doing, it would increase the risk of:
- a) Rear shunts as northbound traffic comes down the long, gently curving stretch of the bypass towards the level crossing; and during the build-up of queues as southbound vehicles exit the roundabout only to find themselves heading into the back of the queue.
  - b) Traffic queuing back over the roundabout, with east-west drivers performing ill-advised manoeuvres in order to work their way between cars.
  - c) Frustrated drivers "rat-running" through Robertsbridge.
  - d) Interference with the use of the pedestrian crossing to the north of the roundabout, potentially leading to pedestrians making ill-advised crossings through stationary traffic.
- 6.5.3.3. RVR argue that there is adequate SSD to prevent these things from happening, and that the Order scheme makes provision for the extension of the existing 40mph speed restriction. However, accidents happen, even on roads which are properly designed and maintained. Introducing additional hazards and distractions increases the risk of such accidents. In that context:
- a) It is clear from HE's Closing Statement that they remain concerned about the adequacy of SSDs and the implications of queueing back from the level crossing<sup>168</sup>.
  - b) While Mr Fielding agrees<sup>169</sup> that it is technically possible to obtain the necessary visibility over land within the highway, the practical reality is that the sight lines are not maintained. Mr Hamshaw recognised that northbound visibility is currently restricted by vegetation on the verge, and it is agreed that the SSD through the Robertsbridge Roundabout requires the tree in the centre of the roundabout to be pruned. If these things are not currently being done, it is difficult to see why the public should have any confidence that they would be done in future.
  - c) Similarly, it is a matter of record that a significant proportion of traffic already flouts the existing speed restrictions on this stretch of the A21. In circumstances where the Robertsbridge bypass was designed for vehicles travelling at the national limit, there can be little basis for believing that this is likely to change, simply because the restriction is extended.

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<sup>168</sup> INQ/159 HE Closing paras 12-14

<sup>169</sup> INQ/105

- 6.5.3.4. RVR also argue that KESR is just a heritage railway, which would only be in operation for less than half the year.<sup>170</sup> However, the Landowners indicate that crossings may still be closed for operational or private use purposes during non-timetabled time periods.<sup>171</sup> There is no suggestion that these would be at set times, e.g. avoiding peak periods not controlled by Condition 21. Furthermore, crossings being called with a sporadic nature may result in driver confusion, as they would not be expecting a level crossing closure.
- 6.5.3.5. In any event, although heritage railways carry fewer trains and travel at a more sedate pace, they are not immune from the problems of increased risk to safety:
- a) Mr Hamshaw lists 12 collisions between trains and vehicles on heritage railways in the period between 2011 and 2019<sup>172</sup>, a rate of one and a half such accidents a year. Mr Clark produces a similar list.<sup>173</sup>
  - b) Although Mr Hamshaw concludes<sup>174</sup> that this is a “considerably better” safety record than the 81 collisions at mainline crossings in the same period, that conclusion fails to reflect either the fact that there are nearly four times the number of level crossings on the mainline,<sup>175</sup> or the much higher frequency with which those crossings would be used. If expressed as a ratio of accidents to crossing closures, it is obvious that heritage railways would come off worse.
  - c) Mr Nick Young’s very poignant evidence was a powerful reminder, not only that accidents can occur on heritage lines, but that they can have tragic consequences.
- 6.5.3.6. Once again, having regard to the evidence of Mr Fielding, the Landowners recognise that these risks do not reach the Framework threshold of being ‘unacceptable’. However, that does not alter the fact that the Order scheme would introduce risks to the safety of motorists on the A21 and passengers on the railway which currently do not exist.
- 6.5.3.7. The Landowners consider that these points need to be put in context. Over the last 40 years, both HE and its predecessor (HA) have spent hundreds of millions of pounds<sup>176</sup> in upgrading the A21 in order to

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<sup>170</sup> In the Landowners’ submission, the fact that it will only operate for less than half the year itself calls into question the extent to which there is a compelling case for it.

<sup>171</sup> RVR-W9-1 para 13.2

<sup>172</sup> RVR-W3-1 para 5.3.1

<sup>173</sup> OBJ/1002/PJC/1 section 8.1

<sup>174</sup> Ibid para 5.3.3

<sup>175</sup> Ibid para 5.3.1: 5,800 level crossings on the mainline network as against 1,500 on heritage “and minor” railways.

<sup>176</sup> Huw Merriman MP cited the figure of £130m on the recent dualling between Tonbridge and Tunbridge Wells alone, together with a further £20m which has been set aside as part of the latest programme of road safety improvements on the A21.

improve safety and ease congestion. Introducing delays and new risks to safety runs entirely counter to everything that HE is trying to achieve. When Mr Hamshaw was asked about this, he accepted that - whether or not the delays were "severe" - they undermined the rationale for the Robertsbridge bypass.<sup>177</sup>

6.5.3.8. In those circumstances, there is obvious sense in Mr Hardwick's (OBJ/99) question:

"What was the point of building the Robertsbridge bypass if RVR is just going to turn it into an obstacle course?"

6.5.3.9. The Landowners say that whether or not they fail the Framework test for the grant of planning permission, the impacts of the Order scheme on safety and congestion on the A21 add yet more harm to the disadvantages of the Order scheme. Because the A21 is a "critical national asset", those disadvantages should be given significant weight.

6.5.3.10. Finally, in relation to the A21, the Landowners ask the Secretary of State to note the concerns which have been expressed about the potential for the Order scheme to prejudice the future dualling of the road.

6.5.3.11. As the Inquiry has heard, there has been longstanding political support from almost every MP on either side of the constituency boundary for the dualling of the A21 down to the coast. The Landowners consider it is clear that what local residents have described as "the Snail Trail" is seen as a real impediment to the economic regeneration of Hastings.

6.5.3.12. RVR argues that HE has no plans for dualling. At present, that is true, but the history of improvements to the A21 has been a long and slow one, with various sections being proposed and then shelved, only to be brought back to life years later.<sup>178</sup> Slowly, inexorably, the improvements have happened, and have worked their way south. It is clear from the evidence of both Sally-Ann Hart MP and Huw Merriman MP that the campaigning for that to process to continue will not stop.

6.5.3.13. In the Landowners' submission (in keeping with Greg Clark MP and Sally Ann Hart MP) the creation of a level crossing puts that possibility at risk. Even if, as Huw Merriman MP has suggested, a technical solution could be found, the existence of a level crossing would inevitably impose significant design constraints which are likely to make any design solution significantly more expensive.

## 6.6. **SoM3)a)-The B2244**

6.6.1. The Landowners say that in all the discussion of the A21, it would be easy to forget that the Order scheme also depends upon a level crossing over the B2244, Junction Road. It is a matter of record that East Sussex County Council originally objected to a level crossing here as a matter of

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<sup>177</sup> Hamshaw cross-examination.

<sup>178</sup> The recent dualling of the A21 between Tonbridge and Tunbridge Wells is a prime example.

principle, and that its decision to withdraw that objection was not because it had received any information to demonstrate that a safe crossing could be achieved, but simply because the HA had withdrawn its objection to the crossing on the A21. In circumstances where HE now recognises that the latter decision was a mistake, it is questionable what reliance can be placed on the County Council's position.

6.6.2. The point is important, because it remains the case that very little work has been done on the B2244. Despite its poor accident record and the fact that, in Mr Coffee's words, it is a "threatening and intimidating environment characterised by speeding cars and motorcycles"<sup>179</sup> there has been no survey of vehicle speeds, nor any engagement with the County Council on design.

6.6.3. Again, whether or not the risks are "unacceptable" for the purposes of the Framework, a level crossing at this location is a disbenefit and creates a definite safety hazard in the Landowners' view.

### 6.7. **SoM3)b)-Public Rights of Way**

6.7.1. In addition to the level crossings over the A21, the B2244 and Northbridge Street, the Order scheme would introduce changes to two other public rights of way: the bridleway, and Footpath S&R 31 (FP31).

6.7.2. In terms of the bridleway, the proposal is that there should be a new level crossing. Given that other such crossings already exist elsewhere on the rail network, the Landowners do not suggest that this cannot be designed in a way that (to use the ORR's language) is "tolerably safe". However, the ORR remains undecided as to whether RVR has demonstrated that there is no reasonably practicable alternative, and in particular whether a bridge crossing would have been possible.

6.7.3. On this issue, RVR points to the letter from a planning officer at RDC indicating that a bridge would not be supported, but that issue has never been tested by an application for planning permission.<sup>180</sup>

6.7.4. Even if a bridge is not a reasonably practicable alternative, it is clear that the level crossing would introduce an additional risk to users which does not currently exist. This may not be fatal on its own, but it is an undoubted disbenefit of the Order scheme.

6.7.5. Similar arguments apply to FP31. As the ORR has observed:

"Footpath crossings on other railway systems do not generally have a good safety record on average".

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<sup>179</sup> Mr Coffee, evidence in chief.

<sup>180</sup> It would, of course, have been open to RVR to include such an application in the TWAO

Consequently, the ORR would have

“significant reservations if there were proposals to create an at-grade foot crossing in such close proximity to the A21 crossing location”<sup>181</sup>

- 6.7.6. In answer to the Inspector’s questions, Mr Raxton drew particular attention to the proximity of the FP to the A21 level crossing and the farm crossing, commenting that this was something they would “want to avoid strenuously”.
- 6.7.7. It is presumably for this reason that RVR’s proposal, as initially presented to this Inquiry, was to divert FP31 so that it ran under the embankment, in a culvert alongside the Mill Stream. However, as a diversion, this is something the Secretary of State can only approve if satisfied that it is a suitably convenient alternative to the existing footpath. It is therefore somewhat surprising that this is a matter on which RVR has produced almost no evidence.
- 6.7.8. In the Landowners’ submission, and for the reasons outlined by Mr Clark, RVR’s proposal fails this test, in particular because lowering the footpath would mean it is more susceptible to flooding, and because placing it in a narrow channel alongside moving floodwater is inherently unsafe.<sup>182</sup> It also creates a darker, less attractive underpass with poor forward visibility at the point at which the user has to make a decision whether to enter it.
- 6.7.9. Without expressly saying so, RVR has implicitly accepted the force of at least the first two of those criticisms through its modified proposals, which are either to provide the option of a higher path which would flood no more frequently than the existing footpath, or to provide a level crossing over the railway adjacent to the worker crossing. However:
- a) while the former would address the concerns about the extent to which the footpath would be passable, it compounds the concerns about the attractiveness of the route and the poor forward visibility. In particular, at both the upper and lower level the footpath would now be narrower than the previous proposal, while the 0.85 metres wide upper ledge would have restricted headroom. Although it may be physically possible to squeeze past another user, not everyone would feel comfortable doing this, but they would already have committed themselves to entering the culvert before the need to do so would have become apparent.
  - b) The latter is not an option on which the ORR has commented. However, it is clear from Mr Raxton’s evidence that it is not an option they would favour.

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<sup>181</sup> ORR Statement of Case REP/017-0 para 39

<sup>182</sup> See in particular the Defra Supplementary Note on Flood Hazard, quoted in OBJ/1002/PJC/1 para 7.5.11

6.7.10. How much any of this matters will depend on how well used the footpath is, and by whom. Regrettably, RVR has produced no evidence which helps with that. In the circumstances, whether the revised proposal is suitably convenient is a matter the Landowners leave to the Secretary of State, but on any analysis, the solution would be less attractive than the current path. The only other alternative is the level crossing, which the ORR "want to avoid strenuously". Either way, there is a downside.

6.8. **SoM3)c)-Flood Risk**

6.8.1. National policy on development in the floodplain is clear:

- a) Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere: Framework para 159.
- b) The sequential approach should be used in areas known to be at risk from any form of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding: Framework para 162.
- c) If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the Exception Test may have to be applied. The need for the ET would depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification: Framework para 163.
- d) To pass the ET it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and that it will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. Both elements of the ET should be satisfied for development to be allocated or permitted: Framework paras 164-165.

6.8.2. PPG<sup>183</sup> puts flesh on the bones of this. In particular:

- a) Para 7-001 describes the Framework as setting '*strict tests to protect people and property from flooding*'.
- b) Para 7-018 describes the aim of the ST as being '*to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) and other areas affected by other sources of flooding where possible.*'

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<sup>183</sup> INQ/009

c) Para 7-019 states:

*'The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. The flood zones as refined in the Strategic Flood Risk Assessment for the area provide the basis for applying the Test. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2 (areas with a medium probability of river or sea flooding), applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.'*

*Note: Table 2 categorises different types of uses & development according to their vulnerability to flood risk. Table 3 maps these vulnerability classes against the flood zones set out in Table 1 to indicate where development is 'appropriate' and where it should not be permitted.'*

- d) Para 7-023 effectively restates the Framework policy in relation to the Exception Test.
- e) Table 3<sup>184</sup> and the Key indicate that 'less vulnerable' development should not be permitted in Flood Zone 3(b), while 'Essential Infrastructure' should only be permitted following the application of the ET.

6.8.3. The status of Table 3 has given rise to considerable debate at this Inquiry. It is fair to say that this is an issue on which neither the Framework nor the PPG is entirely clear. Ultimately, the point is one of law. On that basis, the Landowners make the following submissions:

- a) Whether it is called 'policy' or 'guidance', Table 3, published by government, is intended to form part of an overall suite of tests which sit within the overall policy of the Framework, and which it indicates are 'strict'.
- b) In that context, and wherever Table 3 fits in terms of the ST or the ET, the words '*should not be permitted*' are plainly intended to have some meaning. An interpretation which deprives them of any meaning is one which cannot, logically, be correct.

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<sup>184</sup> INQ/099



- c) The solution lies in para 7-019. In a section which is squarely dealing with the Sequential Test, para 7-19 advises that:
- i. Where there are no suitable sites in Flood Zone 1, authorities should consider *'reasonably available sites in Flood Zone 2, applying the Exception Test if required'*. That is consistent with Table 3, under which (subject to the ET for highly vulnerable development) all development can be permitted in Zone 2.
  - ii. Where there are no reasonably available sites in Flood Zones 1 or 2, the suitability of sites in Flood Zone 3 should be considered *'taking into account the flood risk vulnerability of land uses'*.
  - iii. Table 3 *'maps [the] vulnerability classes ... to indicate where development is 'appropriate' and where it should not be permitted'*.
- d) The difference in wording here (*'consider reasonably available sites'* and *'consider the suitability of sites'*) is not an accident. What it reveals is that Table 3 is more than just a guide to when to use the ET: it answers the question whether development is even *'appropriate'* or *'suitable'* in Flood Zone 3. In essence it tells us that, for certain categories of development, the ST can only be taken so far. As Mr Patmore explained it,<sup>185</sup> Table 3 shows where the ST "hits the buffers".
- e) There is no conflict between this and the note to Table 3 which advises that the Table *'does not show the application of the Sequential Test'*. As the note says, there is nothing in Table 3 itself which states that sites in a higher flood zone must first be eliminated before one is able to move to a lower zone. In that sense, the table does not show *'the application'* of the ST. That does not mean it cannot show the limits to which that test can be taken.

#### 6.8.4. Applying Table 3:

- a) It is common ground that the majority of the proposed new line lies within the functional floodplain, i.e. Zone 3(b).<sup>186</sup>
- b) Throughout all of RVR's flood risk assessment work, up to and including the ESu, RVR has recognised that a heritage railway should be classified as a *'less vulnerable'* use.<sup>187</sup> That is also the

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<sup>185</sup> Oral x-in-c

<sup>186</sup> See 2013 Capita FRA (for the ES) RVR/26 App 7 para 3.2.3; 2016 Capita FRA, RVR/28 App A para 3.3.2; RVR/76 para 3.5.1

<sup>187</sup> See 2013 Capita FRA (for the ES) RVR/26 App 7 para 3.2.2; 2016 Capita FRA, RVR/28 App A 3.3.2; ES Update RVR/70-01 para 9.3.18

basis on which it was assessed by the Local Planning Authority when granting planning permission.<sup>188</sup>

- 6.8.5. In those circumstances, Table 3 is categoric: development should not be permitted. RVR seeks to argue its way around this by reference to the ET, but it is very clear that the ET is not an escape route that is available to 'less vulnerable development' in Zone 3(b).
- 6.8.6. Mrs Callaway's (RVR-Flood risk witness) belated attempt, in her rebuttal evidence, to escape this conclusion by distancing herself from Capita's own previous (and repeated classification) of the Order scheme as "less vulnerable" is unconvincing and should be rejected. In particular:
- a) The ES Update specifically considers and rejects any suggestion that the Order scheme could be considered 'essential transport infrastructure'.<sup>189</sup> Mrs Callaway does not seriously contend otherwise.
  - b) Although Mrs Callaway suggests that the Order scheme could be classified as 'water compatible', that is plainly wrong, given that the only way in which RVR can ensure that it remains safe in a flood event is to cease operation. A clearer indication that it is not "water compatible" would be difficult to find.
  - c) As Mr Patmore observed, it would make no sense for the Order scheme to be regarded as 'water compatible' when even land and buildings used for agriculture are treated as the higher risk 'less vulnerable' development.
- 6.8.7. On this basis, the Landowners' primary submission in relation to flood risk is that the Order scheme is fundamentally contrary to the PPG, and thus the Framework.
- 6.8.8. Significantly, RVR has no reasoned answer to this. Its only response is to repeat the mantra that neither the Local Planning Authority (LPA) nor the EA has raised any objection. The difficulty with that is that there is nothing to indicate that either the EA or the LPA has actually grappled with the issue: nowhere in the material before this Inquiry is there anything which explains either why RDC or the EA do not consider that Table 3 applies, or (if it does apply) why an exception should be made. Disappointingly (and in sharp contrast to the ORR) the EA has specifically declined to come to the Inquiry to explain its position.
- 6.8.9. In those circumstances, the Landowners consider that this is an issue which the Secretary of State cannot simply sidestep on the basis that the responsible authorities are satisfied. The conflict with Table 3 demands an answer, and it would be an error of law not to provide one.

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<sup>188</sup> RVR/56 para 6.5.3

<sup>189</sup> RVR/70-01 para 9.3.18

- 6.8.10. In any event, even if there were some way around Table 3 and the classification of the development as 'less vulnerable', RVR's problems would not end there.
- 6.8.11. First, the footnotes to Table 3 clearly state that, in order to be acceptable within Zone 3(b), essential infrastructure and water compatible uses need to be designed and constructed to remain operational and safe for users in times of flood. It is self-evident that the Order scheme fails the first of these tests: as the Landowners have noted, the only way in which RVR can ensure that the Scheme remains safe during a flood event is if the railway ceases to operate.
- 6.8.12. Second, unless the Order scheme is 'water compatible', it should only be permitted if it satisfies the ET, the second limb of which is that it:
- 'will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.'*
- 6.8.13. RVR argue that the development would be safe because they would simply cease operating trains. However, as Mr Dewey confirmed,<sup>190</sup> none of KESR's three flood alert warning levels, or even the presence of water on the tracks, necessarily triggers the trains stopping: it is in each case a decision for the controller. If it became necessary to evacuate a train once there was water over the tracks, it is extremely difficult to see how the evacuation route could be described as "safe".
- 6.8.14. In any event, the word 'safe' applies not only to the safety of users, but also to the safety of the development itself. While it may be possible to employ techniques which would reduce the risk of the embankment being eroded or undermined, Mr Dewey has confirmed<sup>191</sup> that "*the embankments are particularly vulnerable*". The Inquiry has been told of occasions on which RVR has had to bring out equipment to replace the sheet-piling associated with the culverts on its existing line.
- 6.8.15. The Landowners' point here is reinforced by the recent amendments to the Framework, and in particular the requirement now added to para 167(b) that development must be appropriately flood resilient such that '*it could be quickly brought back into use without significant refurbishment*'. There is no evidence that the Order scheme would meet that requirement.
- 6.8.16. In addition, far from demonstrating that the Order scheme would not increase the risk of flooding elsewhere, the latest FRA demonstrates that there would be areas where it would increase flooding. As Mrs Callaway accepted,<sup>192</sup> the fact that this may "only" be on agricultural land is no answer.

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<sup>190</sup> In response to the Inspector's questions

<sup>191</sup> In response to the Inspector's questions

<sup>192</sup> Callaway cross-examination

- 6.8.17. Further, the modelling is reliant on a large number of culverts (currently 27) in order to allow water to flow from one side of the embankment to another. Should any of those become blocked, the results are likely to be very different. While KESR is no doubt capable of keeping the culverts clear in between flood events, it is flood events themselves which are likely to bring down the debris which would cause blockage. At such times, with the track under water, there would be no easy way for KESR to clear the obstructions. Significantly, the consequences of this have not been tested or modelled by RVR.
- 6.8.18. Finally (in terms of the second limb of the ET), RVR has yet to demonstrate that it would not be required to compensate for the loss of floodplain storage. The Landowners return to this issue under the heading of 'Impediments', below.
- 6.8.19. In summary, even if the fact that the Order scheme is "less vulnerable" development is not fatal, the Order scheme is still contrary to national policy, because it fails the ET in the Landowners' view.
- 6.8.20. Even if all the above arguments are rejected, the Landowners reiterate that, in order to pass the ET, the development must also provide wider sustainability benefits to the community that outweigh the flood risk. This is a separate, freestanding element of the ET, and both limbs must be satisfied. It follows that it is not enough for an applicant to demonstrate that the development will be "safe for its lifetime ... without increasing flood risk elsewhere"<sup>193</sup>, even where that is the case, the mere fact that the development is located in Flood Zone 3(b) creates a risk which needs to be offset by public benefits.
- 6.8.21. In the present case, RVR seeks to answer that requirement by reference to the economic benefits of the development. However, those are the same benefits that RVR relies upon to justify the use of compulsory purchase powers. For the reasons the Landowners have outlined above, RVR cannot rely on the same benefits twice: anything that is needed to offset the flood risk is "spent", and is no longer available to counterbalance the interference with the Landowners' Article 1 rights. Alternatively, all these matters, including the flood risk, must be taken into account when considering the 'compelling case in the public interest'.
- 6.9. **SoM3)d)-Heritage Assets: Impact on Robertsbridge Abbey**
- 6.9.1. RVR's ES recognises that the reinstatement of the railway embankment would have a significant adverse impact on the setting of Robertsbridge Abbey.<sup>194</sup> The Landowners say that contrary to Mr Turney's suggestion to Mr Slatcher,<sup>195</sup> the ES does not conclude that this would be eliminated over time: rather, it confirms that mitigation would be '*difficult to*

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<sup>193</sup> If that were the case, the first limb of the test would be redundant

<sup>194</sup> RVR/24 para 4.7.5;

<sup>195</sup> Slatcher in chief

*achieve*<sup>196</sup> and that the effects *'could reduce to moderate or slight over time'*.<sup>197</sup> Mr Slatcher's proof echoes this, noting that there would be a *'moderate negative effect'* which *'would remain significant, albeit declining over time'*. When asked by the Inspector how or why (given the acknowledged difficulties of mitigating the impact) the impact might decline, the best that Mr Slatcher could manage was to suggest that the ballast used to construct the embankment might mellow with age. That, of course, assumes that it would not need to be replaced as a result of scouring caused by flood events.

6.9.2. Mr Slatcher's evidence also refers to the fact that *'the area would return to the state when trains last ran'*<sup>198</sup>. This appears to pick up on RVR's much-repeated contention that the Order scheme is reinstating an historic 19<sup>th</sup> Century line which used to serve the farms and mills of the Rother Valley.<sup>199</sup> The Landowners say that is both factually flawed, and irrelevant to the impact on the Abbey:

- a) It is factually flawed, because the line did not open to the public until 1900 and only operated a passenger service until 1954.<sup>200</sup> It therefore crept into the very last year of Victoria's reign and operated entirely in the 20<sup>th</sup> Century. It has been closed now for as long as it ever operated.
- b) It is irrelevant because Robertsbridge Abbey predates the railway by almost 800 years. As Mr Slatcher accepted,<sup>201</sup> there is no suggestion that the railway makes, or has ever made, any contribution to understanding the significance of the Abbey.

6.9.3. In circumstances where RDC has granted planning permission for the Order scheme, the Landowners do not suggest that the impact on Robertsbridge Abbey would be enough on its own to warrant refusal. However, as a Scheduled Ancient Monument the Abbey is a heritage asset of the highest significance.<sup>202</sup> The harm to its setting is a matter to which great weight must be given. Under para 200 of the Framework, that impact requires a "clear and convincing justification". Under para 202, the harm has to be weighed against the public benefits of the proposal.

6.9.4. The Landowners consider that this is highly important when assessing the compelling case in the public interest: the harm to the Abbey needs to be included in that overall balancing exercise. As such, it eats into any socio-economic benefits to which RVR might lay claim, well before

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<sup>196</sup> RVR/25 para 12.6.1; see also Slatcher RVR-W5-1 para 2.6.5

<sup>197</sup> See also the Updated ES RVR/70-01 para 11.3.6

<sup>198</sup> See also Updated ES, RVR/70-01 para 11.3.7

<sup>199</sup> RVR Opening Statement, INQ/3 para 6

<sup>200</sup> Gillett proof RVR/W1/1 para 2.2.2 (though Mr Gillett seemed unaware of this in cross-examination); RVR/25 paras 8.1.2 12.3.18; evidence of Mr Paul Smith

<sup>201</sup> Slatcher cross-examination

<sup>202</sup> Framework para 194(b)

one comes to the question whether the use of compulsory purchase powers is justified.

6.10. **SoM3)d)-Landscape and the AONB**

6.10.1. The Landowners indicate that, although they may be less significant than the impact on the Abbey, RVR's Landscape and Visual Review identifies the potential for significant negative visual effects in views along Church Lane, together with conflicts with two of the objectives of the High Weald AONB Management Plan.<sup>203</sup>

6.10.2. It is a matter of judgement whether this underestimates the actual impacts. Although this is not an issue on which the Landowners have produced expert evidence, the Inquiry has heard the views of Mr David Webster, who has expertise, with whom they agree. In that context, they draw attention to the fact that RVR's ES recognises that parts of the original railway are "defined by linear stands of mature vegetation which contribute positively to the existing character of the area"<sup>204</sup> and that the Order scheme would remove these where it passes through Moat Farm. Additionally, the Landowners now know that RVR would need to extend the existing lighting on the A21, and light the level crossing at Junction Road. The effect of the former is picked up in the ESu, but the latter is not.

6.10.3. The Landowners say whatever the level of impact, the AONB is a landscape which enjoys 'the highest status of protection', and 'great weight' should be given to conserving and enhancing it. On RVR's own analysis, the Order scheme would not do that.

6.11. **SoM3)d)-Biodiversity**

6.11.1. The Landowners indicate that, as Mr Highwood and Mrs Ainslie have explained, since it was acquired by the de Quincey family, Moat Farm has been farmed in an ecologically responsible manner, and today falls within Natural England's Higher Stewardship Scheme. It is home to a number of red-listed species, including skylarks and nightingales whose habitat includes the mature trees which now grow along the line (and out of) the old railway embankment. Their evidence as to the value of Moat Farm is supplemented by that of Mr Flint.

6.11.2. The Order scheme would involve the felling of hundreds of mature trees along the line of the old embankment. RVR's ES recognises<sup>205</sup> that this would result in the permanent loss and fragmentation of habitat. The construction effects are described as '*major adverse effect at local level*', with the knock-on effects for birds, bats and dormice ranging from '*minor negative*', through '*major adverse at district level*' to '*moderate adverse at a County level*'.

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<sup>203</sup> RVR/70-2 App B.

<sup>204</sup> RVR/25 para 8.1.2

<sup>205</sup> RVR/24 para 4.5.4

- 6.11.3. Despite this being a point the Landowners have made throughout, it was not until mid-way through the Inquiry that the land on which RVR is proposing to provide mitigation for these impacts was identified. In particular, Mr Coe's *'Note on Tree Planting'*<sup>206</sup> proposed four 'areas' for ecological planting. However:
- a) Reflecting the fact that the concern identified in the original ES relates not only to the loss, but also to the fragmentation of a habitat which *'provides ecological connectivity through the landscape'*,<sup>207</sup> the Updated ES states<sup>208</sup> that 1.5 ha would be planted *'in a single block within adjacent arable fields'*. In contrast, the four areas proposed by Mr Coe are not in a single block, are not in adjacent fields to the trees proposed to be removed, and are not all currently arable fields. This mismatch is not addressed anywhere in Mr Coe's evidence.
  - b) Of the four areas, the largest - Area 1 - is already an area of scrubland, in circumstances where the ES also requires the provision of 1 ha of new scrub as compensation for the loss of existing scrub.<sup>209</sup> As Mr Highwood pointed out<sup>210</sup>, planting trees on Area 1 is simply robbing Peter to pay Paul.
  - c) Since INQ/74 (Note on tree planting) was first produced, the Inquiry has also been told that this land will be used to provide compensation for any loss of flood-plain storage. The Inquiry has not been presented with any analysis of the extent to which those two things are compatible.
- 6.11.4. Presumably in response to the above, on 13 August 2021 (after the adjournment of the Inquiry) RVR wrote to the Inspector referring to an *'in principle agreement'* with New House Farm Bodiam Ltd for the provision of a 4 ha field between the railway and the river at Junction Road to provide the ecological mitigation.<sup>211</sup>
- 6.11.5. The Landowners consider that this belated and further moving of the goalposts (at a point in time at which the Inquiry was supposed to have concluded) is typical of the way in which RVR has gone about the preparation of the whole of its case, namely to ignore objections made by the Landowners unless and until the Inspector has expressed any interest in them. Even then, the location of the field was not shown on the plan attached to the letter. The Landowners indicate they can only ask that this is included in the site visit, so the Inspector can form his own impression.

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<sup>206</sup> INQ/74

<sup>207</sup> RVR/25 para 9.3.49 and Table 9.6 at p. 108

<sup>208</sup> RVR/70-01 para 8.8.5

<sup>209</sup> RVR/25 paras 9.5.4 and 9.5.5

<sup>210</sup> X-in-chief

<sup>211</sup> INQ/149.

6.11.6. However, even if it is potentially suitable, mature trees are not a habitat which can be replaced overnight.<sup>212</sup> It is therefore difficult to see how there could not be adverse effects on protected species and biodiversity. Indeed, even with mitigation, RVR's ES recognises that there would be such adverse effects.

6.12. **SoM9)a)-Impediments**

6.12.1. Para 15 of the government's *Guidance on Compulsory Purchase and the Crichton Down Rules* states that:

*'The acquiring authority would 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'.*

6.12.2. The rationale for this is straightforward: if there are impediments to delivery of a scheme, there is a risk that the public benefits which that scheme is expected to deliver may never be realised. If that is the case, then the justification for compulsory purchase evaporates.

6.12.3. The Landowners say that critically, the test in para 15 is very different to that which governs the imposition of Grampian conditions on a planning permission. Whereas a Grampian condition should not be imposed if there are "no prospects at all of the action in question being performed within the time limit of the permission", para 15 requires the applicant to demonstrate that the Order scheme is unlikely to be blocked.

6.12.4. In the present case, there are a number of obstacles which RVR would need to clear before the Order scheme can be delivered.

6.12.5. *The Need for a New Planning Permission*

6.12.5.1. Although RDC has already granted planning permission for the extension of the line, that permission is subject to the standard time limit on commencement of development, together with a number of pre-commencement conditions which have still not been satisfied. Although RVR argues that it has already successfully implemented the permission, the local planning authority does not agree,<sup>213</sup> and (for the reasons set out in their response to RVR's Note on Implementation<sup>214</sup>), the Landowners agree with that. In their submission, the permission would lapse unless RVR is able to discharge all the remaining pre-commencement conditions before 22 March 2022.

6.12.5.2. For the reasons set out in greater detail below, the Landowners submit that there are significant questions over whether RVR will be able to

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<sup>212</sup> The time-lag in the replacement of habitat is recognised in paras 9.6.1-9.6.2 of the ES: RVR/25

<sup>213</sup> See RDC's letter of 8 February 2021, INQ/052 p. 4

<sup>214</sup> INQ/104



discharge those conditions at all, but on any analysis the prospects of doing so before the permission has lapsed are becoming increasingly thin. In particular, it is common ground<sup>215</sup> that Conditions 3, 5, 6, 9 and 11 would (or are at least very likely) to require access to the two farms before RVR can apply to discharge them. That is unlikely to happen unless or until the draft Order is confirmed.

- 6.12.5.3. In any event, RVR now accepts that its proposed changes to the height of the embankment would require amendments to the planning permission. RVR cannot do that under a section 96A non-material amendment unless and until they have control of the Landowners' land, and neither a section 73 application nor a non-material amendment can change the date for implementation of the permission.
- 6.12.5.4. In the circumstances, RVR would, at the very least need to make a section 73 application, and may well need to make an entirely new application for planning permission. As and when that application is made, it would be objected to by the Landowners, who would (amongst other things) demand a clear answer from RDC to issues such as the conflict between the proposal and Table 3 of the PPG relating to the floodplain. Unless the Secretary of State finds against them on their substantive objections on grounds of conflict with national policy on flood risk, there is no basis on which he could conclude that the need for a new permission is not a potentially significant impediment to the Order scheme.
- 6.12.6. *Discharge of the flood-related conditions attached to the existing permission*
- 6.12.6.1. Even if it was able to proceed under the current permission, RVR could only deliver the Order scheme if it first satisfies the pre-commencement conditions requested by the EA. In the Landowners' submission, there is no certainty that RVR will be able to do this.
- 6.12.6.2. In particular, Condition 11<sup>216</sup> sets out the standard EA requirement for like-for-like replacement of any loss of storage capacity. Reinstatement of the embankment across Parsonage Farm self-evidently involves a loss of existing storage capacity, and although RVR asserts that compensation may not be required, that is not what Condition 11 says, the amounts involved are not small,<sup>217</sup> and the EA has not agreed that no compensation is necessary.<sup>218</sup> Indeed, the fact that RVR is now (apparently) in discussion with the EA about possible sites, and is taking

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<sup>215</sup> RT and PBQC answers to Inspector, Day 16

<sup>216</sup> RVR/7

<sup>217</sup> Mrs Callaway estimates that the volume of the embankment to the west of the A21 at between 2,500 m<sup>3</sup> and 3,360 m<sup>3</sup>: INQ/114. Mr Patmore puts it at c. 3,200 m<sup>3</sup> but agrees that the difference is not significant: INQ/132. To the east, Mrs Callaway has estimated that a further 5,000 m<sup>3</sup> may be required. Mr Patmore's initial estimate was of the order of 11,000 m<sup>3</sup>. Following discussions with Mrs Callaway, he recognises that it is now likely to be less than that, but is unable to say by how much. Both he and Mrs Callaway agree that the actual amount will depend upon the detailed design: INQ/113.

<sup>218</sup> RVR/70-01 para 9.4.28; RVR/70-07 para 4.6.3

active steps to acquire land on which compensation might be provided indicates that it accepts that compensation may well be necessary. The Landowners say that in the circumstances, there is no basis on which the Secretary of State could conclude that compensation would not be required.

- 6.12.6.3. Accordingly, this is at the very least a potential impediment to delivery of the Order scheme, and the Secretary of State needs to be satisfied that it is unlikely to be a problem. RVR therefore needs to demonstrate that, if compensation is required, it has or would be able to obtain control of the land needed.
- 6.12.6.4. Significantly, this is not simply a matter of finding any old piece of land somewhere along the Rother Valley: the requirement is for volume for volume and level for level compensation, and the location would need to be one which is suitable.
- 6.12.6.5. Despite the fact that this is an issue which the Landowners have been raising for some time,<sup>219</sup> it was not addressed at all in any of RVR's written evidence to this Inquiry. Only in re-examination of Mrs Callaway (and after she had specifically said she was unaware of any document before the Inquiry which showed where compensation might be provided) was the Inquiry told that the answer lay in INQ/74 (Note on Tree Planting).
- 6.12.6.6. This frantic, last-minute scrabbling around to re-badge land which was presented to the Inquiry as mitigation for the loss of trees as all-singing-and-dancing tree and flood compensation reveals just how little proper thought RVR has given to the matter. As Mr Highwood observed, this is particularly strange, given that RVR has owned Area 1 since 2013.
- 6.12.6.7. The Landowners indicate that, even now they have it, INQ/74 does not adequately answer the question: as Mr Patmore explains,<sup>220</sup> while Area 1 might be capable of providing the compensation needed for the embankment to the west of the A21, it is too high, and therefore not suitable for compensating for the embankment to the east, nor would any of the other areas identified be suitable or sufficient for that purpose.
- 6.12.6.8. Once again, it appears that some at least of these points are now accepted by RVR. In particular, following the adjournment of the Inquiry, in a Note which was supposed merely to consolidate material which it had already put in evidence (and which Mr Turney specifically assured the Inquiry would not contain anything new) RVR has now produced details of a further five areas of land (which neither RVR nor its witnesses have ever previously mentioned) which are apparently subject to the '*agreement in principle*' with New House Farm Bodiam Ltd and on which RVR say compensation for the loss of floodplain could be provided.

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<sup>219</sup> See Statement of Case OBJ/1002-0 paras 7.8-7.10

<sup>220</sup> INQ/132, pp. 2-3

6.12.6.9. Again, for the reasons set out by Mr Patmore,<sup>221</sup> the Landowners question whether even this latest moving of the goalposts is anything more than a desperate clutching at straws. Although they are told that RVR has agreed heads of terms with New House Farm Bodiam Ltd. Mr Turney confirms that there is as yet no binding agreement in place. RVR therefore does not yet have control of the land in question. Even if it did, there is no planning permission for significant engineering works in any of these areas, and the impact of such works has not been assessed. More importantly, these new areas are within or adjacent to an area of the floodplain which is currently shown to benefit from the Order scheme, because the embankment would hold back water to the north. Put simply, they are on the wrong side of the railway line to provide compensation where it is needed. In addition, Area 2 is already susceptible to waterlogging and ponding, such that they are unlikely to be able to provide additional storage during a flood event. The volumes which Areas 3, 4 and 5 might be able to contribute are small.

6.12.6.10. In short, the Landowners consider it is far from clear that these areas can provide what is needed.

6.12.6.11. In any event:

a) The flood modelling work which the EA has seen predates the revisions to the Order scheme which would raise the level of the embankment in the vicinity of the A21 (and, possibly, the bridge required to accommodate RVR's alternative proposals for FP31).

b) The flood modelling work makes no allowance for the ramps which would be needed to accommodate the worker crossings.<sup>222</sup>

The impact of both these matters therefore remains to be assessed by flood risk assessment and the EA.

6.12.6.12. In the Landowners' submission, this is a significant impediment. RVR has had ample time to address it, but has failed to do so. It has not discharged the burden of demonstrating that the need for compensation is unlikely to block delivery of the Order scheme.

6.12.7. *Discharge of Conditions Relating to the A21*

6.12.7.1. Under condition no. 20, no part of the development shall commence until a level crossing design and Departure from Standard has been approved. This would require HE to accept the Departures Application and the Stage 1 RSA.

6.12.7.2. The Landowners have already made the point that this is information which should have been provided before planning permission was ever granted, and that HE has belatedly recognised that it was a mistake not

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<sup>221</sup> INQ/152

<sup>222</sup> Which, if all built to the same dimensions as those at Morghew Park Estate, could result in a requirement for an additional 927 cubic metres: see INQ/132 p. 2.

to insist on this. As Mr Harwood made clear<sup>223</sup> it should certainly have been obtained before the TWAO was applied for.

- 6.12.7.3. It may be that this matter is resolved before the Secretary of State comes to make a decision. However, this cannot be assumed. In particular, for the reasons explained by Mr Clark, the realignment of the carriageway in order to accommodate the 1:150 incline of the level crossing is contrary to DMRB standards for superelevation and longitudinal gradient.<sup>224</sup> No-one at this Inquiry has suggested that Mr Clark is wrong in this regard. The Landowners are therefore still unclear how RVR proposes to address this, or why HE should not regard it as a problem.
- 6.12.7.4. The practical reality is that RVR has now had 10 years to resolve this issue, but has still not managed to do so. The Landowners echo HE's submission that the Order should not be made until it has been overcome. Either way, unless and until the DSA is approved, this remains an impediment to the Order scheme.
- 6.12.8. *Land for the worker crossings*
- 6.12.8.1. It is now accepted by RVR that farm vehicles would not be able to negotiate the embankment at the proposed crossing points unless a properly graded approach is provided. It is therefore noteworthy that there has been no assessment<sup>225</sup> of whether there is actually space to provide them in the locations where they are likely to be needed. RVR explains the failure of the Order to make provision for this on the basis that the precise locations have yet to be agreed, and that the burden to make land available would fall on the Landowners under the duty to mitigate. That is, however, only a partial answer.
- 6.12.8.2. Although the precise location of the farm crossings may yet be unknown, the general areas within which they would be needed are identified in Mr Hodges' evidence. In some case, the options available are limited. The Inspector has himself drawn attention to some of the "pinch points" – in particular in relation to the farm crossing near the point where it is proposed to divert FP31. In such cases, RVR's argument that "it will be all right on the night" is simply not good enough.
- 6.12.9. *Ecological Mitigation*
- 6.12.9.1. The ES indicates that the Order scheme would need to provide 3 ha of new native broadleaved woodland to compensation for that which would be lost as a result of the Order scheme, together with a minimum of 1 ha of scrub.<sup>226</sup>

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<sup>223</sup> Evidence in chief.

<sup>224</sup> Clark, OBJ/1002/PJC/1 section 7.3.

<sup>225</sup> Hodges cross-examination.

<sup>226</sup> RVR/25 paras 9.5.4 and 9.5.5

- 6.12.9.2. From the outset of this process, the Landowners have been asking where this compensation would be provided.<sup>227</sup> After Mr Coe had given evidence, RVR produced its *Note on Tree Planting*<sup>228</sup>, which proposes an area of land just to the north of Robertsbridge. In addition, the Inquiry now has RVR's letter of 13 August 2021, indicating that there may be a further 4 ha of land in the vicinity of Junction Road.<sup>229</sup>
- 6.12.9.3. The Landowners have set out or submissions on these areas above, and do not repeat them here. Subject to the Inspector's views, following any site visit, on the land referred to in the letter of 13 August 2021, the Landowners stand by their objection that RVR has not demonstrated how it would provide the ecological mitigation which its own ES (and Updated ES) recognise is necessary. Without that mitigation, condition nos. 5 and 7 of the Permission cannot be discharged and the Order scheme cannot be delivered.
- 6.12.10. *Funding*
- 6.12.10.1. Finally, the Landowners question the extent to which the Secretary of State can be satisfied that funding would be in place to carry out the development.
- 6.12.10.2. The importance of this is clearly flagged up in the *Guide to Transport and Works Act Procedures*, where:<sup>230</sup>
- a) Para 1.31 advises that the capability of a scheme to attract the funding necessary is a relevant factor in the Secretary of State's decision.
  - b) Para 1.32 refers to the right of those whose land is being acquired to expect the applicant to be able to raise the necessary finance, and the Secretary of State's wish to have regard to the prospects of funding the works.
  - c) Para 1.33 states that the applicant should be able to demonstrate that the proposals are capable of being financed in the way proposed.
- 6.12.10.3. In addition, para 14 of the *Guide to Compulsory Purchase Process and the Crichel Down Rules*<sup>231</sup> states that the acquiring authority should provide substantive information as to the sources of funding available both for acquiring the land and implementing the scheme for which the land is required.
- 6.12.10.4. In the present case, RVR is not a company with any significant assets or income of its own: it is simply a vehicle to deliver the Missing Link, after which the line would be handed over to KESR which consistently runs at

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<sup>227</sup> See Statement of Case OBJ/1002-0 para 8.5

<sup>228</sup> INQ/74

<sup>229</sup> INQ/149.

<sup>230</sup> INQ/005

<sup>231</sup> INQ/008

a loss in any normal commercial sense. Delivery of the Order scheme would therefore be entirely dependent upon donations, and in particular the generosity of two wealthy benefactors, neither of whom was (until recently) willing to be identified.

- 6.12.10.5. Presumably recognising the difficulties in which that placed RVR, one of those two benefactors has belatedly broken cover,<sup>232</sup> but the identity and resources of the other remains a mystery. In the Landowners' submission, this remains an unacceptable position: if the anonymity of both donors was a valid objection, it is not removed by the fact that one of them has chosen to be named. Moreover:
- a) Although the Inquiry now knows who one of the benefactors is, there is no contractual or other binding commitment to provide the money needed: delivery of the Order scheme is still entirely dependent upon that person's goodwill.
  - b) There is nothing to indicate that, if the donor who remains anonymous decides to withdraw, the named benefactor is willing to foot the whole of the bill himself.
  - c) There is no evidence as to what the position may be if RVR's cost estimate is exceeded (as may, for example, be the case if HE does not agree to the use of RVR's own appointed workforce).
  - d) There is no commitment to contribute towards the ongoing costs of maintenance.

So the Landowners say funding is still an unanswered question.

- 6.12.10.6. Even assuming these impediments can be overcome, there still needs to be a 'compelling case in the public interest'. Accordingly, the Landowners turn to consider the benefits on which RVR relies.

### 6.13. ***SoM1-The Alleged "Benefits"***

#### 6.13.1. *Economic*

- 6.13.1.1. RVR's argument that there is a compelling case in the public interest is founded principally on what it claims are the socio-economic benefits of the Order scheme. However, the Landowners consider that it is difficult to reconcile this with RVR's own ES, which candidly describes the local socio-economic benefits as '*minimal, though very marginally positive amongst certain receptors*'.<sup>233</sup> The ES's overall assessment of the impact of the Order scheme is '*neutral to minimal positive*'. Significantly, even after consideration of the Steer Report, the Updated ES does not suggest any change to this conclusion.<sup>234</sup> Even on RVR's own assessment, therefore, it is difficult to see how this scheme passes muster.

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<sup>232</sup> Gillett Rebuttal App 4 (RVR/W1/5-4)

<sup>233</sup> RVR/25 para 14.7.2

<sup>234</sup> RVR/70-01 para 13.5.4 "the conclusions of the ES chapter remain valid"

- 6.13.1.2. The Landowners suggest that picture becomes even more stark once it is recognised that the economic benefits which RVR announced to the world (and to the ORR<sup>235</sup>) when garnering support for its proposals, a claimed total of £35 million during construction and £4.6 million per annum in local benefits from 2030 onwards (figures which are still quoted by a number of supporters in their representations to this Inquiry), were entirely dependent upon further investment which RVR now describes as “aspirational”<sup>236</sup> and which not even its own witness, Mr Higbee, relies upon. Rather, RVR’s case<sup>237</sup> now relies on an estimated £6.5 million in local construction benefits and an ongoing £1.06 million per annum, less than a quarter of that previously advertised.
- 6.13.1.3. The Landowners say that even if these figures were reliable, they would still fall woefully short of a ‘compelling case in the public interest’. But, for the reasons explained by Mrs Evans, even they are not reliable.
- 6.13.1.4. First, they rely on a projected 25% overall increase in passenger numbers. This is significantly higher than anything which any other heritage railway has managed to sustain, following connection to a mainline station.
- 6.13.1.5. In particular, both Mr Higbee and Mrs Evans agree that, of all the heritage railway lines in operation in the country, the best comparator is the Bluebell Line.<sup>238</sup> It is therefore highly pertinent that KESR’s 25% increase is not even remotely supported by the experience of the Bluebell Line, following its connection to the mainline station at East Grinstead. Despite a 32% increase in patronage in the first year after the connection, passenger numbers on the Bluebell line have since plummeted to a level which is even below that experienced before connection.<sup>239</sup>
- 6.13.1.6. In cross-examination, Mr Higbee sought to dismiss this on the basis that there might be “other factors” at play in the case of the Bluebell Line. However, when asked what those factors might be, he had no answer. If the Bluebell Line is a meaningful comparator, the drop in numbers there calls for some investigation and explanation before there can be any confidence that those same ‘other factors’ would not also affect KESR.
- 6.13.1.7. In this regard, it will be noted that KESR has already had a similar experience to the Bluebell Railway: in 2000, when the KESR was extended to Bodiam, passenger numbers leapt to 107,992.<sup>240</sup>

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<sup>235</sup> RVR/75

<sup>236</sup> RVR-W9-1 para 14.7

<sup>237</sup> Higbee, RVR-W2-1 para 2.20

<sup>238</sup> See also the Steer Report, RVR/9 para 4.38: the uplift is based inter alia on “the experience of the Bluebell Railway”

<sup>239</sup> Evans Table 8: OBJ/1002/EE/1 p. 17

<sup>240</sup> See KESR Annual Accounts for FY2013, Evans Appendices OBJ/1002/EE/2 p. 5

They have never reached the same heights since. The Bluebell Railway is patently not the only line to be affected by 'other factors'.

- 6.13.1.8. In a world where he could not point to any persistent growth in the overall number of passengers on the Bluebell Railway, Mr Higbee fell back on the argument that 25,000 passengers still access the Bluebell Line via East Grinstead. However, that figure is an irrelevance. For the purposes of calculating the economic benefits to the area, the question is not how many people might access KESR from Robertsbridge, but how many of those would be additional visitors to the area. What the Bluebell Line figures show is that, while some existing visitors may change the point at which they access a heritage line, there is unlikely to be any significant and persistent net increase in patronage overall.<sup>241</sup> Without that persistent net increase, there can be no economic benefits to the area.
- 6.13.1.9. The Landowners say critically, there is no good reason why KESR should be more successful than the Bluebell Line. Even before its connection to the mainline, the Bluebell Railway was attracting more than twice the number of visitors to KESR.<sup>242</sup> Moreover, East Grinstead is only 55 minutes away from London Victoria, and benefits from a half-hourly service, as compared with Robertsbridge, which is 1 hr 20 minutes from Charing Cross and has only an hourly service from London (and one which, as Mr Le Lacheur has pointed out,<sup>243</sup> is often replaced with a bus service at weekends while NR carry out essential repairs). As Mrs Watkins observed,<sup>244</sup> East Grinstead is also a much larger settlement, with significantly more to attract visitors than Robertsbridge. If either was likely to appeal to the 'untapped London market', it is the Bluebell Line.
- 6.13.1.10. In addition, the scope for encouraging visitors to travel down by rail to Robertsbridge would be limited by the practical and legal restrictions which would "bookend" any schedule KESR produces:
- a) As the Steer Report notes,<sup>245</sup> the journey down from London is much less likely to be attractive if visitors are travelling at peak time and paying peak fares. Under current fare arrangements, this would mean a departure from London after 9.30 am, placing visitors in Robertsbridge between 10.40 am and 11.00 am. Allowing time to transfer from the mainline station to KESR and

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<sup>241</sup> The Landowners indicate that, in this regard, it is irrelevant whether the 25,000 Bluebell passengers who use East Grinstead were existing customers who now simply access Bluebell at a different place, or whether they are new visitors from London who have displaced pre-existing customers: the simple point is that the number of people being brought into the area by the Bluebell Line has gone down since connection with the mainline.

<sup>242</sup> Evans Table 8: OBJ/1002/EE/1 p. 17: in FY13 Bluebell had 190,000 visitors

<sup>243</sup> INQ/095

<sup>244</sup> Oral evidence

<sup>245</sup> RVR/9 para 4.24



buy a ticket, it is difficult to see how it would be possible to leave Robertsbridge much before 11.00 am.

- b) The return journey would be constrained by condition no. 21 of the planning permission, which prohibits use of the level crossing between 5pm and 7pm on weekdays and bank holidays. As Mr Dewey recognised,<sup>246</sup> in order to ensure that passengers were back at Robertsbridge in time, without breaching the condition, KESR would need to allow a 15-20 minute buffer, so return trains would need to depart Bodiam by 4.15 pm in order to be back in Robertsbridge by around 4.45 pm.
- c) RVR has produced no timetable to illustrate how it expects to operate. However, based on Mr Dewey's estimate<sup>247</sup> that it might take half an hour to get from Robertsbridge to Bodiam, it is apparent that, if the line were extended to Robertsbridge, KESR would struggle to run the last of its current services on either 'Red' or 'Green' days, and potentially the last two of its current services on 'Gold' days, as set out on the schedules appended to Mr Hamshaw's evidence.<sup>248</sup>

- 6.13.1.11. This takes us to Mr Higbee's reliance upon a 2 hour journey time to unlock a catchment of around 5 million potential new customers, as opposed to the 90 minute catchment which Mrs Evans has used, and which (on RVR's figures<sup>249</sup>) would result in a much smaller increase of 674,000.<sup>250</sup>
- 6.13.1.12. As Mrs Evans was at pains to point out, she was not suggesting that no-one would spend 2 hours travelling to Robertsbridge, merely that, once one goes above 90 minutes, the penetration rate is likely to drop significantly. In the Landowners' submission, this is no more than common sense. Indeed, the principle that a smaller proportion of people would be willing to travel for up to 2 hrs is accepted by Mr Higbee.<sup>251</sup>
- 6.13.1.13. However, unlike the destinations listed in the Time Out 'Top 10 Days Out' to which Mr Higbee refers,<sup>252</sup> Robertsbridge is not a destination in its own right. The sole purpose for going there would be to visit KESR. In the Landowners' submission, the idea of spending up to 2 hours on a train, simply in order to go on a different (steam) train for the 2 hours it would take to get to Tenterden and back, before spending a further 2 hours on the mainline train journey home is not one that many parents with young children are instinctively likely to find attractive.

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<sup>246</sup> Answer to Inspector's question

<sup>247</sup> Dewey, re-x

<sup>248</sup> RVR/W3/2 pp 43-45

<sup>249</sup> Higbee Rebuttal, Table 1: RVR-W2-4 para 17 (37,800 + 177,200 + 459,200 = 674,200)

<sup>250</sup> See INQ/162 Appendix 1 for journey times from the parts of London identified by Mr Higbee as the most likely points of origin for new visitors.

<sup>251</sup> Higbee Rebuttal, RVR-W2-4 para 20

<sup>252</sup> Higbee Rebuttal. RVR-W2-4 para 20 and Table 2

Significantly, before undertaking such a journey, one of the things they would almost certainly do is look around to see what other heritage railways were accessible.

6.13.1.14. In that regard:

- a) As the Landowners have already observed, for a large part of the catchment area identified by Mr Higbee, there is already a quicker, more frequent service to the Bluebell Railway East Grinstead.
- b) Any train going down to Robertsbridge would also call at Tunbridge Wells, where a walk from the mainline station through the Pantiles would take you to the Spa Valley Railway, and similar scenic delights of the line to Groombridge Place.

6.13.1.15. In his rebuttal, Mr Higbee suggests that heritage steam trains do not compete with one another in this way, but that evidence is contradicted by both RVR<sup>253</sup> and Sir Peter Hendy.<sup>254</sup> Indeed, Mr Higbee's own suggestion that visitors who have been on the Bluebell line might prefer to do something different the following year<sup>255</sup> simply makes the point that choice dissipates use.

6.13.1.16. In cross-examination of Mrs Evans, Mr Turney suggested that, if the Bluebell line is put to one side, the experience of NNR and the NYMR supported an uplift of between 12 and 15%. On this basis, he criticised Mrs Evans assumption of only 7½% growth. However:

- a) The Steer Report specifically chose the Bluebell Line as a comparator because it is the most similar to KESR. Mrs Evans agreed with that. Mr Turney's hypothesis thus involves abandoning the underlying premise of the Steer Report, which is agreed by both expert witnesses.
- b) Mrs Evans 7½% was arrived at having regard to RVR's own evidence that, of the total 88,000 passengers per annum, 39,800 were on 'special' services which were already fully sold out and which KESR was not expecting to expand.<sup>256</sup>
- c) Mr Higbee's rebuttal of this is confused and contradictory: on the one hand (and contrary to what the Steer Report suggests) he indicates that RVR "would seek to operate more 'specials' or 'themed' events", while in the next breath he notes that the proportion of passengers on special services has reduced.<sup>257</sup> There is no explanation of how this ties in with RVR's case that

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<sup>253</sup> See RVR accounts for FY19 in Dewey Appendices, RVR-W9-1 p. 46 "the market in which the Charity operates is relatively competitive"

<sup>254</sup> In evidence in chief, Sir Peter Hendy commented that "individual heritage railways compete for visitors from the general tourist market"

<sup>255</sup> Higbee Rebuttal, RVR-W2-4 para 23

<sup>256</sup> Evans Proof, OBJ/1002/EE/1 para 3.3

<sup>257</sup> RVR-W2-4 paras 27 and 29

one of the main benefits of the Order scheme is that it would allow KESR to balance the existing tidal flows, nor any analysis of the extent to which 'special' visitors are likely to contribute to expenditure in the local region in the same way as 'regulars'.

- d) In any event, even if one takes 12% or 15%, the consequence is still significantly less than the overall increase of 25% assumed by Steer.

6.13.1.17. The Landowners say RVR's contention that a 25% uplift is justified is thus wholly dependent upon the additional 8,800 passengers (based on 5% of existing visitors to Bodiam) which they claim as a distinct source of growth. In the Landowners' submission, there is no justification for this:

- a) It is evident that a significant number of KESR's existing customers combine their trip on the railway with a visit to Bodiam. On the assumption that the same would be true of anyone accessing KESR from Robertsbridge, the 15% increase in KESR customers would itself include new visitors to Bodiam. There is no logical basis for treating these people as distinct from and additional to the 15%.
- b) In so far as Mr Higbee points to the Bluebell line as a comparator, precisely the same argument could have been made in relation to Sheffield Park and Gardens. With visitor numbers ranging between 195,000 and 289,000 per annum.<sup>258</sup> Sheffield Park and Gardens is consistently more popular than Bodiam. It is also within walking distance of one of the stops on the Bluebell line. Consequently, if RVR's arguments about the 'Bodiam uplift' are correct, one would have expected to see a corresponding increase in passenger numbers on the Bluebell Line attributable to people wanting to visit Sheffield Park and Gardens. However, as noted above, the figures for the Bluebell line simply do not support that.

6.13.1.18. In the circumstances, the Landowners consider that the Secretary of State should be extremely cautious before accepting that the Order scheme would result in anything like a 25%, year on year increase in patronage on KESR. That has not been the experience of any other heritage railway in the country, and the experience of what both Mr Higbee and Mrs Evans agree to be the most relevant comparator has, if anything, been the reverse.

6.13.1.19. The Landowners indicate that there is a second problem with the Steer analysis, which is that it assumes that all 22,000 passengers who are new to KESR would also be new to the area. However, in the section of the Steer Report dealing with transport benefits, Steer claim the benefit of a 1% modal shift from existing KESR customers, and a 1% modal shift from existing visitors to Bodiam. The Landowners make the following points about this:

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<sup>258</sup> See NT Annual Accounts, Evans App 32-37, OBJ/1002/EE/2 32-37

- a) In so far as there are separate allowances for existing KESR customers and visitors to Bodiam, it is clear (and Mr Higbee confirms) that the 1% modal shift for Bodiam are customers who do not currently use KESR.
- b) The Steer Report works on visitor numbers to Bodiam of 176,000. 1% is 1,760 people.
- c) If those existing 1,760 Bodiam visitors are in future going to come via train, they would inevitably need to use KESR in order to access Bodiam.
- d) Since they are not existing KESR customers (see (a) above) they would be new passengers on KESR.
- e) If they are new passengers on KESR, then one of two things must follow. Either:
  - i. They are included within the 22,000 uplift in the number of KESR customers, or
  - ii. They are additional to the 22,000, in which case the increase in patronage on KESR is in fact 23,760.
- f) If they are part of the 22,000, then (since these people are already coming down to Bodiam) they are, by definition, not new or additional visitors to the area, and the calculation of benefits should not be based on 22,000 new visitors but on (22,000-1,760 =) 20,240.

6.13.1.20. Belatedly realising the difficulties that this creates for his overall claim that RVR would introduce 22,000 new visitors to the Rother Valley, Mr Higbee's supplementary note<sup>259</sup> argues that these 1,760 Bodiam visitors are not included in the 22,000.<sup>260</sup> In the Landowners' submission, that argument lacks all credibility:

- a) It is inconsistent with Table 5-4 of the Steer Report, which clearly shows the modal shift within the overall increase of 22,000.
- b) If correct, it would mean that the actual increase in visitors to KESR is not 22,000, but 23,760. That being so, it is astonishing

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<sup>259</sup> INQ57

<sup>260</sup> INQ57 paras 6-7. Mr Higbee also argues that the actual figure should be 1,410 rather than 1,760, because the "reality" is that "a proportion of 'existing' Bodiam demand already accesses Bodiam via Tenterden/KESR": INQ57 footnote 2. However, that argument is inconsistent with Mr Higbee's acceptance in cross-examination that the 1% Bodiam allowance must be new customers to KESR, because existing KESR customers were already accounted for in the separate modal shift allowance for 1% of existing car-based trips to KESR who currently access the railway at Tenterden, but would in future do so by mainline rail at Robertsbridge: see INQ/57 para 6. In any event, the landowners indicate that even if the figure of 1,410 is correct, the basic criticism still applies: either the number of new visitors is smaller than Mr Higbee has assumed (22,000-1,410= 20,590) or the total number of new visitors on KESR is still greater than 22,000 referred to in the Steer Report (22,000 + 1,410 = 23,410), and therefore more unlikely.

that there is no reference to that level of increase anywhere in the Steer Report or Mr Higbee's proof, still less any explanation of how it is justified or said to be consistent with the evidence from other heritage railways.

- c) If correct, it would mean that that actual overall increase in the number of visitors to KESR is not 25%, but 27%. Such an increase is even more unlikely than 25%.

- 6.13.1.21. In the circumstances, the Landowners invite the Secretary of State to conclude that these 1,760 visitors are in fact part of the overall 22,000 increase, in which case they are not new to the area, and Steer's calculation ought to have started on the basis that the actual increase in visitors to the area is 20,240. Of itself, that would reduce the claimed £1.06 million benefits per annum to  $(20,240/22,000 \times £1.06m =) £0.9752$  million.
- 6.13.1.22. Third, the figure of £1.06m depends upon an average spend of £42.55 per visitor, which is based on a blended average of £31 per day tripper and £196 per overnight visitor. In the Landowners' submission, both these are overstated.
- 6.13.1.23. In relation to day-trippers, the figure of £31 includes an average of £20.70 being spent on KESR, which includes the price of the ticket, an allowance for food and beverage and a visit to the KESR shop. This then begs the question: on what, and where, is the balance to be spent? Mrs Evans recognises that it would be possible for some visitors (such as those going to Bodiam or all the way to Tenterden) to get up to £31, but beyond this, the opportunities would be limited:
  - a) In order to mitigate the disincentive of the comparatively infrequent mainline service to Robertsbridge, KESR proposes to schedule departures from and arrivals at Robertsbridge to coincide with mainline services to London. This would necessarily limit the potential for spending in Robertsbridge, other than at KESR itself.
  - b) Although the RVR evidence is littered with references to a number of other attractions in the Rother Valley, the reality is that almost none of these are within convenient walking distance of any KESR (or mainline) station.<sup>261</sup> RVR's own ES recognises that *'there is no clear evidence that these attractions would directly benefit from the Scheme.'*<sup>262</sup> In cross-examination, Mr Gillett suggested that it might be possible to provide bus connections to some of these, but there is nothing before the Inquiry to indicate that this is what KESR intends, or how it might work (indeed, if RVR seriously considers this a sensible way of conveying people to local attractions, it begs the question why, given that the number of people they expect to attract to KESR is far greater than that

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<sup>261</sup> See INQ/162 Appendix 2 for details.

<sup>262</sup> RVR/25 para 14.4.9

which would visit any of the more minor attractions along the line, they and the National Trust do not simply lay on a bus service for the relatively short journey from Robertsbridge to Bodiam, so people could visit the Castle and connect with KESR without any need for a level crossing over the A21 or the use of compulsory purchase powers).

- 6.13.1.24. Accordingly, the assumption that, on top of the cost of the return fare from London, day trippers (including families with young children) would spend an average of £31 per person is unrealistic.
- 6.13.1.25. In relation to overnight visitors, RVR seeks to claim the benefit of expenditure over an average stay of four whole days. In the Landowners' submission, there is simply no basis for this:
- a) The average stay is based on existing holidays in the area, most of which would be by visitors with cars, who would thus be perfectly capable of visiting KESR and local attractions in any event.
  - b) Mr Higbee recognises that visitors are unlikely to travel on KESR on more than one of the four days. It follows that there must be enough in the area to hold them here for three additional days, all of which they are able to access by some other form of transport. But if that is the case, it is hard to see why they would not come anyway. Why would RVR make the difference.
- 6.13.1.26. The Landowners indicate that the difference this makes to the overall economic benefits is significant: as Mrs Evans pointed out, these overnight visitors make up 25% of the expenditure on which Mr Higbee relies.
- 6.13.1.27. Finally, Mr Higbee's figures also make no allowance for displacement. As Mrs Evans pointed out, in reality some of the new visitors to KESR would have been displaced from trips to other attractions in the area.
- 6.13.1.28. Applying more realistic figures (and assuming that there is no leakage to other areas), Mrs Evans estimates that the actual additional spend in Rother is likely to be in the order of £470,000 for the year the connection is made and then £2.6m over the following 10 years in the central case – less than half of RVR's central case, barely a tenth of RVR's "aspirational" investment case, and a mere 0.1% of local tourism.
- 6.13.1.29. The Landowners consider that these sums are totally insignificant. However, the weight to be attached to them is still further reduced by the relative strength of the economy in the area where they would be spent. Although RVR has made extensive reference to the extent of deprivation across East Sussex as a whole, RVR's own ES concludes<sup>263</sup> that the economic benefits are unlikely to accrue to an area much wider than the Salehurst ward, which is characterised by very low

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<sup>263</sup> RVR/25 paras 14.2.3, 14.2.6, 14.3.3, 14.3.7, 14.4.1, 14.7.1-2

unemployment; is 'extremely robust' in socio-economic terms; and (as the ES Update confirms) 'is not deprived by national standards'.<sup>264</sup>

6.13.1.30. Similarly, in terms of employment, Mr Higbee's rebuttal indicates that KESR itself is seeking to reduce staffing costs<sup>265</sup> and the ES concludes<sup>266</sup> that the scale of any wider employment which the extension is likely to generate:

*'is only a small positive in the context of the very robust labour market and very low local unemployment levels'.*

6.13.1.31. In short, the Order scheme would not benefit those parts of East Sussex which are deprived. However, as you have heard from Sally-Ann Hart MP, there are deep concerns that it would disadvantage places such as Hastings, which are deprived, by increasing their severance from London.

6.13.2. *Other benefits*

6.13.2.1. Although the socio-economic benefits are the principal benefit on which RVR relies, it also argues that the Order scheme would deliver benefits in terms of sustainable transport, an increase in volunteering and benefits to NR. Given their relative status in the hierarchy, the Landowners address these more shortly.

6.13.2.2. In terms of the alleged transport benefits:

- a) It is common ground that the introduction of new level crossings would introduce delays to existing motorists. RVR argue that this would be more than offset by the benefits of their scheme, in particular by encouraging modal shift of existing visitors to KESR. However, this argument is premised on the assumption that only 15% of new visitors would drive to Robertsbridge.
- b) No explanation has been given for how this figure has been arrived at, it appears to be a "finger in the air" exercise. In the Landowners' submission, it is wholly unrealistic, since:
  - i. Much of the new catchment for KESR would be the area to the west of Robertsbridge, which has no way of accessing Robertsbridge by train. Those people would necessarily arrive by car.
  - ii. In terms of the catchment areas to the north and south, Robertsbridge enjoys excellent access from the A21. The Steer Report recognises that a station at Robertsbridge would make KESR '*significantly more accessible by car*' and has '*significant potential to attract more visitors by road*'<sup>267</sup>.

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<sup>264</sup> RVR/70-01 para 13.4.10

<sup>265</sup> RVR-W2-4 para 9

<sup>266</sup> RVR/25 para 14.4.11

<sup>267</sup> RVR/9 paras 3.19 and 4.14

- c) On that basis, much more realistic is the ESu, which recognises that any reduction in vehicle distance travelled by existing visitors who would switch to Robertsbridge would be *'largely offset by new car trips generated by the widening of the catchment the Robertsbridge connection would provide'*.<sup>268</sup>
- d) While it is very easy to make the assumption that travel by rail is more sustainable than travel by car, it needs to be remembered that the baseline for that assumption is that rail would involve modern, and normally electric locomotives. In contrast, RVR would be running steam trains and vintage diesels. RVR's ESu recognises that, in terms of the overall CO<sub>2</sub> emissions and climate change:

*'as a reasonable worst case, the operational emissions will be no worse than a small increase in carbon emissions, leading to a negligible effect'*.

- e) Even if Mr Higbee is correct, the amounts involved are "small beer": Mr Higbee assesses them at a value of £18,100 per annum.<sup>269</sup>

6.13.2.3. As to the benefits to NR, according to Mr Gillett NR already uses RVR for training purposes, storing equipment prior to possessions and borrowing equipment for repairs.<sup>270</sup> It is not clear what the extension would add to this. In the circumstances, it is not surprising that Mr Gillett acknowledged that they were "not the main benefits" on which RVR relies.<sup>271</sup>

6.13.2.4. As to the benefits of volunteering, it will be noted that this is a matter mentioned for the first time in RVR's proofs of evidence. The Landowners do not doubt that some social benefit may be derived from opportunities to volunteer on KESR. However, that opportunity already exists, both at the existing stations along the line from Tenterden to Bodiam and at Robertsbridge. There is no evidence that KESR would cease to exist if the Scheme is refused, indeed, RVR's evidence is that KESR is and would remain viable. There would, therefore, still be a heritage railway in Kent and East Sussex which people can enjoy. The Order scheme may enhance the opportunities for volunteering slightly, but the difference it would make is marginal.

## 6.14. **Conclusions/The Overall Balance**

6.14.1. In opening, the Landowners commented on the fact that, in most cases, compulsory purchase powers would not even be available to a private organisation such as RVR<sup>272</sup> and that, but for the fact that RVR's

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<sup>268</sup> RVR/70 para 17.7.23

<sup>269</sup> RVR/W2/1 para 3.92

<sup>270</sup> RVR/W1/1 para 10.1

<sup>271</sup> Answer to Inspector's question

<sup>272</sup> Indeed, RVR's own Statement of Case recognises that it is "unusual" for a heritage railway to seek powers of compulsory acquisition: RVR SoC para 13.6



particular 'business' happens to involve the running of trains, which fall within the scope of the Transport and Works Act, there would be no vehicle for them to seek compulsory purchase powers without the active participation of some other statutory body, such as RDC. The fact that RVR is technically able to take advantage of this legal 'loophole' does not detract from the Landowners' submission that this is not what compulsory purchase powers are for.

- 6.14.2. In order to enlist the might of the State to expropriate property against the will of its owners, there needs to be a compelling case in the public interest. In the present case, the Landowners consider that RVR falls woefully short of this target. On the basis of its own assessment, the socio-economic and other benefits of this scheme are paltry, and do not come remotely close to a justification for depriving the Landowners of their land. That shortfall is only magnified when one adds in the additional harm which the Order scheme would cause, not just to the Landowners, but to the public interest as a whole.
- 6.14.3. In particular, and to varying degrees, the Order scheme would cause harm to the safety and free flow of traffic on the A21, the setting of Robertsbridge Abbey, and the AONB. These are, all of them, assets of national significance, the harm to which requires clear and convincing justification. In addition, the Order scheme is in fundamental conflict with national policy on the location of development in a functional floodplain.
- 6.14.4. As a matter of policy, any one of these things in isolation would require clear public benefits before they could be sanctioned. Taken together with the impacts on the amenity of users of the public rights of way and the biodiversity of Moat Farm, they are a hurdle which the benefits of this scheme do not even begin to mount.
- 6.14.5. As demonstrated by RVR's 2019 request for an adjournment, and the parade of changes which has followed (including those made immediately before and during the course of the Inquiry itself), this is an application which was poorly conceived and under-prepared from the outset. The Landowners consider that frankly, it should never have been allowed to get this far.<sup>273</sup> It is time to put a stop to this nonsense, once and for all. The Landowners urge the Secretary of State to refuse the application, and to do so in terms which make it clear that the Scheme is not just flawed, but is and always was hopeless, so the Landowners may finally go back to the land that they love, and get on with their lives in peace.

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<sup>273</sup> The Landowners observe that, indeed, had the Local Plan Inspector been required to apply a test of deliverability, or had the EA properly addressed the implications of the scheme being less vulnerable development in Flood Zone 3(b), or had the HA stuck to its original guns and followed the DMRB in responding to the application for planning permission, it might not have done.

7. **THE CASE FOR OBJECTOR OBJ/782-HIGHWAYS ENGLAND (HE)**
- 7.1. HE is an arms-length company wholly owned by the Secretary of State for Transport (SoS) that came into being on 1 April 2015. At the time of the Inquiry it was announced that HE would be renamed National Highways and National Highways is being set up as a subsidiary company of HE. For the purposes of this Inquiry the legal status of HE is unchanged. In due course it is envisaged that National Highways will take on the current legal status of HE.
- 7.2. HE has been appointed by the SoS as a strategic highway company under the provisions of the Infrastructure Act 2015. HE is the highway authority, traffic authority and street authority for the Strategic Road Network in England (SRN). The SRN is a critical national asset. In the vicinity of the proposed railway it comprises the A21.
- 7.3. HE is under statutory direction from the SoS to operate and manage the SRN in the public interest both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity. HE is specifically directed by the Secretary of State by paragraph 4.2(e) of its Licence<sup>274</sup> to "*protect and improve the safety of the network.*" Safety is integral to HE's work.
- 7.4. It is agreed that the introduction of a new level crossing on the A21 is a new point of conflict that would increase the overall risk of accidents.<sup>275</sup>
- 7.5. Paragraph 11 of Department for Transport Circular 02/13<sup>276</sup> provides that proposals must comply in all respects with design standards and that the DMRB sets out details of the Secretary of State's requirements for access, design, and audit, with which development proposals must conform.
- 7.6. A level crossing is not a recognised highway feature in the DMRB. As a result and as agreed, a DSA must be submitted and approved for an '*Aspect not covered by requirements*' before the level crossing design can be accepted.<sup>277</sup>
- 7.7. Within HE the SES Division is responsible for maintaining and updating the DMRB in consultation with the Overseeing Organisations. SES provide the technical expertise to build and operate the SRN safely and efficiently. SES is the custodian of DMRB and acts independently within HE to consider applications for departures from DMRB submitted through HE's Project Sponsors. This independence ensures that departure applications are treated impartially.
- 7.8. RVR submitted a DSA on 17 March 2021. The DSA seeks to demonstrate that the risks of introducing the level crossing into the SRN are

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<sup>274</sup> OBJ/782/W1/2 APP.A, p.13.

<sup>275</sup> INQ/60 para 4.2.2.

<sup>276</sup> RVR/HE/07.

<sup>277</sup> INQ/60 para 4.4.2.

outweighed by the benefits of the proposals and that the risks of the crossing have been reduced to as low as reasonably practicable.

- 7.9. SES remains in the process of reviewing the DSA. The Inquiry is familiar with the recent history of the DSA including SES's initial response dated on 26 May 2021<sup>278</sup> in which SES identified a list of 33 items that it required RVR to address. There followed a conference call between RVR, HE and SES on 9 June 2021 to discuss the DSA and these issues. Following this, RVR responded on 25 June 2021 with further information which seeks to address the 33 points.
- 7.10. SES has now reviewed this further information and meetings were held between RVR and HE on 6 August 2021 and 31 August 2021. The purpose of the first meeting is set out in an email dated 3 August 2021 as follows<sup>279</sup>:
- "In advance of the meeting on 6 August, I thought it would be helpful to give you more detail on the issues centred around mitigation to the A21 being proposed:*
- The concerns are centred around:*
- *Managing the speed of traffic to provide a compliant, or relaxed, Stopping Sight Distance to the back of the shortest typical queues generated by the crossing.*
  - *Queuing back onto the roundabout generated by the longest typical queues associated with the crossing".*
- 7.11. As predicted by both Philip Hamshaw<sup>280</sup> and David Bowie in giving oral evidence, the DSA as submitted may require further work/mitigation before the departure can be approved.
- 7.12. In this context, SES has indicated that its principal concerns relate to queuing through the roundabout and appropriate SSDs for queues that are shorter than the longest queues, e.g. a southbound queue that goes most but not all of the way back to the roundabout.
- 7.13. The meeting on 31 August considered the response by RVR to the issues discussed in the first meeting. It also discussed potential further mitigation. HE indicated that the discussion was positive and constructive, and a further meeting was planned shortly thereafter. It will be for RVR to bring forward revised proposals to address SES's concerns and that RVR undertakes to deliver.
- 7.14. The position remains therefore as set out in opening. There has been considerable progress since HE's Statement of Case OBJ/0782 (20 September 2018) and the Order now contains protective provisions for the benefit of HE which are agreed.<sup>281</sup>

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<sup>278</sup> RVR/HE/02.

<sup>279</sup> INQ/134.

<sup>280</sup> RVR-W3-4 para 2.2.3.

<sup>281</sup> INQ/21.

- 7.15. Work is on-going between SES and RVR in the context of the DSA. However, it has yet to be approved and, as the result, HE continues to object to the proposed Order for the following reasons:
- a) HE considers that the installation of a level crossing on the A21 would be detrimental to safety on the A21.
  - b) The design of the proposed railway where it crosses the A21 Trunk Road does not conform to the DMRB.
- 7.16. HE confirms that, if and when, SES approves the DSA, it will write to the Secretary of State to withdraw its objection and give its consent to an access to the A21 under section 175B of the Highways Act 1980.
- 7.17. Further, HE would not require the RSA Stage 1 Audit to be carried out prior to the withdrawal of the objection, as this issue is covered by the protective provisions.<sup>282</sup>

## 8. **THE CASES FOR OTHER OBJECTORS WHO APPEARED AT THE INQUIRY**

### 8.1. **OBJ/729-Robertsbridge Cricket Club (RCC)**

#### 8.1.1. *SOM3)-harm*

- 8.1.1.1. RCC believes that government Policy is that 'other than in exceptional circumstances, no new level crossings on any railway therefore creating no new risks'. RCC would accept that HS2 would be regarded as an 'exceptional circumstance' however this is not the case here. Add to that the reputation of the A21 being the 'most dangerous road in the South East' if not the country, to add another hazard and therefore another risk would be immoral.
- 8.1.1.2. There has been no ecological survey carried out on the actual proposed route of the railway. RCC is aware that surveys have been carried out along the opposite bank of the River Rother, but this is a distance of a minimum of a river and a field away and therefore would produce very different results and so cannot be relied on to give a true reflection of the ecological damage the railway would cause.
- 8.1.1.3. The stated plan is to run not only steam trains, which obviously are not beneficial to the atmosphere, but to run diesels which RCC believes the government has announced its 'commitment to scrapping all diesel-only trains on UK railways'. These proposed diesels are not new 'clean' diesels but old 'dirty' diesels.
- 8.1.1.4. RCC considers that, in addition to the obvious objections to the proposed new railway related to matters such as 3 new level crossings, devastating ecological damage, irreversible environmental damage, there would be a detrimental economic impact. This was demonstrated

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<sup>282</sup> INQ/21, paragraph 3(1).

on the Rother Valley Railway open day, when one store in the village had its worst ever Saturday takings and another had to dispose of the extra food it anticipated in selling that never materialised. Furthermore, the car parking impact on the village, again demonstrated on the RVR open day when parking became a bigger issue in the village than on a normal crowded commuter weekday.

- 8.1.1.5. There are two other areas, set out below, that the Members of the Club are particularly concerned about.
- 8.1.1.6. Firstly, the land through which the new railway would run (it would have to be considered as a new railway as there is no existing track bed) is in Flood Zone 3. To build a bund across the floodplain could only lead to disastrous consequences somewhere along the line, and despite mans' best efforts to predict the results, Mother Nature always has a habit of winning. The Framework indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.<sup>283</sup>
- 8.1.1.7. In one of the various reports presented to the village by RVR it stated that there were six properties in the village that they could not guarantee would not be affected by any extra flooding the construction of the new railway would produce, one of which was the Cricket Pavilion. In fact since the implementation of the flood defences following the major flooding of 2000, there have been at least 6 occasions, 2005, 2009, 2013, 2017, 2019 and 2020, when the Pavilion has been between 20-50 mm from flooding. The new Pavilion, built prior to 2000 and with Lottery funding, is constructed on 'stilts', around 1.26 metres above ground level<sup>284</sup>, in order to ensure that it does not flood. When constructed, the Club was informed by RDC, in no uncertain terms, that there was no way they would allow 'another brick to be added'. If the Pavilion becomes more susceptible to flooding the insurance for the Club would rise and more than likely become uninsurable, which would result in the end of cricket in Robertsbridge. This would not only be a loss to all the adults and children who use the facilities, but would also be ironic that the village, which is home to the Cricket Bat, Gray-Nicolls being the worlds' largest bat manufacturer, would no longer have a Cricket Club!
- 8.1.1.8. Secondly, and these issues were particularly a concern and raised by the Junior Members of the Club:
- a) The Framework indicates that the planning system should support the transition to a low carbon future in a changing climate<sup>285</sup>. What is the 'carbon impact' of not only the construction of the new railway but what will the annual footprint be? The children

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<sup>283</sup> INQ/122.

<sup>284</sup> INQ/107.

<sup>285</sup> INQ/122.

also wanted to know what mitigating actions would be imposed on RVR during the construction phase and annually thereafter should permission be granted? They are aware that the government target for zero emissions is 2030, and that the industrial revolution was the start of major damage to the planet, so could not understand why anyone would choose to take a step backwards and go against the aim of the government? They expressed a concern not only on the coal powered steam engines, but those powered by diesel which would have an even more detrimental effect. Also the impact of the increased level of road traffic in the village, as demonstrated on the open day held by RVR, not only to the carbon levels but the car parking issues this also caused.

Having regard to RVR's Environmental Statement, the proposal would be neither carbon negative, carbon neutral nor would it use sustainable fuel.<sup>286</sup>

- b) Although the Junior Members were aware of the concerns of the proposed introduction of the 3 new level crossings, they felt that the focus had been mainly on the A21 and Junction Road, very little attention had been paid to the Northbridge Street one. The introduction of this extra hazard would have an effect, not only at times when they were playing cricket, but continually as many parents are happy to let their children walk to the Cricket Club, Recreation Ground, village and school unaccompanied at the moment, this would change with this extra hazard, especially as there are no parking restrictions along the Clappers with the increase traffic flow, again demonstrated on the RVR open day.

- 8.1.1.9. On a personal note, Mr Moor indicated that whilst he fully understands and agrees with the use of CPOs for government backed major infrastructure projects such as HS2, he fails to see how, in this case, a CPO can be used to force the sale of lawfully owned land to a charity for little, if any, benefit to the community. In his view, it appears to be going back in time and he reflects on the huge sacrifice that the country's armed forces have made over the past 100 years or so, upholding the rights of a democratic, civilised, free world, and makes him question whether it was all worthwhile?

8.2. **OBJ/61-Edward Flint (EF)**

8.2.1. *SoM3)d)-Environmental harm*

- 8.2.1.1. The Rother Valley between Robertsbridge and Udiam lies within the designated High Weald AONB. EF considers that it is not spectacular but has an understated charm. It is a landscape with an unusual sense of integrity worthy of proper appreciation and protection. The current land use has evolved creating a landscape economically viable, absorbing of floodwater and to provide an attractive diverse working landscape of

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<sup>286</sup> INQ/153.

great species and habitat diversity. It has a deep and resonant sense of place. EF believes that it typifies much of what the AONB designation seeks to protect providing '*a highly interconnected ecological infrastructure network with a mosaic of intermingled semi-natural habitats*'<sup>287</sup>, whilst also '*Securing agriculturally productive use for the fields of the High Weald*'<sup>288</sup>.

- 8.2.1.2. At Moat Farm the entire redundant track bed has evolved into a narrow strip of secondary woodland, a corridor linking two more intensive arable farming enterprises at either end. EF considers that this secondary woodland is a marvellous ecosystem of mature woodland trees with a dense scrub layer and frequent pools of water. He indicates that the mature Aspen trees within this belt of trees are home to the nationally scarce Blue Underwing Moth and he indicates that he has been fortunate to watch Woodcock, a Red Data List bird<sup>289</sup>, performing their courtship ritual, roding along the length of this woodland, a prelude he believes to nesting in this strip of woodland.
- 8.2.1.3. EF considers that this secondary woodland has developed under the benign stewardship of the current owners, who have managed this land with minimal impact for decades. Their own surveys have shown Dormice to be present within the area and EF indicates he knows from having been fortunate to explore the farm that it is a magical place full of butterflies with the ever-present hum of insects a constant soundtrack. This benign stewardship extends to the land on either side of this woodland corridor, where nationally scarce permanent pasture dominates.
- 8.2.1.4. The *High Weald AONB Management Plan 2014-17*, Monitoring the condition of the AONB and the performance of the AONB states that '*...whilst the overall condition is reasonably good, most of the landscape is under threat or at severe risk of being damaged or its condition deteriorating. The most threatened components are agriculturally productive fields and unimproved and semi-improved grassland.*'<sup>290</sup>, precisely the landscape features threatened by this proposed development.
- 8.2.1.5. EF indicates that unimproved meadows such as this are a feature of the AONB; regarded as being 'highly vulnerable'<sup>291</sup>, and home to vast numbers of pollinator-friendly plants, they are at risk nationally through agricultural improvement and afforestation by scrub. The proposal by RVR would see the clear felling of the high quality secondary woodland habitat, its unnecessary loss offset by planting trees on some of this permanent pasture undermining its conservation value and integrity.

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<sup>287</sup> INQ/101-0 High Weald AONB Management Plan Review 2019: Strategic Environmental Assessment (SEA)-Environmental Report November 2018 para 6.15

<sup>288</sup> INQ/101-0 page 2.

<sup>289</sup> INQ/101-1 BoCC4.

<sup>290</sup> INQ/101-0 page 2.

<sup>291</sup> INQ/101-2 High Weald AONB Management Plan 2014-17-Monitoring the condition of the AONB & performance of the AONB management Plan page 3 FH3.

However well-intentioned and however technically compliant this new planting may be, it simply cannot replace a habitat that has evolved over the decades since the closure of the railway. EF considers that the short and medium term cost to the species diversity and habitat integrity of the valley would be huge, far outweighing any slowly accruing benefits from habitat creation and habitat mitigation schemes.

- 8.2.1.6. EF says that Nightingales, whose summer song was such a welcome feature of this end of the valley are just one of the many Schedule 1 bird species<sup>292</sup> that used to be present within the close orbit of the proposed railway extension.
- 8.2.1.7. *Rother Valley Railways (Track Reinstatement between Austen's Bridge and Junction Road) Site –Specific Ecological Assessment Additional Information Report for Rother Valley Railway* by The Ecology Consultancy, states that the site was surveyed on the 28 November 2018 for its suitability to support Nightingales. *'Most of the site was assessed as being of low potential to support Nightingales as it was heavily shaded and the scrub was not well developed.... Overall the site was deemed to lack the scrub cover nightingales prefer and is unlikely to be a key site that requires protection'*<sup>293</sup>.
- 8.2.1.8. EF says on the 28 May 2019 just days before this track bed was cleared he took the time to visit the site, on the adjacent footpath, and heard and recorded Nightingales singing from this scrub and at several other points along the line of the proposed new track bed, close to the pill box. He acknowledges that they may not have nested here, but he considers that these interconnected fragments of habitat are part of a wider ecosystem, which needs to be treated as a whole and with proper respect. EF indicated that he had not heard Nightingales at that end of the valley since the clearance works took place.
- 8.2.1.9. EF indicates that in June and August Cuckoos are still common in the valley between Robertsbridge and Udiam, though scarce even in neighbouring Parishes. Swallows, House Martins and Swifts can still be reliably seen in good numbers hawking for insects over the fields that support good invertebrate populations.
- 8.2.1.10. EF acknowledges that they could of course go elsewhere, but considers that they shouldn't have to. He says were this proposal to be of genuine strategic, economic or environmental purpose that argument might sway, but this proposal is none of the above and the Nightingales deserve protection. As we consistently fail to recognise the importance and significance of such 'ordinary' bits of woodland and farmland habitat and landscape so such 'ordinary' bits of landscape and habitat become compromised and scarce. We need to protect these places and the species they support before they become scarce.

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<sup>292</sup> INQ/101-1 BoCC4.

<sup>293</sup> INQ/101-3 para 2.6.



- 8.2.1.11. In EF's view, the same argument should be applied to the land at Parsonage Farm. He indicates that here the track bed will pass across significant areas of arable land, but also see the removal of some significant little copses and spinneys that have grown up since the land was bought by the current owners. These little 're-wilded' intrusions of woodiness in this agricultural landscape are important havens along the valley bottom.
- 8.2.1.12. EF indicates that much is heard about the collapse of our farmland bird species: Buntings; Sparrows; Pippits; Finches and Skylarks. All are to be found in good numbers in the valley. They are particularly common during the winter when they congregate in flocks on the stubbles left over from summer crops and fodder crops drilled to feed livestock in late winter. These are birds of arable fields and small mixed farms such as Parsonage Farm are vital in supporting their populations. Lapwing nested there in the summer 2021. Any threat to the arable enterprise through the forced creation of uneconomic field sizes or increased waterlogging of the soil rendering cultivation uneconomic is a threat to their continued presence in the landscape. This is not an accident, more a result of the relatively benign stewardship and vitally the diversity of habitats that that stewardship has encouraged, whilst still yielding an attractive landscape, economic returns and unhindered flood dissipation. This proposal would compromise the economic viability of the land, and see important farmland habitat lost. As with the land at Moat Farm, this proposal would take land currently providing good quality habitat for Schedule 1 species<sup>294</sup> such as Skylarks and see it replaced with a second rate version that provides no economic benefit.
- 8.2.1.13. EF believes that were he to take a walk from his home in Salehurst on public footpaths to Udiam he could, depending on the time of year, reasonably expect to encounter at least 20 bird species on the UK Red List<sup>295</sup> of endangered species and at least 11 from the Amber List. Not all dependent on the woodland, the arable or the pasture land but all part of a complex and finely wrought web of dependencies. A remarkable haul of species from such a small area: and proof of this unremarkable landscape's remarkable habitat diversity, a diversity surely deserving of protection.
- 8.2.1.14. EF considers that it seems iniquitous, in the name of an unnecessary project of doubtful economic and absolutely no strategic value, to compromise a landscape that gives so much to residents and visitors, owners, the ecosystem and all it supports. It is a landscape rich in variety with exactly the intermingling of habitats that the AONB designation seeks to protect and as such it should not be subject to this intrusive proposal.
- 8.2.1.15. EF confirmed that he has no ecological or ornithological qualifications and he is not a recognised expert in those fields. He has a degree in Countryside Management, which included some study of ecology, and a

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<sup>294</sup> INQ/101-1 BoCC4.

<sup>295</sup> INQ/101-1 BoCC4.

particular interest in wild flowers. He has lived in the local area for over 25 years.

8.3. **OBJ/19-Mike Le Lacheur (ML)**

8.3.1. *SoM3)c)-Environmental harm*

8.3.1.1. ML states that, for around 30 years, he helped out on a voluntary basis at Forge Farm (now the site of Compass Park, Udiam) whilst it was in the ownership of Mr Derek Wilton. He had access to the whole of the farm and was a key holder there. He saw the land change from one fairly devoid of natural habitat due to the years of intensive spraying on what were once hop fields, to a prime example of what might now be trendily called 're-wilding' where you could see deer, hares, badgers, a huge variety of birds and insects and at certain times of the year, sea trout swimming up the river to spawn.

8.3.1.2. ML indicates that it has been widely stated by RVR that should they succeed in getting approval for the track to cut through this piece of land to Robertsbridge then it will benefit wildlife and the local community. ML says, clearly this is not the case and he sets out below why he considers RVR's position to be wrong.

8.3.1.3. He confirms that, as a father, he would often bring his children down to the farm. At the same time he points out, that his son was an avid watcher of Thomas the Tank Engine and he also took him to KESR at Tenterden for a chance to see Thomas.

8.3.1.4. One particular evening, ML and his son went down to watch the barn owls flit along the now cleared stretch of woodland between Junction Road and the river crossing at Austen's Bridge. They came so close that his son swore blind he could feel their wings on his head as they swooped past as they hunted for mice and voles. He indicates that as they passed the bridge and headed towards the old pill box, they spotted movement in the grass and ML told his son sit down quietly and remain still. It was then a group of six badger cubs came up to them inquisitively, so close he asked if he could stroke them. The cubs stayed with them for around 10 minutes while their mother watched over them from about 20 yards away. ML considers it to be one of the most magical moments of his childhood, which will be with them both forever.

8.3.1.5. ML says his point is this. At any time they could go and see a steam train at Tenterden, Sheffield Park, New Romney or at Tunbridge Wells. It never mattered where it went to his children and it never needed to join the mainline at Robertsbridge. They were all easy to get to and hopefully will be there for future generations. But, by clearing the stretch of disused line at Udiam, ML considers that RVR have taken away any opportunity local children and their parents had of experiencing what he and his son did that evening.

8.3.1.6. ML indicates that RVR may preach to everyone that they are forming a new wildlife corridor (it already is one) and opportunities to watch badgers exist locally at the RSPCA's Mallydams Wood sanctuary. However, there it is a captive show where the badgers are summoned

by banging a bucket of food on an artificial sett. In his view, their experience was real, it was free, it was accessible for anyone who took the time to walk along the public footpath of an evening and it was a memory etched in the mind of a youngster for life. Thomas has long been forgotten and his decline in popularity is maybe why he has now been relegated from peak time children's TV and can now be viewed at slots between midnight and 6.50am while programmes such as Countryfile, Springwatch and the thought-provoking Life on Earth with David Attenborough are all prime time, essential family viewing. ML says surely that tells us something about what parents and children want nowadays? People are finding out more about where they live and what they have nearby and this has maybe been a positive from a country not able to travel due to COVID-19.

- 8.3.1.7. It is also why George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, stated only recently (while recognising the Defra commissioned report from Julian Glover and an independent panel to consider how we might improve the management of our National Parks and AONBs) the following :

*'The government agrees that more funding should be directed towards making space for nature and supporting nature's recovery in our protected landscapes. Since the review was published, we have been supporting important projects in our protected landscapes through our Nature for Climate Fund and Green Recovery Challenge Fund. Our future Local Nature Recovery scheme, part of the future agriculture policy, will also support the objective of nature's recovery in our protected landscapes and beyond. I have also asked Natural England to prepare proposals for the possible designation of additional National Nature Reserves, where there is landowner support, and to consider how nature's recovery within such designations might be supported financially through our new Landscape Recovery scheme (also part of our future agriculture policy).'*

- 8.3.1.8. The second point made by ML relates to the timings of the clearing in May 2019 of the land discussed above and the ecological credibility of RVR, their advisers and the project. He says it was questioned at the time as to why the 'island' that RVR could not in any way get a train onto without approval of a level crossing over Junction Road had to be cleared during the nesting season in May 2019. It has now been said by Mr Coe that this was due to the dormice breeding and hibernation seasons and this was unavoidable. However, RVR's *Construction and Environmental Management Plan (CEMP) (v3 19/2/19)*<sup>296</sup> says the following:

*'Breeding Birds*

*2.35- The removal of habitats with potential to support breeding birds (those within BPZ 5) is to be undertaken during May 2019*

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<sup>296</sup> INQ/95 Appendix 2.

*(subject to a dormouse mitigation licence being granted by Natural England). As site clearance during the breeding season is unavoidable then potential nesting habitat will be inspected up to 48 hours prior to clearance work commencing to identify active birds' nests. If any nests are found, they are to be protected until such time as the ecologist confirms that the young have fledged (left the nest). This would involve setting up an exclusion zone/cordon of an appropriate size for the species concerned. Works may then proceed up to, but not within, this exclusion zone. If any nesting birds are found at any time during clearance works when the ecologist is not present, work must stop immediately and an ecologist consulted immediately for advice on how to proceed*

*2.36- Otherwise, habitats with potential to support breeding birds will be removed during September to February inclusive, to avoid any potential offences relating to breeding birds during their main bird breeding season.'*

- 8.3.1.9. Why ML asks were none of the RVR's ecological advisers aware of these "unavoidable" timings prior to February 2019 as they had stated in their previous version of the CEMP document (v1 25/5/18)<sup>297</sup>

*'Breeding Birds*

*2.27- The removal of habitats with potential to support breeding birds (those within BPZ 5) is to be undertaken during September to February inclusive (outside of the main breeding season).'*

- 8.3.1.10. In ML's view, surely if you know that badgers, dormice and breeding birds are likely to be along that stretch of woodland and you are qualified to understand how they are all linked in terms of the optimum time to clear that habitat, why did it take another organisation to tell them when clearing should be done? In fact, why clear it at all back in 2019 when RVR had no permission to cross Junction Road?

- 8.3.2. *SoM3)a) & e)-level crossing and parking harm*

- 8.3.2.1. ML indicates that he asked during Mr Higbee's evidence the following question:

"Given that essential engineering work on the Southeastern network is regularly carried out over weekends and bank holidays including, as an example, two weekends in August 2021 at what may be one of the KESR's busiest times, has an allowance been made for days where bus replacement services would affect train travel and if so, are there any figures please regarding how many days bus replacement services have operated in recent years and accordingly, any changes in journey times from London and/or the coast? I assume that the bus replacements will be key in any visitor's decision as to how they might travel?"

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<sup>297</sup> INQ/95 Appendix 1.

- 8.3.2.2. He says Mr Higbee responded that replacement bus services had not been taken into consideration because the same may apply to roads if there were roadworks on the route. Having thought about this and after seeking advice from someone who was employed as a contractor which undertook the work, major road repairs such as resurfacing are almost always done at night when the A21 would be closed and diversions put in place. Any other small work on the roads would be under restricted time (usually 9.30am - 3.30pm) and would only be a traffic under signal and not a closure.
- 8.3.2.3. ML considers that major roadworks would not happen during railway operating hours, people could still drive to visit 1066 country although they may on rare occasions find traffic lights on the way after 9.30am but they would be gone on their return after 3.30pm. Trains however are often found to be replaced by buses and this is usually planned by NR to happen for the whole day at weekends and bank holidays, presumably RVR's busiest predicted times. ML indicates that it seems to him that this is something which must be taken into consideration when stating that rail will be the preferred way for RVR to receive visitors. ML says he for one would choose the car as opposed to a bus visiting all railway stations enroute and he strongly believes many others would do exactly the same given the choice.
- 8.3.2.4. As someone whose small business relies heavily on using the A21, ML is deeply concerned about the implications of the level crossing the railway and the associated parking issues could have for local residents in Robertsbridge and road users in general. He indicates that an open day at the RVR caused serious parking and access issues along Station Road and in the village itself, which proves that many visitors arrived by car and not on public transport as envisaged by RVR. Furthermore, research undertaken in 2017 at Bodiam Castle proves that the majority would still visit the attraction by car, as either they do not live on the London to Hastings train line, they need their car for onward travel or the costs are too prohibitive for a family on a budget. ML asks, if that is the case, how then can RVR state that the 'railway would help reduce traffic movements on local rural roads', won't they be worse? With a marked increase in traffic, Robertsbridge village would lose all the benefits of the bypass and where would all the visitors park?
- 8.3.3. *SoM1)-Benefits*
- 8.3.3.1. ML suggests that it is also important to remember that the majority of the 71 jobs (which only equate in fact to 14 full time positions) RVR hope to create would be volunteer roles.
- 8.3.4. *SoM10)-Other matters*
- 8.3.4.1. ML's final point is this. If the Inspector at the start of the Inquiry felt that submissions from RVR were out-of-date and inaccurate and requested that they be redone, recalculated and resubmitted, does that then hold true that the submissions made by RVR and their experts for planning applications were the same? Has planning permission been granted by RDC using inaccurate and out-of-date evidence? If so, then it

must seriously question the validity of the planning proposal, the quality of the evidence and the process applied at the time it was granted. At what point does someone say that planning, like the Inquiry, needs a second look and new evidence needs to be submitted? ML indicates that he was under the impression that RVR had employed the best-in-field professional experts but it now seems to him that the original evidence given for both the planning application and Inquiry was not up-to-standard, nor up-to-date.

8.3.5. *Conclusion*

8.3.5.1. Summarising his feelings about the proposal, he is against it for every single reason presented to the Inquiry, from flood risk to economic benefit and from traffic issues to environmental impact. There are more than enough opportunities right across the southeast to ride on a steam train or see Thomas but once the badger setts, nests and habitat along this stretch of woodland are destroyed it is gone forever, or at least will take another 60 years to rewild and become the vibrant and varied habitat it was and in the main, still is. In view of all the evidence submitted to the Inquiry, he strongly believes the Secretary of State should not make the draft Order.

8.4. **OBJ/189-Nick Young (NY)**

8.4.1. *SoM3)a)- A21 level crossing harm*

8.4.1.1. NY indicates that in 1962 his father was killed by a steam locomotive on a level crossing at Bourne End in Buckinghamshire. The car, which was stalled on the railway track, was pushed some distance down the line. This left him and his brother without a father and his mother a widow. He had thought, for many years, that this was a freak accident. However, his research revealed that 43 people were killed 16 years earlier in a train derailment at the same place.

8.4.1.2. He refers to an article in The Times newspaper that there was at least one case of level crossing misuse every day last year. In all, 394 incidents were logged in 2017/18. Five people were killed on level crossings (excluding suicides) and seven vehicles were struck, in spite of around £100 million being spent over the last five years to improve safety. Bob Crow, the former General Secretary of the National Union of Rail, Maritime and transport Workers (RMT) stated that "we've seen only recently that Network Rail cannot stop the carnage that is an ever present risk wherever rail meets road. The only solution is speeding up the phase out of these crossings". NY considers that the proposed level crossing over the busy A21 London to Hastings main road will, in all likelihood, cause accidents and possibly fatalities.

8.5. **OBJ/91-Sally-Ann Hart MP (SH)**

8.5.1. *SoM1)-socio-economic impacts*

8.5.1.1. SH indicates that since becoming the MP for Hastings and Rye, she has had the opportunity to speak to many local businesses, the hospital and schools, amongst many other organisations. The common complaint is

that Hastings has poor connectivity which impacts on the businesses' ability to grow, and even to recruit staff and retain them. The latter is so for the hospital and schools. The poor road and rail connections is also attributed to the difficulty of attracting businesses to locate to Hastings. SH is disappointed, therefore, that no consultation has been undertaken by RVR with the Hastings Chamber of Commerce, for example, or any of the businesses or other organisations as to their views about the level crossing and how or if it might impact on them.<sup>298</sup>

8.5.1.2. RVR commissioned a Local Economic Impact Study from Manchester Metropolitan University in 2007, with an update in October 2013. It indicates it is likely that the proposal would have a positive local economic impact and enable a more secure economic base for KESR. SH says she does not dispute that, but there is no conclusion that the Order scheme would have a positive economic impact for the wider area. The principal findings of the updated 2013 Study concludes again, that the extension should *'improve the commercial position of K&ESR'*. More importantly, the 2013 Study acknowledges two main issues;

- a) Firstly, that increased visitor numbers will directly benefit RVR/KESR and indirectly local visitor attractions, namely Bodiam Castle, *'but not without difficulty if resistance to modal shift (from car to rail/public transport) remains. Without substantial marketing inputs this problem may prove difficult to overcome just as it has done for operators in the commercial transport sector'*. Without a business plan to peruse, SH has no idea whether or not marketing, or even the enterprise itself, would find itself falling ultimately on the public purse.
- b) Secondly, the authors of the Study's final comment that they *'recognise that increased visitor numbers and the introduction of level crossings (especially on the A21 Robertsbridge by-pass) may have negative economic impacts arising from the RVR/K&ESR 'missing link'.*

8.5.1.3. SH considers that a negative economic impact on a proportion of the population may be acceptable if the outcome benefits the majority; CPOs were first introduced in government legislation in the nineteenth century for the building of railways. These national infrastructure projects, whilst having a negative impact on some, vastly benefitted the UK and enabled rapid economic growth, leading to prosperity and social change. RVR's use of the *Transport and Works Act* to compulsorily purchase private land for a heritage steam railway, which is not a national infrastructure project, is an abuse of the spirit of the legislation. If the Application is successful, it will no doubt be beneficial for the economic longevity of KESR; however, in SH's view, this desire to improve the commercial position of KESR should not be at the expense of economic growth in Hastings and Rother District, impacting on the existing and future life chances and livelihoods of thousands of people.

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<sup>298</sup> INQ/119-1.

- 8.5.1.4. There appears to be a clear lack of understanding, or even care, on the part of RVR about the wider socio-economic impact that a level crossing on the A21 would have. SH doubts that the deprived communities of Hastings and St Leonards, or the businesses and other organisations there, and what would be a benefit or detriment to them have been considered at all by RVR.
- 8.5.1.5. SH indicates that Transport for the South East's primary aim is to support and grow the economy through identification and prioritisation of a programme of integrated strategic transport projects and programmes. As part of the ongoing improvements to the region's road network, Transport for the South East published *The Economic Connectivity Review of the South East (July 2018) (Review)*<sup>299</sup>. One of the 'economic corridors' that it seeks to identify for investment is the A21 road (and London to Hastings railway line) infrastructure. It is well established that transport connectivity supports economic growth and the flow of traffic is important. The Review also evidences how delay in journey times can negatively impact on economic growth; a one minute journey time saving on key corridors adds £4.5 million to the economy.<sup>300</sup> Frequent 51 second (or 76 seconds, which SH understood to be the updated time for each closure of the A21 for the train to cross) would have a negative impact on journey times and subsequently the wider economy.
- 8.5.1.6. SH says that the A21 is already a slow road south of Tunbridge Wells and has the reputation for being a 'complete nightmare', 'a joke' the 'snail trail'. It is not just the reality of the road being one of the most dangerous roads in the country, but also of public perception; the road is slow so an additional impediment of a level crossing to already slow moving traffic will only add to the negativity around the road and ultimately getting to Hastings, Rye and local villages.
- 8.5.1.7. SH indicates that tourism is vital to Hastings and Rye, with over 30% of her constituency's economy dependent on it. She has no doubt that the Rother Valley Railway would have some beneficial impact for Hastings and Rye, but there is more to the tourism economy than a steam railway between Tenterden and Robertsbridge and the wider tourism economy is dependent on better road and rail links.
- 8.5.1.8. The East Sussex County Council Local Transport Plan 3, 2011 – 2026, states at paragraph 4.48 that '*our strategic infrastructure, to carry longer distance traffic, is seen as a major constraint by local business to achieving economic growth and improving our connectivity with the rest of the region. This can result in traffic using less appropriate rural roads, creating a greater maintenance burden on those roads leading to higher accident rates and poorer connectivity between areas*'.
- 8.5.1.9. When SH researched her 'Maiden Speech' last year, she looked back at the Maiden Speeches of her last four predecessors in Hastings and Rye,

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<sup>299</sup> INQ/119-2.

<sup>300</sup> INQ/119-2.



starting with Kenneth Warren in 1972. All of them highlight the necessity of improvements to the A21 as being an essential prerequisite to economic development in the constituency. She indicates that stood there, nearly 50 years later, making the same point; that to have any chance of 'levelling up' opportunities in Hastings and Rye, of providing opportunities to all residents and of unleashing the potential of Hastings and Rye residents and businesses, the government needs to invest in the A21 and in the local rail and bus transport infrastructure.

- 8.5.1.10. A good transport infrastructure platform combined with a skilled local population would encourage existing businesses to grow and new businesses to start up, boosting economic growth in Hastings and Rye and combating poverty.
- 8.5.1.11. Since becoming an MP, SH has joined with other East Sussex and Kent MPs bordering the A21 to lobby the government for improvements to the A21. She references a letter written by MPs bordering the A21 to the then Roads Minister, Jesse Norman. SH's predecessor Amber Rudd, was one of the signatories. It stated:

*'In November 2017, a report by the Road Safety Foundation cited the A21 from Hurst Green to Hastings as the highest risk road on England's Strategic Road Network, with the place most likely to be killed on an A-Road being the A21 junction at Coopers Corner. This is sobering and should be cause alone for an upgrade to be approved but there is a practical impact on others too - the March 2017 South Coast Central Route Strategy recognised this stating, "The lack of viable alternative routes also means this corridor has limited resilience to disruption." Accidents sadly can and do grind to a halt one of the country's most important roads'.*

*'Our ambition is to see a modern dual carriageway which befits the main link between the M25 and south coast. For decades schemes have been designed, approved and scrapped. Sometimes as a whole, more often for separate sections. But they have all demonstrated that the need is clear. We have every confidence the case for dualling the A21 from top to toe satisfies the five key aims of RIS2 as well as the four goals in the Transport Investment Strategy'.*

- 8.5.1.12. SH's predecessor, Amber Rudd, was very concerned too about the negative impact on Hastings and Rye of a level crossing on the A21. She opposed the building of a level crossing on the A21 and believed that there are safer and more effective ways to re-establish a transport link between Robertsbridge and Bodiam which should be explored. SH agrees with her and would urge the Secretary of State to consider alternative transport links which do not involve interrupting the traffic flow on this trunk road to one of the most deprived towns in the country.
- 8.5.1.13. SH says that this amazing constituency, her home, is located in the affluent South East, but it suffers from some of the lowest levels of deprivation in the country. Hastings is slipping further down the levels of

deprivation and is now the 13th most deprived out of 317 local authorities, based on the 2019 Indices of Multiple deprivation. In East Sussex, 9 out of the 10 most deprived neighbourhoods are located in Hastings and St Leonards. Baird Ward, for example, is still among the most deprived 0.5% in the whole country.

8.5.1.14. SH profoundly believes that the people, businesses and other organisations in Hastings and Rye need a voice in this Inquiry and she hopes that she has provided an adequate one for them. She confirms that she cares deeply about her constituency and believes a level crossing on the A21 will cause significant congestion, limit tourists' accessibility to Hastings and Rye and limit opportunities to achieve economic growth.

8.6. **OBJ/133-Kathryn Bell (KB)**

8.6.1. KB indicates that her understanding is that the *Transport and Works Act* is intended to enable projects whose expected benefits to the wider public outweigh the general assumption in law that a person is entitled to hold and enjoy their own property. She does not believe this is the case here and explains why with reference to: lack of socio/economic benefits; traffic congestion; and risk of flooding.

8.6.2. *SoM1)-Socio/economic benefits*

8.6.2.1. Over the years, various claims have been made for expected economic benefits from the link to the mainline railway, reaching into the millions. However, when it comes to making this application, RVR were noticeably more cautious. Its own report<sup>301</sup> stated,

*'The local social/economic impacts of the scheme would be minimal, though very marginally positive amongst certain receptors in the impact area. The benefits would arise from improved connectivity for inward tourism that would translate to a small increase in local jobs in this sector.'*

8.6.2.2. RVR's Statement of Aims says the reinstatement of the railway would help to unlock the tourist potential of the district through the provision of a sustainable transport infrastructure. KB considers that, if the main aim of the link is to enable people to travel by train to Robertsbridge then get to the station at Bodiam, then a bookable shuttle minibus would achieve this. Surely a small fleet of electric vehicles is more sustainable than building embankments and maintenance infrastructure, cutting down trees and running diesel and coal trains?

8.6.2.3. KB says, if RVR wanted to support the local tourist economy they could extend the scope of a dial-a-ride service like this, with bus stops at nearby tourist attractions such as vineyards, Brede, Great Dixter or Smallhythe Place. With more destinations available, this could encourage overnight stays. The railway could attract more customers if, with good marketing, they promoted tours where for example, the

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<sup>301</sup> RVR/25 para 14.7.2.

railway minibus picked you up at the station, delivered your luggage to Tenterden by train, delivered you to Great Dixter, picked you up later for you to catch the train at Northiam. On to Tenterden for an overnight stay and the next day perhaps the minibus to Smallhythe Place and back, then take the train to explore Bodiam, then minibus back to Robertsbridge. In contrast, the railway would take you to Bodiam, Northiam and Tenterden. That is it.

- 8.6.2.4. KB considers that there is a major conflict between two assumptions in Mr Higbee's Proof of Evidence. On one hand, linking the railway will create extra spending and encourage extra visits to other tourist attractions, yet most people will travel to Robertsbridge by train. If they are on foot, they will not be able to visit most other tourist attractions, e.g. Batemans or Sissinghurst.
- 8.6.2.5. KB's understanding is that RVR uses volunteers so will create few jobs actually running the railway. If, as they hope, most visitors would come by train, they would only use shops etc within walking distance. The High St is full of listed buildings, so there is no room to expand and the shops are those which fulfil the needs of a small village and the outlying villages which depend on it (mini-supermarkets, pharmacy, baker, hardware store, vet, florists, hairdresser). It would be harmful to the village if one of the existing facilities was turned over to tourist trade, which would only be seasonal. There is also the risk to existing businesses if parking becomes very difficult. The baker's is also a small coffee shop, with 4 small tables squeezed in and 2 or 3 outside. They have no room to expand. It seems unlikely any new business would be viable if it only has business for 4 months a year. The two pubs within the village could attract customers from the railway.
- 8.6.2.6. The major economic risk of this project is associated with the greater risk of flooding, which is covered more fully below, but the potential cost of insurance claims and higher premiums is significant.
- 8.6.3. *SoM3)b)-Impact on roads*
- 8.6.3.1. Mr Higbee's Proof of Evidence proposes that only 15% of visitors would arrive by train. This is a hope; not a certainty. Two small studies of visitors to Bodiam and to a heritage railway near Tunbridge Wells (cited in Emma Watkins' objection<sup>302</sup>), indicate the opposite. RVR offer no analysis of how car traffic associated with Rother Valley Railway visitors would impact on the village, apart from near the level crossings. It seems possible that cars would be arriving to catch the train just as people returning on the train were leaving, resulting in an unknown number of cars, in a short period. There are three places in Robertsbridge where traffic is reduced to one way; George Hill, Northbridge Street and Station Road. All three are very sensitive to even short term increases in traffic flow.

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<sup>302</sup> OBJ/25 consultation response.

- 8.6.3.2. RVR intends to avoid the 'rush hours' at around 9am and 5pm to 6pm. However, Robertsbridge has a rush hour at 3pm to 4pm, as there are two schools, a primary on George Hill and a secondary at the top of Knelle Road. RVR could be running a train at this time, in term time. More cars park on George Hill at these times and 6 buses travel through the village to the secondary school every school day. There is also short term congestion at the crossroads between Langham Road and Knelle Road at school pick up time. In addition, the village has been allocated a target of providing another 150 houses and small infill developments do not count towards this total, so there would actually be more than 150. A small village, with a Conservation Area, in a floodplain where 2 rivers converge, struggled to find suitable sites within the development boundary. One of these sites would be accessed from Northbridge Street, near the proposed level crossing, the other from George Hill. Obviously this extra housing would generate more traffic. This is not RVR's fault but the cumulative effect needs to be considered. Also, when there is an accident and the A21 is blocked, traffic from the trunk road is routed through the village. This creates gridlock very quickly. There are obvious concerns if emergency vehicles cannot get through or are stuck amidst cars with no space to pass on pavements or verges.
- 8.6.3.3. KB indicates that Robertsbridge is a 'Service Village', providing essential facilities such as GPs, a pharmacy and dentists to neighbouring villages. Those living outside Robertsbridge need to be able to park when they visit them. It is already the case that commuters who do not want to pay for parking leaving their cars wherever they can; Mill Rise, Bellhurst Road and lower Langham Road are favourites. They now have parking enforcement which has reduced parking on Station Road but it has been impossible to see whether commuters are using the station car park more or are moving further out into residential streets as normal travel patterns have been changed by Covid.
- 8.6.3.4. KB acknowledges that there is a car park at the railway station, but no proposals from RVR on how visitors would be induced to use it if they believed they could park with no charge elsewhere. RVR's calculations for the need for parking spaces do not cover special events, such as 'Santa trains', which they expect would generate more traffic. Therefore, KB considers that there is a significant risk that visitor parking would exacerbate congestion. People unfamiliar with the village do not know if their chosen parking space would block a road. As an example, in 2018, a car was parked on a bend in Knelle Road opposite a tree. Whilst there are no yellow lines, no indication that this would be a problem, the first school bus that came along had difficulty passing between the car and the tree. As the first bus struggled on the verge to get its wing mirror past the tree, the other 5 buses were blocking Brightling Road/Station Road. At the same time, cars parked at the crossroads between Langham Road and Knelle Road had left space for a car to get through but certainly not a fire engine.
- 8.6.3.5. The documents regarding the planning permission granted by RDC included this comment from the local Highways Authority, East Sussex County Council:

*'Concerns have been raised locally regarding the potential impact that this development will have on the centre of Robertsbridge, particularly with regard to on street parking. These concerns are shared by this highways authority and therefore we would wish to ensure that a travel plan is included as part of any proposal. Specifically, the travel plan should review the existing car parking within the High St, Northbridge Street, Station Road and associated streets.'*

- 8.6.3.6. This application only includes the assessment that RVR expect sufficient parking spaces will be available in the station car park; sufficient presumably if only 15% of extra visitors arrive by car.
- 8.6.3.7. In conclusion, KB considers that increased traffic and parking would adversely affect daily life in the village and trade, worsen air pollution and potentially delay access to emergency vehicles.
- 8.6.4. *SoM3)c)-Flood risk*
- 8.6.4.1. KB indicates that Robertsbridge grew up on the confluence of 2 rivers. Clay soil becomes waterlogged, run off into rivers can be fast from the surrounding higher ground and as it is not very far to the sea at Rye, a high tide slows the rate at which the water flows out to sea. In the past river meadows served their purpose, could be used for grazing in summer and flood in winter with little harm done. However, over time, more houses were built on lower ground and in the 1980s the A21 Robertsbridge bypass was built across the floodplain on an embankment. Around the year 2000, this was found to have acted as a dam and the lower parts of the village were flooded twice. A very expensive flood prevention scheme was put in place, with flood gates, bunds and automatic pumping out of a drainage ditch if water levels rose too high. The EA keep a very close eye on the village when flooding is possible, they stay here, they are up all night, the risk is seen as a very real one.
- 8.6.4.2. Now RVR propose to build an embankment across the floodplain, joining the A21 embankment and at right angles to it. Its own earlier ES stated:<sup>303</sup>
- 'The presence of the new railway embankment will result in a loss of floodplain storage and the bridge crossings will impact flooding by obstructing flood flows.... Flood defences at Northbridge Street and Station Road would need to be raised by 0.3 metres to mitigate the increased flood risk caused by the proposed scheme. There are no plans to defend the museum, pavilion, a commercial property on Station Road, properties at Robertsbridge Abbey, Udiam Cottages, Forge Farm and Park Farm.'*
- 8.6.4.3. The next section of the report refers to the proposal from RVR to fund improvements to flood defences. They seem to have abandoned this

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<sup>303</sup> RVR/24 para 4.6.9-10.

commitment. However, after referring to these promised improvements, the report continues,

*'However for an electricity substation west of the High Street and a pumping station/electricity substation east of the village, there would be an increased risk of flooding, which is considered a significant effect.'*

- 8.6.4.4. So, KB observes that in a previous flood risk assessment (which did not include more recent upgrades for climate change), RVR was saying there would be an increased risk of power failure and sewage not being pumped away from the village, even if the flood defences were raised.
- 8.6.4.5. RDC imposed the following condition on the application for the A21 crossing,
- 'No development shall take place until a satisfactory scheme for compensatory flood storage has been submitted. The applicant will need to demonstrate that there will be no loss of floodplain storage post development with any loss of flood plain storage to be compensated for on a volume by volume, level by level basis and in a suitable location.'*
- 8.6.4.6. RVR has only just started talking about this during the Inquiry.
- 8.6.4.7. KB is concerned that the provision of only one evacuation route from the river meadows to higher ground at Moat Farm puts human lives at risk when livestock has to be moved rapidly. Just last winter, at another place in the village, flood waters rose fast and trapped some sheep and passers-by had to swim out to release them from the field. Water levels can rise very fast.
- 8.6.4.8. KB considers that the importance of keeping the culverts under the embankment on the floodplain clear has been established. She does not understand why RVR has not provided a schedule of inspection for these culverts. KB understands that they cannot provide a schedule for clearing them until they know how often they block but surely this Inquiry should have the opportunity to test the adequacy of planned inspection (and remedial action) arrangements? For example, when would clearing be delayed until a volunteer work party was available and what would trigger immediate action by a contractor?
- 8.6.4.9. KB says she does not know whether the flood risk assessments have included consideration of the surface water runoff from the A21, which flooded houses in Northbridge Street. She believes that representations were made to HE about diverting the flow of water, and any changes in water flow may affect the water flow on the river meadows.
- 8.6.4.10. Planning permission has been granted for 96 dwellings on the Hodson's Mill site which would reduce the capacity of land in the locality to absorb water. Plans for that development obviously took into account the flood risk there but KB would like to be reassured that the development there and the railway are looked at as a whole, for their potential effects on each other.

8.6.5. *SoM9)a)-Funding*

8.6.5.1. KB says she would have expected RVR would have to provide a detailed business plan, to demonstrate that the Order scheme would be viable but they have just said in the past that their charity has the money to do this work. This seems inadequate to KB.

8.6.6. *Conclusions*

8.6.6.1. KB knows that other objectors will have gone into detail about the environmental effects of the proposed line and supports their positions. She says she has walked along the banks of the river, it was a perfectly tranquil, beautiful setting, the river meadow bordered by a linear copse of mature trees which would be felled to create the railway line. She believes that the hoped for gains do not sufficiently outweigh the damage to the whole community to justify this destruction.

8.7. **OBJ/652 & 1035-Nigel Leigh and Charles Wyndham (NLCW)**

8.7.1. SoM1)-SoM9)-public interest

8.7.1.1. NLCW consider that the RVR business plan is not credible. The railway cannot bring significant benefits in terms of employment or turnover to a village which has only a tiny café and a couple of convenience stores. Any possible benefit would be hugely outweighed by a shortage of parking. It is not accepted that everyone would arrive by train from London.

8.7.2. *SoM3)a)-Level crossings impact*

8.7.2.1. NLCW consider that the creation of 3 new level crossings would be contrary to all policy and common sense and is widely opposed, not only locally but also in Hastings, St Leonards and Bexhill. It would be likely to lead to a serious build-up of traffic both along the main road itself and in the village, which is used as a 'rat-run'. It seems extraordinary to spend millions on the bypass to then allow a hobby railway to interrupt the flow of traffic along the already congested and dangerous A21 at Robertsbridge, at the foot of a hill with several blind corners.

8.7.3. SoM3)d)-Environmental harm

8.7.3.1. The development of the rail link would harm ecology, by removing mature trees and habitat. Once a habitat is disrupted, there is no assurance that the species displaced would return. Access to the valley on foot is available using footpaths, so the public can enjoy this valley on foot in a healthier way than by travelling by train.

8.7.4. *SoM3)c)-Food risk and 3)d)-heritage assets*

8.7.4.1. NLCW indicate that the Rother floods several times each year along Redlands Lane from some 300m eastwards from Redlands Farm up to the start of their Abbey and Summertree Stud properties. They indicate that, as the EA flood maps show, the most severe flooding (high risk) extends across their sole means of vehicular access to their properties. Indeed, NLCW believe that this map seriously underestimates the extent

and severity of flooding. Whenever the lane is flooded, the fields along the lane owned by Charles Wyndham are inundated, and so are the Abbey fishponds, and the floods extend around the back (south aspect) of Summertree Stud and converge to the south and east of Greyfriars, the last building along the lane. The Abbey undercroft, over which the Abbey Guest House is built, dates from around 1220, and is regularly flooded such that the water has to be pumped out.

- 8.7.4.2. The depth of the flooding can be up to 1 metre and the speed and force of the water makes wading very dangerous at times.
- 8.7.4.3. In a letter to Charles Wyndham from RVR representatives, it was stated that: *'...it has been possible to demonstrate that the reinstatement of RVR would have no significant effect on the flooding of Robertsbridge and the surrounding areas'*.
- 8.7.4.4. In the light of climate change and extreme weather events which can now be relied on to occur, NLCW consider that this complacency is not justified, and they doubt will be mitigated by any of the proposed structures of the rebuilt railway.
- 8.7.4.5. There are other related considerations they hope that the Inquiry will take into account in coming to a decision:
- a) As NLCW understand it, the RVR development contravenes current policy regarding developments on floodplains. However, they do not pretend to legal expertise in this area and others who do have that expertise will no doubt comment.
  - b) It is now generally accepted that all modelling of complex systems is highly fallible, and often misleading. This especially applies to 'modelling' of future extreme weather events (including flooding). Prediction is now even more unreliable than hitherto due to climate change, as has been seen in the tragic and devastating recent flooding events across Europe, China and elsewhere.
  - c) Climate change almost certainly invalidates any current 'models' of local flooding. They indicate that, sadly, the people of Robertsbridge and especially those living along Redlands Lane must expect more extreme flooding events, with threats not only to their access, but to personal safety related to the depth and force of the flood waters that flow along their only direct route of access to the outside world. Even 4-wheel drive vehicles cannot safely get through the floods at their worst. Thus floods are not simply inconvenient. In addition, NL indicates that he and his wife have clinical commitments to acutely sick patients in their respective hospitals.
  - d) Finally, there must also be a real risk to the integrity of the Abbey and its grounds, which are protected by statute, and under the supervision of Historic England. The grounds include almost uniquely preserved Abbatial fishponds and un-investigated archaeology of the mediaeval iron industry developed at the Abbey from 1538 by Sir William Sydney.



- 8.7.4.6. In summary, NLCW ask the Inquiry to consider the serious risks that might result from the proposed RVR development to their properties, their land, even to their personal safety, and to the integrity of the Abbey and Abbey grounds.
- 8.8. **OBJ/99-Eric Hardwick MBE (EH)**
- 8.8.1. *SoM1)-Socio/Economic benefits, 2)-alternatives and 3)a)-traffic impact*
- 8.8.1.1. EH indicates that having moved to Hastings more than 50 years ago, he regularly travels to and from London using the A21, which is the only road available. Whilst there have been many improvements over the years, it remains 'the snail trail' and further improvements are planned. Instead of being cut off from the world, Hastings is beginning to encourage businesses and visitors to the area. EH considers that it would be a massive retrograde step to now consider an obstacle on the A21 in the form of a train level crossing at Robertsbridge. What was the point of building the Robertsbridge bypass, just to bring in another reason for delay. You only have to use the road to see the delays and pile up of traffic, especially at weekends, to understand the folly of the proposal. The A21 should not be turned again into an obstacle race, for the benefit of a few dedicated train enthusiasts.
- 8.8.1.2. EH considers that RVR should build a bridge or a tunnel instead, and leave the A21 alone.
- 8.9. **OBJ/1032-Ray Norton (RN)**
- 8.9.1. *SoM1)-Socio/Economic benefits, 2)-alternatives and 3)a)-traffic impact*
- 8.9.1.1. RN indicates that in 2018 he visited the Nene Valley Railway, which used to have a level crossing over the A1, until a road bridge crossing was provided. From research he has done, he has the impression that before the bridge was in place, closure of the level crossing caused chaos. He also recalls delays caused by a level crossing over the A27 near Lewes, until an overbridge was provided.
- 8.9.1.2. Against that background, and given the poor infrastructure links to Hastings, RN considers that the proposal should not be allowed as it would introduce additional delays on the A21. He considers that an alternative could be investigated. Furthermore, he is concerned that the floodplain works associated with the Robertsbridge bypass may be undone by the proposed railway works.
- 8.10. **OBJ/1037-David Faithfull (DF)**
- 8.10.1. DF's objections to the proposal relate to the following matters: compulsory purchase of land; the crossing of the A21; the impact on traffic and parking in the village; the increased risk of flooding within the village; potential benefits being far outweighed by the severity of the problems; and alignment with the neighbourhood plan.

8.10.2. *SoM9)- Justification of compulsory purchase powers*

8.10.2.1. DF finds CPOs deeply unpalatable in principle, he suspects like the vast majority of people. However, he accepts that where a development is significantly and demonstrably important for the local or national transport infrastructure such orders may be necessary. He believes that in no way is the RVR proposal an important infrastructure development. For example, it can hardly be considered an important transport link between Robertsbridge and Bodiam/Tenterden: even supposing that there is a large body of people who currently commute or otherwise regularly travel over this route, a seasonal and off-peak service, which Rother Valley Railway would be, would hardly be very useful. DF therefore believes that the justification for CPOs for this project is non-existent.

8.10.3. *SoM5)-Policy and SoM3)a), b), c) and e)-level crossing, roads, food risk and car parking impacts*

8.10.3.1. DF believes that in many areas the RVR proposal contravenes the Salehurst & Robertsbridge Neighbourhood Development Plan (SRNP), which he suggests represents a most accurate and comprehensive snapshot of the views of a very large cross-section of the village population, across a very wide range of issues.

8.10.3.2. DF finds it extraordinary that there could ever be permission granted to install a level crossing across the A21, a busy, main, trunk road. The particular stretch affected, the Robertsbridge bypass, carries very high volumes of traffic during peak times, and continuously large volumes at almost all other times. On summer weekends, probably the busiest time for the Rother Valley Railway service, there is an almost constant flow of heavy traffic down to the coast and back. Traffic on the bypass is frequently, if not always, very fast, and for north-bound traffic the crossing would not be visible for the first few hundred yards, so that the probability of there being high-speed collisions becomes significant.

8.10.3.3. DF suggests that RVR's assessment of the effect on traffic flows on the A21 is surely flawed; however favourably they calculate it, having the crossing down during busy times will certainly cause additional tail-backs and delays on an already busy and frequently overloaded road.

8.10.3.4. The SRNP says:

a) Policy EC7: Tourism- *'[Business development in the Parish will be encouraged where] 3. It will not cause or exacerbate any traffic problems and will promote sustainable transport'*.

b) Policy LE3: New facilities- *'[Proposals for new and/or improved community facilities will be supported subject to the following criteria] 3. The proposal would not have unacceptable impacts on the local road network and will actively promote access by sustainable transport'*.

8.10.3.5. RVR estimated that up to 50,000 visitors to the railway per year would come to Robertsbridge via the main line from London. DF considers that this is a gross over-estimate, and optimistic in the extreme. But even if the numbers were as high as 20% of this, and given that it is highly speculative that all of those would come to Robertsbridge via the national rail line, it is inconceivable that the village would not be hugely strained with higher traffic volumes and increased parking, to the great detriment of local residents.

8.10.3.6. The SRNP says:

- a) Policy EC5: Tourism- *'3.1.5 ... It is also extremely important that a balance is kept so that tourism development does not have an adverse effect on local beauty and tranquillity.'*
- b) Policy IN1: Loss of parking- *'Development proposals that would result in the overall net loss of existing on-street and/or off-street parking will not be supported.'*
- c) Policy IN2: Maintain and improve existing infrastructure- *'[New and/or improved infrastructure..... will be encouraged and supported in order to meet the identified needs of the Parish, subject to the following criteria] 3. The proposal would not have significant impacts on the local road network.'*

8.10.3.7. RVR's development plan would take the railway across the floodplain. DF considers that in general terms, for any development, this is a bad idea; but in this particular case it is hard to see how the project could not but increase risks to property and land were there to be another flooding event. Reporting on their commissioned study, RVR said that the rise in flood water levels caused directly by the new railway would be around 1 mm. Firstly, given the minimal flood avoidance measures that they propose (see later) DF does not believe that this can possibly be the case. Secondly, whatever their method of calculation, such a degree of resolution in flood heights is not only impossible but also meaningless. In answer to questions about the nature of the flood avoidance that they will adopt, RVR said they would have frequent culverts in the railway embankment. It has been pointed out that at best this would divert the flood waters elsewhere, not discharge them away safely: in other words it would become someone else's problem.

8.10.3.8. The SRNP says:

- a) Policy IN8: Reducing flood risk- *'Development will not be supported in flood attenuation areas where that development would reduce the ability of these areas to alleviate flooding. Proposals to use culverts simply to pass the potential to flood to elsewhere, i.e. not as part of a viable SuDS strategy, will not be supported.'*

8.10.4. SoM9)-public interest

8.10.4.1. DF indicates it is only right that the objections raised above are considered in the context of any benefits that the creation of the Rother

Valley Railway might have for the village. RVR's estimates for the benefits to tourism DF believes are wildly optimistic.

- a) In one of RVR's submissions they said they believed that many of the visitors to Robertsbridge would come straight down from London and catch the Rother Valley Railway train to Bodiam and/or Tenterden. This seems likely, since there is not a lot in the village for visitors to see or do. Therefore, the major part of any money spent would not be to the benefit of the village.
- b) RVR also cited the extension of the Bluebell line to East Grinstead as an example of the benefits to the local economy of this type of project. There are significant differences between the two situations because of the vast difference in population and consequent large difference in the provision of infrastructure: the population of East Grinstead is around 24,000, that of Robertsbridge around 2,700. In East Grinstead there are at least 10 inns or pubs and 8 restaurants within walking distance of the railway terminus. In Robertsbridge and Salehurst there are 3 pubs and 3 restaurants. In East Grinstead they have a theatre, cinema, town museum, sports centre with swimming pool, many more shops than Robertsbridge, 9 banks/cashpoints, and a National Trust property. Thus the appeal to, and support of, visitors to East Grinstead on the Bluebell Railway is far greater than would be the case for the Robertsbridge proposal. Therefore, DF considers that the comparison is invalid and unhelpful.

8.10.4.2. In summary, DF indicates that he is not opposed to the reinstatement of heritage railways; indeed he is a life member of the Lynton & Barnstaple Railway. Furthermore, he is not demonstrating 'nimbyism'; the idea of a steam train running through Robertsbridge is quite appealing, were it not for the significant and serious issues which it raises, and the problems which it creates. The human, environmental and safety costs are simply far too high.

8.11. **OBJ/68-Paul Smith (PS)**

8.11.1. *SoM3)a)-impact of the A21 level crossing*

8.11.1.1. PS considers that the accident record of the East Sussex section of the A21, which includes 2 severe injury accidents to the north of the Robertsbridge roundabout, indicates that it is a dangerous road.

8.11.1.2. On Bank Holidays the A21 would be at its busiest with visitors to Hastings and Rye. The Railway would be likely to be busy as well, as it would want to take advantage of people wanting to travel by heritage train. Highway congestion resulting from the operation of the proposed level crossing would be likely to give rise to a higher risk of accidents at those times.

8.11.1.3. Furthermore, PS indicates that some railway enthusiasts like to photograph trains from different vantage points and so would use their cars to travel around the area, potentially adding to traffic in already

congested locations, such as Salehurst, and increasing the risk of accidents.

8.11.2. *SoM3)c)-Operation of first generation diesel trains*

8.11.2.1. In view of the concern with respect to pollution caused by emissions from diesel cars and the more stringent MOT regime, which came into force in 2018, it seems surprising to PS that diesel locomotives or trains with little or no protection from poisonous emissions would be allowed to run along the Bodiam to Robertsbridge extension.

8.11.2.2. During KESR's current operating season, diesel trains operate two round trips on 88 days of the year. This does not include maintenance trains. PS does not believe that the operation of first generation diesel trains (built 1950s/1960s) would have an acceptable impact on the High Weald AONB.

8.11.3. *SoM1)-the railway as a means of facilitating access to the AONB*

8.11.3.1. Mr Crawley of RVR, in an article in the Daily Mail in 2018, entitled 'We're not Chuffed' makes the following points:

*'There are a lot of very wealthy people in East Sussex but parts are very deprived and the big employer nowadays is tourism. Making tourism here more accessible to people who don't have cars is very important.'*

8.11.3.2. PS argues that Mr Crawley's statement does not work from a personal finance point of view, especially for deprived people and families on low incomes. First people would need to get to Robertsbridge by train, which is good, but would be at a cost which would be higher the further they travel. Using KESR fare structure in 2018 as an example of what might be charged when the railway is fully open: Family ticket-£38 (2 adults and 3 children); Adult-£18; and, child-£12. The main line fare would increase the cost further.

8.11.3.3. PS doubts that many people from deprived areas could afford travel costs of £50 or more for a day out on the new railway, and that is before the cost of eating and drinking is considered or the cost of other attractions, such as Bodiam Castle. Therefore, this argument for the proposal is flawed, as in order to use the railway passengers would have to be fairly well off.

8.11.3.4. Mr Crawley goes on to say:

*'its not as though we're putting a new line across virgin land-there was a railway there until the 1960s'.*

8.11.3.5. PS acknowledges that there was a railway on this route. However, it only opened in 1900, closed to freight in 1961 and to passengers some years before. Hardly a success story, if compared to the Tonbridge to Hastings main line, which opened in 1852 and is still serving its communities.

8.11.4. *SoM3)d)-Impact on natural habitats*

8.11.4.1. After the railway was closed, the land was sold by the British Transport commission to adjoining landowners. As for 'virgin land', most of the track bed has been removed or has become a species rich corridor of secondary woodland. This is an important mixed woodland habitat that supports a raft of interesting species, plants, birds, mammals, reptiles, insects and fungi that greatly enrich the landscape of the Rother Valley. So in fact, the proposal would involve building on 'virgin land', currently used for farming, open pasture or woodland; activities which add to the local ecology of the Rother Valley and support the High Weald AONB.

8.11.4.2. The proposed railway would be built on land where species co-exist in beautiful woodland in luscious landscapes, to enable KESR to run its diesel trains and events such as its 'fish & chip supper' trains, real ale trains, the 1940s and Thomas the Tank Engine weekends. PS considers that you can go to the Spa Valley or Bluebell railways to experience those things. Furthermore, the destruction of these habitats and the displacement of those that rely on and live within these habitats would have an unacceptable impact on the High Weald AONB, and the precious environment must come before building a heritage railway with limited appeal.

8.11.4.3. PS describes himself as a career railwayman with over forty years' experience. Nonetheless, he objects to the proposal, as he considers that it would conflict with the requirement of Policy EM8 of the Rother District Local Plan, 2006 that '*it has an acceptable impact on the High Weald Area of Outstanding Natural Beauty*'.

8.12. **OBJ/1014-Nicholas and Anna Eastwood (NAW)**

8.12.1. *SoM1)-Loss of access*

8.12.1.1. NAW run a camping and glamping business directly beside the current KESR line and Bodiam Station employing around 22 people directly with others employed in local businesses that provide services to the campers. Some years ago NAW's family sold to RVR the land necessary to re-build the section of the line that runs through Quarry Farm, to the east of Junction Road. That section of track has been reinstated.

8.12.1.2. Around 2011, NAW started a camping business at Quarry Farm, which involves some campers having to cross over to the northern side of the railway to reach their pitches. The draft Order plans show two existing UWCs over the reinstated line through Quarry Farm, which are used by NAW's campers and for the day-to-day running of the farm. However, NAW indicate that, for many years, they have also used a third crossing point further to the west, which provides a route across the reinstated line between a parking area to the south and a campsite to the north of the line. It is not shown on the Order plans. NAW indicate that RVR claim sole rights to the land at that location and refuse to consider any form of crossing, a matter that NAW have been trying to resolve with RVR for around 2 years. They indicate that if they are unable to use that third crossing point, it would be likely to have a significant impact on

their business, as campers would be reluctant to walk from the car park to the nearest agreed UWC further to the east. NAW estimate around 60% of their camping revenue post-covid has been associated with temporary use of areas to the north of the railway for camping and that would be at risk, with knock on effects to employment in their business and potentially the number of campsite customers who travel on KESR.

- 8.12.1.3. NAW consider that if, in the future, trains run along the line through Quarry Farm, it would be necessary to lock the gates leading to the crossings, as they believe campers could not be relied upon to cross on their own. Under these circumstances, they consider that the temporary campsites to the north of the line would be impractical to use.
- 8.12.2. *SoM7)-Loss of access*
- 8.12.2.1. In their original letter of objection<sup>304</sup>, NAW suggest that, as the third crossing is not shown on the Order plans, they would lose their right of access. They initially contended therefore that they are statutory objectors and should have been, but were not, served notice regarding the loss of access rights. However, following a response by RVR, NAW have acknowledged that they do not qualify as statutory objectors<sup>305</sup>.
- 8.12.3. *SoM7)-Illegal appropriation of NAW's farmland*
- 8.12.3.1. In their original letter of objection, NAW observe that sheet 8 of the draft Order plans shows the existing Rother Valley Railway line where it runs through Quarry Farm in turquoise. That area to the south and southeast of the track broadens alongside their farm track. NAW contend that this extends beyond the area sold to RVR, 4 metres either side of the track bed, and that they still own that land. Furthermore, they contend that, if it is RVR's intention to compulsory purchase that area of land alongside the track under the terms of the draft Order, then NAW should have been served notice as potential statutory objectors. They received no such notification. However, following a response by RVR, NAW have acknowledged that they do not qualify as statutory objectors<sup>306</sup>.
- 8.12.4. *SoM7)-Blocking a legal right of way*
- 8.12.4.1. In their original letter of objection, NAW contend that Quarry Farm retains a right of way through Udiam Farm onto the B2244 immediately beside and to the south of the existing railway line at that point. The right of way was blocked and a hedge planted across that access point in the past by a former owner of the farm, when the driveway to Udiam Farm was relocated to the south. They indicate that the right of way they describe is not shown on the draft Order plans (sheet 7) and if, under the terms of the draft Oder, their right of way would be removed,

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<sup>304</sup> OBJ/1014, dated 30 May 2018.

<sup>305</sup> INQ/102 para 1.7.1 and INQ/98. Transport and Works (Inquiries Procedure) Rules 2004- 'statutory objector means person within section 11(4)' of the Transport and Works Act, 1992.

<sup>306</sup> INQ/102 para 1.7.1 and INQ/98. Transport and Works (Inquiries Procedure) Rules 2004- 'statutory objector means person within section 11(4)' of the Transport and Works Act, 1992.

then NAW should have been served notice as potential statutory objectors. They received no such notification.<sup>307</sup>

8.12.5. *SoM9)a)-Impediment-legal right of way*

8.12.5.1. Separately, NAW indicate that if the former access arrangement onto the B2244 were to be reinstated, it could be problematic for the proposed Junction Road level crossing.

8.12.6. *SoM3)c)-Flood risk*

8.12.6.1. NAW are concerned that RVR has not done any flood modelling to show whether or not their land used for camping would be at greater risk of flooding as a result of the Order scheme. Those camping areas are positioned alongside the River Rother downstream of the location of the proposed reinstatement works subject of the draft Order.

8.13. **OBJ/25-Emma Watkins (EW)**

8.13.1. EW considers that there are some facts which are undeniable:

- a) The A21 is the main artery into Hastings/Battle and Bexhill. It is a very dangerous road, with comparatively high levels of accidents compared to the national levels. It is also a busy congested road: and,
- b) The creation of level crossings will introduce hazards which do not exist at present.

8.13.2. The government has recently given Hastings £24 million to help rebuild the local economy after the pandemic. In EW's view, putting a level crossing on the A21 seems to directly conflict with the broader understanding that this part of Sussex needs help to improve employment and attracting businesses to the area.

8.13.3. As a user of the A21, EW has found it difficult to understand why this proposal has got as far as it has. While she believes that the ORR has slightly changed its stance, at the time of local planning, the ORR and NR were very clear that they would not endorse any new crossings. However, neither of them objected to the 3 new crossings which this railway line would introduce.

8.13.4. RVR seems to have friends in high places. David Keay was Deputy Chief Inspector for the ORR and left in February 2017. On the 20 February 2017 he became a board member for RVR and a Member on the Board of Trustees for Vintage Trains. Sir Peter Hendy, the Chair of NR at the time of submission, is also an active supporter.

8.13.5. When the questionnaire was submitted to the village for the local plan back in 2006, EW believes that the question asked was:

*'If we had a steam railway in the village would we use it?'*

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<sup>307</sup> INQ/102 para 3.1.1.



- 8.13.6. EW indicates that, as a mother of small children, at the time she said yes. However, she says she did not realise the implications of being one of around 200 locals who ticked the box that this meant it would be included in the Local Plan. She suggests that the parties who wrote this original questionnaire are both openly supporters of the railway. While she has no doubt that they followed all the correct processes, she wonders why the question was not 'Do we want a steam railway – yes or no?'
- 8.13.7. EW indicates that the subsequent applications have demonstrated that Robertsbridge residents are fairly evenly split for and against. There is no huge desire to have the proposed railway in the village, because of the concerns with respect to parking and flooding.
- 8.13.8. Whilst the justification for the Railway has been about bringing new tourists to the area via the main line, EW indicates that this seems to conflict with the results of the survey she completed of 200 visitors to Bodiam. She found that: 68% were visiting the area for a few days, the rest were local; 94% had driven to the castle and the average number per car was 3 people; and 32% came on a day trip to the castle. When asked if they could take a mainline train to Robertsbridge, would they then take a steam train to Bodiam? No one interviewed thought that this would be possible, as they were either not near a station on the Robertsbridge main line or they needed their car for another part of their visit, for example to travel to Rye for lunch.
- 8.13.9. EW considers that due to the distance from London, the area is not considered as a day trip from there. Furthermore, along the line from London to Hastings, Tunbridge Wells with its historic importance, shopping and Spa Steam Railway seems to be more attractive to those heading out from London. Why would they come another 20 minutes further down the line?
- 8.13.10. EW says Robertsbridge is not East Grinstead, which is where the Bluebell Railway sits and has been cited as a success story, where rail usage has increased, without the need for any additional parking. The station at East Grinstead is located next to a Sainsbury's, with 250 spaces and offers free parking for 4 hours, which is slightly longer than the time required to visit Sheffield Park, one of the Bluebell Railways' main attractions. She reports that when she asked one of the Sainsbury's staff if anyone who visited the railway parked there he said "Yes all the time".
- 8.13.11. EW considers that RVR has always appeared very confident about its likely success in bringing the proposal to fruition. Furthermore, it appears to her that RVR has friends in very high places, that would allow it to put an additional barrier across the main trunk road to an area with poor transport links and this would potentially undermine the efforts to make this part of Sussex attractive to business. In 1971 RVR applied for a light railway from Tenterden to Robertsbridge. However this was reduced to Bodiam to Tenterden because of concerns about the A21 crossing. EW is struggling to understand how after 50 years this is a more attractive proposition.

8.14. **OBJ/71-David Webster** (DW)

8.14.1. **SoM3)d)-Impact on the High Weald AONB & 6)-ES adequacy**

8.14.1.1. DW's concerns relate to the reliability of the LVIA (RVR/25-section 8), which he considers has a number of shortcomings and therefore should not have been relied upon for decision making purposes. In particular, he was concerned that there was no clear assessment of the landscape effects, with the clear emphasis of the LVIA being on visual effects. He considers that this was an important shortcoming, as saved Policy EM8 only supports an extension so long as *'it has an acceptable impact on the High Weald Area of Outstanding Natural Beauty.'*

8.14.1.2. It is important to note that the AONB Unit raised concerns regarding the LVIA<sup>308</sup>. These concerns were not addressed until the 2017 ES Addendum<sup>309</sup>. However, it remains the case that no clear and reliable assessment of landscape effects, following *Guidelines for Landscape and Visual Impact Assessment Third Edition*<sup>310</sup> (GLVIA) methodology, was made in support of the original planning application or draft Order scoping process. DW also has concerns about the methodology employed with regard to the assessment of visual effects.

*Concerns relating to landscape effects*

8.14.1.3. DW welcomes the LVIA review undertaken by Ms Tinkler<sup>311</sup> which clearly identifies the shortcomings of the original LVIA throughout<sup>312</sup>. DW understands that RVR/70-02 ultimately agrees with the LVIA conclusions, but wishes to draw attention to the following concerns.

8.14.1.4. The landscape value of the Rother Valley as part of the High Weald AONB would be more appropriately considered very high. DW believes that the LVIA underscores as high, as does Ms Tinkler.<sup>313</sup>

8.14.1.5. At many locations along the proposed reinstatement route there are few, if any, references to the type of development proposed. In particular, sections 3 and 5<sup>314</sup>. In these areas the landscape susceptibility is arguably higher and therefore increases the landscape sensitivity. Using the methodology employed in RVR/70-02 the susceptibility ranking for these areas would more correctly be judged to be moderate and the overall landscape sensitivity should be recorded as high<sup>315</sup>. On this basis, even small magnitudes of change would result in a moderate significance of effect. DW considers that the likely magnitude of effect in both sections 3 and 5 would be moderate (to reflect the introduction of a railway embankment in a flat floodplain), resulting in moderate to major overall significance of effect.

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<sup>308</sup> See Claire Tester's letter dated 6 June 2016, page 21 of 34-RVR/64.

<sup>309</sup> RVR/28

<sup>310</sup> Published by the Landscape Institute and the Institute of Environmental Management and Assessment.

<sup>311</sup> RVR/70-02.

<sup>312</sup> In particular section 5.5.

<sup>313</sup> RVR/70-02 para 5.5.43(i)

<sup>314</sup> See RVR/27 Figure 8.5.

<sup>315</sup> See RVR/70-02 Tables 3 & 4.

DW therefore disagrees with Ms Tinkler's conclusions and suggests that there would be significant adverse landscape effects in these sections.<sup>316</sup>

- 8.14.1.6. As Ms Tinkler notes at paragraph 2.13 following her site visit<sup>317</sup> *'during the site visit I noticed that the far eastern end of the site corridor has recently been roughly surfaced with stone. That has resulted in some damage to and loss of trees, and the resultant gaps allow views in from nearby residential properties, roads, commercial premises, and a campsite. This was not anticipated in the effects assessments (nb. it adversely affects character as well as visual amenity)'*. DW considers it is clear that this would be the case along the reinstatement route and that the landscape effects would likely be greater than stated in the LVIA.
- 8.14.1.7. As Ms Tinkler notes at paragraph 2.16 of RVR-W5-2, the final scheme would need to be subject to good landscape design and proper future management. However, as she notes at paragraph 2.12, it is unlikely that the railway operator would attempt to fully restore the existing vegetated corridor along the reinstatement route as they would be *'unlikely to want the whole of the section to be through a deeply-wooded corridor, missing out on fine views of the surrounding countryside'*. For that reason DW thinks that the residual landscape effects would also be greater than stated.
- 8.14.1.8. DW disagrees with Ms Tinkler's conclusion at paragraph 5.5.43 (xi) that there is *'a relatively high degree of consensus that the heritage steam railway is recognised for the positive contribution it makes/can potentially make to landscape character and visual amenity (and related areas such as social/cultural/economic sustainable travel/tourism, green infrastructure and natural capital)'*. DW considers that the number of objections to the reinstatement and the requirement for the Inquiry refute that observation.

*Concerns relating to visual effects*

- 8.14.1.9. DW has grave reservations about the methodology employed by the LVIA to consider visual effects. For example, where a receptor is able to have a medium sensitivity and the magnitude of impact is assessed as moderate, the overall significance of effect is considered to be slight (i.e. Assessment viewpoint A-page 36 of 58 in RVR/27). DW considers that this is implausible.
- 8.14.1.10. DW indicates that using Ms Tinkler's methodology the overall level of effect would be moderate and therefore significant.<sup>318</sup> This ranking is supported by some of the commentary in Figure 8.6. For example, the post completion view from Church Lane is described:

*'Reinstated low embankment and track bed forms a somewhat alien, engineered feature in otherwise rural landscape with*

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<sup>316</sup> RVR/70-2 para 5.5.4.5.

<sup>317</sup> RVR-W5-2.

<sup>318</sup> RVR/70-2 table 12.

*fencing running along the base of the embankment. There may be views of bridges 14, 16 and the farm access crossing with signalling equipment if required. Depending upon the detailed design for the halt, there may be views of tree clearance and of the Salehurst Halt construction and signalling equipment'.<sup>319</sup>*

- 8.14.1.11. On this basis, DW agrees with Ms Tinkler's initial conclusion that there is potential for the Order scheme to give rise to significant negative visual effects, particularly towards the western end of the reinstatement route. DW does not believe that these effects can be appropriately mitigated and agrees with Ms Tinkler's observation at paragraph 2.11 of RVR-W5-2:

*'I do not recommend relying on existing or proposed vegetation to mitigate adverse effects on views'.*

- 8.14.1.12. Whilst DW disagrees with Ms Tinkler's conclusion at paragraph 2.6 of RVR-W5-2, he believes that she is correct to identify that trains themselves could cause significantly adverse visual effects (paragraph 2.7), but accepts that there is always a degree of subjectivity in these matters.

- 8.14.1.13. DW considers that it is also important to note that whilst the front covers to the ES and Addendum include the image of a small steam engine, many of RVR's train operations feature a diesel train that emits a tall column of black exhaust. Overall, he does not believe that the adverse visual effects of the train operations have been properly assessed.

*RVR Response to Representation: Landscape and Visual Matters, July 2021 (LVM)*

- 8.14.1.14. LVM<sup>320</sup> paragraph 1.7(i) *Concerns relating to LVIA-As* part of the original EIA scoping exercise, the AONB unit requested that 'a standard LVIA under the Landscape Institutes guidelines' should be undertaken and that the unit were more concerned about the predicted landscape effects than the visual effects, and that their assessment of these effects would be made against the AONB Management Plan. The LVIA did not follow this guidance.

- 8.14.1.15. As noted by the AONB Unit, the *'landscape section of the ES has concentrated on the potential visual impact that may be caused by looking at views to the site and while this is welcome, an assessment of a range of views is not sufficient to explain and/or justify the development' potential impacts (positive or negative) to the landscape itself*. To date, DW does not believe that a LVIA has appropriately assessed the landscape impacts of the proposals.

- 8.14.1.16. Ms Tinkler makes clear (paragraph 5.5.10 of RVR/70-02) that she has not carried out a full LVIA (only a high level desktop assessment) and

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<sup>319</sup> Assessment viewpoint F (page 41 of 58 in RVR/27)

<sup>320</sup> INQ/39.

(paragraph 5.5.2) that the LVIA has not stated the '*assessed levels of landscape value, susceptibility to change, sensitivity, magnitude of effect, or overall level of effect*'. Indeed, DW considers it is possible, although not confirmed, that landscape and visual effect have been combined, which would be an error in the LVIA process (as noted at paragraph 5.5.8)

- 8.14.1.17. DW's view is that the 2017 Addendum in no way compensates for the absence of a clear transparent LVIA. Given that protection of the AONB underpins saved Policy EM8, this failing must be of material concern.
- 8.14.1.18. LVM paragraph 1.7(ii) *Concerns relating to landscape effects a)*<sup>321</sup>- DW considers that Ms Tinkler's response is somewhat confusing, as she notes (at paragraph 5.4.16) that the descriptions of landscape sensitivity in the LVIA Table 8.1 'are very brief, and seem only to relate to individual landscape elements and features, not designations or other value indicators (such as those set out in GLVIA Box 5.1)'. DW agrees with Ms Tinkler that the High Weald AONB landscape receptor should be judged to be of very high sensitivity, which he considers supports his comments above regarding underscoring. As noted previously, he considers that the LVIA offers no transparent assessment of landscape effects.
- 8.14.1.19. DW says that whilst he appreciates and applauds Ms Tinkler's efforts to decipher the LVIA (paragraph 5.5) their professional opinions differ regarding the significance of the predicted landscape effects. As previously explained, DW believes the landscape susceptibility to be higher (particularly over Parsonage Farm and the open floodplain). He also believes the magnitude of effects would be greater, particularly where the previous railway has now rewilded into a linear tree belt, a landscape feature typical in the High Weald. NCA 122 notes in key characteristics 'small and medium sized irregularly shaped fields enclosed by a network of hedgerows and wooded shaws'. He considers that the likely results of the reinstatement are clearly visible in section 7 of the line (closest to Junction Road) and this reinforces his concern about higher levels of magnitude of effect than reported in the LVIA or by Ms Tinkler.
- 8.14.1.20. DW confirms that in forming his views, he has taken into account that the original railway would have run along an embankment. Whilst flood defences and the A21 embankment are evident on the settlement boundary of Robertsbridge, DW does not believe that sections 3 to 5<sup>322</sup> are materially influenced by those landscape features and any remaining railway embankment to the east of the reinstatement route is almost entirely concealed by vegetation.
- 8.14.1.21. LVM paragraph 1.7(ii) *Concerns relating to landscape effects b)a)*<sup>323</sup>- Whilst the *East Sussex County Landscape Assessment* County Landscape

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<sup>321</sup> INQ/39 page 1.

<sup>322</sup> See RVR/27 Figure 8.5 Landscape Strategy.

<sup>323</sup> INQ/39 page 2.

Character Area 13 (CLCA 13) may include the existing railway from Bodiam to Tenterden as a key 'positive attribute', DW considers that this does not translate into the reinstatement being a positive contribution, nor is there any support or mention of reinstatement in the CLCA 13.

- 8.14.1.22. LVM paragraph 1.7(ii)b)b)- The High Weald AONB Management Plan also notes in the same section that disused railway lines contribute to the area's 'natural and cultural capital'.
- 8.14.1.23. LVM paragraph 1.7(ii)b)d)<sup>324</sup>- DW considers this is highly debatable and he disagrees. The High Weald is described in the 'Forward' to the Management Plan as '*One of the best surviving Medieval landscapes in North West Europe, the High Weald has remained a unique and recognisable area for at least the last 700 years*'. The removal of the railway embankment over the majority of sections 3 to 5 has allowed a return to the historic field patternation that was disrupted by the introduction of the railway in the late 19<sup>th</sup>/early 20<sup>th</sup> centuries. DW believes that the reintroduction of the railway would clearly be in conflict with Objectives FH1 and FH2 of the Management Plan.
- 8.14.1.24. LVM paragraph 1.7(ii)b)e)- The Management Plan is very clear that the component 'Routeways' describes the dense network of historic routeways (now roads, tracks and paths). Typically present by the 14<sup>th</sup> century, with many extending back into pre-history and predating settlements. This component does not relate to railways that operated in the 20<sup>th</sup> century. Indeed, there is no mention of railways within this component. Further, the reinstatement of the railway would likely cause harm to nearby historic routeways. For example, Beech House Lane that continues south as bridleway S&R 36B. DW believes that it is clearly an error to score the railway reinstatement as a major accord with Objective R1. He indicates that a telephone conversation with Claire Tester (Planning Advisor at the High Weald AONB Unit) confirmed this position (29 July 2021).
- 8.14.1.25. Paragraph 1.7(iii) Concerns relating to visual effects: DW indicates that he remains of the opinion, as set out above, that the LVIA and Ms Tinkler have underestimated the visual effects.

#### *Conclusions*

- 8.14.1.26. DW believes that the reinstatement of the track and subsequent train operations have the potential to cause significant and adverse landscape and visual effects that have not been identified in the ES or subsequent addendums.
- 8.14.1.27. Whilst DW agrees with much of Ms Tinkler's LVIA review, he believes that she understates the likely landscape effects, in particular at sections 3 and 5, and the visual effects at various locations. He considers that there would undoubtedly be significant adverse visual effects created in an area with a number of public rights of way and open views from

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<sup>324</sup> INQ/39 page 3.

publicly accessible locations. In addition, a large number of residential receptors would have either clear views or partially screened views of the proposal.

8.15. **OBJ/178-Environment Agency (EA)**

8.15.1. In its letter to the Secretary of State, dated 26 March 2019, the EA confirmed that it had had meaningful discussions with RVR since submitting its Statement of Case in September 2018 and has agreed wording for the Protective Provisions for Schedule 8, Part 3 – ‘*For the Protection of Drainage Authorities and the Environment Agency*’ of the draft Order. The EA confirmed that as a result it was in a position to withdraw its objection to the Order, with the exception of the following one outstanding point.<sup>325</sup>

8.15.2. RVR seeks to include deemed approval of ‘specified works’ within section 17 of Part 3 of Schedule 8 of the protective provisions of the draft Order. The EA considers that 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.’*

8.15.3. In light of that, the EA has requested that the protective provisions be amended as per its submitted version to include ‘deemed refusal’ as set out in Part 3(17) of Schedule 8 of the draft Order.

9. **THE CASES FOR OTHER OBJECTORS WHO DID NOT APPEAR AT THE INQUIRY**

9.1. I have had regard to the large number of written representations provided by objectors to the Order scheme (including petitions<sup>326</sup>). Key areas of objection cited in the letters of objection relate to: economic harm and absence of economic benefits; level crossing impacts on traffic and safety at level crossings; environmental impacts; inappropriate use of compulsory acquisition; flood risk; inadequate parking in Robertsbridge; funding of the Order scheme; and, inadequate/out-of-date documentation.

9.2. Where the submissions made by other objectors, who relied on written representations only, reflect matters raised by those who appeared at the Inquiry, I do not repeat them in detail here. The gist of the other material points made by objectors, who made written objections but did not appear at the Inquiry, are as follows.

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<sup>325</sup> OBJ/178-1.

<sup>326</sup> See OBJ/0801 (includes 200-600 & 801-973).

- 9.3. In 1967, the Secretary of State refused to make a Light Railway Order extending the line to Robertsbridge. In her letter dated 16 October 1967, Barbara Castle's concerns included whether the railway would be sufficiently profitable to sustain its maintenance obligations and the view that the benefits of the Order scheme would be outweighed by the effect on road traffic and other factors such as the belief that there would need to be consequential public expenditure on three dual carriageway bridges.<sup>327</sup>
- 9.4. Allowing RVR, which is not a public body, to benefit from compulsory purchase powers using a TWAO would be an abuse of the process.<sup>328</sup>
- 9.5. The British Horse Society conveyed the dismay expressed by local horse riders regarding the proposed railway crossing of bridleway S&R 36b, which they feel would introduce a significant hazard in to one of their comparatively few currently safe off road routes. In the event that the Order is made, the British Horse Society would expect that the guidelines published by ORR for crossings at grade for bridleways would be followed together with the British Horse Society's published recommendations for level crossings.<sup>329</sup>
- 9.6. Noise and air pollution emitted by the trains associated with the Order scheme would harm the residential and countryside environments.<sup>330</sup>

## 10. **THE CASES FOR OTHERS WHO APPEARED AT THE INQUIRY**

### 10.1. **REP/17-Office of Rail and Road (ORR)**

#### 10.1.1. ***SoM3)a)-Level crossings***

- 10.1.1.1. ORR is the non-ministerial government department with duties of oversight and enforcement of health and safety in relation to railways, tramways and certain forms of guided transport. ORR's powers in the health and safety field are largely derived from the *Health and Safety at Work Act 1974* (HSWA) and relevant statutory provisions to that Act, as well as some other specific Acts such as the *Level Crossings Act 1983* (LCA) and its associated regulations. ORR has duties to regulate the efficient performance of Highways England, but has no role in road safety such as investigation of highway safety incidents or offering road safety advice.
- 10.1.1.2. ORR's delegated functions in relation to the LCA are principally assessing and issuing Level Crossing Orders on behalf of the Secretary of State. This involves assessing both the safety of proposed crossing arrangements as well as making a consideration of the effects on convenience of road users if the crossing is necessary.

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<sup>327</sup> OBJ/192 and OBJ/1002 Statement of Case.

<sup>328</sup> Various objectors, for example OBJ/615.

<sup>329</sup> OBJ/1034 and others e.g. OBJ/157.

<sup>330</sup> See INQ/103 e.g. OBJ/115, 119, 123.



*ORR Policies and Guidance*

- 10.1.1.3. ORR has a long established policy that new level crossings should only be considered appropriate in exceptional circumstances because of the risk they introduce to the railway. This is consistent with eliminating risk as the priority in a hierarchy of risk control. ORR clarified what it means by exceptional circumstances in its internal process for considering proposals for new level crossings (RIG-2014-06), which was updated in 2018. There would only be exceptional circumstances where there is no reasonably practicable alternative to a level crossing at the location in question. ORR would consider an alternative to be reasonably practicable unless it can be demonstrated that the cost is grossly disproportionate when weighed against the safety benefits. The test of reasonable practicability is not solely a numerical calculation, the disproportion figure is one of a range of factors that ORR considers such as the operating method and characteristics of the railway, the road and traffic characteristics, and the physical practicability of alternatives.
- 10.1.1.4. The assessment of whether the alternatives to a level crossing are reasonably practicable should be informed by as much information as can be gathered on the costs of constructing and operating each alternative; the costs of constructing and operating a level crossing; and, the cost of the risk created by the level crossing in so far as it can be estimated in terms of the potential for fatalities and injuries.
- 10.1.1.5. The initial development of the RVR proposals took place from around 2009 when ORR first set out the policy that there should be no new or reinstated crossings on the mainline railway. ORR subsequently updated the policy in 2014 in the light of emerging incidents to extend this view to all types of railway, including heritage, and introduced the terminology of 'exceptional circumstances'. It is against this version of the policy that RVR has developed its final proposals.
- 10.1.1.6. It is the application of this policy in cases like RVR where careful exploration of the issues of Reasonable Practicability and Gross Disproportion must be made to decide if the safety disbenefit of creating a level crossing are substantially outweighed by the costs of creating the practicable alternatives. As noted above this is not solely a numerical test and is largely a qualitative test that considers the many factors involved at each specific location. Additional information on the principles of '*Reasonable Practicability and Gross Disproportion*' is given in Appendix A of ORR's initial Statement of Case.<sup>331</sup>
- 10.1.1.7. ORR also provides guidance for the operators and managers of level crossings on minimum standards to be achieved, guidance for those operating 'user worked' level crossings, and crossings on farms.<sup>332</sup>

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<sup>331</sup> ORR Statement of Case Page 12 of 18.

<sup>332</sup> ORR Statement of Case-Level Crossings: A guide for managers, designers and operators, December 2011.

*ORR's approach to the RVR evidence base*

- 10.1.1.8. The evidence that ORR has used to form the opinion comprises submissions made to it by RVR in July, September, November and December 2019 and then February and April 2021.
- 10.1.1.9. ORR visited the sites of the road crossings most recently on 19 July 2019, and previous visits had been made in July 2009 and November 2010. ORR has not visited the location of the bridleway.
- 10.1.1.10. ORR has accepted the cost information provided by RVR and has not verified the values. It has made its own estimates of the safety performance of the proposed level crossing arrangements. This is because the information provided by RVR was drawn from NR data relating to a type of level crossing which ORR believes was not directly comparable to its proposals. ORR's safety performance estimate was developed in two stages. Firstly, it identified what it considered the closest comparable crossing type on the mainline network (where the train speed is comparable). Then it incorporated a weighting to reflect the fact that there are features of the heritage operation which cannot be changed and which potentially increase the risk. These features relate to the different performance characteristics of heritage locomotives and lower crashworthiness of heritage rolling stock.
- 10.1.1.11. ORR notes that RVR's figures for the cost of level crossing options reflect a degree of unpaid or low cost labour from within the heritage company's own resources. This has the effect of reducing the cost of a level crossing alternative when compared with the other engineering solutions which would need to be delivered almost entirely by professional external contractors. ORR has not sought confirmation of the suitability of the in-house resource and has taken at face value that work would be delivered to expected standards.
- 10.1.1.12. The proposed route of the new railway is through an AONB and adjacent to a river in a floodplain. Both these factors appear to create significant additional costs for engineering solutions other than level crossings. ORR has accepted that these factors influence the costings under consideration as part of the assessment of reasonable practicability and draw this to the attention of the Inquiry as these are not factors on which ORR can consider as part of its assessment.
- 10.1.1.13. ORR has excluded assumptions on maintenance costs as part of its consideration of gross disproportion. This is partly to simplify the calculations and ensure that it is clear that the data on gross disproportion is an indicator and not an exact forecast figure, and partly to avoid making assumptions on forward maintenance costs for the various options that are not substantiated by good evidence. The figures for maintenance are likely to be dwarfed by the capital costs for the various works options anyway, so this is considered an appropriate assumption in this case.
- 10.1.1.14. ORR's comments are restricted to the railway safety aspects of the proposed crossings and to a limited extent the suitability of the barriers,

signs and signals for road traffic. It cannot offer a wider view on the road safety aspects of the proposals.

*ORR opinion on the proposals*

- 10.1.1.15. On the more general point of the railway proposals overall, ORR would not have any objection as long as the project follows good practice in the industry and delivers an infrastructure and operational capability that is compatible with the KESR with which it would create an operational connection. ORR would expect to engage with the project as part of its normal inspection process to monitor development of the works, and make use of its normal regulatory tools to deal with any issues that arise where it felt risks were not being reduced to as low as is reasonably practicable.
- 10.1.1.16. ORR's views are principally directed to the safety of the level crossing proposals. If ORR were solely considering an application for Level Crossing Orders using its delegated functions in relation to the LCA, and were the sole party making the determination, then it may take both safety and convenience issues into its considerations. However this is not such a case, and ORR believes that the local Highway Authority and HE are better placed to make assessment and comment on the convenience impacts of the proposed crossings of the three roads and the bridleway and that it is then for the Inquiry to take the holistic view of the proposals.

*Northbridge Street*

- 10.1.1.17. Introducing a level crossing at Northbridge Street would introduce a new and therefore increased safety risk. However, there does not appear to be a reasonably practicable alternative to a level crossing based on the information that the ORR has been provided with and a tolerably safe crossing arrangement could be created.<sup>333</sup>

*A21*

- 10.1.1.18. Introducing a level crossing on the A21 would introduce a new and therefore increased safety risk.
- 10.1.1.19. ORR considers that the arguments in the case of the A21 crossing are more finely balanced in terms of whether the costs of an alternative are grossly disproportionate. Initial opinion was that in an overall context the case was not entirely convincing. However, further consideration and discussion has established that it is ORR's opinion there is a degree of gross disproportion between the costs of a level crossing and the cheapest form of grade separation, and that a tolerably safe level crossing could be created. Initially it appeared that the form of crossing controls suggested by the railway would be unusual and perhaps not the ideal solution. However, as a result of clarification provided by RVR, ORR is satisfied that the proposed operation of the crossing is consistent with those seen on the mainline railway and would appear to be an

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<sup>333</sup> Mr Raxton oral evidence.

arrangement that reduces risks to as low as is reasonably practicable. ORR also thinks that there are wider road safety issues which fall outside of its remit and are more appropriate for HE to comment on.

10.1.1.20. So ORR is satisfied that in railway safety terms the test of exceptional circumstances (as defined in its policy) has been met and that an alternative to a level crossing is not reasonably practicable on the basis of railway safety issues. ORR acknowledges that there are wider issues related to highway safety that it is not competent to comment on, and various environmental impacts of alternatives to crossings that it is also unable to offer a view on, and that it is quite properly the role of the Inquiry to consider the wider issues.

10.1.1.21. If the Inquiry leads to a recommendation of a crossing at this location then ORR would wish to explore further with RVR what the most appropriate crossing control and operation arrangements would be. In any case, this is a stage that ORR would expect to engage in as a normal part of the Level Crossing Order process.

*Junction Road*

10.1.1.22. Introducing a level crossing at the B2244 would introduce a new and therefore increased safety risk. However, there does not appear to be a reasonably practicable alternative to a level crossing based on the information that ORR has been provided with and a tolerably safe crossing arrangement could be created.<sup>334</sup>

*Footpath Salehurst and Robertsbridge 31*

10.1.1.23. ORR supports RVR's proposal to divert the footpath beneath the railway alignment and it expects that provisions would be made in the draft Order for the diversion of the footpath to avoid an at-grade crossing. ORR would have significant reservations if there were proposals to create an at-grade foot crossing in such close proximity to the A21 crossing location. Footpath crossings on other railway systems do not generally have a good safety record on average; this is partly due to user behaviour and partly to infrastructure issues such as poor sighting.

*Bridleway Salehurst and Robertsbridge 36b*

10.1.1.24. RVR has not demonstrated the case for an at-grade level crossing at the bridleway, as it is likely that a bridge to take the bridleway over the line would be reasonably practicable in physical and cost terms. ORR notes that there may be additional issues in relation to land take and visual impact that the Inquiry may wish to consider but which are outside of ORR's consideration.

10.1.1.25. RVR has now provided ORR with a quote from RDC dated 13 August 2020 making clear that it could not accept the visual intrusion of a bridge to carry the bridleway over the railway in planning terms given the location. This leaves a consideration for the Inquiry as to whether

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<sup>334</sup> Mr Raxton oral evidence.

such a specific objection constitutes a 'practicability' issue in the test of reasonable practicability which ORR would normally apply in health and safety considerations.

- 10.1.1.26. ORR has spent some time exploring the risk data that is available in relation to bridleway crossings. All of this comes from the UK mainline railway which operates at significantly higher speeds than those proposed for the Rother Valley Railway route, and across a diverse range of physical locations many of which will be very different to the proposed location on the Rother valley Railway route where the line is straight, and sightlines would be good.
- 10.1.1.27. The mainline data itself is based on a degree of statistical estimation by the Rail Safety and Standards Board given that the root causes of events are not always clear. While it is possible to estimate the risk outcomes where trains and people do come together, what is difficult to estimate is the level of usage of such crossings, and hence draw an estimate of overall risk.
- 10.1.1.28. Attempting to extrapolate from the detailed data on precursors and events does not generate meaningful numerical outputs, and this underlines the position set out in Appendix A of ORR's 31 January 2020 Statement of Case that wider qualitative factors are more important.
- 10.1.1.29. It seems likely that on a railway with a relatively straight alignment, good sightlines, properly set up and maintained warning equipment, and a good crossing surface, that a tolerably safe crossing arrangement could be created. It remains of course ORR's view that not having a level crossing will always be a safer situation, but that does not mean that the residual safety risk of such a crossing cannot be delivered with risks reduced to as low as is reasonably practicable and at a tolerable level.
- 10.1.1.30. ORR's view remains that it is not calculated data that should be the deciding factor in these cases. A more holistic view needs to be taken of the surrounding issues, including for example the view of the local authority, and whether the wider public benefit of a crossing is acceptable for the related level of safety risk.
- 10.1.1.31. It is important to remember that the law does not prevent an increase to risk, provided that it can be demonstrated that the level of risk has been reduced to as low as is reasonably practicable.
- 10.1.1.32. ORR has noted the objections of the local authority to the creation of a grade-separated crossing of the railway and bridleway, which appears to affect the practicability position that ORR took previously. If it is necessary for the bridleway to remain, ORR believes that a tolerable safe crossing using appropriate technology could be created, but it is for the Inquiry to decide if the residual risk of an at-grade crossing is outweighed by the benefits of the creation of the railway.

*Private user worked crossings*

- 10.1.1.33. RVR has not set out the case for the user worked crossings. These crossings should be avoided if at all reasonably practicable and

they refer the Inquiry to the poor safety record of such crossings on the mainline railway. While crossings on the mainline generally experience far higher levels of train movements and at much higher speeds than is proposed here, there is evidence that such crossings on minor railways also suffer from levels of user misuse that make them undesirable. ORR recommends that the railway and landowners be required to come to agreement on alternative methods of access that do not require at-grade crossings of the railway route.

- 10.1.1.34. RVR has clarified that it would seek to minimise the number of any such crossings that need to be put in place to maintain access to severed land. It has agreed that the provision of alternative routes of access would be considered where situations are appropriate. Importantly it acknowledges that any decisions would still be subject to RVR's overriding legal duties to undertake optioneering and risk assessment to deliver solutions that reduce risks to as low as is reasonably practicable.
- 10.1.1.35. RVR acknowledges the need to carefully consider the locations where any such crossings might be required relative to other railway features to minimise the risk of train crew distraction. It notes the potential to limit train speeds on approach if required, and potentially providing locks on the gates to restrict use to authorised users.
- 10.1.1.36. Many crossings similar to those that might be required by RVR exist on other heritage railways, and on the mainline network, and these can be constructed and used in a tolerably safe manner. Many of those current crossings have little or no advice for users beyond signage warning them to look both ways before crossing; it is features such as this that lead to the incidents and accidents that do occur. RVR's documentation does now give commitments to providing appropriate instructions and advice to users and visual signals to approaching train crew of gate position.
- 10.1.1.37. ORR's position remains that it prefers that UWCs are avoided by RVR and landowners coming to agreement on alternatives, but if this is not possible, for the number to be kept to an absolute minimum. RVR has stated that it would take a risk-based approach to this issue, by demonstrating that alternative access was not reasonably practicable and that risks have been reduced to as low as is reasonably practicable, which is the legal requirement.

*Form of level crossings*

- 10.1.1.38. In consideration of the Order scheme overall ORR advises that regardless of the technology and operating methods being proposed by the railway in its documents, that if the crossings are authorised through the draft Order, then ORR would expect that the railway would install the highest level of protection at crossings that was reasonably practicable. ORR would expect to have further discussion on the type and detail of any crossings as part of the project development and the drawing up of appropriate Orders under the LCA.

*Open points to be resolved*

- 10.1.1.39. The most significant issue for ORR remains the uncertainty over the numbers and types of private UWCs that RVR has suggested. These represent a high risk to users if not used correctly; experience on other railways suggests that the user compliance with safety procedures can be extremely poor leading to collisions with serious consequences.
- 10.1.1.40. ORR would prefer in the first instance for there to be no such crossings.
- 10.1.1.41. The documents sent to ORR give no indication that any consideration has been given to the provision of 'cattle creeps' beneath the railway. Given the expected need for flood alleviation across the railway alignment these may be a practicable option at some locations.
- 10.1.1.42. If the avoidance of some UWCs is not reasonably practicable by providing access from other points, then ORR would encourage that the number of such crossings is minimised and that a commitment is obtained from the railway to provide some form of appropriate user warning system to the crossings.
- 10.1.1.43. In all cases, if the outcome of the Inquiry is to support the proposals including the creation of the road, bridleway and private UWCs, then ORR would expect to engage in further discussion with RVR on the exact details of each crossing and the protective arrangements for road and rail users at each location. This would include where appropriate the consideration of applications for Orders under the *Level Crossings Act 1983*.
- 10.1.1.44. ORR notes the specific reference to the LCA in section 15 of the draft Order and these are powers delegated to ORR by the Secretary of State. The Law Commissions for England and Wales, and for Scotland had recommended to the Department for Transport in 2013 that the current regulatory regime around level crossings should be modified which would very likely have led to the LCA being replaced. However, in May 2018 the Department clarified that it wished to take forward the spirit of the recommendations through administrative process change rather than regulatory reform. As a result the LCA is likely to stay in place for the foreseeable future, certainly over the likely period of the development and construction of this proposed railway. The ORR can offer no advice on the long term impact of referring to specific legislation in the Order, for example if the LCA were to be revoked at some point in the future. The Secretary of State may wish to seek separate advice on this matter.<sup>335</sup>
- 10.2. **REP/11- Salehurst & Robertsbridge Parish Council (SRPC)**
- 10.2.1. ***SoM5)-Local Policy***
- 10.2.1.1. SRPC indicates that it has a responsibility to represent the views of all parish residents. It also has a duty to consider the economic, social and

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<sup>335</sup> REP/17-0 para 49.

environmental health of the parish and the possible effects of any development, whether it be residential, commercial or infrastructural.

- 10.2.1.2. SRPC is not qualified to make a judgement on the possible economic benefits or disadvantages of the proposed RVR development. It notes the theoretical financial projections made in the RVR business case and would agree that, were these to prove correct, the economic benefit to the parish and the businesses operating within it could be significant. SRPC must also consider the effects upon the limited infrastructure currently existing in this rural area which a major development of this kind may have.
- 10.2.1.3. SRPC has specific concerns about a number of issues surrounding the proposed development. It does not seek to go into comprehensive detail on these, as the rationale behind each of them is clearly laid out in other representations. The primary, although not exclusive, issues are best summarised as follows:
- a) The risk of flooding.
  - b) The pressure on parking, a perennial problem within the village of Robertsbridge, arising from the generation of considerable amounts of visiting traffic.
  - c) The effects on the environment, animal habitat and vegetation of construction on a greenfield site.
  - d) The right of the owners of the land and other residents affected by the proposed TWAO to quiet enjoyment of their property.
- 10.2.1.4. In raising these issues, SRPC is guided by the policies adopted in the Neighbourhood Plan. Further details are given below. SRPC acknowledges that the Neighbourhood Plan was primarily concerned with residential housing; but it also addressed commercial development proposals and SRPC believes that the policies cited below are equally applicable to infrastructure projects such as that proposed by RVR.
- 10.2.1.5. The *Salehurst and Robertsbridge Neighbourhood Plan 2016-2028* was created as a result of the Localism Act 2011. It was established following extensive consultation and adopted following a local plebiscite in May 2018. The Plan sought to address potential housing sites within the parish and associated development possibilities, but also sought to address some of the major concerns which the parish already faces, including (although not limited to) continued potential flooding from the River Rother and from surface water; parking difficulties caused by railway commuters, users of the village schools and other visitors; and the absolute need to preserve and enhance the beautiful natural environment within which the parish sits.
- 10.2.1.6. The Neighbourhood Plan seeks to influence development in the area under six different criteria: Economy; Education; Environment; Housing; Infrastructure; and Leisure. It is arguable that the RVR proposal primarily relates to four of these, with both Education and Housing being



to a large extent not directly affected; and, that there are a number of specific policies which should be addressed.

*Economy*

10.2.1.7. Policy EC5 states that tourism development which includes any business activities that facilitate tourism and leisure activities will be permitted where:

- a) *Any new buildings make appropriate use of materials, scale, height, form and signage; and*
- b) *They are in keeping with the rural character of the AONB countryside and settlements.*

10.2.1.8. Policy EC7 states that business development in the parish will be encouraged where:

- a) *It is in keeping with the character of the area and the amenities of neighbouring properties and minimises visual impact through sensitive siting and design*
- b) *It minimises the impact of the proposal on the wider character of the AONB landscape and*
- c) *It will not cause or exacerbate any severe traffic problems and will promote sustainable transport.*

*Environment*

10.2.1.9. Policy EN3 deals with Countryside Protection and the parish's place within the High Weald AONB and states:

*'All development will be considered with regard to the need to protect the landscape character of the countryside, as a whole of the Parish is within the AONB. Proposals which preserve the open character of the important gaps between settlements and which are not detrimental to the Green Infrastructure Network (as identified by RDC) will be supported.*

*In particular it will:*

- a) *Take opportunities to restore the natural function of the River Rother, the Darwell Stream and other watercourses to improve water quality, to prevent flooding and enhance wetland habitats;*
- b) *Respect the settlement pattern of the Parish, use local materials that enhance the appearance of development, and support woodland management;*
- c) *Relate well to historic route ways and not divert them from their original course or damage their rural character by loss of banks, hedgerows, verges or other important features;*

- d) *Not result in the loss or degradation of Ancient Woodland or historic features within it and, where appropriate, will contribute to its ongoing management;*
- e) *Conserve and enhance the ecology and productivity of fields, trees and hedgerows, retain and reinstate historic field boundaries, and direct development away from mediaeval or earlier fields, especially where these form coherent field systems with other medieval features.'*

10.2.1.10. Policy EN4 deals with Conservation of Landscape and Natural Resources and states that *'development will be expected to retain well-established features of the landscape, including mature trees, species-rich hedgerows, watercourses and other ecological networks together with the habitats alongside them and ponds.'*

10.2.1.11. Policy EN8 deals with locally important trees and hedgerows outside the Conservation Area. It makes clear that development will be resisted where it would result in:

- a) *'An unacceptable loss of, or damage to, existing trees or woodlands or hedgerows during or as a result of development unless the benefits of the proposed development outweigh the amenity value of the trees or hedgerows in question.'*

#### *Infrastructure*

10.2.1.12. Policy IN1 deals with loss of parking and states that:

- a) *'Development proposals that would result in the overall net loss of existing on-street and/or off-street parking will generally not be supported.'*

10.2.1.13. Policy IN2 addresses the maintenance and improvement of existing infrastructure and states that new and/or improved infrastructure, including utility infrastructure, will be encouraged and supported in order to meet the identified needs of the parish, subject to the following criteria:

- a) *The proposal would not have significant harmful impacts on the amenities of surrounding residents and other activities;*
- b) *The proposal would not have significant harmful impacts on the surrounding local environment; and*
- c) *The proposal would not have significant impacts on the local road network.*

#### *Leisure*

10.2.1.14. Policy LE3 deals with new leisure or community facilities and states that proposals will be supported subject to the following criteria:

- a) *The proposal would not have significant harmful impacts on the amenities of surrounding residents and other activities;*

- b) The proposal would not have significant harmful impacts on the surrounding local environment;*
- c) The proposal would not have unacceptable impacts on the local road network and will actively promote access by sustainable transport; and*
- d) The proposal would adequately address surface water run-off issues.*

10.2.1.15. SRPC considers that these Policies should be taken into account by the decision maker.

## 11. **THE CASES FOR OTHERS WHO DID NOT APPEAR AT THE INQUIRY**

11.1. Where the submissions made by others reflect matters raised by parties who appeared at the Inquiry, I do not repeat them in detail here. The gist of the additional material points made by other parties, who made written representations but did not appear at the Inquiry, were as follows.

### 11.2. **REP/15-Rother District Council (RDC)**

11.2.1. RDC received planning application Ref. RR/2014/1608/P in June 2014 together with an associated ES 2014. The local planning authority indicates that it acted positively and proactively in determining the application by identifying matters of concern within the application (as originally submitted) and negotiating, with the applicant, acceptable amendments to the proposal to address those concerns. The Council's Planning Committee considered the application in March 2017 and decided to grant planning permission Ref. RR/2014/1608/P subject to conditions, in accordance with the recommendation of its Planning Officer. The Council was satisfied that the planning application was in accordance with the Development Plan, including saved Policy EM8, having had regard to the mitigation measures put forward, consultation responses and the environmental information provided. The Council has indicated that the conditions attached to the planning permission, which include a number of pre-commencement conditions, were considered crucial to the granting of planning permission.

## 12. **INSPECTOR'S CONCLUSIONS**

### 12.1. **Introduction**

12.1.1. The purpose of this report is to allow the Secretary of State to come to an informed view about whether the draft Order should be made.<sup>336</sup>

12.1.2. In support of the Order, RVR cites benefits of the railway, which it considers would be realised. However, the matters to be 'weighed in the balance' when determining the public interest are not limited to potential benefits of the railway, whilst understandably highlighted by RVR. The Secretary of State may need to address a wide range of issues and policies, in deciding whether it is in the public interest to grant the powers applied for in a TWAO, including taking due account of any objections made, providing the issues raised are relevant to the particular powers being sought in the Order. For example, such matters may include the likely impact of RVR acquiring rights over the land of others. The government's *Guidance on Compulsory purchase process and The Crichel Down Rules (2019)* confirms, amongst other things, that: 'A compulsory purchase order should only be made where there is a compelling case in the public interest'; and, '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'.<sup>337</sup> The SoM sets out the matters upon which the Secretary of State wishes to be informed.

### 12.2. **SoM1)- The aims and the need for the proposed Order and the justification for the particular proposals, including the anticipated transportation, environmental and socio-economic benefits**

12.2.1. The aim of the draft Order is to enable the completion of the restoration of a railway line between Robertsbridge and Tenterden that was closed in 1961. The section of the line between Bodiam and Tenterden has been reinstated<sup>338</sup> and it is operated as a heritage railway and tourist attraction by KESR. In addition, land has been purchased and sections of track have been laid at either end of the route between Robertsbridge and Bodiam<sup>339</sup>. The proposed Order is needed to provide statutory authority for RVR to maintain those two existing lengths of line: Bodiam to Junction Road at Udiam; and, Robertsbridge Station to Northbridge Street. It would also authorise RVR to construct and maintain the missing section of line between Junction Road at Udiam and Northbridge Street in Robertsbridge.<sup>340</sup> Without the Order the line would remain split into two separate parts, with the section operating as KESR, to the east, disconnected from the main line station at Robertsbridge. RVR currently

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<sup>336</sup> For example, INQ/6 DfT 'Transport and Works Act Orders: a brief guide' para 4.

<sup>337</sup> INQ/8.

<sup>338</sup> RVR/27 sheet 1.

<sup>339</sup> RVR/27 sheet 1 Railway nos. 1 and 2.

<sup>340</sup> RVR/66 para 1.32.

anticipates that timetabled passenger services on the completed line would involve around 173 operating days per year.<sup>[6.5.3.4]<sup>341</sup></sup>

12.2.2. **Benefits-Economic**

12.2.2.1. The ES indicates that it draws on the findings of two major studies of the local economic impact of the Order scheme undertaken by the International Centre for Research and Consultancy, Manchester Metropolitan University (MMU). The first study (MMU1) was completed in 2007 and the second in 2013 (MMU2). The ES identifies that a review of the socio-economic aspects of the Order scheme, taking into account the conclusions of the MMU reports, indicated that socio-economic benefits are unlikely to accrue over a much wider area than Salehurst ward, which includes Robertsbridge and Bodiam Castle, and so the primary focus of the assessment was the impacts in the context of the population of the Salehurst ward.<sup>342</sup>

12.2.2.2. The ES concludes that:

*'the baseline exercise has clearly identified that the local impact area does not suffer any serious deprivation...*

*the local socio-economic impacts of the Scheme would be minimal, though very marginally positive amongst certain receptors in the impact area. The benefits would arise from improved connectivity for inward tourism that would translate into a small increase in local jobs in this sector. Some of these jobs would certainly be taken by local people. However, given the very low unemployment rates, there is unlikely to be any deadweight in the local area and in terms of additionality this increase in employment is insignificant...*

*There could be a small number of potential losers in terms accessibility because of the level crossings issue. These appear to represent minimal impacts and are likely to be inconsequential in terms of overall local impact...*

*Overall the Scheme in terms of socio-economic impacts is neutral to minimal positive.'*

12.2.2.3. However, the 2021 ES Update Report indicates:

*'the likely positive effects of additional visitor spending are considered but not explicitly measured by the ES chapter. These could well be significant positive effects of the Proposed Scheme and are considered in more detail by the Steer report on the Rother Valley Railway Economic Impacts...*

*The work by Steer published in September 2018 has a wider brief than the ES chapter. Its purpose is to assess the direct, indirect and induced economic impacts of both the Rother Valley Railway*

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<sup>341</sup> RVR-W9-1 para 13.1.

<sup>342</sup> RVR/25 pages 178-180.

*Reinstatement Project (the Proposed Scheme) and the wider Kent and East Sussex Railway (KESR) investment programme that would be unlocked by the completion of the missing link of the Rother Valley Railway between Bodiam and Robertsbridge...*

*The core impact area used by the Steer study in the measurement of economic benefits is Rother District, although some economic impacts are also estimated at regional and national scale.'*

12.2.2.4. The Steer '*Rother Valley Railway Economic Impacts Report, 2018*', (Steer Report) forecasts that the Rother Valley Railway would generate local economic benefits of up to £35 million over the two-year construction period (2019-2020) and the first ten years of operation, and up to £4.6 million of local economic benefits per year from 2030.<sup>343</sup> These figures form the basis of the benefits cases cited by a number of the supporters of the proposal, including the local MP.<sup>[4.3.1.3]</sup> However, at the Inquiry, RVR confirmed that the generation of a large proportion of those benefits would be dependent on future investment in KESR following delivery of the Order scheme, an investment plan described as aspirational by RVR.<sup>[6.13.1.2]</sup> Given the uncertainty associated with that future investment plan, I consider that little weight is attributable to the potential associated benefits.

12.2.2.5. The benefits cited by RVR at the Inquiry included local economic benefits associated with the two-year construction period of £6.5 million and a central forecast of ongoing local economic benefits from the Order scheme of £1.08 million.<sup>[3.2.21-22]</sup> This would equate to around £17 million over the two-year construction period and the first ten years of operation, and up to £1.08 million per year from then on, of which £1.06 million is visitor spend.<sup>344</sup> The Landowners dispute the £1.08 million figure on the basis that the underlying assumptions in relation to visitor numbers, trip spend and persistence of the benefits are overly optimistic.<sup>[6.13.1.2-3]</sup>

*Visitor numbers*

12.2.2.6. There is no dispute that the extension of KESR to Robertsbridge would significantly increase the population within the 90 minute car travel and 120 minute rail travel catchments of KESR, including some areas with relatively high populations, such as parts of London. Furthermore, whilst this would be likely to increase visitor demand to some extent, it would not be directly proportional to the increase in catchment population and would be likely to be dependent on a number of factors, including distance.<sup>345</sup><sup>[3.2.6-10, 3.2.13]</sup> As identified by the Landowners, demand or volume is likely to decrease rapidly as the distance from a source increases.<sup>346</sup><sup>[6.13.1.12]</sup>

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<sup>343</sup> RVR/9 page i.

<sup>344</sup> RVR/9 page v table 1-2 and page iv Table 1.1.

<sup>345</sup> RVR/W2/4 paras 42-47, OBJ/1002/EE/1 para 4.10-4.16.

<sup>346</sup> OBJ/1002/EE/1 para 4.16.

- 12.2.2.7. The Steer Report makes a 'central case' assumption that additional visitor demand arising from the Order scheme would comprise a 15% increase from the base KESR demand (around 13,300 visitors<sup>347</sup>), due to the new mainline rail access opportunity and expanded highway catchment associated with access from Robertsbridge rather than Tenterden, and a further increase of 5% in Bodiam Castle demand (some 8,800 visitors<sup>348</sup>), due to the new mainline rail access opportunity for those without access to a car. This equates to a total increase of around 22,000 visitors per annum<sup>349</sup>, which represents an overall increase of 25% above 2017 KESR demand.
- 12.2.2.8. In the context of assessing transport related economic impacts, the Steer Report estimates that 1% of existing trips to Bodiam Castle would transfer from car to rail access, as a result of the Order scheme. Whilst RVR indicates that it would equate to around 1,410 visitors<sup>350</sup>, it confirms that they have not been treated as new visitors for the purposes of the Steer Report's economic assessment, as they are not new visitors to the area. To my mind, this would suggest that, if consideration is given to all additional visitors to KESR, the total would be 23,410 rather than 22,000, which would equate to an overall uplift of 26-27% rather than 25%.<sup>[3.2.16, 6.13.1.19-20]</sup>
- 12.2.2.9. The Steer Report sought to benchmark its approach with comparable heritage railways with links to the national rail network in England. They include, amongst others, the Bluebell Railway, the NNR and the NYMR. It identifies the Bluebell Railway as the most similar to KESR in terms of passenger numbers, proximity to London, a recent direct connection to the national rail network and the use of the track by a single operator.<sup>351</sup> In addition, although not referred to by the Steer Report, I understand that Sheffield Park and Garden, a popular National Trust property, is within reasonable walking distance of Sheffield Park Station on the Bluebell line, and may well attract visitors to that line in the way the Steer Report anticipates Bodiam Castle would attract visitors to RVR.<sup>[6.13.1.17]</sup>
- 12.2.2.10. The Steer Report indicates that Bluebell Railway experienced a 32% boost in passenger numbers in the 'year following connection' to the national rail network at East Grinstead, and as around 84% of the additional visitors started their journey at East Grinstead, the new rail connection helped contribute to an overall 27% uplift in demand.<sup>352</sup> However, whilst the Steer Report indicates that visitor demand accessing the Bluebell line directly by rail at East Grinstead has since been around 25,000 trips per annum, in the 4 years since the 'year following connection', overall visitor numbers to the Bluebell Railway

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<sup>347</sup> 15% of 88,400 base demand on KESR in 2017= 13,300 visitors per annum.

<sup>348</sup> 5% of 176,000= 8,800 visitors per annum all by mainline train.

<sup>349</sup> 13,300+8,800.

<sup>350</sup> Little different to the Landowners' assessment of 1,760 [see footnote to para 6.13.1.20].

<sup>351</sup> RVR/9 para 4.31.

<sup>352</sup> RVR/9 para 4.32

have been below the level in the year of connection.<sup>353</sup> Therefore, the boost in overall visitor numbers, which is the key factor when calculating the economic benefit of the connection to the area, has not been maintained. To my mind, this may well be explained by the competitive tourist market heritage railways operate within, as acknowledged by RVR and Network Rail.<sup>[6.13.1.15]</sup>

- 12.2.2.11. Whilst RVR and the Landowners consider that the Bluebell Railway is the best comparator, RVR has also made reference to passenger uplift following National Rail connections associated with the NNR and NYMR. Whilst the 'year following connection' boost appears to have been sustained in those cases, it was only around 12% at NNR and 15% at NYMR, far lower than the initial boost seen at the Bluebell Railway and the overall level assumed for the Rother Valley Railway.<sup>[6.13.1.16]</sup>
- 12.2.2.12. Having had regard to the identified comparators, in my judgement, it is likely that there would be a boost in visitor numbers in the year following connection, as has been seen elsewhere. However, given the similarities between the Bluebell and KESR lines, I consider it likely that they would be in direct competition for visitors, and so any initial boost would be unlikely to be as significant as that seen at the Bluebell line. In my judgement, it would be conservative to assume a boost of 15% in the year following connection, broadly comparable to the NNR and NYMR trends. Furthermore, given that KESR starts from a considerably lower customer base than the Bluebell Line, the significant increase in its potential catchment population as a result of the Order scheme and the popularity of Bodiam Castle as a visitor destination, I consider it likely that the initial boost of 15% would be sustained thereafter.<sup>[6.13.1.16]</sup><sup>354</sup>

*Visitor spend*

- 12.2.2.13. RVR's forecast visitor spend depends upon an average spend of £42.55 per visitor, which is based on a blended average of: 93% day trippers at a rate of £31 each; and 7% overnight visitors at a rate of £196 each (2018 prices). There is relatively little between RVR and the Landowners in relation to an appropriate day tripper rate; the latter considers that a rate of £28.90 per person would be appropriate.<sup>[3.2.17]</sup> However, in relation to overnight visitors, the difference between them is greater. For each overnight visitor RVR seeks to claim the benefit of expenditure over an average stay of four whole days. This is on the basis that if an overnight visitor is induced to visit the area because of the Order scheme, then their whole economic contribution to the area should be regarded as directly attributable to it. The Landowners consider that expenditure for only one of the four days of the trip would be reasonably attributable to the Order scheme.<sup>[3.2.18]</sup>
- 12.2.2.14. As indicated above, RVR has estimated that the vast majority of the new visitors who are induced to visit the area as a result of the Order scheme would arrive at Robertsbridge by main line train (85%). From there they

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<sup>353</sup> OBJ/1002/EE/1 page 17 Tables 7 and 8.

<sup>354</sup> OBJ/1002/EE/1 para 6.11.



would be able to access the heritage railway and both Bodiam Castle and Tenterden town centre, which are each a short walk from a station on the line. However, whilst there are other attractions in the Rother Valley, I understand that they are not as easily accessible on foot from KESR stations or by other means, such as by bus<sup>355</sup>.<sup>[6.13.1.23]</sup> Furthermore, RVR has indicated that, as a result of the Order scheme, in a day trip of eight or nine hours it would be possible to complete a round trip from London by train to Robertsbridge and on to Tenterden by heritage rail with 1.5-2.5 hours to spare.<sup>356</sup> Having been to both Tenterden and Bodiam Castle, I consider that time would be sufficient to visit those attractions. RVR acknowledges that overnight visitors would be unlikely to travel on KESR for more than one day of an average 4 night stay.<sup>[6.13.1.25]</sup>

- 12.2.2.15. Under the circumstances, I consider it unlikely that the limited improvement in connectivity provided by the Order scheme would be the factor that induces overnight visitors to come to the area for more than a day. Therefore, in my view, it would be unreasonable to attribute more than one day of expenditure associated with an average 4 night trip to the Order scheme. This would reduce average spend to around £32 per visitor<sup>357</sup>, comparable to the £30 per visitor estimated by the Landowners<sup>358</sup>. I have had regard to other Steer Report assumptions, including, an indirect and induced impacts multiplier rate of 1.22; 92% spend retention in the Rother District; volunteer spend of £1,900; and direct employment impacts of £17,900. Taking these together with my findings for visitor numbers, initial operational stage local economic benefits, rather than reaching £1.08 million, would be around £0.5 million.<sup>359</sup><sup>[6.13.1.28]</sup>
- 12.2.2.16. The Steer Report identifies that tourism is a key sector within the East Sussex economy and references a report produced by Tourism South East which indicated that for the Rother District in 2015 business turnover supported by tourism was £292 million, supporting around 4,871 full-time equivalent jobs.<sup>360</sup> The importance of the sector to Rother District's rural economy is also recognised by the *Rother Local Plan Core Strategy, 2014*, and Policy EC6 in particular, which gives encouragement to the enhancement of existing attractions. I understand the opportunities to do so are likely to be limited, the only specific opportunity identified by the reasoned justification for the Policy is the extension of KESR.<sup>361</sup><sup>[4.1.3.3]</sup> Against this background, I consider that the contribution made by the Order scheme to the local economy would amount to a significant benefit, notwithstanding that in the context of business turnover supported by tourism for the whole of the Rother

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<sup>355</sup> RVR-W2-4 para 57.

<sup>356</sup> RVR-W2-4 para 52.

<sup>357</sup>  $0.93 \times £31 + 0.07 \times £196/4$ .

<sup>358</sup> OBJ/1002/EE/1 para 6.12.

<sup>359</sup>  $((15\% \text{ of } 88,400) \times £32 \times 1.22 \times 0.92) + £1,900 + £17,900$ .

<sup>360</sup> RVR/9 page 14.

<sup>361</sup> INQ/61 para 16.33.

District in 2015 the contribution would be relatively small, at around 0.2%.<sup>362</sup><sub>[6.13.1.28]</sub>

- 12.2.2.17. Previous research by the All-Party Parliamentary Group on Heritage Rail in 2013 indicated that '*for every £1 that is spent on the railway, a mean average figure of £2.71 is added to the local economy*', with ratios across the study group ranging from 0.8 to 6.0.<sup>363</sup> RVR suggests that this can be used to sense check the 'bottom up' approach set out above. Using RVR's expected revenue per passenger figure of £18.14, whilst the initial economic value to turnover ratio would fall slightly below the average, it would be well within the range of values reported by the Parliamentary Group<sup>364</sup>.<sub>[3.2.20-21]</sub>
- 12.2.2.18. Steer Report notes that 'Research carried out by Deloitte for Visit England in 2013 suggests that each £54,000 of tourism spend is associated with an additional job.'<sup>365</sup> Applying that to its central local economic benefits estimate of £1.08 million per annum, RVR calculates that it would deliver 20 additional jobs. Using the same factor, my own figure for annual economic benefits would be equivalent to around 9 additional jobs.

*Other economic benefits*

- 12.2.2.19. I acknowledge that the Order scheme would be likely to improve the efficiency and support the viability of KESR, as it would be able to carry the additional passengers at marginal additional cost. However, RVR's evidence is that KESR is viable without the Order scheme.<sub>[6.13.2.4]</sub> Whilst improved efficiency and support for the viability of KESR may enable further investment in KESR and result in additional economic benefits, there is significant uncertainty in relation to those 'aspirational' matters.<sub>[3.2.25-26, 6.13.1.2]</sub> This attracts no weight in my view.
- 12.2.2.20. The £6.5 million local economic benefits from construction of the Order scheme and support of around 34 jobs over the 18-24 months construction period identified by RVR are not disputed by the Landowners and I have no reason to do so.<sub>[3.2.22]</sub>
- 12.2.2.21. RVR acknowledges that there would be journey time disbenefits as a result of the introduction of the proposed level crossings<sup>366</sup>. However, it calculates that the welfare impact upon users of the highway would be small in monetary terms and would be outweighed by welfare benefits related to time savings for visitors who access KESR at Robertsbridge rather than Tenterden, and modal shift from car to rail. Whilst its calculations in relation to these matters have not been disputed, it appears to me that the net benefit would also be small; using a minimum level crossing closure time of 51 seconds and maximum of 112

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<sup>362</sup> OBJ/1002/EE/1 para 6.16.

<sup>363</sup> RVR/9 para 4.89.

<sup>364</sup> Year of opening  $£500,000 \div ((15\% \text{ of } 88,400) \times £18.14) = 2.1$ .

<sup>365</sup> RVR/9 page v.

<sup>366</sup> RVR/9 paras 5.2-6, RVR/W2/1 paras 3.84-3.87.

seconds, it calculates that the net benefit would range from around £21,500-£18,100 per annum (2018 prices).<sup>367</sup> [3.2.23, 6.13.2.2, 8.5.1.4-5]

- 12.2.2.22. Based on its assumptions with respect to increases in rail demand related to KESR, Bodiam Castle and as a result of modal transfer, RVR estimates that the Order scheme would result in additional revenue on the national rail network of around £355,100 per annum.<sup>368</sup> Whilst, in light of my conclusions with respect to visitor numbers, the additional revenue would be likely to be lower, it would nevertheless amount to a notable sum which would contribute towards the viability of the mainline.<sup>[4.3.1.3]</sup>

#### *Conclusion-Economic benefits*

- 12.2.2.23. I consider that the construction and operation of the Order scheme would give rise to a range of economic and employment benefits and, although the operations benefits associated with visitor spend would be more limited than claimed by RVR, they attract significant weight.

#### 12.2.3. **Benefits-Other**

- 12.2.3.1. In keeping with the aims of the Framework, the proposed extension of the railway between Junction Road and Robertsbridge Station would provide an opportunity which is not available at present for visitors to reach the heritage railway by mainline train, a sustainable transport mode. Whilst it is expected that some existing car based trips would transfer to rail as a result, the proportion estimated is small; around 1% of trips to KESR and 1% of trips to Bodiam Castle, which is not significantly different to the findings of EW's survey of a limited number of existing visitors.<sup>[3.9.1, 6.13.2.2, 8.13.8]</sup> However, RVR estimates that only around 15% of its estimated 13,300 uplift in KESR visitors would arrive by car. Even if it were closer to the 50% referred to by the Landowners, the proportion of those visitors arriving by car would still be significantly lower than the existing pattern at Tenterden, where around 80% of existing visitors travel to join KESR by car.<sup>369</sup>

- 12.2.3.2. The Environmental Statement 2021 Update (ESu)<sup>370</sup> indicates that the contribution of some aspects of the construction and maintenance of the Order scheme towards climate change should be regarded as significant, albeit minor adverse. However, appropriate and reasonable mitigation measures are proposed. As regards operational emissions, associated with the use of the extended line by trains and visitor travel, the ESu identifies that any reduction in vehicle distance travelled by existing visitors who would switch to Robertsbridge would be '*largely offset by new car trips generated by the widening of the catchment the Robertsbridge connection would provide*' and '*as a reasonable worst case, the operational emissions will be no worse than a small increase in*

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<sup>367</sup> RVR/9 para 5.27.

<sup>368</sup> RVR/9 para 5.35.

<sup>369</sup> RVR/9 table 5-4.

<sup>370</sup> RVR/70-01 section 17.

*carbon emissions, leading to a negligible effect'*.<sup>[3.2.1, 3.10.3, 3.15.1, 6.13.2.2, 8.1.13 & 8, 8.11.2]</sup>

- 12.2.3.3. By encouraging new visitors, a significant proportion of whom would be likely to arrive by train with little impact on carbon emissions, I consider that overall the Order scheme can be regarded as providing for sustainable tourism, in keeping with the aims of the Framework.
- 12.2.3.4. By improving the accessibility of the heritage line the Order scheme would add to the recreational value of KESR and thereby Bodiam Castle, a property of the National trust, who support the Order scheme.<sup>[3.2.2]</sup>
- 12.2.3.5. A substantial number of volunteers are engaged in the operation and maintenance of KESR and I acknowledge that such activity can provide social benefits, such as new skills, a sense of achievement, the health benefits of steady exercise, wellbeing and social interaction for the retired or those struggling to find work. However, there is no compelling evidence before me to show that additional opportunities likely to be associated with the Order scheme would be significant.<sup>[3.2.2, 4.10.1.16, 4.13.1.1, 6.13.2.4]</sup> This attracts little weight.
- 12.2.3.6. I understand that from time to time NR uses RVR's connection to the main line at Robertsbridge for training purposes and to store equipment. Whilst RVR anticipates that NR may use the facilities provided by the Order scheme for other training purposes, I have not been provided with any compelling evidence to show there is any certainty in that regard or that it would meet a need which cannot be provided for elsewhere.<sup>[6.13.2.3]</sup> I give this potential benefit little weight.

12.2.4. **SoM1)-Conclusion**

- 12.2.4.1. The aim of the draft Order is to enable the completion of the restoration of a railway line between Robertsbridge and Tenterden that was closed in 1961, primarily by enabling the completion of a missing section of line between Junction Road at Udiam and Northbridge Street in Robertsbridge.
- 12.2.4.2. RVR has confirmed that the benefits of the Order scheme would not be offset by any call on the public purse for funding, as the anticipated cost of the Order scheme of £5.3 million is expected to be funded by The Rother Valley Railway Heritage Trust through donations. I will return to this matter under SoM9)a).
- 12.2.4.3. I conclude that the Order scheme would give rise to a range of economic and employment benefits, which together attract significant weight. It would also provide for sustainable tourism, which attracts moderate weight. Other identified benefits are less significant and attract little weight.

12.3. **SoM2)- The main alternative options considered by RVR and the reasons for choosing the proposals comprised in the scheme**

- 12.3.1. The majority of the KESR line, which had been closed in 1961, has been reinstated, including a short section between Robertsbridge Station and

Northbridge Street, at the western end of the line, and a much longer section between Junction Road, Udiam and Tenterden, to the east, which is operated as a heritage railway.

- 12.3.2. The ES confirms that the aim of the Order scheme is to reinstate the missing section of the line along its original alignment, enabling trains to operate between Tenterden and Robertsbridge, with a connection to the main line network at Robertsbridge. Therefore, the 'do nothing' option would leave the line split into two parts with the section operating as KESR, to the east, disconnected from the main line station at Robertsbridge.<sup>371</sup>
- 12.3.3. No party has put forward an alternative geographical route for the proposed line and I have no reason to believe that such an alternative would meet the aims of the Order scheme.
- 12.3.4. A number of objectors suggest that the route across the A21 should comprise a grade separated crossing.<sup>[8.9.1]</sup> The ES confirms that options to create grade separation of the A21 crossing, together with the proposed at grade level crossing, have been considered. They are set out in *A21(T) Crossing Options Feasibility Report* by ARUP.<sup>372</sup> The options assessment considered the feasibility and industry standard construction costs of the proposed level crossing and 3 grade separated options to provide a like for like comparison. It concluded that the proposed at grade crossing would be cheaper than the least expensive grade separated option by a considerable margin.
- 12.3.5. In addition, the assessment considered RVR's costed delivery of the proposed level crossing based on its established delivery mechanism, which involves the design work and much of the construction work being undertaken by suitably qualified and experienced unpaid volunteers. ARUP indicate that the RVR costing is based on quotes where applicable as well as its experience of civil works on the KESR, which provide a good level of confidence in the cost estimate.<sup>373</sup> I consider its finding is reasonable and on that basis the cost of the proposed crossing would be very significantly less than any of the grade separated options.<sup>[3.3.2.2]</sup>
- 12.3.6. Whilst some objectors have suggested that the costings should have included other factors, such as maintenance costs, no evidence has been provided to show that this would be likely to have a material impact on the outcome.<sup>374</sup> On the contrary, RVR's Summary Demonstration of Gross Disproportion<sup>375</sup> indicates that it would not, and further support is provided by ORR's view that maintenance costs would be dwarfed by the capital costs, which have been accounted for.

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<sup>371</sup> RVR/25 paras 3.12 and 3.14.

<sup>372</sup> RVR/76.

<sup>373</sup> RVR-W4-1 para 3.1.16.

<sup>374</sup> OBJ/1002/PJC/1 para 10.1.1

<sup>375</sup> RVR/75 document 7.

- 12.3.7. Furthermore, the ES identifies that there are a range of technical reasons why a level crossing presented the most practical solution. It identifies that constraints to a grade separated crossing include:
- a) The creation of unacceptably steep track gradients from a safety perspective either side of the A21 to pass over or under the highway.
  - b) An underbridge would put the railway track under the A21 much lower than the adjacent river. In addition, flooding of the underbridge option would be inevitable and was predicted to occur several times during the course of a year. These events would lead to a deposit of silt and collection of debris along the railway line which would require removal prior to the line re-opening and cause train safety adhesion risks.
  - c) Creation of very significant landscape impacts from deep cuttings or high embankments and potentially significant additional permanent land take requirements.<sup>376</sup>

These matters are not disputed.

- 12.3.8. Against that background, I conclude that it is reasonable for RVR to regard the proposed level crossing option as its preferred crossing solution for the A21.
- 12.3.9. Using a similar approach to that set out above, RVR has provided assessments of the Northbridge Street and Junction Road level crossings and a number of alternatives. This also identified a range of technical reasons why a level crossing presented the most practical solution in each case and that the cost of alternatives would be far higher. I have no compelling reason to dispute those findings and I conclude that it is reasonable for RVR to regard the proposed at grade option as its preferred crossing solution for those highways.<sup>377</sup>
- 12.4. **SoM3)a)- The likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact of the three new level crossings on traffic flows, congestion and safety**
- 12.4.1. In the context of the draft Order, ORR is principally concerned with the safety of the proposed level crossing arrangements. Wider road safety issues and the effects on the convenience of road users associated with the proposed crossings fall outside its remit and are a matter for the Highways Authorities.
- 12.4.2. **Traffic flows and congestion**
- 12.4.2.1. DfT Circular 02/13 indicates that when assessing the impact of development, account should be taken of existing traffic levels as well as

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<sup>376</sup> RVR/25 para 3.13.

<sup>377</sup> RVR/76 documents 3 and 5.

the impact of likely future development.<sup>378</sup> The ESu identifies that following the original Traffic Impact Study in 2011, which was the basis for the traffic data in the ES, an *Addendum to Traffic Impact Study* (TISa) was prepared in 2018<sup>379</sup>, which utilised data from 2010 and 2017 respectively. Both the ES and the TISa took account of committed developments through the application of TEMPRO, which provides forecasts of traffic growth. The TISa showed that traffic flows on the A21 were broadly unchanged, with flows on Junction Road (B2244) and Northbridge Street increasing in line with previous forecast growth.<sup>380</sup>

12.4.2.2. Subsequently, traffic counts have been undertaken in April 2019 and updated traffic data presented for each location in the Review of Traffic and Transport Chapter to the ESu. It generally shows that traffic volumes on the A21, B2244 and Northbridge Street have remained constant or show only minor increases in traffic volume. The ESu concludes that such minimal changes in baseline traffic flow would have no material effect on assessments. Furthermore, it confirms that there are no specific committed developments which need to be accounted for in the future baseline.<sup>381</sup> Whilst my attention has been drawn to plans for some housing development at Robertsbridge in the future, in my view, the likely scale is so limited, that it would be unlikely to result in a material increase in traffic flows.[8.6.3.2, 8.6.4.10]

12.4.2.3. Given that traffic flow levels have been reasonably stable for a significant period of time and in the absence of any compelling evidence to show that this is likely to change significantly in the future, I consider that the basis of the ES transport assessment remains valid.[6.5.2.5]

#### A21

12.4.2.4. In the vicinity of the proposed railway, the A21 forms part of the SRN, which is a critical national asset. Under the terms of its licence, HE is directed to 'protect and improve the safety of the network'. DFT Circular 02/13 provides that proposals must comply in all respects with the DMRB, which sets out details of the Secretary of State's requirements for access, design, and audit, with which development proposals must conform. The DMRB indicates that where an aspect of the works is not covered by existing requirements, a category into which the proposed A21 level crossing falls, a DSA shall be submitted. Departures from the DMRB are considered independently within HE by the SES. Highways Officers outside the SES are not permitted to influence the outcome of those considerations and each Departure is considered on its own merits and based only on the information submitted in support of the application. The acceptability of a design incorporating a Departure

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<sup>378</sup> RVR/HE/07 Department for Transport Circular 02/2013-The Strategic Road Network and the Delivery of Sustainable Development para 25.

<sup>379</sup> RVR/75 page 26-Mott MacDonald Addendum to Traffic Impact Study, 27 November 2018.

<sup>380</sup> RVR/70-06 sections 3.2, 3.4.

<sup>381</sup> RVR/70-06 section 3.6.

cannot be accepted until the Departure is assessed and approved by SES.<sup>382</sup>

- 12.4.2.5. In relation to the proposed A21 level crossing, RVR submitted a DSA to HE in March 2021 and has provided additional supporting information in April 2021<sup>383</sup> and thereafter, in response to feedback from SES.
- 12.4.2.6. For the purposes of the DSA, RVR used the most up to date 2019 traffic flow data, which HE considers provides an appropriate basis for the assessment of the proposals on the highway network. In contrast to the 51 seconds and 112 seconds level crossing closure periods upon which the ES was based, a period of 72 seconds was used. This was based on an assessment undertaken by Atkins, on behalf of HE, which concluded that a minimal timing of 72 seconds may be possible, based on, amongst other things, utilising modern technology. For the reasons given by the Landowners, I consider that the closure period would be unlikely to be shorter than 72 seconds and from time to time may be longer.<sup>[6.5.2.4]</sup> However, when assessing the likely impact of closure, RVR has also taken into account traffic flows on the busiest 15 minutes of the most heavily trafficked day of the year (a Bank Holiday), amongst others.<sup>[3.4.1.5, 6.5.2.1-3]</sup> Taking these factors together, I consider that the DSA assessment of the likely impact is reasonably robust. This is also a view shared by HE in relation to the A21 and this reinforces my view.<sup>[6.5.2.5]</sup><sup>384</sup>
- 12.4.2.7. The distance from the proposed level crossing north to the southbound exit of the Robertsbridge roundabout would be around 120 metres. The southbound entrance to the roundabout would be around 160 metres from the proposed level crossing and some 60 metres further north there is a signalised pedestrian crossing.<sup>385</sup> RVR's modelling, associated with a 72 seconds level crossing closure period and peak traffic 15 minute periods, indicates that there would be southbound queues of some: 420 metres on the busiest Bank Holiday; 178 metres on an April weekday; and, 143 metres on a March weekday.<sup>386</sup> The same modelling also indicates that, on the southern approach to the closed crossing there would be northbound queues of around: 500 metres on the busiest Bank Holiday; and, 109 metres on an April and March weekday.<sup>[6.5.2.2-3]</sup> Furthermore, it estimates that there would be up to around 20 occasions during the course of a day that the crossing closure sequence would be initiated.<sup>[3.4.1.3, 6.5.2.3]</sup>
- 12.4.2.8. However, HE has confirmed that the general flow of traffic along the A21 involves platooning of vehicles and so traffic released when the level crossing opens would tend to catch up with slower moving traffic further along the highway, a view echoed in the ES.<sup>387</sup> Against this background,

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<sup>382</sup> OBJ/782-w2-1 paras 29-32.

<sup>383</sup> RVR/HE/01, INQ/31

<sup>384</sup> INQ/60 para 4.3.3.

<sup>385</sup> INQ/86 and INQ/31 page 21.

<sup>386</sup> RVR/W3-2 page 289.

<sup>387</sup> RVR/34 para 4.5.2.



HE is satisfied that the queues and delays likely to be associated with the operation of the proposed A21 level crossing would be unlikely to adversely affect the free flow of traffic on the A21.<sup>388</sup> I am satisfied that this would be likely to be the outcome based on my own observations of traffic movements on the A21 and the likelihood that queuing traffic would move on reasonably quickly when the level crossing re-opens. Furthermore, I have no compelling reason to disagree with the shared view of RVR, HE and the Landowners that, in terms of congestion, the cumulative residual impact of the Order scheme would not be severe.<sup>[3.4.1.2, 4.9.1.2, 6.5.2.7-8, 6.5.3.7-9, 6.13.1.31, 8.5.1]</sup>

- 12.4.2.9. I conclude that the effect of the proposed level crossing on the free flow of traffic and congestion on the A21 would be acceptable. Insofar as there would be any such effects, they would not weigh materially against the Order scheme.

*Northbridge Street and Junction Road*

- 12.4.2.10. The ES indicates that queues and delays associated with the closure of the proposed crossings on Northbridge Street and Junction Road would be small and I have not been provided with any compelling evidence to the contrary. There is no objection from the relevant highway authority.<sup>[3.4.2.1]</sup> I conclude that the effect of the proposed crossings on the free flow of traffic and congestion on both Northbridge Street and Junction Road would be acceptable. Insofar as there would be any such effects, they would not weigh materially against the Order scheme.

12.4.3. **Safety**

*Level crossing-safety*

- 12.4.3.1. With the intention of giving an indication of the scale of risk inherent in the proposed crossings, the Landowners have made reference to the risk scores for a number of NR's level crossings generated by its All Level Crossing Risk Model (ALCRM). However, ALCRM is not a risk assessment tool, it is a risk ranking tool used by NR to rank its level crossings against one another.<sup>389</sup> Therefore, in my view, it is of little assistance in determining the scale of risk likely to be associated with the proposed crossings. Furthermore, ALCRM risk scores are based on a range of physical and environmental factors, some of which, such as sighting, appear not to have been taken into account by the Landowners when selecting NR level crossings to use as 'comparator benchmarks' for the Order crossings.<sup>390</sup> This casts doubt over the suitability of the level crossings selected as 'comparator benchmarks' and reinforces my view. I give little weight to the Landowners' arguments reliant on ALCRM.<sup>[6.4.6-7]</sup>
- 12.4.3.2. There is no dispute that the proposed introduction of the level crossings on the A21, Northbridge Street and Junction Road would introduce new

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<sup>388</sup> INQ/60 para 4.3.3.

<sup>389</sup> RVR-W8-4 para 39.

<sup>390</sup> OBJ/1002/PJC/1 section 8.2.

and increased safety risks for both rail and road users.<sup>[3.3.1.1, 6.4.4, 6.5.3.5-6, 8.4]</sup> However, as observed by NR, in comparison with its own busy network, with heavy trains travelling at up to 125 mph, up to 24 hours a day, the Order scheme would be characterised by a relatively low number of short trains, running predominantly for only part of the year and at speeds as low as 10 mph at the proposed crossings. In this context, I do not doubt that, in comparison with level crossings on the national rail network, the risk of a catastrophic train accident associated with the Order crossings would be much lower.<sup>[4.8.4.2]</sup> This is supported by the record of reportable incidents for the heritage sector, which I understand show that whilst there were 12 collisions between trains and vehicles between 2011 and October 2019, none resulted in injury to the occupants of the vehicle or train.<sup>[6.5.3.5]</sup><sup>391</sup>

- 12.4.3.3. ORR's policy is that new level crossings should only be considered appropriate where there is no reasonably practicable alternative to a level crossing at the location in question and ORR would consider an alternative to be reasonably practicable unless it can be demonstrated that the cost is grossly disproportionate when weighed against the railway safety benefits.<sup>[3.3.2.1]</sup> In making its assessment, ORR has made its own estimates of the likely safety performance of the proposed level crossing arrangements and has used the cost information provided by RVR, without seeking to verify that information itself, to inform a judgement about whether the costs would be grossly disproportionate.<sup>[10.1.1.10]</sup> As indicated above, I consider the basis of the cost information provided by RVR for the proposed highway level crossings and alternatives to be reasonable.
- 12.4.3.4. Against that background, ORR has determined that the proposed level crossing arrangements would be in line with main line practice. Furthermore, having had regard to the railway safety implications and the costs of potential alternatives, it considers that there are no reasonably practicable alternatives to the three proposed highway level crossings. The ORR is satisfied that, in relation to those crossings, its policy tests are met.
- 12.4.3.5. Whilst a number of objectors have expressed some concerns in relation to design aspects of the crossings, the details have yet to be finalised.<sup>[3.3.1.3, 3.3.3.2, 8.1.1.8b)]</sup> Furthermore, the ORR has indicated that it would be possible to ensure that they are tolerably safe. If the Order is made, the ORR would make use of its normal regulatory tools to deal with any issues that arise where it felt risks were not being reduced to as low as is reasonably practicable.<sup>392</sup><sup>[3.3.3.1]</sup> The ORR does not have a rail safety objection to those crossings.<sup>[3.3.1.1-2]</sup> Under these circumstances, I am content that tolerably safe crossing arrangements would be put in place.<sup>[3.3.1.3]</sup>
- 12.4.3.6. I conclude that the proposed introduction of the level crossings on the A21, Northbridge Street and Junction Road would introduce new and

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<sup>391</sup> RVR-W3-1 para 5.3.1.

<sup>392</sup> RVR-W8-4 paras 5-6.

increased safety risks for both rail and road users. This weighs against the Order scheme. However, the rail safety regulator, ORR considers that they can be made tolerably safe. Under these circumstances, I consider that little weight is attributable to the residual increased safety risk for both rail and road users associated with the use of the three proposed highway level crossings themselves.<sup>[6.4.11-14]</sup>

*Level crossing-implications for the wider safety of road users*

*A21*

- 12.4.3.7. There is no dispute that the proposed A21 level crossing would introduce a new point of conflict and the safety implications associated with the proposed level crossing would not be limited to the risks of a vehicle colliding with a train, dealt with above. Queues that form when the crossing is closed would themselves increase the risk of accidents elsewhere on the A21.<sup>[6.5.3.2, 7.1-4]</sup>
- 12.4.3.8. Documents submitted by RVR to HE in support of its DSA indicated that the accident rate on this stretch of the A21 is 4 accidents in 5 years, which HE indicates is appropriately evidenced and represents a reasonably good safety record<sup>393</sup>. I give no weight to the incidence of accidents elsewhere on the A21.<sup>[8.11.1.1]</sup> The same DSA documents estimate that the accident rate would be likely to increase to 16 accidents in 5 years with the inclusion of the proposed level crossing. For the purposes of this assessment RVR assumed that a 4-arm signal junction would provide a reasonable proxy to indicate the likely increased number of accidents associated with the proposed level crossing. Considering the crossing in isolation, I share the more recent view of RVR that the proxy chosen may represent an overly cautious approach, not least as a greater accident rate is associated with a 4-arm signal junction than any other junction form.<sup>[6.5.3.1]</sup> Furthermore, by comparison, the operation of the level crossing would be relatively simple, with no turning movements and barriers to limit the risk of collisions. However, HE has indicated that RVR's analysis did not include other relevant factors, such as the risks associated with queuing from the proposed crossing towards Robertsbridge roundabout. Overall, HE considers that an estimated increase in the rate to 16 accidents in 5 years would not be overly cautious.<sup>394</sup> I have not been provided with any compelling evidence to the contrary with respect to the overall impact.
- 12.4.3.9. Whilst HE has indicated that if SES approves the DSA, it would withdraw its objection to the Order and give its consent to the proposed access across the A21, at the close of the Inquiry the DSA had not been approved and a number of matters of safety concern to SES had not be resolved to its satisfaction.<sup>[7.16]</sup> I understand that its principal remaining concerns relate to queuing through the roundabout and appropriate SSDs for queues that are shorter than the longest queues; that is, a southbound

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<sup>393</sup> INQ/60 para 4.2.1 and Mr Bowie's oral evidence.

<sup>394</sup> Mr Bowie's oral evidence.

queue that goes most but not all of the way back to the roundabout.[7.8-7.12] I will deal with each in turn.

- 12.4.3.10. Whilst RVR's original DSA stated that queuing southbound traffic is expected to regularly extend through Robertsbridge roundabout when the level crossing is closed, the later version characterised such events as occasional<sup>395</sup>. However, having regard to the results of RVR's modelling, set out above, to my mind, it can reasonably be anticipated that whilst southbound queuing resulting from the closure of the level crossing would not extend north of the roundabout as frequently, it would often extend onto the roundabout. RVR's modelling, associated with a 72 seconds level crossing closure period and peak traffic 15 minute periods, also indicates that, on the southern approach to the closed crossing there would be northbound queues of around: 500 metres on the busiest Bank Holiday; and, 109 metres on an April and March weekday.[6.5.2.2-3]
- 12.4.3.11. HE has identified that queueing through the roundabout, resulting from closure of the level crossing, gives rise to a risk of nose to tail shunt type collisions in the queue as well as side on 'T-bone' type collisions associated with drivers travelling other than in a southbound direction trying to weave between those queuing on the roundabout.
- 12.4.3.12. To my mind the risk of nose to tail shunts in queuing traffic, which is likely to be slow moving, would be relatively low and collisions more likely to be slight than serious.
- 12.4.3.13. In relation to the risk of 'T-bone' type collisions, RVR has proposed 'keep clear' road markings at the entrance to the roundabout from Church Lane in order to allow the free flow of traffic onto the roundabout from the east. HE indicated at the Inquiry that such a measure would be unlikely to provide sufficient mitigation, as traffic movements on circular carriageways tend to wear away road markings.<sup>396</sup> However, I have no reason to believe that this could not be addressed by a reasonable maintenance regime. Even if it could not, I consider that the risk of T-bone type collisions associated with east-west traffic movements would be likely to be small. Firstly, as the number of properties directly served by Church Lane is limited to a small area of housing and the village of Salehurst, which appears to contain fewer properties, east-west traffic volumes are likely to be low. Secondly, intervisibility between drivers queuing across the roundabout and those wishing to enter from Church Lane would not be restricted and it would be clear whether a gap in slow moving/stationary traffic on the roundabout would be sufficient to allow a vehicle to emerge from Church Lane safely.
- 12.4.3.14. Therefore, I give little weight to HE's concerns with respect to nose to tail shunt type collisions and T-bone type collisions at the roundabout.

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<sup>395</sup> RVR/HE/01 page 20 and INQ/31 page 21.

<sup>396</sup> Mr Bowie's oral evidence.

- 12.4.3.15. RVR has provided information to show that appropriate SSDs would be available on the southbound approach to Robertsbridge roundabout and that the approach to the proposed level crossing itself from the roundabout falls only slightly short of the standard. However, HE has raised particular concerns with respect to the 'best-case' days southbound queues at the proposed level crossing, which would end around 25 metres south of the roundabout.<sup>397</sup> It indicates that RVR's submissions do not demonstrate that the desirable minimum SSD to the back of the southbound best-case queuing traffic scenario can be achieved from local roads or the exit to the roundabout.<sup>398</sup>
- 12.4.3.16. I consider that if adequate SSDs were not provided, it would increase the risk of rear end shunt type collisions between vehicles leaving the roundabout and those queuing back from the level crossing and would be likely to constitute an unacceptable effect on highway safety, to which great weight would be attributable.<sup>[6.5.3.2, 7.12-13]</sup> Furthermore, to my mind, the provision of signs warning of a level crossing ahead would not necessarily fully address this matter. Whilst southbound drivers emerging from Northbridge Street could be expected to be travelling more slowly, as they turn around the central island, southbound A21 drivers and those emerging from Church Street may well be travelling up to the posted speed limit and could reasonably expect an appropriate SSD to be available.
- 12.4.3.17. However, Mr Bowie, who gave technical evidence on behalf of HE, indicated that, in his view, none of the issues identified by SES are insurmountable.<sup>[3.4.1.10]</sup> I consider it is likely to be possible to ensure adequate SSDs for southbound drivers entering the roundabout from the A21 or Northbridge Street by removing some planting within the central island. Planting to the southeast of the roundabout may need to be removed to provide an adequate SSD for southbound drivers emerging from Church Lane. It appears to me that such mitigation measures would only be likely to involve land within the extents of the highway and so would be within HE's control.<sup>[6.5.3.3b)]</sup>
- 12.4.3.18. Furthermore, the Statement of Common Ground agreed between RVR and HE confirms that they have reached agreement on the form of the protective provisions for HE and other matters relevant to the implementation of the Order scheme, which have been incorporated within a revised draft of Schedule 8 of the Order.<sup>399</sup><sup>[7.14]</sup> In the event that RVR is unable to deliver necessary mitigation measures, it would be open to HE, under the terms of the protective provisions, to refuse to approve the highway works necessary to facilitate the Order scheme, thereby preventing an unacceptable effect on highway safety.<sup>[3.4.1.12]</sup>
- 12.4.3.19. A number of other safety concerns have been raised in relation to potential impacts of the proposed level crossing.<sup>[6.5.3.2, 6.5.3.4, 8.7.2.1]</sup>

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<sup>397</sup> OBJ/782-W2-1 para 70.

<sup>398</sup> INQ/31 para 17.

<sup>399</sup> INQ/60 para 4.5.6, INQ/21, INQ/129.

- a) In my judgement, whilst southbound queues would be likely to extend beyond the pedestrian crossing at times, pedestrians wishing to cross there would be safeguarded by the signals halting traffic. Furthermore, they would be prevented from crossing further south between stationary or slow moving vehicles by existing roadside railings.<sup>[3.4.1.13]</sup>
- b) I consider that drivers would be unlikely to 'rat-run' through Robertsbridge, rather than waiting on the A21, as that route is not significantly different in length and it would also be likely to be affected by the operation of the Northbridge Street level crossing at a similar time.<sup>400</sup>
- c) The Order scheme includes an extension to the existing 40 mph speed restriction southwards beyond the position of the proposed level crossing, in order to reduce northbound approach speeds towards the proposed crossing and the resultant risk. I acknowledge that the 2019 traffic survey recorded 85 %tile speeds up to around 44 mph in the existing 40 mph zone to the south of Robertsbridge roundabout.<sup>401 [6.5.3.3c)]</sup> However, to my mind, for northbound traffic this is likely to be due to the step down from 60 mph to a posted 40 mph on the relatively straight and flat approach to the roundabout from the south and for southbound traffic due to vehicles accelerating away from the roundabout with good visibility and a national speed limit sign ahead. As set out in RVR's DSA, the works associated with the proposed crossing, such as pre-warning signage, would be likely to contribute to driver perception of possible hazards ahead encouraging greater adherence to the posted speed limit.<sup>402</sup>
- d) RVR has also provided information to show that appropriate SSDs would be available on the northbound approach to the proposed level crossing itself.<sup>403</sup> However, at present forward visibility is restricted to an extent by roadside planting. The crossing would create a new stopping point on the road, greatly increasing the importance of an adequate SSD on that approach in my view.<sup>[3.4.1.12-13]</sup> Therefore, I give little weight to RVR's argument that insofar as there is any visibility restriction, it is an existing deficiency. Nonetheless, given the increased importance of forward visibility there in the event that the Order scheme were to proceed, to my mind, it is more likely that the maintenance necessary to ensure that roadside vegetation does not restrict visibility would be carried out by HE. I consider that the same can be said in relation to maintenance of vegetation within the Robertsbridge roundabout central island, to ensure appropriate forward visibility when proceeding from the north.

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<sup>400</sup> INQ/23.

<sup>401</sup> INQ/31 pages 11-12.

<sup>402</sup> INQ/31 pages 11-12.

<sup>403</sup> INQ/24

e) The provision of adequate SSDs and proposed level crossing advance warning signage would be sufficient, in my view, to ensure that approaching drivers would not be unduly surprised or confused in the event that the crossing operates outside of the normal tourist season, such as for maintenance activity.<sup>[6.5.3.4]</sup>

I give these particular concerns little weight.

12.4.3.20. I note the concern raised by the Landowners that the realignment of the A21 carriageway in order to accommodate the incline of the level crossing appears to be contrary to the requirements of the DMRB.<sup>[6.12.7.3]</sup> However, it is not one of the principal concerns identified by SES, who is responsible for approving RVR's DSA. Furthermore, I have no compelling reason to dispute the view of RVR's highway expert witness that it would be possible to ensure that the highway around the proposed level crossing would continue to be adequately drained at the later detailed design stage. Therefore, I give the Landowners' concern little weight.

12.4.3.21. I conclude overall that, subject to the proposed provisions being included in the draft Order for the protection of HE, the Order scheme would be unlikely to have an unacceptable impact on highway safety on the A21.<sup>[6.5.3.6]</sup>

#### *Junction Road*

12.4.3.22. The ES indicates that the existing safety record of Junction Road in the vicinity of the proposed crossing is of concern, with a history of accidents associated with excessive speed and the highway layout.<sup>404</sup> A number of objectors echo that concern and the ESu shows a similar record.<sup>405</sup> However, the Order scheme would include a reduction in the posted speed limit from the current 60 mph to 40 mph and the provision of warning signs for the level crossing. I share the view of the ES that this would be likely to have a traffic calming effect and, in my judgement, it would be sufficient to ensure that the proposed level crossing would not add to the existing highway safety issues and it may result in an improved road safety record on this section of Junction Road.<sup>[3.4.2, 4.5.3.3, 6.6]</sup> As well as highway drivers, this would be likely to benefit pedestrians who cross the road thereabouts between off-road public rights of way.

#### *Northbridge Street*

12.4.3.23. The ES confirms that there are no existing highway safety issues in the vicinity of the proposed Northbridge Street level crossing.<sup>406</sup> The posted speed limit is 30 mph and whilst there is a bend in the road to the north of the proposed crossing location, I consider that the SSD available to southbound drivers is adequate. Furthermore, I understand that the proposed level crossing arrangements would be in line with mainline practice, including warning signals and automatic full barriers with

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<sup>404</sup> RVR/34 page 31.

<sup>405</sup> RVR/70-06 page 12.

<sup>406</sup> RVR/34 page 30 and RVR/70-06 page 13.

obstacle detection. To my mind, the proposed approach would be likely to satisfactorily safeguard users of the carriageway and the adjacent footways, which I understand are used by children accessing the Cricket Club's grounds and may be used by those with disabilities, amongst others.<sup>[8.1.1.8]</sup> In my judgement, the proposed crossing would be unlikely to have an adverse effect on highway safety.<sup>[3.4.2.1, 4.5.3.4]</sup>

#### 12.4.4. **Other traffic matters**

##### *Dualling of the A21*

12.4.4.1. A number of interested parties have suggested that the proposed level crossing of the A21 would put at risk the possibility of dualling the single carriageway A21 in the future.<sup>[6.5.3.10-13, 8.5.1.11]</sup> Having regard to the costs set out in the ARUP *Proposed Rail Extension-A21 (T) Crossings Option Feasibility Report* (ARUP Report) relating to options for grade separating the existing highway from the proposed railway, I consider it is possible that the additional costs of dualling associated with working around the proposed level crossing may well be considerable.<sup>[6.5.3.13]</sup> However, I understand that, notwithstanding longstanding political support from local MPs for the dualling of the A21 down to the coast, there are no firm plans at present for dualling of the section subject of the proposed level crossing.<sup>[4.9.1.1, 6.5.3.11-13]</sup> Furthermore, HM has indicated, with reference to the recent dualling of a section of the A21 further north, that relative to the scale and technical difficulties likely to be associated with dualling the A21, interfacing with the proposed level crossing would be a relatively minor issue, which would not make or break such a scheme. I have not been provided with any compelling evidence to the contrary.<sup>[4.3.2.2]</sup> For these reasons, I give the concerns raised with respect to the effect on the prospects of dualling little weight.

#### 12.4.5. **SoM3)a)-Conclusions**

- 12.4.5.1. With respect to effects on highways, the Framework indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. To my mind, this indicates where the public interest lies in relation to such matters.
- 12.4.5.2. I conclude that the likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact of the three new level crossings on traffic flows and congestion would be acceptable. Having regard to the Framework, it would not have a severe residual cumulative impact on the road network.
- 12.4.5.3. Turning to highway safety, safety risks would be associated with the use of each of the proposed level crossings on the A21, Northbridge Street and Junction Road. The rail safety regulator, the ORR, considers that the highway crossings can be made tolerably safe and whilst a residual risk would remain for users of the highway crossings (road and rail), under those circumstances it attracts little weight.<sup>[6.5.3.2]</sup>



12.4.5.4. In relation to:

- a) Northbridge Street, where the proposed crossing would be unlikely to have wider implications for highway safety, I consider that the overall effect on highway safety there would be acceptable.
- b) Junction Road, where the proposed level crossing may result in an improved road safety record on the wider highway, I consider that the overall effect on highway safety there would be acceptable.
- c) The A21, where, subject to the proposed protective provisions, the proposed crossing would be unlikely to have significant wider implications for highway safety, I consider that the overall effect on highway safety on the A21 would be acceptable.

12.4.5.5. Furthermore, I have found that there is significant uncertainty as to whether this section of the A21 is likely to be dualled in the future and I have not been provided with any compelling evidence to show that the Order scheme would be likely to prejudice such a dualling scheme.

12.4.5.6. I conclude overall that the likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact of the three level crossings on traffic flows, congestion and safety, would be acceptable.

12.5. **SoM3)b)- The likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact of the scheme on roads, footpaths and bridleways, including the impact on access to property and amenities**

12.5.1. ***Other crossings-Bridleway S&R 36b level crossing***

12.5.1.1. To the south of Salehurst, the route of the proposed railway would cross bridleway S&R 36b (the bridleway). I am in no doubt that it is necessary to maintain a bridleway route there, which I understand forms part of the network of historic routeways in the area and one of the comparatively few local off road routes for horse riders.<sup>407</sup><sub>[8.14.1.24, 9.5]</sub> The Order scheme, which includes the provision of a level crossing, would do so.

12.5.1.2. As to whether there would be a reasonably practicable alternative to the proposed level crossing, I acknowledge that it would be likely to be physically possible to construct a bridge to take the bridleway over the proposed railway. However, to my mind, such an elevated structure, which would necessarily incorporate long ramps to maintain access for horse riders, would be likely to cause significant harm to the character and appearance of the AONB thereabouts and conflict with associated planning policies. A Principal Planning Officer for RDC has confirmed that planning permission would be required for such a development and his

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<sup>407</sup> OBJ/1034-Letter of objection.

view is that it would be unlikely to be granted by the local planning authority for the reasons I have identified.<sup>408</sup> In my judgement, that is a credible and defensible position, and under the circumstances, a bridge cannot be considered as a reasonably practicable alternative to the proposed level crossing.<sup>[3.3.2.5, 6.7, 10.1.1.24-32]</sup>

12.5.1.3. I conclude that the proposed level crossing would introduce a new point of conflict for users of the bridleway and increase the risk of accidents, contrary to the aim of the Framework to protect and enhance public rights of way and access. However, ORR believes that, using appropriate technology, a tolerably safe crossing could be created, a position accepted by the Landowners. RVR has confirmed that it intends to work with ORR and the British Horse Society to ensure that suitable, user focussed and reliable protective measures would be installed.<sup>409</sup> Furthermore, I understand that KESR has such a bridleway crossing, which it indicates has operated safely for over 40 years.<sup>410</sup> I consider that under these circumstances, little weight is attributable to the residual increased safety risk for both rail and bridleway users. Furthermore, the bridleway would remain a suitable and convenient route for users, who, in addition to those on horse, may include a range of other people, such as those who are elderly, children or have mobility impairments.<sup>[6.7.2, 10.1.1.32]</sup>

#### 12.5.2. ***Other crossings-Footpath S&R 31 underpass***

12.5.2.1. Footpath S&R 31 runs in a southeasterly direction from a point on Church Lane close to its junction with the A21. This section of the route runs through agricultural land and crosses a bridged section of Mill Stream immediately to the south of the east-west route of the proposed railway. From there, the footpath runs in a southeasterly direction to Redlands Lane (Fair Lane). The draft Order includes the provision of a bridge to carry the railway over Mill Stream and the stopping up and diversion of part of footpath S&R 31.

12.5.2.2. Section 5(6) of the TWA indicates that '*An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied— (a) that an alternative right of way has been or would be provided, or (b) that the provision of an alternative right of way is not required.*'<sup>[3.4.3.2]</sup>

12.5.2.3. There is no compelling evidence before me to show that an alternative right of way, to that which would be stopped up, is not required. On the contrary, during the course of my site visits I saw the footpath in use.<sup>[6.7.10]</sup> Furthermore, other existing routes between the same points linked by footpath S&R 31 on Church Lane and Redlands Lane appear to be notably longer and in some cases involve routes along highways, as opposed to across agricultural land. I consider that an alternative right

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<sup>408</sup> RVR/W8/2-7.

<sup>409</sup> RVR-W8-1 para 35 and OBJ/1034.

<sup>410</sup> RVR-W8-1 para 35 and OBJ/1034.

- of way to the section of footpath S&R 31 which would be stopped up would be required.
- 12.5.2.4. If an alternative is to be provided, I understand that the Secretary of State would wish to be satisfied that it would be a convenient and suitable replacement for existing users. Whether concerns with respect to the convenience of a promoted diversion would be fatal to the Order, would be a matter for the decision maker.<sup>[3.4.3.3, 6.7.7]</sup>
- 12.5.2.5. The alternative provided for by the draft Order would involve the diversion of footpath S&R 31, on the north side of the proposed railway embankment, down under the proposed bridge no. 12, alongside the stream, and up the other side to re-join the existing footpath route to the south of the railway.
- 12.5.2.6. The proposed diversion would be similar in length to the section of the footpath that it would replace.<sup>[3.4.3.4]</sup> Beneath the bridge, the length of the footpath would only be around 4.2 metres long. Whilst it would be enclosed on one side by a bridge abutment, it would be more open on the other side, with a row of handrailing along the edge of the footpath, which would be around 2.3 metres wide beside the stream with headroom of at least some 2.1 metres. Although the width and headroom of the underpass would fall slightly short of standards for footpaths set out in the DMRB, they would comply with the Fieldfare Trust minimum standards for countryside rights of way, identified by RVR, which appear to me to be more applicable in this particular situation involving a field footpath.<sup>411</sup>
- 12.5.2.7. To my mind, the proposed underpass would have the appearance of a reasonably open space with adequate daylighting and space for users to pass one another. A bend in the footpath route on the southern side of the bridge would tend to reduce intervisibility between users of the route approaching in opposite directions. However, given the width of the footpath and the gradual nature of the bend, the possibility of users being surprised by others travelling in the opposite direction would be small. In my judgement, the physical characteristics of the proposed diversion would be unlikely to deter pedestrians from using the footpath on the basis of security concerns.<sup>[6.7.8]</sup>
- 12.5.2.8. The diversion route beneath the bridge would be at a lower ground level than the existing route and RVR has confirmed that, as a result, the diversion route alongside the stream would be likely to flood around 2-3 times a year. However, this compares with the likelihood that the existing route would flood 1-2 times per year.<sup>[3.4.3.4]</sup> To my mind, in common with the existing route, the proposed diversion would be unlikely to be used when flooded, not least due to the risk of straying into deeper water in the channel of the stream, although the risk would be less in the case of the proposed diversion, as it would be lined by guard rails. In my judgement, the flood risk associated with the

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<sup>411</sup> INQ/81, 96, 113 and 146.

proposed diversion would not be materially different to that of the existing route.

12.5.2.9. I consider overall that, in comparison with the section of the existing field footpath that it would replace, the proposed diversion would provide a suitable and convenient alternative for users of the footpath, who may include a range of people, such as those who are elderly, children or have mobility impairments.<sup>[6.7.10]</sup>

12.5.2.10. Other options explored at the Inquiry included a split-level footpath beneath the bridge and a level crossing, both of which would be problematic in different ways:

- a) The split-level footpath would involve a lower section of footpath at the level originally proposed, with a width of around 1.2 metres, and the higher section, which would flood no more frequently than the existing route, with a width of around 0.85 metres. The 2 levels would be separated by a guard rail and the upper level of the diversion route would have limited headroom of around 1.8 metres, below the 2.1 metre minimum headroom identified above.<sup>412</sup> In my view, this arrangement would have a more enclosed appearance and the limited widths of the paths at each level would make it far more difficult for users to pass one another comfortably; giving rise to security concerns which would be likely to deter users.
- b) ORR has indicated that it would have significant reservations with respect to an at-grade footpath crossing of the proposed railway, not least due to the close proximity of the crossing point to the proposed A21 level crossing and a proposed landowner accommodation crossing.<sup>[6.7.5-6, 10.1.1.23]</sup> As it is, the proximity of the A21 and accommodation crossings to one another would necessitate an approaching train driver having to observe and potentially react to activity at the two crossings at the same time.<sup>413</sup> It appears to me that, even if the footpath and accommodation crossing were to be combined, adding footpath user activity would increase the frequency of use and thereby risk of an accident.

In my view, neither of those alternative options are to be preferred.<sup>[3.3.5, 3.4.3.4, 3.4.3.6, 6.7.9]</sup>

12.5.2.11. Whilst my attention has been drawn to other proposed or existing footpath underpasses elsewhere<sup>414</sup>, it is not self-evident that any are directly comparable in all respects to the proposal before me. For example, with reference to the *Network Rail (Cambridgeshire Level Crossing Reduction) Order*, whilst a proposed underpass replacement for crossing C22 was rejected, in that case there was a lack of information on likely flooding events. I give those other cases little weight.<sup>[3.4.3.5]</sup>

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<sup>412</sup> INQ/81.

<sup>413</sup> Mr Raxton's oral evidence.

<sup>414</sup> INQ/81 pages 6-10.

- 12.5.2.12. I conclude that the proposed diversion of footpath S&R 31 would provide a suitable and convenient alternative to the section of the existing route that it would replace. It would meet the requirements of section 5(6) of the TWA. RVR has confirmed that neither the Highway Authority nor the Ramblers Association has objected to the diversion, which was included in the Order scheme for which planning permission Ref. RR/2014/1608/P was granted.<sup>415</sup> These factors reinforce my findings.<sup>[6.7.10]</sup>
- 12.5.3. ***Other crossings-User worked accommodation level crossings (UWCs)***
- 12.5.3.1. Under the terms of the draft Order (Article 3), RVR would be required to make and maintain such accommodation works as 'shall be necessary' for the mitigation of severance, unless this would prevent or obstruct the working or using of the railway, or in circumstances where the owners and occupiers of the lands have agreed to receive compensation instead. The nature of such accommodation works may include, but are not limited to, UWCs.<sup>[3.3.4.1]</sup>
- 12.5.3.2. ORR would prefer that the Order scheme did not include any UWCs or at least that they are kept to a minimum and provided with a user warning system. In support of its view, the ORR refers principally to the poor safety record of such crossings on the mainline railway, which it acknowledges features faster and more frequent train movements and so, to my mind, are unlikely to be representative of risk levels likely to be associated with UWCs on the proposed railway.<sup>[6.4.5, 10.1.1.33-42]</sup>
- 12.5.3.3. ORR indicates that there is evidence that such crossings on minor railways also suffer from levels of user misuse and it identifies that features such as little or no advice for users beyond signage warning them to look both ways before crossing, can lead to the incidents and accidents that do occur. However, it acknowledges that RVR is committed to go further, by, for example, providing visual signals to the approaching train crew of gate positions. ORR acknowledges that many crossings similar to those that might be required by RVR exist on other heritage railways and these can be constructed and used in a tolerably safe manner. This appears to be borne out by the experience on the existing KESR line, which I understand has 27 UWCs. Furthermore, there is no evidence before me to show that they have prevented or obstructed the working or using of the railway or that ORR has sought to prohibit the use of the railway on the basis that a UWC renders the railway unsafe. I have no reason to believe that the situation would differ in relation to UWCs necessary on the Order line.<sup>[3.3.4.3-4, 4.2]</sup>
- 12.5.3.4. The need, location and type of crossing would, in the first instance, be a matter to be settled between RVR and the Landowners, if the Order is made. Having established the need and location for a proposed crossing, the practicality of alternatives to a UWC, such as a bridge or underpass may well be considered, in the interests of managing risk. However, to my mind, it is unlikely that such alternatives would be reasonably

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<sup>415</sup> INQ/146.

practicable, in the case of: a bridge, for the reasons set out in relation to the bridleway; and, an underpass, due to the flood risk likely to be associated with the proximity of watercourses and the depth of development below the railway necessary to accommodate farm traffic.<sup>[6.4.9-10]</sup>

- 12.5.3.5. The Order plans identify five accommodation crossings along the route and at the Inquiry RVR acknowledged that a sixth would be likely to be necessary. Whilst it is foreseeable that ramps required to service some UWCs may extend beyond the bounds of the Order land, I share the view of RVR that, until matters such as need and location are resolved, it would not be appropriate to speculatively compulsory purchase land for that purpose. There would be no certainty that it would be required in a particular location. Furthermore, I understand that the landowner would be required to mitigate its losses as far as reasonably practicable and this might, for example, include making land available for ramps or for infrastructure associated with the crossing.<sup>[3.3.4.2, 6.3.4, 6.4.10]</sup> Against this background, I consider it likely that potential difficulties associated with some of the locations shown on the plans, such as the southern approach to the UWC shown adjacent to Mill Stream Bridge where access is constrained by the stream, could be overcome by relocating the crossing slightly further to the east.<sup>[6.12.8.2]</sup>
- 12.5.3.6. Against this background, I consider that the provisions within the Order to secure accommodation crossings appear adequate and that UWCs are likely to be provided where necessary. Whilst sightline standards for a 25 mph line speed may be unobtainable at some UWCs, RVR has indicated, if that is the case, line speed would be reduced to suit. I saw that this approach was not unusual along the existing KESR line and have no reason to believe that it could not be managed on the section of the proposed railway subject of the Order. In my view, it would be unlikely to have a significant impact on train schedules.<sup>[6.4.8]</sup>
- 12.5.3.7. Nonetheless, there is no dispute that UWCs would introduce a new point of conflict for farm workers and increase the risk of accidents.<sup>[4.2]</sup> To my mind, it is likely that tolerably safe crossings could be created, and whilst a residual risk would still be associated with the use of the proposed at-grade crossings, it would be small, not least as farm workers would be likely to use the crossings routinely and so would be conscious of the risks.<sup>[6.4.11-14]</sup> The adverse impact attracts little weight.
- 12.5.4. ***Impact on agriculture***
- 12.5.4.1. In the case of each of the farms affected, Parsonage Farm/Redlands Farm and Moat Farm, the ES estimates that less than 5% of the total area managed would be subject to acquisition in perpetuity and it is not expected that any of it would comprise '*best and most versatile agricultural land*', as defined by the Framework.<sup>416</sup> The land at Parsonage Farm subject of the Order comprises a mix of arable cropping and livestock grazing land for the most part. At Moat Farm, with the

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<sup>416</sup> RVR/70-1 section 14.3.

exception of a small pasture field, the Order land generally comprises land occupied by the remains of the former railway embankment, which is not farmed, but rather has become overgrown and is regarded by a number of objectors as re-wilded.<sup>[8.2.1.2]</sup><sup>417</sup> There is no dispute that, if adequate crossings are provided, the Order scheme would not render either of the directly affected farm holdings unviable.<sup>[3.14.2, 6.3.2]</sup>

- 12.5.4.2. The division of Parsonage Farm fields caused by the proposed railway would restrict agricultural activity there. It would be likely to result in some fields that are currently arable becoming pasture, although the overall area affected would be likely to be relatively small, and even smaller areas of existing pasture becoming unsuitable as productive land. I give no weight to RVR's argument that the UK's exit from the EU and the *Agriculture Act, 2020* may provide opportunities for the Landowners to obtain subsidies for turning those parts of their land which are rendered unusable by the Order scheme to an environmental management use, as the details are not yet known.<sup>[6.3.2, 6.3.6]</sup>
- 12.5.4.3. Whilst the use of crossings would result in some inconvenience at the affected farms, for example, due to time taken to open and close crossing gates, to my mind, this would be likely to be minor. Furthermore, I am not convinced that the provision of 6 crossing points, as referred to above, would make it significantly more difficult for landowners to move stock quickly in times of emergency, as the distances to crossings would be unlikely to be large.<sup>[6.3.2, 8.6.4.7]</sup>
- 12.5.4.4. Against this background, I share the conclusion of the ES and ESu that the Order scheme would be likely to have no more than a slight adverse impact on agriculture.<sup>418</sup>
- 12.5.5. ***Impact on access at Quarry Farm***
- 12.5.5.1. In 1992 the family of NAW sold land within Quarry Farm to RVR for the reinstatement of the railway. The railway has since been reinstated along that route as far as Junction Road.
- 12.5.5.2. Around 2011, NAW started a camping business at Quarry Farm, which involves some campers having to cross over from the southern side to the northern side of the railway to reach their pitches. I saw that whilst some vehicles park on the northern side of the line, there is also a car park on the southern side.
- 12.5.5.3. Of the three former farm UWCs of the original railway, whilst there is no dispute that NAW retain rights of access across two, that is not the case in relation to the third, which is not shown on the Order plans. RVR indicate that NAW have only been able to use the third crossing on a permissive basis.
- 12.5.5.4. NAW argue that if they are unable to use the disputed third crossing point, it would be likely to have a significant impact on their business, as

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<sup>417</sup> RVR/67.

<sup>418</sup> RVR/25 section 15.9.2 and RVR/70-1 section 14.3.

campers would be reluctant to walk from the car park on the southern side of the track to the nearest agreed UWC further to the east. As the settlement of access rights relating to the disputed crossing point is a legal matter for the two parties to resolve and is associated with the existing railway, I consider that it is of little relevance to the consideration of the proposed Order. In any event, I saw that some campers' vehicles cross the railway line and are parked alongside tents. I have no reason to believe that those allocated to use the car park on the southern side of the line could not also cross over first to unload baggage. After that the walk from the car park on the southern side of the line to the nearest agreed UWC is reasonably short in my view. I consider that no weight is attributable to this matter.<sup>419</sup>

12.5.5.5. NAW are concerned that if, in the future, trains run along the line through Quarry Farm, it would be necessary to lock the gates leading to the crossings, as campers could not be relied upon to cross on their own, to the detriment of NAW's business. However, to my mind, it must have been understood when the land was sold for the railway and the camping business was started that trains would be likely to run from time to time. Furthermore, it seems to me that this concern could be overcome by NAW supervising the use of the crossings during the limited periods when both the campsites and the railway are in use. I give this matter no weight.<sup>420</sup>

12.5.5.6. NAW contend that Quarry Farm has a right of way through Udiam Farm onto the B2244, immediately beside and to the south of the existing railway line at that point, which has been blocked by the landowner when their driveway was re-located further south. However, there is no evidence before me to show that the landowner intends to reopen an access at that point from Udiam Farm onto the B2244, that the planning permission necessary to do so would be granted by the local planning authority or if it were, that it would be in a form which would have a material impact on the operation of the proposed level crossing. I give that matter no weight.<sup>421</sup>[8.12.4, 8.12.5]

12.5.5.7. I conclude that the Order scheme would be unlikely to have an unacceptable impact on access at Quarry Farm.

### 12.5.6. ***Som3)b)-Conclusions***

12.5.6.1. The proposed diversion of footpath S&R 31 beneath the proposed railway would provide a suitable and convenient alternative to the existing route.

12.5.6.2. The proposed bridleway level crossing would introduce a new point of conflict for users of the bridleway and increase the risk of accidents contrary to the aim of the Framework to protect and enhance public rights of way and access. However, it is likely that a tolerably safe crossing could be created. I conclude that, under the circumstances,

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<sup>419</sup> INQ/102 section 1.6.

<sup>420</sup> INQ/102 section 5.

<sup>421</sup> INQ/102 section 3 and 4.



little weight is attributable to the residual increased safety risk for users of the crossing.

12.5.6.3. The Order scheme would limit the productive use of some agricultural land and the proposed UWCs would introduce a new point of conflict for farm workers and increase the risk of accidents. In these respects it would harm existing agricultural businesses, contrary to the aims of the Framework, insofar as it seeks to support them. However, the impact on agricultural productivity would be slight and the increased risk small. I conclude that the adverse impact on agriculture attracts little weight.

12.5.6.4. I conclude that the Order scheme would be unlikely to have an unacceptable impact on access at Quarry Farm.

12.5.6.5. I conclude that overall, little weight is attributable to the adverse impact of the Order scheme on interested parties, with particular reference to roads, footpaths and bridleways, including the impact on access to property and amenities.<sup>[6.4.13-14]</sup>

12.6. **SoM3)c)- The likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the effects on flood risk, air quality, water and waste discharge and noise**

12.6.1. ***The likely impact with respect to flood risk***

12.6.1.1. RVR accepts that parts of the Order scheme would be flooded from time to time. Nonetheless, the FRA confirms that the existing KESR line is subject to frequent flooding along certain sections of the track. Furthermore, procedures are in place involving inspections of the track in response to flood warnings, ceasing to run trains when judged necessary due to flooding, and inspection of the line and structures following severe weather or flooding and prior to recommencing services.<sup>[3.5.1.10]</sup> There is no evidence before me to show that this approach has failed to satisfactorily safeguard either the users or operators of the existing railway or to ensure that any flood damage is identified and addressed in a timely manner.<sup>[6.8.13-15]</sup> Furthermore, in my judgement, it is likely to be possible, through good design and maintenance, to ensure that embankments/ballast would not be prone to scouring or culverts to blockage.<sup>[3.5.1.10, 6.8.17]</sup>

12.6.1.2. Against this background, I am satisfied that procedures could be put in place to ensure that the proposed section of railway would be safe for its lifetime taking account of the vulnerability of its users and would be suitably flood resilient, in keeping with the requirements of the Framework.

12.6.1.3. I turn then to consider whether the Order scheme would increase flood risk elsewhere. In order to inform the FRA and FRAa, flood modelling of the likely impact of the Order scheme was undertaken by CAPITA using the EA's calibrated model, which extends around 12.5 Km upstream and

7.5 Km downstream of Robertsbridge, beyond Bodiam<sup>422</sup>. In addition to bridges along the proposed railway line, this took account of the large number of culverts which would be included in the railway embankment in order to maintain existing floodplain continuity and flow paths. RVR consulted the EA for guidance on the application of the latest UKCP18 climate change projections for peak river flow inputs to the FRAa modelling. In advance of its publication of updated climate change allowances using those latest UKCP18 projections, the EA recommended the then current (UKCP09, July 2020) higher central (45% increase in peak river flow) and upper end (105% increase in peak river flow) allowances be applied to the 1% Annual Event Probability (AEP) design flood event. For the purposes of the FRAa modelling, RVR also updated the hydrological calculations based on the latest guidance and the additional years of gauge data that were then available, which following review, the EA confirmed were fit for purpose.<sup>423</sup>

- 12.6.1.4. During the Inquiry, the EA published its updated climate change allowances, which included reduced higher central (38% increase in peak river flow) and upper end (66% increase in peak river flow) allowances. Under these circumstances, I accept CAPITA's assessment that the 1% AEP with 105% allowance for climate change 'baseline' (without the proposal) and 'with railway' scenarios are likely to provide a generous allowance for the uncertainty associated with climate change predictions and parameters within the model when identifying the receptors at risk.<sup>[8.7.4]</sup><sup>424</sup>
- 12.6.1.5. The modelling indicates that variations in predicted maximum flood levels between the baseline (without the railway) scenario and the 'with railway' scenario would be relatively small and no additional properties are predicted to be at risk of flooding in the 'with railway' scenario.
- 12.6.1.6. More specifically, the baseline model scenarios identify the potential for flooding to affect fields in the vicinity of Robertsbridge Abbey and the private access road leading to that area as well as the potential for flood waters to come within a short distance of buildings at Summertree Stud. I consider that predicted patterns are reasonably consistent with the evidence of objectors with respect to the impact of past flood events.<sup>[8.7.4]</sup> The modelled 'with railway' scenarios indicate that the Order scheme would be likely to have a negligible effect on flood levels in the vicinity of those properties. In the fields to the west of Robertsbridge Abbey, which are prone to flooding, CAPITA has confirmed that a decrease in flood levels, albeit negligible, is predicted. Similar results are predicted to the south of the railway at Robertsbridge Cricket Club. Based on the evidence presented, I am content that the Order scheme would be unlikely to materially increase flood risk at these properties. The modelling also indicates that the Order scheme would be unlikely to result in an increase in flood risk at Quarry Farm, situated between Junction Road and Bodiam.<sup>[8.12.6]</sup>

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<sup>422</sup> RVR-W7-1 4.11.1 and INQ/102 page 5..

<sup>423</sup> RVR-W7-1 para 4.2-4.

<sup>424</sup> RVR-W7-4 para 2.4.7.

- 12.6.1.7. The largest area subject to a likely increase in the depth of flooding comprises agricultural land between the proposed railway line and the farmstead of Moat Farm. The modelling predicts an increased flood depth in the range 0.01-0.05 metres. However, in the context of overall flood depths, exceeding 1 metre in parts, the predicted increase in depth is small.<sup>[3.5.1.11]</sup> Furthermore, the modelling indicates that this increase would be unlikely to have a significant effect on the time taken for floodwaters to recede.<sup>425</sup> The same conclusions can be drawn in relation to: areas to the south of the railway in the vicinity of the A21, with predicted overall depths of 0.7-1.2 metres and increase in depth resulting from the 'with railway' scenario in the range 0.07-0.15 metres; and, in relation to properties along Northbridge Street with overall depths of around 1.3 metres and an increase in depth resulting from the 'with railway' scenario of only around 0.01 metres.<sup>426</sup>
- 12.6.1.8. The modelling indicates that, as a result of the Order scheme, some other areas of the existing floodplain would be likely to be subject to greater depths of flooding in the future.<sup>427</sup> However, the increases in depth would be relatively small and, having regard to the FRAa flood extent comparison plots, it appears likely that the extent to which there would be flooding elsewhere as a result of the Order scheme would be negligible. Under the circumstances, I consider that the increased flood risk would be likely to be negligible.
- Floodplain storage compensation*
- 12.6.1.9. Absent of floodplain storage compensation, it is self-evident that the reinstatement of an embankment across Parsonage Farm would involve a loss of floodplain storage capacity.<sup>[6.12.6.2]</sup> The nature and extent of any proposed floodplain storage compensation was not submitted in support of planning application Ref. RR/2014/1608/P. The EA had taken the view that a solution would be feasible and this could be demonstrated as part of the discharge of a pre-commencement condition.<sup>428</sup> Condition, no. 11, was attached to planning permission Ref. RR/2014/1608/P. It requires the applicant to demonstrate that there will be no loss of floodplain storage post development with any loss of floodplain storage to be compensated for on a volume by volume, level by level basis and in a suitable location. The reason given for the condition is to prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided.<sup>[3.5.2.1]</sup>
- 12.6.1.10. As I have indicated, based on existing modelling, it appears to me to be likely that the extent to which there would be any flooding elsewhere as a result of the Order scheme would be negligible. The EA has indicated that any requirements for compensation would need to be based on a revised hydraulic model, reflecting final design details and site-specific

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<sup>425</sup> RVR/W7/5 Appendix 1.

<sup>426</sup> RVR/70-07-00 section 4.4.

<sup>427</sup> RVR/70-07-01.

<sup>428</sup> OBJ/1002/CP/2 Appendix A5.

survey data.<sup>429</sup><sub>[3.5.2.2]</sub> RVR has confirmed that those details and any proposals for compensation have yet to be submitted for the consideration of the EA. Nonetheless, in my view, it is necessary to be satisfied at this stage that land would be likely to be available to provide for any necessary floodplain storage compensation, either within or out with the Order limits, as if it would not that could potentially prevent the discharge of condition no. 11 and amount to an impediment to the implementation of the Order scheme.<sub>[3.5.2.2, 6.12.6.3]</sub>

- 12.6.1.11. Both RVR and the Landowners have provided estimates of the volume of floodplain storage compensation which would potentially be required. Due to a number of unduly onerous assumptions made by the Landowners, I consider that their estimates are likely to significantly overstate the potential need for compensation. For example, they have not accounted for the flood levels being below embankment levels in places, rather assuming the whole embankment is within those levels. Consequently, I give greater weight to the RVR estimates.<sub>[3.5.2.4]</sub>
- 12.6.1.12. During the course of the Inquiry RVR has identified 8 areas and associated estimates of potential floodplain storage compensation capacity.<sub>[6.12.6.5-8]</sub> Some of these areas are also identified for ecological mitigation. Having seen a range of habitats already established within the floodplain and having had regard to the EA's report '*Achieving more: operational flood storage areas and biodiversity*'<sup>430</sup>, I am satisfied that dual use of the land, for floodplain storage compensation and habitat creation, is likely to be feasible.<sub>[6.11.3.c]</sub>
- 12.6.1.13. A comparison of RVR's potentially 'required' and 'available' volume estimates indicates that there may be a small deficit.<sup>431</sup> Furthermore, to my mind, it is not self-evident that areas to the south of the proposed railway, identified as 'land to the south 1 to 5', would be suitably located to compensate for potential increases in flood levels and area to the north of the railway.<sub>[6.12.6.9]</sub> If they were discounted for that purpose the potential deficit would be greater. In addition, some details of the Order scheme, which could reasonably be expected to add to the scale of necessary floodplain storage compensation, have yet to be finalised and so have not been included in RVR's calculations. For example, ramps leading to accommodation crossings of the railway.<sub>[6.12.6.11]</sub>
- 12.6.1.14. However, I am conscious that RVR's estimates of potential requirements are based on the 1% AEP with 105% allowance for climate change, rather than the 38% allowance now used for such purposes by the EA.<sup>432</sup> Therefore, they are likely to overstate need to some degree, and the modelled extent of flooding elsewhere would also be likely to reduce based on the EA's current guidance. Furthermore, I have no reason to dispute the view of RVR that it is likely to be possible to reduce any potential requirement for compensation to some degree by adjusting the

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<sup>429</sup> OBJ/1002/CP/2 Appendix A5.

<sup>430</sup> INQ/150 page 5 and Appendix A.

<sup>431</sup> INQ/150 Appendix B, updated by INQ/160.

<sup>432</sup> INQ/111-0 and INQ/111-2 page 4/12.

vertical alignment and side slopes of the embankment as part of the final design process.<sup>433</sup> Against this background, I consider it likely that RVR would be able to satisfy the floodplain storage compensation requirements of condition no. 11 and that requirement would be unlikely to constitute an impediment to the implementation of the Order scheme.<sup>[6.12.6.12]</sup>

*Flood risk impact-conclusion*

12.6.1.15. I conclude in relation to flood risk that the Order scheme would be likely to be safe for its lifetime taking account of the vulnerability of its users. Furthermore, it would be unlikely to materially increase flood risk either within the existing floodplain or elsewhere. In addition, I am satisfied it is likely that RVR would be able to comply with condition no. 11 attached to planning permission Ref. RR/2014/1608/P.

12.6.2. ***Air quality***

12.6.2.1. The ES 2014 air quality assessment indicated that the background pollutant concentrations in the vicinity of the proposed rail line are well below the national air quality objectives and found that the air quality effects as a result of the construction and operational phases of the Order scheme would be unlikely to be significant.<sup>434</sup> The ESu provided an update to the air quality assessment, focussing in particular on the continued validity of the ES 2014 assessment as well as the impact of: construction dust; level crossings; and, railway engines.<sup>435</sup>

12.6.2.2. The ESu notes the ES 2014 assessment used DMRB screening criteria to determine whether a detailed dispersion modelling study was necessary and found that it was not. The ESu confirms, having regard to updated traffic data and updated DMRB screening criteria, that this remains the case.<sup>436</sup>

12.6.2.3. Turning to the likely impact of construction dust. The ES 2014 indicates that, having regard to the Institute of Air Quality Management, 2012, '*Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance*' (IAQM Guidance), the sensitivity of the area surrounding the Order site is considered to be low. Although it identifies that the area is generally characterised by low density residential and commercial properties, it recognises that there are a number of properties at Northbridge Street and Salehurst which would be within 200 metres of the construction works and that those settlement areas may also be affected by 'track out' haulage routes.<sup>437</sup> However, the ES 2014 sets out that through the implementation of best practice mitigation measures, nuisance dust effects would be minimised and would not be significant. The ESu confirms that having had regard to the update of the IAQM Guidance in 2014, the ES 2014 dust risk

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<sup>433</sup> INQ/150 page 8.

<sup>434</sup> RVR/25 section 7.9.

<sup>435</sup> RVR/70-01 section 6.

<sup>436</sup> RVR/70-01 para 6.3.1.

<sup>437</sup> RVR/25 para 7.5.10.

assessment remains valid. Furthermore, it identifies the necessary mitigation measures would be secured by condition no. 6 attached to planning permission Ref. RR/2014/1608/P and it echoes the finding of the ES 2014 that nuisance dust effects would not be significant.<sup>438</sup>

- 12.6.2.4. The ESu also provides an update to findings of the *Temple Final Air Quality Report, 2018*, with respect to air quality at the proposed level crossings.<sup>439</sup> Account was taken, amongst other things, of: more up to date traffic counts from 2019, albeit that there is little difference from the previous counts that informed the ES 2014 assessment, and growth factors; as well as a barrier closure period of 72 seconds. Whilst the barrier closure period may extend beyond 72 seconds from time to time, the air quality assessment is based on modelled queue lengths during the peak 15-minute periods, which are likely to be longer than at other times. On balance, I consider that this approach is reasonable. Having regard to the *Land-use Planning & Development Control: Planning for Air Quality, 2017*, guidance produced by the IAQM/Environmental Protection UK, the likely air quality impacts (Nitrogen Oxides (NO<sub>x</sub>) and particulates (PM<sub>10</sub>)) associated with each of the 3 proposed level crossings at sensitive receptors were judged to be negligible, with no risk that annual or short-term air quality objectives would be breached.<sup>440</sup> These findings are consistent with those of previous assessments.
- 12.6.2.5. Turning to the likely impact from railway engines. The ESu makes reference to Defra's *Local Air Quality Management Technical Guidance, 2018* (TG16), which provides screening criteria for whether there is a risk that SO<sub>2</sub> and NO<sub>2</sub> air quality objectives may be breached by diesel or steam locomotives. In relation to the proposed engine shed at Robertsbridge, the nearest receptors, users of the public rights of way network or local residents, fall well outside the cordon of concern identified by TG16 in relation to stationary locomotives. The ESu concludes that the air quality impacts from the proposed engine shed would be likely to be negligible and would not result in a breach of the relevant air quality objectives. For moving locomotives, the ESu also confirms that air quality impacts would be likely to be negligible, having regard to air quality objectives and given: the relatively low calculated emission rates and, the location of receptors relative to the line.<sup>441</sup><sub>[9.6]</sub>
- 12.6.2.6. Overall, the ESu confirms that its findings are consistent with those of the ES that the Order scheme would be unlikely to have a significant adverse effect on air quality. I have not been provided with any compelling evidence to the contrary. I conclude that the impact of the Order scheme on air quality would be likely to be negligible and insignificant.

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<sup>438</sup> RVR/70-01 para 6.2.6.

<sup>439</sup> RVR/60.

<sup>440</sup> RVR/70-01 para 6.3.2-10.

<sup>441</sup> RVR/70-01 paras 6.3.11-22.

12.6.3. **Water and waste-water discharge**

- 12.6.3.1. *The Water Environment (Water Framework Directive)(England and Wales) Regulations 2017* indicate that the Secretary of State must exercise their relevant functions in relation to each river basin district so as best to secure that the requirements of the Water Framework Directive for the achievement of environmental objectives.
- 12.6.3.2. The ES confirms that the Order scheme has the potential to impact on the River Rother surface water body and Kent Weald Eastern-Rother groundwater body, which fall within the scope of the South East River Basin Management Plan, 2015. The overall status objectives for these water bodies are: in the case of the River Rother, to move from moderate to good status by 2027; and, in the case of the Kent Weald Eastern-Rother groundwater body, to move from poor to good by 2027.<sup>442</sup>
- 12.6.3.3. Whilst the detailed design of the Order scheme has not yet been finalised, the design has progressed since the Water Quality, Hydrology and Hydrogeology chapter of the ES and supporting Water Framework Directive Assessment (WFDA) were written. The ESu provides an update to those documents taking account, amongst other things, of relevant design changes. In common with the ES 2014, the ESu indicates that safeguards are in place to ensure that the Order scheme would not have any significant adverse effects on water quality or groundwater during the construction and operational phases of the Order scheme.<sup>443</sup>
- 12.6.3.4. The safeguards include conditions already attached to planning permission Ref. RR/2014/1608/P requiring for example: investigation of potential contaminated land and implementation of approved remediation, monitoring and maintenance measures as necessary (condition nos. 12 and 13); and, the implementation of an approved CEMP, which will identify mitigation measures required to ensure the protection of relevant waterbodies from the construction of the Order scheme (condition no. 6).<sup>444</sup>
- 12.6.3.5. Furthermore, consultation in respect of the detailed design, surface water management and delivery programme of the Order scheme is ongoing with the EA, who through the Environmental Permit regime can seek to ensure that there are no detrimental effects on the River Rother or groundwater in the area. As part of that process the EA would take account of a further iteration of the WFDA on the finalised detailed design for the Order scheme.<sup>445</sup> I have no reason to believe that the required Environmental Permit would be likely to be refused.
- 12.6.3.6. With these safeguards in place, I conclude that the Order scheme would be unlikely to cause a deterioration in the status of the identified water bodies or compromise achievement of their status objectives.

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<sup>442</sup> RVR/70-03 section 4.

<sup>443</sup> RVR/70/01 9.4.43-57.

<sup>444</sup> RVR/7.

<sup>445</sup> RVR/70-01 paras 9.4.50-53.

12.6.4. **Noise**

- 12.6.4.1. Whilst a number of objectors have raised general concerns with respect to the noise impacts of the Order scheme, I have not been provided with any compelling evidence to show that the impact would be any greater than as set out in the ES 2014 and ESu.<sup>[9.6]</sup>
- 12.6.4.2. The ESu indicates that, since the ES 2014 was written, baseline noise levels are only likely to have increased due to growth in road traffic, generally the dominant noise source. However, having regard to traffic flow data, the change in noise impact is likely to be relatively low or negligible and, in any event, any increase in baseline road traffic noise levels would tend to reduce the noise impact of the Order scheme. Therefore, the ESu concludes that the ES noise baseline assessment is considered to be robust.<sup>446</sup>
- 12.6.4.3. Whilst construction activity maybe closer to some receptors than anticipated by the ES 2014, the ESu indicates that with the identified best practice mitigation measures in place, the residual adverse effects are likely to remain as set out in the ES 2014. The ES 2014 indicates that the residual noise effects from construction activities would be likely to be between minor and moderate adverse and reducing when activities are taking place away from the receptors.<sup>447</sup> It appears to me that, given the linear nature of the Order scheme, the proportion of the construction period during which activity would be likely to be close to any one receptor would be relatively short. I consider that the impact of construction noise would be negligible.
- 12.6.4.4. The ES 2014 indicates that operational noise, based on train pass-by events on the existing KESR, would be likely to have a negligible effect at all receptors.<sup>448</sup> Although the ES 2014 did not consider noise associated with the proposed level crossings, such as warning alarms and traffic stopping, the ESu indicates that the relatively short duration and low number of operations (with a large proportion of the year where the railway would not carry passengers at all), combined with the distance to receptors, mean that significant noise effects are unlikely to be associated with the level crossings.<sup>449</sup> I consider that the impact of operational noise in both urban and countryside areas would be likely to be negligible.
- 12.6.4.5. I conclude that the impact of the Order scheme on the noise environment of receptors would be likely to be negligible.<sup>[4.5.3.5, 4.7.7]</sup>

12.6.5. **SoM3)c)-Conclusions**

- 12.6.5.1. I conclude in relation to flood risk that the Order scheme would be likely to be safe for its lifetime taking account of the vulnerability of its users and it would be unlikely to materially increase flood risk either within the

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<sup>446</sup> RVR/70-01 para 5.2.27.

<sup>447</sup> RVR/70-01 para 5.2.30, RVR/25 para 6.6.1.

<sup>448</sup> RVR/25 paras 6.5.11 and 6.6.3.

<sup>449</sup> RVR/70-01 5.2.31-35.



existing floodplain or elsewhere, in keeping with the aims of the Framework. Furthermore, the impact of the Order scheme in terms of air quality and noise would be negligible and it would be unlikely to cause a deterioration in the status of the identified water bodies or compromise achievement of their status objectives. It would not give rise to unacceptable levels of air, noise or water pollution, in keeping with the aims of the Framework.

12.6.5.2. I conclude that overall, the effect of the Order scheme on interested parties, with particular reference to the effects on flood risk, air quality, water and waste discharge and noise, would be acceptable and would not weigh for or against it.

12.7. **SoM3)d)- The likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact on heritage assets, the surrounding natural habitats, fauna and flora and the High Weald Area of Outstanding Natural Beauty**

12.7.1. ***Heritage***

12.7.1.1. The ES identifies that the site of Robertsbridge Abbey, which is designated as a Scheduled Monument, is situated to the south of the River Rother. The remains include above and below ground structures and several elements of the former Abbey are also designated as Listed Buildings (Grade II\*). Of these, the building known as 'Robertsbridge Abbey Farmhouse' is outside the scheduled area.<sup>450</sup>

12.7.1.2. The ES indicates that whilst the Order scheme would be within around 20 metres of the site of the Abbey at its closest, the Order scheme would be located to the north of the river. Furthermore, there are no indications that significant remains extend north of the Rother, which the ES suggests would have formed a natural limit to the monastic precinct. The ES identifies that whilst the surrounding pattern of fields, woods, tracks and roads has an ancient origin, all these assets have undergone modification to a greater or lesser extent. It indicates that the most recent evolution of the landscape includes the original railway, the embankment of which remains in place to the north and northeast of the site of the Abbey. Whilst the site of the Abbey is set within a modern rural landscape, there are historic places, some structures and routes between that were contemporary with the Abbey and form part of its setting. These include the village of Salehurst and its Church of St Mary, situated to the northwest, and settlements such as Moat Farm, which is located to the northeast.

12.7.1.3. Although to the northeast of the Abbey site the proposed route would run along an existing section of embankment, to the northwest the Order scheme would include the reconstruction of a section of the railway embankment, which had been removed, in fields. The ES indicates that the construction of the new embankment would have a

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<sup>450</sup> RVR/27 Figure 12.1 asset 1.

moderate negative effect on the setting of the Abbey site, which would continue throughout its operational phase, and due to the value and sensitivity of the heritage asset, the significance of the negative impact is judged as large.

- 12.7.1.4. Whilst I consider that the significance of effect of construction activity, including impacts such as the movement and noise associated with construction traffic, may reasonably be regarded as moderate/large adverse, it would be temporary in nature. However, in the operational phase, where the new embankment would rise above existing ground level, the Order plans indicate that it would comprise a low profile structure. Furthermore, based on what I have read and seen, I consider that views towards the proposed railway from the Abbey site would be greatly restricted by planting, such as that along the River Rother, even accounting for some loss of planting along the existing embankment.<sup>451</sup> In views from Salehurst, Moat Farm and nearby public rights of way towards the Abbey site, the visual impact of the railway line would also be likely to be limited by intervening planting. Under these circumstances, I consider that the likely impact of the reinstated embankment on the setting of the Abbey site has been overstated by the ES. Although I recognise that the movement of trains during the operational phase of the Order scheme would also have a negative impact on the setting of the Abbey site, principally due to noise, I share the view set out in the ES that the impact on the setting of the Abbey site would be likely to be negligible and the significance slight.
- 12.7.1.5. In my judgement, the significance of effect of the Order scheme on the setting of Robertsbridge Abbey Scheduled Monument and associated Listed Buildings in the operational phase would be slight/moderate adverse overall.<sup>[6.2.9, 6.9.1]</sup> This is consistent with the findings of the ESu.<sup>452</sup> Furthermore, I have no compelling reason to dispute the findings of the ESu which indicate that, insofar as the Order scheme would be likely to have an adverse effect on any other designated heritage asset, the significance of effect would be no greater than slight/moderate adverse during construction phase and slight adverse during the operational phase.
- 12.7.1.6. I have found that the Order scheme, which would enhance opportunities to travel to Bodiam Castle by a more sustainable mode of transport than the private car, would be likely to encourage more people to visit that Scheduled Monument. However, in my view, that does not amount to the *'development within...the setting of heritage assets, to enhance or better reveal their significance'* supported by the Framework.<sup>453</sup> In my judgement, it would not offset the harm to the significance of the designated heritage assets associated with the site of Robertsbridge Abbey. I give no weight to RVR's view that it would offset the harm.<sup>[3.2.2, 3.7.1-2]</sup>

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<sup>451</sup> For example, RVR/27 Figure 8.6 N and M.

<sup>452</sup> RVR/70-05.

<sup>453</sup> INQ/91 para 206.

12.7.1.7. I conclude overall that the Order scheme would cause less than substantial harm to the significance of designated heritage assets.

12.7.2. ***The surrounding natural habitats, fauna and flora***

12.7.2.1. The ES includes an assessment of the potential impacts of the Order scheme on ecology and biodiversity. There is no dispute that the Order site and its eastern section in particular, which runs through Moat Farm to Junction Road, has some ecological and biodiversity value. Unusually, but not uniquely, the ES did not include surveys of the Order site, as RVR was denied access to the site by the landowners, who object to the Order scheme.<sup>454</sup> Instead the ES was based primarily on a desk based view of publicly available data, observations made from public footpaths and roads, and professional judgement on the likelihood of habitats and species being present on the site. Furthermore, a precautionary approach to assessment was employed, assuming the presence (as opposed to absence) of legally protected species that could logically be present.<sup>455</sup>

12.7.2.2. The ES identifies that, without mitigation, a number of significant adverse impacts would be likely to result from the construction phase of the Order scheme.<sup>[6.11.2]</sup> No significant additional impacts are considered likely to occur once operational. The ES identifies a package of mitigation measures to minimise the impacts on habitats and species, such as woodland and scrub planting. However, it acknowledges that despite the proposed mitigation measures there is likely to be displacement of/disturbance to some species within the construction corridor and the loss of limited numbers of mature trees. It is also acknowledges that some impacts would remain while the proposed woodland planting becomes established. All of these effects are assessed as significant.<sup>[6.11.6, 8.2.1.5]</sup> However, with mitigation in place, the ES anticipates that there would be no residual effect on species by virtue of the creation of suitable alternative foraging and breeding habitat to accommodate species displaced from the proposed route.<sup>456</sup>

12.7.2.3. The local planning authority when deciding to grant planning permission Ref. RR/2014/1608/P took account of its duty to have regard to the purpose of conserving biodiversity, which includes restoring or enhancing a population or habitat. It also had regard to Natural England's *Standing Advice for Protected Species*, amongst other guidance. It determined that the approach taken by the ES was appropriate, given the lack of access, and it accepted the advice of the County Ecologist that interests of acknowledged importance, including those of legally protected species, could be satisfactorily safeguarded through the imposition of pre-commencement conditions, which would secure necessary surveys, assessments, and measures to mitigate, compensate and enhance biodiversity. Neither the EA nor Natural England raised an objection in principle to this approach.

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<sup>454</sup> RVR/70-01 para 8.3.5.

<sup>455</sup> RVR/70-01 para 8.4.1.

<sup>456</sup> RVR/25 para 9.6.1-3.

Furthermore, the local planning authority had regard to the tests under Regulation 53 of *The Conservation of Habitats and Species Regulations 2010* (now Regulation 55 of the *Conservation of Habitats and Species Regulations 2017*), which Natural England would apply to determine whether mitigation licences would be issued in relation to species encountered, and saw no reason to believe that necessary licences would not be granted.<sup>457</sup>

- 12.7.2.4. Having gained control of the land required for the section of route between Austen's Bridge and Junction Road, RVR commissioned the requisite surveys, the findings of which were broadly consistent with the ES, and associated plans for that section in accordance with the pre-commencement conditions.<sup>458</sup> The details for the section between Austen's Bridge and Junction Road have been approved by the local planning authority. In addition, Natural England has issued the necessary licences in relation to legally protected species encountered, resulting, for example, in the successful movement of badgers to new setts in the locality.<sup>459</sup><sub>[8.3.1.4-6]</sub> In my judgement, these outcomes indicate the approach taken by RVR to be reasonable and robust.
- 12.7.2.5. The ESu has drawn on updated ecology data added to databases held by the Sussex Biodiversity Records Centre in the intervening period since the ES was produced and the Sussex Ornithological Society. It indicates that the previously identified mitigation measures remain achievable and the works undertaken on the Austen's Bridge to Junction Road section of the route should be considered as a viable blueprint for future works.<sup>460</sup> I have not been provided with any compelling evidence to the contrary.
- 12.7.2.6. In evidence to the Inquiry, the Landowners have provided ecological survey information gathered at Moat Farm in 2014, 2015 and 2019. However, for the most part this information relates to Moat Farm as whole, with very little direct reference to the Order site and no associated assessment of the conservation value of species and habitats within the rail corridor. The Landowners, EF and a number of other individual objectors have expressed their own views as to the presence of particular species as well as, more generally, the ecological and biodiversity value of the Order site and potential impact of the scheme.<sup>461</sup> However, they are not qualified ecologists. I consider that greater weight is attributable to the approach, assessments and associated findings of the ES and supplementary evidence provided by RVR's ecologist, which was open to cross-examination at the Inquiry.
- 12.7.2.7. For example, the landowners have indicated that the mature trees which now grow along the line (and out of) the old railway embankment provide a habitat for a number of red-listed species, such as Nightingales.<sub>[6.11.1]</sub> However, this is not supported by an Order site

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<sup>457</sup> RVR/56 section 6.8.

<sup>458</sup> RVR/70-01 section 8.6.

<sup>459</sup> RVR/70-01 paras 8.7.1-9.

<sup>460</sup> RVR/70-01 Chapter 8

<sup>461</sup> See for example, 6.11, 8.2, 8.3.

specific survey. Whilst another interested party has indicated that he has heard Nightingales singing from locations along the route in the past, he acknowledges that they may not have been nesting there and he has not heard Nightingales at that end of the valley since May 2019, just before the track clearance works were undertaken between Austen's Bridge and Junction Road.<sup>[8.2.1.6-10]</sup> Prior to those works that area was surveyed by an ornithologist for RVR, who considered that overall the site was deemed to lack the scrub cover nightingales prefer and is unlikely to be a key site that requires protection.<sup>462</sup>

- 12.7.2.8. Under the circumstances, I consider that the approach taken by RVR to be reasonable and robust in terms of satisfactorily safeguarding ecological and biodiversity interests of acknowledged importance, including in relation to legally protected species.
- 12.7.2.9. The ES anticipates the provision of replacement planting in order to ensure no net loss in biodiversity and seeking to achieve net gain, which the ecology management condition attached to planning permission Ref. RR/2014/1608/P seeks to secure. The ES sets out targets for the creation of woodland and scrub for the whole scheme, which it anticipates would be planted both in linear strips alongside the rail line (1.5 ha of woodland and 1.0 ha of scrub) and also a proportion within adjacent arable fields (1.5 ha in a single block), compensating for losses at a scale of 2:1.<sup>463</sup>
- 12.7.2.10. I have had regard to the concerns raised by objectors with respect to the fragmentation of habitat and that there may be insufficient land available to meet planting requirements. However, I share the view set out in the ES that where the original embankment remains, it is likely that the majority of existing trees either side of the line would be retained<sup>464</sup> and, to my mind, this together with the proposed line side planting, shown indicatively on Figure 8.5 of the ES, would satisfactorily address the risk of fragmentation.<sup>[6.11.2-3]</sup>
- 12.7.2.11. Turning to the sufficiency of land to meet planting requirements. The ESu reports that within just the Austen's Bridge section scrub planting is a little in excess of 50% of that proposed for the whole of the Order scheme, whilst the woodland enhancement measures are a little under 1/10 of the whole scheme. Against that background, I am content that the remaining areas of required 'line side' planting referred to above could be delivered within the Order site. Furthermore, RVR has identified a number of other areas for woodland block planting within adjacent fields.<sup>465</sup> They include around 0.8 ha to the west of Austen's Bridge, which is subject of compulsory purchase under the terms of the Order and a 4 ha field further to the east, which is subject to an 'in principle agreement' with the landowner.<sup>[6.11.4-5]</sup> Based on what I have

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<sup>462</sup> RVR/70-01 para 8.6.29.

<sup>463</sup> RVR/25 section 9.5.

<sup>464</sup> RVR/25 para 8.5.11.

<sup>465</sup> INQ/74 and INQ/149.

read and seen, I consider it likely that sufficient land could be made available to meet the identified planting requirements.<sup>[6.12.9]</sup>

12.7.2.12. Whilst I acknowledge that woodland habitat cannot be replaced overnight, the ES indicates that, with mitigation in place, it is anticipated that there would be no residual effect on species by virtue of the creation of suitable alternative foraging and breeding habitat to accommodate species displaced from the proposed route.<sup>466</sup> Given the limited risk of fragmentation and the proposed scale of compensation, I share this view.

12.7.2.13. I conclude that the approach taken by RVR would be reasonable and robust in terms of satisfactorily safeguarding ecological and biodiversity interests of acknowledged importance, including in relation to legally protected species. I acknowledge that woodland habitat lost to track clearance could not be replaced overnight. However, with the proposed mitigation in place, it is unlikely that there would be a residual effect on species by virtue of the creation of suitable alternative foraging and breeding habitat to accommodate those displaced from the proposed route. It would be likely to lead to a net gain in biodiversity, in keeping with the aims of the Framework. I consider that limited weight is attributable to the adverse impacts of the Order scheme on ecology and biodiversity, which, given the mitigation proposed, would be likely to be time limited for the most part.

### 12.7.3. ***Landscape character, visual amenity and the AONB***

12.7.3.1. ES 2014 submitted in support of the Order was followed an *Environmental Statement Addendum, 2017 (ESa)*, the purpose of which was to provide further explanation and clarification of the impacts of the Order scheme with reference to *The High Weald Area of Outstanding Natural Beauty Management Plan, 2014 (MP 2014)*.<sup>467</sup> The ESu included an independent review and update of the ES 2014 LVIA as well as an update to the ESa taking account of *The High Weald Area of Outstanding Natural Beauty Management Plan, 2019 (MP 2019)*.<sup>468</sup>

12.7.3.2. The ESu review identifies a number of shortcomings of the original LVIA, reflecting some concerns raised in objections to the Order scheme, and addresses them through, amongst other things, the adoption of slightly different criteria for the assessment of significant effects, with reference to GLVIA.<sup>[8.14.1.9]</sup> Nonetheless, the conclusions drawn by the ESu are consistent with the findings of the ES 2014 that the Order scheme would be unlikely to give rise to significant effects on landscape character or visual amenity.

#### *Landscape character*

12.7.3.3. The route of the proposed section of railway runs from Northbridge Street at Robertsbridge, in the west, to Junction Road at Udiam, in the

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<sup>466</sup> RVR/25 para 9.6.3.

<sup>467</sup> RVR/28.

<sup>468</sup> RVR/70-02 and INQ/49.

east, across the floodplain of the River Rother, which runs west to east across the bottom of the valley. The land is predominantly in pasture adjacent to the original alignment of the railway. The site falls within the bounds of the High Weald AONB, which is designated as such for the purpose of conserving and enhancing the natural beauty of the area.<sup>469</sup> The ES 2014 identifies that government guidance relating to AONBs provides a non-technical definition: 'Natural Beauty' is not just the look of the landscape, but includes landform and geology, plants and animals, landscape features and the rich history of human settlement over the centuries.<sup>470</sup>

- 12.7.3.4. The original railway line, which was known as the Rother Valley (Light) Railway, opened in 1900 and was subsequently renamed the Kent & East Sussex Light Railway. It closed to regular passenger services in 1954 and freight services in 1961. In 1974 trains began to run again along part of the route between Tenterden and Bodiam, with the restored line reaching Bodiam in 2000. In 2012 work to reinstate the sections of line from Bodiam to the B2244 Junction Road, as well as from Robertsbridge Station to Northbridge Street, were completed.<sup>471</sup> The Order scheme seeks to reinstate the remainder of the line, around 3.4 km in length, between Northbridge Street and Junction Road. Remnants of that section of the railway, including some lengths of embankment and derelict bridge structures remain.
- 12.7.3.5. Whilst there is no dispute that the reinstatement of embankments where missing along the route of the proposed railway across the floodplain would have an adverse effect on the landscape, the issue is the degree of that effect. I share the view of RVR that the significance of effect would be likely to be slight-moderate negative, rather than more significant, not least as the characteristics of the landscape thereabouts already include embankments within the floodplain, such as the A21 embankment and the retained sections of the original railway embankments at Salehurst and Moat Farm.<sup>[8.14.1.5]</sup>
- 12.7.3.6. The plans associated with planning permission Ref. RR/2014/1608/P indicate that at the eastern end of the Order scheme, between Austen's Bridge and Junction Road, the railway would include a second track; a passing loop. This would necessitate a wider track bed than in most other locations to the west. The ES recognises that tree clearance here would be likely to be more extensive, due to the wider track bed, opening up views from a number of nearby public vantage points.<sup>472</sup> Contrary to the view of a number of objectors, I consider that the same impact would be unlikely along the single track sections of the route, as the track bed would be narrower.<sup>[6.10.2, 8.14.1.6]</sup> For example, with respect to the section immediately to the west, where the original embankment

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<sup>469</sup> The Countryside and Rights of Way Act 2000 section 82. Section 85 requires that 'in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'.

<sup>470</sup> RVR/25 para 8.4.2.

<sup>471</sup> RVR/25 section 2.3.

<sup>472</sup> RVR/25 para 8.5.12.

remains, the ES anticipates that the majority of existing trees either side of the line would be retained and the landscape character would remain largely unaffected there. In my view, that is likely to be possible. In my judgement, this finding is supported by the appearance of the restored section of the route immediately to the east of Junction Road, where the narrow single track bed, is closely flanked by a mixture of low grass/hedgerow planting and taller trees. Its impact on the landscape is slight.<sup>[8.14.1.6]</sup> Whilst I acknowledge that the proposed mitigation planting would be unlikely to result in the route running through a 'deeply-wooded' corridor, as the area is not 'deeply wooded' at present in my view, this doesn't weigh against the Order scheme.<sup>[8.14.1.7]</sup>

- 12.7.3.7. A number of objectors dispute RVR's view to the effect that there is 'a relatively high degree of consensus that the heritage steam railway is recognised for the positive contribution it makes/can potentially make to landscape character and visual amenity...'. They draw attention to the number of registered objectors to the Order scheme. However, of those people who have objected to the Order scheme, it appears to me that those raising concerns specifically in relation to landscape character and visual amenity are limited in number. In any event, I consider RVR's view in relation to this matter to be reasonably well founded, with particular reference to: the *East Sussex County Landscape Assessment*, which identifies the KESR as a positive landscape attribute; and, *The High Weald AONB Management Plan, 2019-24* (MP 2019), which notes that the '89 km of historic railway line' within the AONB contributes to the area's 'Natural and cultural capital'.<sup>[8.14.1.8, 8.14.1.21]</sup> As an aside, the route of the Order scheme is not amongst the 4 disused railway lines said to contribute to the natural and cultural capital referred to in the MP 2019.<sup>473</sup><sup>[8.14.1.22]</sup> Furthermore, I have already concluded above that the impact of operational noise on the local environment would be likely to be negligible.<sup>[4.5.3.5, 4.7.7, 8.6.6.1]</sup>
- 12.7.3.8. I consider that the significance of effect of street lighting associated with the proposed A21 level crossing on either landscape character, visual amenity or the AONB would be unlikely to be greater than negligible adverse, given the location close to the urban area.<sup>474</sup> This would also apply to street lighting at the Northbridge Street crossing location, which would be within the urban area. If it is required, the impact of street lighting would be greater at the proposed Junction Road crossing, which would be situated on an unlit rural road. However, based on what I saw, I consider that any impact would be likely to be limited by tree cover around the location and potentially through the use of 'dark sky-friendly lighting' advocated by the MP 2019.<sup>475</sup> In my judgement, associated lighting would be unlikely to have a significant adverse effect on either landscape character, visual amenity or the AONB.<sup>[6.10.2]</sup>
- 12.7.3.9. I consider overall that the significance of effect of the Order proposal on landscape character would be likely to be slight-moderate negative.

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<sup>473</sup> INQ/49 page 60.

<sup>474</sup> RVR/70-02 para 5.5.30-

<sup>475</sup> INQ/49 page 63.



*Visual impact*

- 12.7.3.10. The ESu indicates that there is the potential for the Order scheme to give rise to moderate negative and therefore, significant adverse visual effects when looking south from vantage points D, E, F and G as well as north from vantage point H. However, it suggests that this reflects a 'worst-case' scenario including assumptions such as mitigation measures may not be achievable, and no account being taken of the likely consensus view that the heritage railway is recognised for the positive contribution it does and could make to landscape character and visual amenity.
- 12.7.3.11. In my judgement, vantage points along Church Lane from which the proposed railway embankment would be visible would be very limited, due to the screening effect of the hedgerow along the southern side of the highway for the majority of its length. Furthermore, for that reason and due to the absence of footways along much of its length, users of Church Lane would be more likely to be focussed on the highway than the countryside to the south; users of Church Lane would be low sensitivity receptors. Even if glimpsed, from vantage points D, E and/or F, I consider that the magnitude of impact of the railway would be likely to be minor-negligible adverse, due to its relatively low profile and the distances involved. Furthermore, notwithstanding the reservations of others with respect to reliance on landscape planting, I consider that grass landscaping of the embankment, which would be likely to be possible as a minimum in my view, would soften its visual impact further.<sup>[8.14.1.11]</sup> To my mind, the visual effect would be likely to be minor.
- 12.7.3.12. I acknowledge that users of local footpaths would be more likely to be focussed on the countryside and therefore, very high sensitivity receptors. However, when the railway is viewed from vantage points G and H on the local footpath network, the magnitude of impact would be likely to be negligible (very low), not least due to partial screening provided by existing path-side planting and that the proposed track would be likely to be at or slightly below existing ground level, according to the Order plans. In my judgement, this would result in no more than a moderate visual effect.
- 12.7.3.13. Some local residents would be able to see parts of the railway from their properties and would be very high sensitivity receptors. However, I consider it likely that the number with clear views of the railway would be limited and the magnitude of effect would be likely to be small to negligible. For example, from neighbouring properties on Northbridge Street, views southwards towards the proposed route are already likely to include built development within Robertsbridge and the A21 embankment with passing traffic. Views of the railway from properties that front onto the northern side of Church Lane would be relatively distant and would also include the A21. Views from properties in Salehurst would be more likely to be partial, due to intervening planting. In my judgement, this would result in no more than a moderate visual effect.<sup>[8.14.1.27]</sup>

12.7.3.14. Trains passing through the open countryside would have a visual impact themselves. However, the impact of each event at any particular vantage point would be short lived and, given the relatively low speed of the proposed trains, in my view, they would not be likely to unduly disturb people nearby.<sup>476</sup> In addition, as indicated above, there is a relatively high degree of consensus that the heritage steam railway in the AONB is recognised for the positive contribution it makes. Having regard to these factors, I consider that trains would result in no more than a minor adverse visual effect.<sup>[8.14.1.12-13]</sup>

12.7.3.15. I consider it likely overall, that the Order scheme would have a minor-moderate negative visual effect, falling short of a significant adverse visual effect.

*The High Weald AONB*

12.7.3.16. With reference to the objectives of the MP 2014, the ESa finds the Order scheme to be: in slight conflict with two objectives; 'neutral' in relation to seven objectives; in 'minor accord' with seven of the objectives; in 'moderate accord' with three objectives; and, in 'major accord' with objectives R1 and UE4.<sup>477</sup> The conclusions of the ESu, with reference to the MP 2019, are comparable, finding: slight conflict with Objectives W1 (temporary), and FH1; otherwise, the Order scheme meets all the other relevant objectives; and, in certain aspects, the Order scheme demonstrates a high degree of compliance with the objectives.<sup>478</sup>

12.7.3.17. Objective W1 seeks to maintain the extent of woodland. Whilst the Order scheme would necessitate the removal of some trees along the existing embankments, mitigation planting is proposed.<sup>479</sup> Objective FH1 seeks to secure productive use of fields as part of sustainable land management. Some sections of the original railway embankment have been removed, resulting in enlarged fields, such as to the south of Church Lane. Although the reinstatement of the embankment would sub-divide those fields again, with a potential impact on agricultural activity, to my mind the areas involved are relatively small. I agree that the Order scheme would be in slight conflict with these objectives.

12.7.3.18. The Order scheme would reinstate a section of a historic railway. However, in my view, it does not follow that it would be in major accord with objective R1, as it is concerned with maintaining the historic pattern and features of routeways, typically present by the 14<sup>th</sup> century. The Order scheme would not involve any significant alteration to the Beech House Lane/bridleway S&R 36b route, which would cross the proposed railway at grade and at a similar level to existing ground level.<sup>[8.14.1.24]</sup> I consider that the Order scheme would be neutral in relation to objective R1.

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<sup>476</sup> RVR-W5-2 para 2.8.

<sup>477</sup> RVR/28 table 2.1.

<sup>478</sup> RVR/70-2 para 6.8(v).

<sup>479</sup> INQ/49.

- 12.7.3.19. However, the Order scheme would provide access to the AONB and links with visitor attractions such as Bodiam Castle from surrounding urban areas. Having regard to this and the matters set out above, in my judgement, it would strike an acceptable balance between seeking to develop and manage access to maximise opportunities for everyone to enjoy, appreciate and understand the character of the AONB while conserving its natural beauty, satisfying MP 2019 objective OQ3 (formerly objective UE4). I consider on balance, that the Order scheme would accord with the MP 2019 taken as a whole.<sup>480</sup>

*Landscape character, visual amenity and the AONB-conclusions*

- 12.7.3.20. I consider that the ES 2014 taken together with ESa and ESu, is adequate for the purposes of identifying the likely significant effects of the Order scheme on landscape character, visual amenity and the AONB.
- 12.7.3.21. In my judgement, the Order scheme would be likely to have a slight-moderate adverse effect on the landscape character and visual amenity of the AONB. Whilst not a significant impact, I am conscious the Framework indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs. However, to my mind, this harm would be offset by the improved access to the AONB and visitor attractions within it provided by the Order scheme. I conclude on balance that the adverse effect of the Order scheme on landscape character, visual amenity and the AONB would be sufficiently limited to be regarded as respectful and acceptable. My view is reinforced by there being no objection from the local planning authority, the AONB Unit or Natural England.<sup>[3.8]</sup>

12.7.4. ***SoM3)d)-Conclusions***

- 12.7.4.1. I conclude that, whilst the Order scheme would cause less than substantial harm to the significance of designated heritage assets, the harm attracts great weight, given the desirability of preserving a designated heritage asset and its setting anticipated by the Framework and the duty under section 66 of the *Planning (Listed Buildings and Conservation Areas) Act 1990*. The Framework indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, a matter I return to below.<sup>[6.9.3-4]</sup>
- 12.7.4.2. I conclude that little weight is attributable to the adverse impacts of the Order scheme on ecology and biodiversity, which, given the mitigation proposed, would be likely to be time limited for the most part. Over time, the Order scheme would be likely to result in net gains for biodiversity, in keeping with the aims of the Framework. I consider overall, that the effect of the Order scheme on the surrounding natural habitats, fauna and flora would be acceptable and it does not weigh for or against the Order scheme.

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<sup>480</sup> RVR/70-02 para 5.7.35.

- 12.7.4.3. I conclude that the Order scheme would be likely to have a slight-moderate adverse effect on the landscape character and visual amenity of the AONB, which attracts great weight under the terms of the Framework. However, it would also improve access to the AONB and tourist attractions within it. I conclude on balance that the effect of the Order scheme on landscape character, visual amenity and the AONB would be acceptable and it does not weigh for or against the scheme.
- 12.8. **SoM3)e)- The likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact from changes to parking provision**
- 12.8.1. RVR has estimated that, as a result of the proposed Robertsbridge rail link to KESR, around 20% of existing daily visitors to KESR who arrive at Tenterden by car would re-route to Robertsbridge and 15% of its anticipated 13,300 annual uplift in new KESR visitors would also arrive at Robertsbridge by car, equating overall to around 33 vehicle trips per day. I consider that even if the proportion of those new visitors arriving by car were significantly higher, as might be the case on the occasions when mainline services are disrupted by maintenance, it is likely that they could be accommodated within the station car park, having regard to the results of the Landowners' 'marked bay' usage survey and the substantial areas of unmarked bays within the car park that I saw.<sup>[3.9, 6.13.1.9, 8.3.2]</sup> My view in this regard is reinforced by my earlier finding that the increase in visitor numbers resulting from the Order scheme would be likely to be significantly lower than anticipated by RVR.<sup>481</sup>
- 12.8.2. I understand that Robertsbridge village has suffered in the past from inconsiderate parking by commuters accessing rail services from the village station who do not wish to use the station car park. Against that background, a number of objectors have raised the concern that people driving to Robertsbridge in order to use the proposed railway would be likely to exacerbate those problems.<sup>[8.1, 8.3, 8.6, 8.10, 8.13, 10.2]</sup>
- 12.8.3. Nonetheless, in my view, the behaviour of commuters is unlikely to be a reliable guide to the behaviour of visitors to KESR who arrive in Robertsbridge by car. The former may well be reluctant to pay the station parking fee day-in-day-out if they can find an alternative parking option. However, for the latter the parking fee would be likely to be only a small part of the cost associated with travelling on the heritage railway for a day and would be unlikely to deter them from using the station car park, which is conveniently located alongside the Robertsbridge Station of the heritage railway.<sup>482</sup><sup>[4.7.4.1]</sup> Furthermore, the local MP has confirmed that the introduction of CPE in Rother District in September 2020, means that dangerous, illegal and inconsiderate parking issues can now be dealt with by traffic wardens.<sup>[4.1.4.2, 4.3.2.4, 8.1.1.4, 8.3.2.4, 8.6.2.5, 8.6.3.3-7, 8.7.1.1]</sup> This position was not disputed at the Inquiry and I have no reason to do so. Further control over the parking demand likely to result from the proposal would be provided by RDC's condition no. 26 attached to

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<sup>481</sup> See SoM1.

<sup>482</sup> OBJ/1002/IF/1 para 7.5.2.

planning permission Ref. RR/2014/1608/P, which indicates that the required Travel Plan should have regard to parking limitations.<sup>[8.6.3.5]</sup>

- 12.8.4. Whilst reference has been made to an RVR open day, which caused parking congestion on local streets, I understand that event pre-dates the introduction of the CPE regime referred to above and so I give it little weight.<sup>483</sup><sub>[8.1.1.4-8, 8.3.2.4]</sub>
- 12.8.5. I conclude that the Order scheme would be unlikely to have a material adverse effect on parking conditions or the road network in Robertsbridge.<sub>[10.2.1.3-5]</sub> Parking associated with the Order scheme would not have an unacceptable impact on highways safety nor would the residual cumulative impact on the road network be severe, in keeping with the aims of the Framework. The likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact from changes to parking provision would be acceptable. This does not weigh for or against the Order scheme.

12.9. **SoM4)- The measures proposed by RVR to mitigate any adverse impacts of the scheme, including any protective provisions proposed for inclusion in the draft Order or other measures**

12.9.1. **Protective provisions**

*Highways England*

- 12.9.1.1. The Statement of Common Ground agreed between RVR and HE confirms that they have reached agreement on the form of the protective provisions for HE and other matters relevant to the implementation of the Order scheme, which have been incorporated within a revised draft of Schedule 8 of the Order.<sup>484</sup><sub>[7.14]</sub>

*Environment Agency*

- 12.9.1.2. In its letter to the Secretary of State, dated 26 March 2019, the EA confirmed that it has agreed wording for the Protective Provisions for Schedule 8, Part 3 – ‘*For the Protection of Drainage Authorities and the Environment Agency*’ of the draft Order. The EA confirmed that as a result it was in a position to withdraw its objection to the Order, with the exception of the following one outstanding point.<sup>485</sup>
- 12.9.1.3. RVR seeks to include deemed approval of ‘specified works’ within section 17 of Part 3 of Schedule 8 of the protective provisions of the draft Order. The EA considers that this is contrary to the approach taken by current legislation. In particular, 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*

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<sup>483</sup> Mr Moor’s oral evidence.

<sup>484</sup> INQ/60 para 4.5.6, INQ/21, INQ/93.

<sup>485</sup> OBJ/178-1.

*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.'*

12.9.1.4. In light of that, the EA has requested that the protective provisions be amended as per its submitted version to include 'deemed refusal' as set out in section 17, Part 3 of Schedule 8 of the draft Order.<sup>[8.15]</sup>  
In response, RVR has indicated that the deemed approval approach is wholly consistent with standard protective provisions applied in many cases and the EA has not identified any aspect of the draft Order that would support a different approach.<sup>[3.13.1-2]</sup>

12.9.1.5. Section 17(3) proposed by RVR states that:

*'any approval of the drainage authority required under this paragraph-...(b) is deemed to have been given if it is neither given nor refused within 2 months of the receipt of the plans for approval and, in the case of refusal, accompanied by a statement of the grounds of refusal;...'*<sup>486</sup>

I consider that a period of 2 months before deemed consent is considered to have been given would provide adequate protection for the interests overseen by drainage authorities, including the EA. Under those terms it would remain open to the EA to refuse approval, including on the basis that insufficient information has been provided. Modification of the Order to provide for deemed refusal would not be justified in this particular case.

## 12.9.2. **Other mitigation measures**

12.9.2.1. A mitigation summary table, which is set out in Appendix 2 of the ES, identifies proposed mitigation measures, associated for the most part with the construction phase of the Order scheme, related to: noise and vibration; air quality; landscape and visual; ecology and nature conservation; water quality, hydrology and hydrogeology; archaeology and cultural heritage; transport and access; as well as land use and agriculture.<sup>487</sup> The measures are expected to be secured by conditions attached to planning permission Ref. RR/2014/1608/P.<sup>488</sup>

12.9.2.2. The principal operational phase mitigation measures are associated with<sup>489</sup>:

- a) Flood risk-including the provision of culverts to enable flood water to flow from one side of the new embankment to the other (provisional details shown on the Order plans) and floodplain storage compensation. Following the making of the Order the design details would be finalised in consultation with the EA and are expected to be secured by conditions attached to the planning

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<sup>486</sup> RVR/01 page 35.

<sup>487</sup> RVR/25 Appendix 2.

<sup>488</sup> RVR/7.

<sup>489</sup> RVR/W1/1 section 11 and RVR/7.

permission for the Order scheme and the protective provisions referred to above.

- b) Farming-including the provision of accommodation crossings, following the making of the Order, the details would be finalised in consultation with the Landowners, as referred to above, and secured under Article 3 of the draft Order.
- c) Ecology-including measures to safeguard species and provide new planting, as identified above under SoM3)d), are expected to be secured by conditions attached to the planning permission for the Order scheme. Since the grant of planning permission Ref. RR/2014/1608/P in 2017, mitigation over the Austen's Bridge-Junction Road section of the route has been undertaken and a position statement is included in the ESu.<sup>490</sup>

12.10. **SoM5)- The extent to which the proposals are consistent with the *National Planning Policy Framework (the Framework)*, national transport policy, and local transport, environmental and planning policies**

12.10.1. ***National Policy***

12.10.1.1. The Framework confirms that achieving sustainable development involves the pursuit of three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. They are economic, social and environmental objectives, which should be delivered through, amongst other things, the application of the Framework policies.

*SoM1) Benefits*

12.10.1.2. The Framework indicates that significant weight should be placed on the need to support economic growth and productivity. The Order would enable the completion of the restoration of the railway line between Robertsbridge and Tenterden, the construction and operation of which would give rise to a range of economic and employment benefits, which together attract significant weight in my view.

12.10.1.3. The proposed extension of the railway between Junction Road and Robertsbridge Station would provide an opportunity which is not available at present for visitors to reach the heritage railway by mainline train, a sustainable transport mode. Furthermore, the connection at Robertsbridge would be likely to result in an increase in visitor numbers, a significant proportion of whom would be likely to travel by mainline train. Whilst others may travel by car and the Order scheme may give rise to a small increase in carbon emissions, I consider that overall, it can be regarded as providing for sustainable tourism, in keeping with the aims of the Framework. This attracts moderate weight.

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<sup>490</sup> RVR/70-1 sections 8.7-8.8.

*SoM3)d) Heritage assets, the surrounding natural habitats, fauna and flora and the High Weald Area of Outstanding Natural Beauty*

- 12.10.1.4. Whilst, with reference to the Framework, the effect of the Order scheme on the significance of designated heritage assets would amount to less than substantial harm, it attracts great weight, given the desirability of preserving a designated heritage asset and its setting anticipated by the Framework and the duty under section 66 of the *Planning (Listed Buildings and Conservation Areas) Act 1990*.<sup>491</sup><sub>[3.7.2, 6.9.3]</sub> The Framework indicates that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal.<sub>[6.9.3-4]</sub> I consider that, on balance, the benefits of the Order scheme, identified above, would far outweigh the less than substantial harm to designated heritage assets which would be likely to be caused by it.
- 12.10.1.5. As regards the surrounding natural habitats, fauna and flora, the Order scheme would be likely to minimise impacts on and, over time, provide net gains for biodiversity, in keeping with the aims of the Framework. I consider that the shorter term adverse impact would be offset by the likely longer term gain, such that this matter does not weigh for or against the Order scheme.
- 12.10.1.6. Whilst the Order scheme would have a slight-moderate adverse impact on the landscape character and visual amenity of the AONB, which attracts great weight under the terms of the Framework, it would also improve access to the AONB and tourist attractions within it, consistent with the aims of the MP 2019, offsetting the harm. I conclude on balance that the effect of the Order scheme on landscape character, visual amenity and the AONB would be sufficiently limited to be regarded as being respectful of the character of the countryside and this matter does not weigh for or against the Order scheme.

*SoM3)a) Highway level crossings*

- 12.10.1.7. The Framework indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. I have found that the residual cumulative impacts on the road network of the Order scheme would be unlikely to be severe. Furthermore, as the proposed level crossings of the A21, Northbridge Street and Junction Road would be likely to be tolerably safe and subject to the safeguards within the agreed provisions for the protection of HE, the Order scheme would be unlikely to have an unacceptable impact on highway safety.

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<sup>491</sup> “In considering whether to grant planning permission [or permission in principle] for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”



*SoM3)b) Public rights of way*

- 12.10.1.8. The proposed level crossing of the bridleway would introduce a new point of conflict for users of the public right of way, with an associated increase to the risk of accidents. Therefore, I consider that it would conflict with the aim of the Framework to protect and enhance public rights of way and access. However, given the view of ORR that the risks could be reduced to a tolerable level, this conflict attracts little weight.

*SoM3)c) Flood risk*

- 12.10.1.9. The PPG confirms that for the purposes of applying the Framework, flood risk is a combination of the probability and the potential consequences of flooding from all sources<sup>492</sup>. RVR's FRA, June 2016, indicates that the functional floodplain is defined by the 5% (1 in 20) AEP Flood Extent.<sup>493</sup> Having regard to the EA's fluvial flood extents maps<sup>494</sup>, it follows that the majority of the route of the proposed new railway subject of the Order lies within the functional floodplain, Flood Zone 3b.<sup>495</sup><sub>[6.8.4]</sub>

*Flood risk-Sequential and Exceptions Test*

- 12.10.1.10. Under the heading '*What is the aim of the Sequential Test for the location of development?*', the PPG indicates that '*Only when there are no reasonably available sites in Flood Zones 1 and 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required... Table 2 categorises different types of uses & development according to their vulnerability to flood risk. Table 3 maps these vulnerability classes against the flood zones set out in Table 1 to indicate where development is 'appropriate' and where it should not be permitted.*' The notes to Table 3<sup>496</sup> state that it does not show the application of the ST which should be applied first to guide development to Flood Zone 1, then Zone 2 and then Zone 3.<sub>[3.5.1.5, 6.8.3]</sub>
- 12.10.1.11. To my mind, it is clear that in circumstances where the sequential approach has been applied and it indicates that development cannot be accommodated within Flood Zones 1, 2 or a low risk part of Flood Zone 3, Table 3<sup>497</sup> then informs, having regard to the flood risk vulnerability of land uses, the outcome of the ST (including whether the development is appropriate, the support of the ET is required or the development should not be permitted).<sub>[6.8.2-3]</sub> The table is not just about the application of the ET, as suggested by RVR.<sub>[3.5.1.5-6]</sub>
- 12.10.1.12. Furthermore, I consider that this approach is consistent with PPG '*Diagram 2: Application of the Sequential Test for Local Plan preparation*'

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<sup>492</sup> INQ/9 para 2.

<sup>493</sup> RVR/36 para 3.2.4.

<sup>494</sup> OBJ/1002/CP/2 Appendix C.

<sup>495</sup> PPG-Flood Risk and Coastal Change, Table 1-Flood Zones.

<sup>496</sup> INQ/9 para 067, Inspector's note: equivalent of Table 2 in the August 2022 update of the PPG.

<sup>497</sup> INQ/9 para 067, Inspector's note: equivalent of Table 2 in the August 2022 update of the PPG.

<sup>498</sup>, which includes consideration as to whether development is appropriate in Flood Zone 3 with reference to Table 3<sup>499</sup>. I have no reason to believe that Table 3 is intended to apply differently to the consideration of a development proposal independent of the Local Plan preparation process.

- 12.10.1.13. RVR's FRA (June 2016) and Flood Risk Assessment Addendum, March 2021 (FRAa) indicates that the proposed railway is considered to fall within the 'less vulnerable' classification set out in PPG Table 2.<sup>500</sup> This was also the basis upon which the local planning authority determined the associated planning application in 2017.<sup>[6.8.4]</sup> Whilst the FRA observes that '*Table 3 Flood Risk Vulnerability and Flood Zone compatibility in that Planning Practice, states that less vulnerable land uses are compatible in Flood Zone 3a*', I consider that to be of little relevance given that the majority of the route of the proposed new railway lies within Flood Zone 3b. Table 3<sup>501</sup> indicates that 'less vulnerable' development should not be permitted in Flood Zone 3b and the ET would not be applicable.<sup>[6.8.5]</sup>
- 12.10.1.14. Alternatively, the FRA suggests that the Order proposal could be classified as water compatible, as during times of flood the railway would not be operated.<sup>502</sup><sup>[3.5.1.10]</sup> In support of that view, RVR cites outdoor sports facilities, which would be unlikely to be used at times of flood and are identified as water compatible development in PPG *Table 2: Flood Risk Vulnerability Classification*.<sup>503</sup> However, whilst Table 3<sup>504</sup> indicates that such development may be appropriate in Flood Zone 3a, the notes accompanying Table 3 confirm that, in order to qualify as appropriate in Flood Zone 3b, water compatible uses and essential infrastructure should be designed and constructed to, amongst other things, remain operational and safe for users in times of flood.<sup>[6.8.11]</sup> Therefore, the Order scheme would not qualify as appropriate development in Flood Zone 3b even if classified as water compatible or essential infrastructure.
- 12.10.1.15. Nonetheless, in my view, that is not the end of the matter. PPG *Diagram 2: Application of the Sequential Test for Local Plan preparation*<sup>505</sup> indicates that in such circumstances, where these criteria are not met, the need for the development can still be strategically reviewed using a Sustainability Appraisal. Furthermore, the PPG indicates that the ST does not need to be applied for individual developments on sites which have been allocated in development plans through the ST.<sup>506</sup>

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<sup>498</sup> INQ/9 para 21, Inspector's note: equivalent to Diagram 2 in para 026 of the August 2022 update of the PPG.

<sup>499</sup> INQ/9 para 067, Inspector's note: equivalent of Table 2 in the August 2022 update of the PPG.

<sup>500</sup> RVR/36 para 3.2.2 and RVR/70-07-00 para 2.3.3. Inspector's note: INQ/9 Table 2 see also Annex 3 of the Framework.

<sup>501</sup> INQ/9 para 067, Inspector's note: equivalent of Table 2 in the August 2022 update of the PPG.

<sup>502</sup> RVR/36 para 3.2.2.

<sup>503</sup> INQ/9 Table 2, Inspector's note: referred to as Annex 3 of the Framework in the August 2022 update of the PPG.

<sup>504</sup> INQ/9 para 067, Inspector's note: equivalent of Table 2 in the August 2022 update of the PPG.

<sup>505</sup> INQ/9 para 21, Inspector's note: equivalent to Diagram 2 in para 026 of the August 2022 update of the PPG.

<sup>506</sup> INQ/9 paras 21 and 33.

- 12.10.1.16. In this case the proposed development involves the reinstatement of a railway and so there is no appropriate area, at a lower risk of flooding, other than where it was originally instated, in the floodplain.<sup>[3.5.1.3]</sup> It would be on a site which was allocated for that purpose in the *Rother District Local Plan*, adopted in 2006 (RDLP) and was supported by Policy EM8. It indicates that *'An extension to the ...Railway...along the route identified on the Proposals Map, will be supported, subject to a proposal meeting the following criteria: (i) it must not compromise the integrity of the floodplain and the flood protection measures at Robertsbridge...'*
- 12.10.1.17. Furthermore, with reference to the *Rother District Local Plan-Inspector's Report*, it appears likely to me that the ST was applicable at the time. Relevant references include: *'PPG25 defines areas at flood risk associated with main rivers and these are shown on the Proposals Map'; '... in areas of flood risk, as shown on the Proposals Map, it is expected to minimise and manage the risk of flooding'; and 'The Council will apply the precautionary principle to the issue of flood risk, using a risk-based search sequence to avoid such risk where possible and managing elsewhere'*.<sup>507</sup> In addition, the Inspector acknowledged *'PPG25 requires that policies in development plans should outline the consideration which will be given to flooding issues, recognising the uncertainties that are inherent in the prediction of flooding and that flood risk is expected to increase as a result of climate change...The Inset Map for the village (Robertsbridge) clearly defines the extent of the flood plain and I am aware that a scheme of flood control works has recently been implemented. Flooding considerations are highlighted as part of the discussion on the sites allocated for development.'*<sup>508</sup> The commentary on Policy EM8 also identified that the proposed route passes through the floodplain.<sup>509</sup> In this respect, the flood risk associated with the site was understood and has not changed.
- 12.10.1.18. Based on the evidence presented, it appears likely to me that the site was allocated in the Development Plan for the purpose now proposed through the ST and there have been no significant changes to the known level of flood risk to the site. It follows, with reference to the PPG, that the ST does not need to be applied again.<sup>510</sup><sup>[3.5.1.4]</sup> The ST was in place at all material times in the determination of the planning permission Ref. RR/2014/1608/P and neither the local planning authority nor the EA raised an objection with reference to it.<sup>[3.5.1.3, 3.5.1.13, 6.8.8]</sup> This reinforces my view.
- 12.10.1.19. Furthermore, it appears to me, with reference to *Diagram 2*, that in these circumstances it is not necessary to apply the ET. However, if it

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<sup>507</sup> RVR/W1/5 Inspector's Report pages 5-8, 5-21 and 5-22.

<sup>508</sup> RVR/W1/5 Inspector's Report page 4-7.

<sup>509</sup> RVR/W1/5 Inspector's Report para 9.61.

<sup>510</sup> Inspector's note: In my judgement, this finding is not affected by the August 2022 update of the PPG which indicates that *'The Sequential Test...will not be required where: The site has been allocated for development and subject to the test at the plan making stage (provided the proposed development is consistent with the use for which the site was allocated and provided there have been no significant changes to the known level of flood risk to the site, now or in the future which would have affected the outcome of the test).'*

were, I consider that the wider sustainability benefits to the community of the Order scheme would outweigh flood risk, thereby satisfying the requirements of part a) of the Test and I have already found that requirements of part b), that it would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, would be likely to be met. In my judgement, the ET would be passed.<sup>[3.5.1.12, 6.8.1, 6.8.20-21]</sup>

*Flood risk-conclusions*

- 12.10.1.20. I consider it likely that the site was allocated in the Development Plan through the ST. Furthermore, I have found earlier that, in relation to flood risk, the Order scheme would be likely to be safe for its lifetime taking account of the vulnerability of its users. In addition, it would be unlikely to materially increase flood risk either within the existing floodplain or elsewhere. In these respects the Order scheme would be consistent with the aim of the Framework that where development is necessary in areas at highest risk, the development should be made safe for its lifetime without increasing flood risk elsewhere.<sup>511</sup> Furthermore, the wider sustainability benefits to the community of the Order scheme would outweigh flood risk. Flood risk does not weigh for or against the Order scheme.<sup>[6.8]</sup>

*SoM3)c) Air quality, noise, water and waste water*

- 12.10.1.21. The Order scheme would not give rise to unacceptable levels of air, noise or water pollution, in keeping with the aims of the Framework. These matters do not weigh for or against the Order scheme.

*SoM3)e) changes to parking provision*

- 12.10.1.22. I consider that off-street parking capacity at Robertsbridge Station car park would be likely to be sufficient to accommodate the demand for parking associated with the Order scheme. Consequently, it would not have an unacceptable impact on highways safety nor would the residual cumulative impact of parking on the road network be severe as a result of the Order scheme, in keeping with the aims of the Framework.

*National Policy-Conclusions*

- 12.10.1.23. The Order scheme would be likely to provide a number of benefits, the most significant of which would be its likely contributions to the economy and the facilitation of sustainable tourism. I conclude on balance that the Order scheme would accord with the Framework taken as a whole.

12.10.2. **Local Policy**

- 12.10.2.1. The Order scheme would occupy land allocated for that purpose by the RDLP and supported by Policy EM8. It was against this background that

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<sup>511</sup> Para 159.

planning permission Ref. RR/2014/1608/P was granted in 2017. Policy EM8, having been delivered by the grant of planning permission, was not carried forward in the Council's *Development and Site Allocations Plan, 2019* and is no longer extant.<sup>512</sup>

- 12.10.2.2. The Development Plan now comprises *Rother Local Plan Core Strategy, 2014 (CS)*, *Development and Site Allocations Plan, 2019* and the SRNP.
- 12.10.2.3. In so far as the Order scheme would contribute to sustainable tourism and would be respectful of the rural character of the countryside, it would accord with CS Policies RA2, EC6 and TR2 as well as SRNP Policies EC5, EC7 and LE3.<sup>[8.10.3.4]</sup> Furthermore, the Order scheme would not result in the loss of on-street or off-street parking and so would not conflict with SRNP Policy IN1 nor would it exacerbate flood risk consistent with SRNP Policy IN8.
- 12.10.2.4. The Order scheme would be unlikely to have a material adverse effect on the free flow of highway traffic and, subject to the agreed Protective Provisions to be included in Schedule 8 of the Order 'for the protection of HE', it would be unlikely to have an adverse impact on highway safety. In these respects it would be consistent with the aims of CS Policies TR1 and TR3 as well as SRNP Policies EC7, LE3 and IN2, which between them: give encouragement to transport improvements that would provide economic benefits; and seek to ensure that proposals would not cause or exacerbate any traffic problems and there would be no unacceptable or significant impacts on the local road network.<sup>513</sup>
- 12.10.2.5. More minor impacts would include that the Order scheme would have an adverse impact on the productivity of a number of fields, albeit affecting a limited area, contrary to in this respect CS Policy RA2, and alter the course of a historic routeway, contrary to SRNP Policy EN3 as well as the loss of some mature trees, contrary to SRNP Policy EN4. The latter harm would be likely to be satisfactorily mitigated by planting and so would not conflict with SRNP Policy EN8.
- 12.10.2.6. I conclude on balance that the Order scheme would accord with the Development Plan taken as a whole.<sup>514</sup><sup>[8.10.3.4-8, 10.2.1.7]</sup> The local planning authority has not objected to the draft Order and this reinforces my view. Nor would the Order scheme conflict with the aims of the *East Sussex Local Transport Plan 3, 2011-2026 (LTP3)*, insofar as it seeks to promote more sustainable transport options and control congestion.<sup>515</sup>

## 12.11. **SoM6)-Adequacy of the Environmental Statement**

- 12.11.1. RVR's *Environmental Statement and supporting information guide (Explanatory Note)*<sup>516</sup> (Essig) sets out the suite of environmental information produced in support of the Order application prior to the

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<sup>512</sup> RVR/W1/1 paras 6.12-6.18

<sup>513</sup> INQ/48.

<sup>514</sup> RVR/W1/5-2.

<sup>515</sup> INQ/51.

<sup>516</sup> RVR/72.

Inquiry. Since the preparation of the ES 2014, additional environmental work has been undertaken in order to address a number of stakeholder requests and to ensure that the findings of the Environmental Impact Assessment remain valid, including:

- a) *Environmental Statement Addendum 2016*-provided supplementary ecology information and considered whether proposed changes to the scheme design would have a material effect on the findings of the ES 2014.
- b) *ESa*-in response to the Secretary of State's Scoping Opinion, provided an assessment of the Order scheme against the High Weald AONB Management Plan.
- c) *Air Quality Statement-Level Crossings and Rolling Stock Emissions, 2018*-provided in response to concerns raised by a number of stakeholders with respect to air quality impacts related to traffic queues at the proposed level crossings and general air quality impacts from diesel and steam emissions from locomotives.
- d) *ESu*-Having had regard to the concerns raised by a number of interested parties with respect to the adequacy of the Environmental Statement a request for FEI was issued on behalf of the Secretary of State, dated 8 June 2020. It indicated that RVR's statement of environmental information should contain additional identified information in order to constitute an Environmental Statement for the purposes of the application, the further information being necessary to verify the findings of the Environmental Statement and to enable the Secretary of State to reach a reasoned conclusion. In response to the request, the *ESu* provided the FEI and revalidated the findings of the ES 2014 where necessary in the light of relevant changes in the intervening period. The *ESu* was accompanied by an updated *Non-Technical Summary, 2021*, which includes a schedule of proposed mitigation and residual impacts. The *ESu* identifies where the requested FEI can be found.

Together with the ES 2014, these documents comprise the Environmental Statement (ES).

12.11.2. As requested on behalf of the Secretary of State, the *ESu* included, amongst other things,

- a) A review of whether the baseline traffic data referred to in the ES remains representative, with reference to the results of the *Addendum to the Traffic Impact Study, 2018*.
- b) An updated Air Quality Assessment-addressing construction dust risk assessment, level crossing air quality assessment, potential impacts from heritage steam and diesel locomotives and potential impacts near the proposed engine shed.

- c) An updated water quality, hydrology and hydrogeology chapter, including updated methodology, FRA and WFDA.

I am satisfied that the ESu provides an adequate response to the request made on behalf of the Secretary of State for FEI.<sup>517</sup>

- 12.11.3. Prior to the Inquiry RVR has provided additional evidence relating to particular aspects of the Order scheme, including details required by HE in support of RVR's A21 level crossing DSA, and ORR to inform its decision as to whether it could support the proposed level crossings, applying its (then) test of exceptional circumstances.<sup>[3.3.1.1]</sup> In the main, that evidence informs a view regarding the likelihood of impediments to the Order scheme, rather than significant effects. Other evidence was provided in response to questions raised during the course of the Inquiry to clarify aspects of the Order scheme, such as the likelihood that floodplain storage compensation could be provided if required. I have had regard to the view of the Landowners that much of this evidence should have been included in the ES. However, to my mind, it serves to compliment the ES and/or clarify points raised in relation to it. It does not amount to 'Further Environmental Information'.<sup>518</sup>
- 12.11.4. I consider that the ES, comprising the above documents, meets the requirements of the *Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (as amended)*, providing a sufficiently up-to-date environmental impact assessment identifying, describing and assessing in an appropriate manner the direct and indirect significant effects of the proposed works. I have taken it into account in drawing my conclusions.<sup>[3.11]</sup>
- 12.12. **SoM7)- Whether the statutory procedural requirements have been complied with**
- 12.12.1. There is disagreement between NAW and RVR regarding the ownership of some of the land either side of the existing KESR track where it passes through Quarry Farm, to the east of Junction Road. However, the disputed land does not include that occupied by the track and RVR has confirmed that no compulsory purchase powers have been sought in respect of NAW's interests. NAW have subsequently acknowledged that they do not qualify as statutory objectors. To my mind, therefore, the dispute in relation to this matter is of no relevance to the consideration of the Order.<sup>[8.12.3]</sup>
- 12.12.2. NAW contend that Quarry Farm has a right of way through Udiam Farm onto the B2244 immediately beside and to the south of the existing railway line at that point, which has been blocked by the landowner of Udiam Farm. However, RVR has confirmed that it does not have an interest in Udiam Farm nor is it seeking to acquire an interest under the Order. To my mind, therefore the matter is of little relevance and NAW

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<sup>517</sup> Request for Further Environmental Information, dated 8 June 2020.

<sup>518</sup> Landowners' consultation response, dated 19 April 2021, following publication of the ESu. OBJ/1002/IF/1 paras 7.8.17-31.

would not qualify as statutory objectors with reference to that matter either.<sup>519</sup>

12.12.3. RVR has confirmed that all relevant procedural requirements have been met and I have no compelling reason to conclude otherwise. I am satisfied that the statutory procedural requirements have been complied with.

12.13. **SoM8)- The purpose and effect of any substantive changes to the draft Order proposed by RVR or other interested parties, and whether anyone whose interests are likely to be affected by such changes has been notified**

12.13.1. ***Provisions for the protection of Drainage Authorities and the Environment Agency***

*Modification 1 (Mod 1)*

12.13.1.1. I have already concluded that the EA's proposed modification of section 17, Part 3, Schedule 8 of the draft Order to make provision for 'deemed refusal' rather than 'deemed approval' would not be justified. Therefore, section 17(3)(b), set out in INQ/93, should read:

'is deemed to have been 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'

*Modification 2 (Mod 2)*

12.13.1.2. Otherwise, RVR and the EA have reached agreement on changes to be made to Part 3, Schedule 8 of the draft Order- *Provisions for the protection of Drainage Authorities and the Environment Agency*, the details of which were made available on the Inquiry website during the course of the Inquiry.<sup>520</sup> There is no dispute that they are necessary for that purpose nor were there any objections to the terms of the proposed provisions. I have no reason to oppose the changes and I am satisfied that the inclusion of them would be unlikely to prejudice the interests of anyone else. The changes and updated provisions are set out in INQ/93 (subject to Mod 1).

12.13.2. ***Provisions for the protection of Highways England***

*Modification 3 (Mod 3)*

12.13.2.1. RVR and HE have reached agreement on the form of provisions to be added to the Order for the protection of HE's interests, the details of which were made available on the Inquiry website during the course of

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<sup>519</sup> INQ/102 section 3.

<sup>520</sup> OBJ/178/1 and INQ/93.



the Inquiry.<sup>521</sup> There is no dispute that they are necessary for that purpose nor were there any objections to the terms of the proposed provisions. I have no reason to oppose the changes and I am satisfied that the inclusion of them would be unlikely to prejudice the interests of anyone else. They would be added to the Order as Part 4 of Schedule 8- Protective Provisions, as set out in INQ/93.

12.13.3. ***Diversion of Footpath S&R 31***

12.13.3.1. RVR has indicated that, if the originally proposed diversion of footpath S&R 31 through an underpass beneath the proposed railway is considered to be unacceptable, a level crossing could be provided as detailed in INQ/129 and 130. However, I have found that the proposed underpass route would provide a suitable and convenient alternative, and is the preferred option. Therefore, the changes to the Order detailed in INQ/129 and 130 are not necessary.

12.13.4. ***Miscellaneous minor changes***

*Modification 4 (Mod 4)*

12.13.4.1. Other miscellaneous minor changes to the wording of the Order proposed by RVR are set out in INQ/93 as tracked changes. In addition, An updated Book of Reference (INQ/2-3) and a replacement Order plan sheet 3 (INQ/2-2) were provided at the start of the Inquiry. The replacement plan correctly shows the limits of deviation on both sides of the proposed A21 crossing, rather on just one side. The details of these minor changes were made available on the Inquiry website during the course of the Inquiry and there were no objections to the changes proposed. I have no reason to oppose those Mod 4 changes and I am satisfied that the inclusion of them would be unlikely to prejudice the interests of anyone.

12.14. **SoM9)a)- Whether there are likely to be any impediments to RVR exercising the powers contained within the Order, including availability of funding**

12.14.1. ***Funding***

12.14.1.1. Having had regard to the *Guidance on Compulsory purchase process and The Crichel Down Rules* (CPO Guidance)<sup>522</sup>, there is no dispute that the capability of a scheme to attract the funding necessary is a relevant factor in the Secretary of State's decision or that the applicant should be able to demonstrate that the proposals are capable of being funded in the way proposed.<sup>[3.14.3.1, 6.12.10.2]</sup>

12.14.1.2. RVR has confirmed that the anticipated cost of the Order scheme of £5.3 million would be funded by The Rother Valley Railway Heritage Trust through donations, with no call on the public purse. Furthermore, that

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<sup>521</sup> INQ/21 and later as part of INQ/93-the filled-up Order.

<sup>522</sup> INQ/8 page 13.

this is how the railway has been constructed to date from Bodiam to Austen's Bridge and between Robertsbridge Station and Northbridge Street, including the construction of the station at Robertsbridge.

- 12.14.1.3. I understand that two major benefactors, who I will refer to as Donor A and Donor B, have funded those existing works. Donor B has confirmed that they have so far donated an equal share of £4.1 million towards the construction and associated costs of the works between Robertsbridge and Bodiam.<sup>[5.3]</sup> RVR has indicated that more than £3.0 million has already been spent to fund the employment of consultants and advisors to advise on all aspects of the project and the implementation of works carried out so far.<sup>523</sup>
- 12.14.1.4. RVR indicates that the two major benefactors have committed to provide grant funding for the outstanding works. Donor A, who wishes to remain anonymous, is silent on the matter. However, Donor B has stated in a letter sent to the Secretary of State that further funding from the existing donors will be made available as necessary to complete the Order scheme, together with funding from other sources, such as a recent legacy of approximately £1 million. Donor B also states that Donor A is an individual of very substantial wealth.<sup>[5.3]</sup>
- 12.14.1.5. I acknowledge that there is no contractual or other binding commitment to provide the money needed and that delivery of the Order scheme would be entirely dependent upon the goodwill of donors. However, I consider that substantive information has been provided as to the sources of funding available for both acquiring the land and implementing the Order scheme for which the land is required. This includes: information outlining Donor B's track record with respect to funding heritage projects, such as a contribution of £10 million towards the re-construction of a railway known as the WHR<sup>524</sup>; the commitment of Donors A and B shown through funding the RVR works to date; and, confirmation from Donor B to the Secretary of State that further funding from the existing donors would be made available as necessary to complete the Order scheme. Against this background, I consider it likely that the funding necessary to satisfactorily implement the Order scheme would be made available in a timely manner.<sup>[3.14.3, 5.3, 6.12.10]</sup>

12.14.2. ***Matters to be approved by HE***

- 12.14.2.1. At the close of the Inquiry, HE confirmed that RVR has so far failed to satisfactorily address the remaining principal concerns of SES and so RVR's DSA has not yet been approved.<sup>[7.12-15]</sup> If this remained the case, it would amount to a significant impediment to the implementation of the Order, as the terms of the protective provisions (and indeed the planning conditions) ensure that the crossing cannot be constructed until these matters have been settled to HE's satisfaction.<sup>[3.4.1.8-11]</sup> Whilst acknowledging it is possible that SES may refuse to approve the application, Mr Bowie who appeared on behalf of HE, indicated that none

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<sup>523</sup> RVR/20, RVR/W1/1 section 5 and SUPP/224.

<sup>524</sup> SUPP/224-Letter from Donor B to the Secretary of State, dated 22 June 2021.

of the issues identified by SES are insurmountable.<sup>525</sup><sup>[6.12.7.3]</sup>  
Having regard to my SoM3)a) findings, I share this view. HE has confirmed that, if and when, SES approves the DSA, it will write to the Secretary of State to withdraw its objection and give its consent to an access to the A21 under section 175B of the Highways Act 1980.

- 12.14.2.2. DMRB *GG 119-Road Safety Audit* indicates that a Stage 1 RSA shall be undertaken at the completion of preliminary design (for example at the Order publication report stage) before publication of the draft Orders. In that regard it notes that the end of the preliminary design stage is often the last occasion at which land requirements can have the potential to be changed.<sup>526</sup>
- 12.14.2.3. Whilst RVR has produced a Stage 1 RSA in 2014, HE has confirmed that it is not DMRB compliant and there is now no dispute that a further Stage 1 RSA would need to be completed following approval of RVR's DSA.<sup>527</sup> However, HE has indicated that, in this case, it would not require the Stage 1 RSA to be carried out prior to the withdrawal of its objection, as this issue is covered by the Protective Provisions.<sup>[7.17]</sup> Furthermore, there is no evidence before me to show that mitigation measures potentially required to gain approval of RVR's DSA or to respond to a Stage 1 RSA would be likely to involve land outside that within the control of HE and RVR under the terms of the draft Order. Based on what I have read, heard and seen, I consider that such measures would be unlikely to involve land outside their control.
- 12.14.2.4. Therefore, I consider it likely that RVR would be able to secure the approval of its DSA and satisfy any recommendations arising from the planned Stage 1 RSA. I am content that HE would be unlikely to find it necessary to exercise its power under the terms of the protective provisions to prevent implementation of the highways works necessary to facilitate the Order scheme.

### 12.14.3. ***Planning permission***

- 12.14.3.1. Planning permission Ref. RR/2014/1608/P, for the reinstatement of the Rother Valley Railway from Northbridge Street to Junction Road, was granted by Rother District Council (RDC) on 22 March 2017. It was subject to a commencement condition, condition no. 1, requiring the development to be begun within 5 years and a number of pre-commencement conditions, which specify that no development shall take place until specified details have been submitted to and approved in writing by the local planning authority.
- 12.14.3.2. It is common ground that before RVR could apply to discharge a number of those pre-commencement conditions it would be likely to be necessary to gain access to the two farms belonging to the Landowners. Access is unlikely to be allowed by the Landowners until the Order is made. It follows that RVR would be unlikely to be able to discharge

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<sup>525</sup> Mr Bowie's oral evidence.

<sup>526</sup> OBJ/782-W1-1 para 31.

<sup>527</sup> OBJ/782 Statement of Case para 6, RVR-W3-4 paras 2.1.2 and 2.2.8.

those conditions before the expiration of the 5 year period from the grant of planning permission. If RVR has not commenced development within that period the planning permission would lapse.

- 12.14.3.3. However, RVR argues that it has already successfully begun the development, meeting the terms of condition no. 1.<sup>[3.14.4.6]</sup> This is on the basis that RDC has approved RVR's 'part submission' of the details required by pre-commencement conditions nos. 3, 5, 6 and 7. The approved 'part submission' relates only to the section of the track between Junction Road and Austen's Bridge and having gained that approval, RVR has begun the reinstatement of the track bed along that section of track.<sup>528</sup> However, RDC does not agree that a lawful commencement of the development has been made. It argues that the planning permission contains a number of other pre-commencement conditions, which specify that no development shall take place until specified details have been submitted to and approved by the local planning authority. Those details have not been submitted. RDC considers that all pre-commencement conditions would need to have been met before the development could be lawfully commenced, a view shared by the Landowners.<sup>529</sup> <sup>[6.12.5.1]</sup>
- 12.14.3.4. Inquiry documents INQ/52 and INQ/104-0 set out the opposing legal submissions of RVR and the Landowners as to whether the development for which planning permission Ref. RR/2014/1608/P was granted has lawfully commenced. Whilst I set out my view below, this is a legal matter for the Secretary of State to determine.
- 12.14.3.5. I consider that the majority of the pre-commencement conditions attached to planning permission Ref. RR/2014/1608/P 'go to the heart of the planning permission', relating either to matters which are central to the deliverability of the Order scheme, such as the A21 level crossing, or to matters which it is essential to resolve before development commences, such as the ecology and flood mitigation measures anticipated by the ES, in order to minimise the risk of harm to interests of acknowledged importance. Furthermore, none of those conditions, including nos. 3, 5, 6 and 7, make provision for phased or partial discharge. To my mind, it follows that, as things stand, the works to date, which have been carried out following only partial approval of the details required by only a limited number of the pre-commencement conditions, have been carried out in breach of condition and so cannot have lawfully implemented planning permission Ref. RR/2014/1608/P, having regard to the 'Whitley' principle.<sup>530</sup>
- 12.14.3.6. RVR argues that: as RDC has given partial approval of the details required by conditions 3, 5, 6 and 7, it would be irrational for the authority to enforce against the works undertaken between Junction Road and Austen's Bridge; with reference to *Greyfort*, irrationality of enforcement action falls within the public law exception to the Whitley

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<sup>528</sup> RVR/W1/2-12.

<sup>529</sup> INQ/52 page 4.

<sup>530</sup> INQ/52 para 4 and INQ/104-0 para 4.

principle; and so, the permission can be regarded as having been implemented.<sup>531</sup><sub>[3.14.4.7-8]</sub>

- 12.14.3.7. However, RDC has no power to waive compliance with the pre-commencement conditions and there is no evidence before me to show that it agreed to the commencement of the development as a consequence of those limited approvals and before other pre-commencement conditions were discharged. Its statement that all pre-commencement conditions would need to have been met before the development could be lawfully commenced, suggests that it has not.<sup>532</sup> Furthermore, there is no evidence before me to show that: the works undertaken have been formally accepted by RDC as being in accordance with the approved details or that the conditions, insofar as they relate to that section of track, have been discharged. Against this background, in my view it is not self-evident that it would be irrational for RDC to take enforcement action against the works that have been undertaken between Junction Road and Austen's Bridge in breach of condition. RDC's position with respect to enforcement in relation to this matter is not known. I am not convinced that RVR is able to rely on the 'irrationality of enforcement...exception to Whitley' argument referred to in *Greyfort*.<sub>[3.14.4.7]</sub>
- 12.14.3.8. Another recognised exception to the Whitley Principle includes where the breach of condition relates to a failure to obtain a particular approval before work commences, but where an application has been, or is subsequently made within the time limits set by the permission and approval is subsequently granted. In those circumstances, the subsequent approval effectively provides retrospective validation of the works which have been carried out, and can be regarded as commencing development.<sup>533</sup>
- 12.14.3.9. However, for the following reasons, I consider that that exception would be unlikely to apply in this case. The pre-commencement requirements of some of the conditions may be fully met before the expiry of the 5 year period from the date on which planning permission Ref. RR/2014/1608/P was granted. However, I consider it is most unlikely that the pre-commencement requirements of all those conditions would be fully met before that date. It is common ground that Conditions 3, 5, 6, 9 and 11 would (or are at least very likely) to require access to the two farms before RVR can meet the pre-commencement requirements. <sub>[6.12.5.2]</sub> For example, I understand that it is necessary to survey the Order land before the detailed design of the structures can be completed and the flood model updated, which is required before any of the flood risk mitigation measures required by condition no. 9 could be approved.<sup>534</sup> That is unlikely to happen unless or until the draft Order is made.<sup>535</sup>

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<sup>531</sup> INQ/52 para 5.

<sup>532</sup> INQ/52 page 4.

<sup>533</sup> INQ/104-0 para 5.

<sup>534</sup> RVR/W7-4 para 2.6.2 and RVR/W7-2 Appendix B.

<sup>535</sup> INQ/52 para 11.

- 12.14.3.10. Therefore, I consider that the planning permission as originally granted has not yet been lawfully implemented, nor is it likely to be before the expiry of the 5 year period from the date on which it was granted.
- 12.14.3.11. RVR indicated at the Inquiry that it intends to apply to amend planning permission Ref. RR/2014/1608/P to expressly allow for a phasing of the development, in order to put the question of lawful implementation beyond doubt. It suggests that this can be achieved by an application under section 96A (non-material amendment) of the *Town and Country Planning Act 1990*, if RDC is content to deal with it on that basis, or under section 73.<sup>536</sup> However, there is no evidence before me to show that RDC would support the suggested section 96A approach. Furthermore, given that some of the pre-commencement conditions relate to land in which RVR has no interest, for example the A21 level crossing location subject of condition no. 20, it appears unlikely that it would be an option open to RVR, having regard to section 96A(7).<sup>537</sup>
- 12.14.3.12. As to the section 73 approach, I acknowledge that this would potentially enable the modification of some of the requirements of the planning permission, resulting in a new and separate planning permission for the Order scheme.<sup>[3.14.4.10]</sup> However, an application under section 73 cannot extend the time for the commencement of the development, and so it would still be necessary for RVR to obtain the section 73 permission in time to discharge any pre-commencement conditions and then commence development before 22 March 2022.<sup>[6.12.5.3]</sup><sup>538</sup> Given the current access difficulties, referred to above, this would be unlikely to be achievable.
- 12.14.3.13. I consider it likely therefore, that the existing planning permission would lapse and a new application would need to be made. RVR's view is that there are no obvious reasons why such a permission would be withheld. The Landowners consider that there are, for example, its view that the Order scheme would conflict with national policy relating to flood risk.
- 12.14.3.14. However, I have found that it likely that the site was allocated in the Development Plan through the ST. Furthermore, the Order scheme would be likely to be safe for its lifetime taking account of the vulnerability of its users and it would be unlikely to materially increase flood risk either within the existing floodplain or elsewhere. In these respects the Order scheme would be consistent with the aim of the Framework that where development is necessary in areas at highest risk, the development should be made safe for its lifetime without increasing flood risk elsewhere. Furthermore, I have concluded on balance, that the Order scheme would be likely to accord with the Framework taken as a whole and the Development Plan. I am also conscious that the local planning authority has not objected to the Order.

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<sup>536</sup> INQ/52 para 3, 9-10.

<sup>537</sup> INQ/104-0 para 22.

<sup>538</sup> INQ/104 para 21.

12.14.3.15. I conclude that whether or not a new planning permission would be needed for the development of the Order scheme is a matter of law upon which the Secretary of State may wish to take advice. In my view, it would not be appropriate to seek to amend planning permission Ref. RR/2014/1608/P under section 96A to expressly allow for a phasing of the development. Furthermore, an application with the same aim made under section 73 would be unlikely to ensure that planning permission Ref. RR/2014/1608/P would not lapse. However, in the event that RVR were to make a new planning application with a view to renewing the terms of planning permission Ref. RR/2014/1608/P, I consider it likely that it would be granted. Furthermore, having regard to the reasons set out above, relating to matters such as the DSA and floodplain storage compensation, and with the benefit of access to the Order land, which would be enabled by the Order, it is likely that the conditions could be discharged.<sup>[3.14.4.3-5, 6.12.7]</sup> Therefore, the need for planning permission would be unlikely to be an impediment to the implementation of the Order scheme.<sup>[3.14.4.11]</sup>

12.14.3.16. Additional planning permissions may be required to gain authority for necessary modifications emerging from detailed design, such as the potential need to alter ground levels and create channels associated with floodplain storage compensation areas. To my mind, consent for ancillary works, which are likely to be relatively minor in the context of the previously approved Order scheme would be unlikely to be refused by the local planning authority.<sup>[3.5.2.5, 3.14.4.10, 6.12.5.3]</sup>

#### 12.14.4. ***SoM9)a)-Conclusions***

12.14.4.1. I conclude it is unlikely that there would be any impediments to RVR exercising the powers contained within the Order.

#### 12.15. **SoM9)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**

12.15.1. I have not been provided with any compelling evidence to show that the land and rights sought are not required to secure the satisfactory implementation of the Order scheme. Having had regard to the draft Order and associated plans, which indicate how the land would be used, I am content that they are. While RVR has sought to acquire the land interests through negotiation, little progress has been made, not least as the Landowners remain strongly opposed to the scheme in principle. I consider it unlikely that, without compulsory purchase powers, RVR would be able to assemble all of the necessary land interests within a reasonable timescale to allow the Order scheme to be delivered in a timely manner.

12.15.2. I conclude that the land and rights in land for which powers are sought are required by RVR in order to secure satisfactory implementation of the Order scheme.

12.16. **SoM10)-Any other relevant matters**

- 12.16.1. In 1967 the then Secretary of State refused to make an Order which would have allowed the railway line to run through to Robertsbridge, citing concerns including whether the railway would remain sufficiently profitable to sustain its maintenance obligations, the impact on traffic and consequential public expenditure associated with dual carriageway bridges.
- 12.16.2. Whilst I do not know the full details of that previous case, it appears to me that the circumstances are materially different from those in the case before me. There is no dispute that KESR is financially viable and I consider that the longevity and continued success of KESR provides some assurance as to future maintenance of the line subject of the Order.<sup>[3.2.25, 6.13.2.4]</sup> This position is reinforced by my finding that the Order scheme would be likely to improve the efficiency of the KESR operation. Furthermore, additional financial security in relation to the level crossings is provided by insurance cover required by conditions attached to planning permission Ref. RR/2014/1608/P and the proposed protective provisions. I have found that the impact on traffic would be likely to be acceptable and there are still no firm plans for dualling of the A21. Under these circumstances, I consider that little weight is attributable to the previous refusal.<sup>[9.3]</sup>
- 12.16.3. The ESu indicates that the Order scheme would be unlikely to give rise to any significant adverse human health effects or any significant adverse environmental effects as a result of its vulnerability to a major event. I consider that this position is consistent with my earlier findings, such as in relation to air quality and flood risk.
- 12.16.4. I have had regard to the Public Sector Equality Duty (PSED) contained in section 149 of the *Equality Act 2010*, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Protected characteristics include, amongst other things, age and disability. I consider that the Order scheme would be unlikely to conflict with the aims of the Equality Act 2010.

12.17. **SoM9)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**

**SoM1)-** *The aims and the need for the proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order*

- 12.17.1. The aim of the draft Order is to enable the completion of the restoration of a railway line between Robertsbridge and Tenterden that was closed in 1961, primarily by enabling the completion of a missing section of line between Junction Road at Udiam and Northbridge Street in Robertsbridge. The construction and operation of the Order scheme would give rise to a range of economic and employment benefits, which together attract significant weight. Furthermore, it would provide for



sustainable tourism and this attracts moderate weight. Other identified benefits would be smaller and attract little weight.

**SoM2)**- *The main alternative options considered by RVR and the reasons for choosing the proposals comprised in the scheme*

- 12.17.2. With respect to the proposed highway crossings, it is reasonable for RVR to regard the proposed 'at grade' option as the preferred crossing solution for the A21, Northbridge Street and Junction Road.

**SoM3)**- *The likely impact of the exercise of the powers proposed in the TWA Order on landowners, tenants, local residents, businesses and statutory undertakers including any adverse impact on their ability to carry out their business or undertaking effectively and safely and to comply with any statutory obligations applying to their operations during construction and operation of the scheme, SoM4)*- *The measures proposed by RVR to mitigate any adverse impacts of the scheme & SoM8)*- *The purpose and effect of any substantive changes to the draft Order*

- 12.17.3. Whilst the Order scheme would cause less than substantial harm to the significance of designated heritage assets, which attracts great weight, I consider that, on balance, the harm would be far outweighed by the benefits of the Order scheme, identified above. Little weight is attributable to the adverse impacts of the Order scheme on ecology and biodiversity, which, given the mitigation proposed, would be likely to be time limited for the most part. Over time, the Order scheme would be likely to result in net gains for biodiversity. The effect of the Order scheme on landscape character, visual amenity and the AONB would be acceptable and it does not weigh for or against the Order scheme.

- 12.17.4. As regards the potential implications for the wider highway network, with the proposed protective provisions for HE added to the Order, the impact of the three level crossings on traffic flows, congestion and safety would be acceptable and would not weigh materially against the Order scheme. The proposed introduction of the level crossings on the A21, Northbridge Street and Junction Road would introduce new and increased safety risks for both rail and road users. However, they can be made tolerably safe. Under these circumstances, I consider that little weight is attributable to the residual increased safety risk for both rail and road users associated with the use of those three proposed highway level crossings. It would not be unacceptable. I have attributed little weight to the limited adverse impact of the Order scheme on other rights of way, including on access to property and amenities.

- 12.17.5. The Order scheme would be unlikely to have a material adverse effect on flood risk, air quality, water and waste discharge, noise or parking conditions. These factors do not weigh for or against it.

**SoM5)**- *The extent to which the proposals in the TWAO are consistent with National and Local Policy*

- 12.17.6. The scheme would accord with the Framework taken as a whole and the Development Plan. Furthermore, it would not conflict with LTP3.

**SoM6)- The adequacy of the Environmental Statement & SoM7)- Whether the statutory procedural requirements have been complied with**

12.17.7. The ES is adequate and all relevant statutory procedural requirements have been complied with.

**SoM9)a)- Whether there are likely to be any impediments to RVR exercising the powers contained within the Order & SoM 9)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**

12.17.8. It is unlikely that there would be any impediments to RVR exercising the powers contained within the Order. In addition, I consider it unlikely that RVR would be able to assemble all of the necessary land interests without compulsory purchase powers.<sup>[3.14.1.1]</sup> The land and rights in land for which powers are sought are required by RVR in order to secure satisfactory implementation of the Order scheme.

**SoM10)- Any other relevant matters**

12.17.9. None of the other matters raised are sufficient to outweigh the considerations which have led to my conclusions on the above matters.

**SoM9c)- Conclusions**

12.17.10. Weighing all the harms and benefits, I conclude on balance that, whilst the Order scheme would cause harm in a number of respects, the adverse impacts would be sufficiently limited to be outweighed by the benefits likely to result from the Order scheme, the most significant of which would be its likely contributions to the economy and the facilitation of sustainable tourism.<sup>[6.2.9.f)]</sup> I conclude therefore, that 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 Order scheme.

12.18. **SoM9)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**

12.18.1. Government CPO guidance indicates that in order to justify a CPO it is necessary to be sure that the purposes for which the CPO 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. That is:

*'every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it*

*deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'*

- 12.18.2. The Order does not seek to acquire any residential properties. The effect of the Order would be to deprive those parties identified in its schedules of titles and/or rights to land. RVR has provided details of how each plot would be used for various aspects of the Order scheme. Against that background, I consider that no rights or land would be unnecessarily acquired and the land titles and rights sought by the Order are a proportionate response to the needs of the scheme. Furthermore, in my judgement, there is a compelling case in the public interest for the Order to be made.
- 12.18.3. Moat Farm was bought by Robert and Noel de Quincy in 1946 at a time when the railway line was still in use. Following the closure of the railway in 1961, they bought the land occupied by the line, which had become overgrown, from British Rail in 1981. A purchase which the family regarded as putting the farm, which includes land on both sides of the track, back together. Rather than removing the railway embankment to allow the land to be farmed, as occurred at Parsonage Farm, they decided to allow it to continue to re-wild in the interests of landscape and biodiversity. The third generation of their family, who currently run Moat Farm, greatly values that land for the contribution they consider it now makes to the biodiversity and the landscape of the area, which they regard as an important part of the legacy left by their grandparents and worthy of protection. It is unsurprising then, that they regard the thought of its loss from Moat Farm, through compulsory purchase, as heart-breaking and are strongly opposed to the Order for that, amongst other reasons, such as concerns with respect to farm access.<sup>[6.3.7]<sup>539</sup></sup>
- 12.18.4. The owners of Parsonage Farm, who are concerned with respect to the impact of the Order scheme on their farming operations, are also strongly opposed to the Order.
- 12.18.5. Insofar as the Order scheme would be likely to impact on the landscape and biodiversity of the area, farming operations and access, I have considered those matters above before coming to the conclusion that there is a compelling case in the public interest.
- 12.18.6. Whilst I understand the strongly held views of the owners of Moat Farm and Parsonage Farm and acknowledge the upset that would be likely to be caused by the making of the Order, it is necessary to take a balanced view between the concerns of those with an interest in the land and the wider public interest.
- 12.18.7. Although RVR is not a public body, there is no dispute that it is able to make an application under the *Transport and Works Act* for a TWA Order to enable the Order scheme.<sup>[6.14.1]</sup> I have concluded that there is a

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<sup>539</sup> OBJ/1002/EA/1.

compelling case in the public interest for the Order to be made. I consider it would be reasonable to conclude on balance in this case, that the public interest in that regard would outweigh the private loss of those people with an interest in the land and that the interference with their Human Rights would not be disproportionate. Therefore, the purposes for which the Order would be made would sufficiently justify interfering with the Human Rights of those with an interest in the land affected. Under these circumstances, I consider that the grant of compulsory purchase powers would be justified in the public interest, notwithstanding that RVR is not a public body, and not an abuse of the process as some have suggested.[6.14.1, 8.1.1.9, 8.5.1.3, 8.10.2, 9.2-3]

12.19. **Conclusions**

12.19.1. I conclude on balance, that there is a compelling case in the public interest for the Order to be made, the public interest in that regard would outweigh the private loss of those people with an interest in the land affected and that the interference with their Human Rights would not be disproportionate. Therefore, the purposes for which the Order would be made would sufficiently justify interfering with the Human Rights of those with an interest in the land affected.

13. **INSPECTOR'S RECOMMENDATIONS**

13.1. I recommend that, subject to the amendments set out below, *The Rother Valley Railway (Bodiam to Robertsbridge Junction) Order* should be made.

13.2. The draft Order should be modified in accordance with INQ/93 (includes Mods 2, 3 and 4), amended in accordance with Mod 1, Order plan sheet 3 should be replaced by INQ/2-2 (Mod 4) and the original Book of Reference superseded by INQ/2-3 (Mod 4).

13.3. As Highways England has now been renamed National Highways, consideration should be given to whether it is necessary to replace references to 'Highways England' within the Order with 'National Highways'.

*I Jenkins*  
INSPECTOR

## APPENDIX 1-APPEARANCES

### For **Rother Valley Railway Limited:**

Richard Turney  
of Counsel

He called

David Gillett  
BSc CEng MICE

Jonathan Portlock  
MEng MSt CEng MICE MIStructE

Shaun Dewey  
BA

David Keay  
BSc CEng FIMechE FIET

Philip Hamshaw  
MSc MCIHT CMILT

Thomas Higbee  
MSc APM

Giles Coe  
BSc(Hons) MCIEEM

Robert Slatcher  
BSc(Hons) MA MIEMA CEnv

Suzanne Callaway  
MSci(Hons) MCIWEM CWEM CSci  
CEnv

Peter Hodges  
FRICS CAAV

Jack Southon  
BSc MSc MCIWEM FRGS CEnv  
CSci CGeog (GIS) C.WEM

Project Manager, RVR

Associate, Ove Arup and Partners Limited (Arup Group Limited)

General Manager, Kent & East Sussex Railway Company Limited (KESR)

Director, RVR

Partner, i-Transport LLP

Transport Consultant, Steer Davies & Gleave Limited

Director, Co-ecology Limited

Director, Temple Group Limited

Principal Flood Risk Consultant, Capita Property & Infrastructure Limited

Consultant, Chartered Surveyor and Agricultural Valuer

Principal Flood Risk Consultant, Capita Property & Infrastructure Limited

### For other **Supporters:**

Councillor Susan Prochak  
(SUPP/186)

Tom Lewis  
(SUPP/121)

Huw Merriman MP  
(SUPP/223)

Anthony Robins  
(SUPP/221)

Derrick Coffee  
(SUPP/222)

Steve Griffiths  
(SUPP/120)

Martin Bates  
(SUPP/8)

Sir Peter Hendy CBE  
(SUPP/80)

Ian Hollidge  
(SUPP/177)

Stephen Oates  
(SUPP/187)

Rother District Council

Member of Parliament for Bexhill and Battle

Ostrich Hotel, Robertsbridge

County Officer, Campaign for Better Transport East Sussex/Transport Futures East Sussex  
Secretary, Rother Valley Railway Supporters Association.

Network Rail Infrastructure Limited

Chief Executive, Heritage Railway Association

Kenneth Hammond  
(SUPP/192)  
John Jenkins  
(SUPP/125)  
Councillor Mike Carter  
(SUPP/113)

Tenterden Town Council

For OBJ/1002-**The Hoad family and the Trustees and Executors of the Noel De Quincy Estate** and OBJ/767-**Emma Ainslie** (the Landowners):

Paul Brown  
QC

He called

Philip Clark	Associate, WSP UK Limited
Ian Fielding	Technical Director, WSP UK Limited
BSc(Hons) MCIHT CMILT	
Ellie Evans	Senior Partner, Volterra Partners LLP
BA MA	
Chris Patmore	Technical Director, WSP UK Limited
CEnv BEng DIP EIA MIEEnvSci MCIHT	
MCIWEM MIRCS	
Emma Ainslie	Landowner
Andrew Highwood	Director, Savills (UK) Limited
LLM FRICS FAAV	

For OBJ/782-**Highways England** (now National Highways):

Mark Westmoreland Smith  
Of Counsel

He called

Paul Harwood	Regional Lead for Spatial Planning, Highways England (now National Highways).
BSc CEng MICE MCIHT	
David Bowie	Associate Director, Systra Limited
BSc(Hons) MCIHT	

For other **Objectors**:

Nick Moor (OBJ/729)	Robertsbridge Cricket Club
Edward Flint (OBJ/61)	
BSc(Hons) Countryside Management	
Mike Le Lacheur (OBJ/19)	
Nick Young (OBJ/189)	
Sally-Ann Hart MP (OBJ/91)	Member of Parliament for Hastings and Rye
Kathryn Bell (OBJ/133)	

Nigel Leigh  
(OBJ/652 & 1035)  
Eric Hardwick MBE  
(OBJ/99)  
Ray Norton  
(OBJ/1032)  
David Faithfull  
(OBJ/1037)  
Paul Smith  
(OBJ/68)  
Anna Eastwood  
(OBJ/1014)  
Emma Watkins  
(OBJ/25)  
David Webster  
(OBJ/71)  
Pennie Yorath  
(OBJ/178)

The Original Hut Company

Environment Agency

For other **Representatives:**

Ian Raxton  
(REP/17)  
Nick Brown  
(REP/11)

Principal Inspector of Railways, Office of Rail and  
Road  
Chair, Salehurst & Robertsbridge Parish Council

## APPENDIX 2-CORE DOCUMENTS

RVR/01	Rother Valley Railway (Bodiam to Robertsbridge Junction) Order
RVR/02	Extract from RDC District Plan Adopted July 2006
RVR/03	Planning Permission RR/94/1184/P
RVR/04	Planning Permission RR/2005/836/P
RVR/05	Planning Permission RR/2009/114/P
RVR/06	Planning Permission RR/2012/1357/P
RVR/07	Planning Permission RR/2014/1608/P
RVR/07-1	Title and Profile Plans associated with Planning Permission RR/2014/1608/P
RVR/07-2	Title and Profile Plans associated with Planning Permission RR/2014/1608/P (INQ/145)
RVR/07-3	Mill Stream Bridge Site Plan (RVR-UB12-001) associated with Planning Permission RR/2014/1608/P (INQ/146)
RVR/08	National Trust Annual Report details - 2017/2018
RVR/09	Steer Economic Impact report
RVR/10	Trip Advisor Reviews
RVR/11	Visit Southeast England Report
RVR/12	Visit Britain Extract
RVR/13	Photographs of Completed Construction
RVR/14	Aims and Objectives of RVR
RVR/15	Objectives of RVRHT
RVR/16	Extract from Inspector Report on RDC Local Plan 13 December 2005
RVR/17	Explanatory Memorandum - dated 14 March 2018
RVR/18	Statement of Aims of Proposal
RVR/19	Report on Consultation
RVR/20	Funding Statement
RVR/21	Estimate of Costs
RVR/22	Book of Reference
RVR/23	Order Plans and Sections (A4 size) A1 size with TWAO docs previously
RVR/24	Temple ES Volume 1
RVR/25	Temple ES Volume 2
RVR/26	Temple ES Volume 3
RVR/27	Temple ES Volume 4



RVR/28	Annex A Temple ES Nov 2016 and ES Addendum responding to TWAO Scoping Response Oct 2017
RVR/29	Temple Draft Air Quality Report
RVR/30	List of Consents
RVR/31	All Party Parliamentary Group on Heritage Railways Report 2013
RVR/32	Mott McDonald Non-Motorised User Audit - Context Report - January 2013
RVR/33	Mott McDonald Economic Cost of Delays Report
RVR/34	Mott McDonald Traffic Impact Study - October 2011
RVR/35	Number Not Used
RVR/36	Capita FRA Report
RVR/37	Capita FRA Modelling Report
RVR/38	Extracts from the National Planning Policy Framework 2018
RVR/39	Extract from ESCC Planning Policy
RVR/40	Extract from Salehurst and Robertsbridge Neighbourhood Development Plan
RVR/41	Welsh Highland Railway Order 1999
RVR/42	Northbridge Street Road Safety Audit
RVR/43	Junction Road Stage 1 Road Safety Audit
RVR/44	A21 Stage 1 Road Safety Audit
RVR/45	Number Not Used
RVR/46	SUP/80
RVR/47	Letter from 1066
RVR/48	Number Not Used
RVR/49	SUP/187 letter
RVR/50	SUP/114 letter
RVR/51	National Trust July 2018 letter
RVR/52	SUP/172 letter
RVR/53	SUP/113 letter
RVR/54	SUP/108
RVR/55	Number not used
RVR/56	RDC Officer Report to Planning Committee 16 March 2017
RVR/57	SUPP/121 letter
RVR/58	SUPP/80 letter
RVR/59	Copies of Newspaper Notices

RVR/60	Temple Final Air Quality Report
RVR/61	Highways and Traffic Assessment Report - Assessment of Delays - July 2013
RVR/62	Non-Motorised User (NMU Audit) - July 2013
RVR/63	Highways and Traffic Assessment Report - Response to HA Comments on A21 Crossing - February 2013
RVR/64	Scoping Opinion and Associated Documents
RVR/65	Rother Valley Railway Limited Statement of Case
RVR/66	Updated Statement of Case Submitted 10 May 2021
RVR/67	Agricultural Impact Report January 2020 including Appendices
RVR/68	Supplemental Agricultural Impact Report April 2020
RVR/69	Letter from ORR to RVR 21 May 2020
RVR/70-01 -	ES Update Report and Appendix A – Noise
RVR/70-02	ES Update Appendix B - Landscape and Visual
RVR/70-03	ES Update Appendix C - Water Framework Directive Assessment
RVR/70-04	ES Update Appendix D- Archaeology
RVR/70-05	ES Update Appendix E - Built Heritage
RVR/70-06	ES Update Appendix F - Traffic and Transport
RVR/70-07-00	ES Update Appendix G - Flood Risk Assessment
RVR/70-07-01	ES Update Appendix G A1 Flood Extent Comparison
RVR/70-07-02	ES Update Appendix G B1 Difference in Maximum Water Level with Railway
RVR/70-07-03	ES Update Appendix G C1 Predicted Maximum Flood Depths with Railway
RVR/70-07-04	ES Update Appendix G D1 Hydraulic Modelling Report 2021
RVR/70-07-04	ES Update Appendix G D1 Hydraulic Modelling Report 2021
RVR/70-07-05	ES Update Appendix G E1 Calculation Record
RVR/70-08 ES	Update Appendix H- Major Accident Hazards and Disasters
RVR/70-09 ES	Update Appendix I - References
RVR/71	RVR Non-Technical Summary 2021
RVR/72	Environmental Statement and Supporting Information Guide (Explanatory Note)
RVR/73-01	SLR Geographic Flora Maps
RVR/73-02	SLR Geological Maps
RVR/74-01	Technical Drawing, March 2021 – Robertsbridge Bypass General Arrangement
RVR/74-02	Technical Drawing, March 2021 – Robertsbridge Bypass Road Markings

RVR/74-03	Technical Drawing, March 2021 – Robertsbridge Bypass Traffic Signs
RVR/74-04	Technical Drawing, March 2021 – Robertsbridge Bypass Construction Details
RVR/74-05	Technical Drawing, March 2021 – Robertsbridge Bypass Proposed Road Surface Geometry
RVR/74-06	Approval in Principle: A21 Level Crossing and Mill Stream Flood Relief Culvert
RVR/75	ORR Submission (please also see INQ/100)
RVR/76	Crossing Options Feasibility Report - July 2019
RVR/77	Rother Valley ES 2021 FEI Update - Erratum
RVR/78	IOM Level Crossing Timing
RVR/79	J C White - Title Plans (B2 to B6) 2016
RVR/80	Halcrow - Gradient Profile Plans (RVG-G 001-006) 2014
RVR/HE/01	RVR Application for Departure from Standards
RVR/HE/02	Redacted HE Response to Departures Submission
RVR/HE/03	Statement of Common Ground between RVR and Highways England (now National Highways)
RVR/HE/04	Redacted Walking Cycling and Horse-Riding Assessment
RVR/HE/05	Redacted Technical Note on A21 Level Crossing Timings
RVR/HE/06	National Planning Policy Framework February 2019
RVR/HE/07	Department for Transport - Strategic Road Network and the Delivery of Substantial Development
RVR/HE/08	Infrastructure Act 2015 (Strategic Highways Companies) Regulations 2015

**APPENDIX 3 – LETTERS OF OBJECTION, SUPPORT AND REPRESENTATION**

<b>LETTERS OF OBJECTION</b>	
OBJ/0001	Ms J Hoad
OBJ/0002	Mr J Knott
OBJ/0003	Mr G White
OBJ/0004	Mr & Mrs F & P Merrick
OBJ/0005	Ms P Beagley
OBJ/0006	Ms K Collier-Keywood
OBJ/0007	Mr A Rowsell
OBJ/0008	Mrs J Wakeling
OBJ/0009	Mr & Mrs S & S Whale
OBJ/0010	Ms H Sassone
OBJ/0011	Mr & Mrs H & L Chivers
OBJ/0012	Mr C Stokes
OBJ/0013	Ms H Passfield
OBJ/0014	Ms G Seligmann
OBJ/0015	<i>Withdrawn</i>
OBJ/0016	Mr D Page
OBJ/0017	Ms S J Wrightson
OBJ/0018	Mr & Mrs M & S Farrant
OBJ/0019	Mr M Le Lacheur
OBJ/0020	Ms S Russell
OBJ/0021	Mr L Godber
OBJ/0022	Ms S Eves-Dann
OBJ/0023	Mr M Bromley
OBJ/0024	Mrs D Critchley
OBJ/0025	Ms E Watkins
OBJ/0026	Mr P Wright
OBJ/0027	Mr R Penfold
OBJ/0028	Ms K Prime
OBJ/0029	Ms N Russell
OBJ/0030	Ms H Cripps
OBJ/0031	Mr L Carter
OBJ/0032	Mr/Ms R F Augarde
OBJ/0033	Ms P Preston
OBJ/0034	Ms R Butler
OBJ/0035	Mr G Gold
OBJ/0036	Mr & Mrs P & S White
OBJ/0037	Ms K Dunn
OBJ/0038	Mr F Gregory
OBJ/0039	Mr S Miller
OBJ/0040	Mr A Hart
OBJ/0041	Ms L Primrose
OBJ/0042	Mrs K Rigby-Faux
OBJ/0043	Mr T Watts
OBJ/0044	Mr J Reynolds

OBJ/0045	Ms M O'Nion
OBJ/0046	Mr P Whiting
OBJ/0047	Mr/Ms J Cripps
OBJ/0048	Ms A Pearson
OBJ/0049	Mr L Upton
OBJ/0050	Mr D Cullen
OBJ/0051	Mr J Hawkins
OBJ/0052	Ms C Humphrey
OBJ/0053	Ms H Fairhurst
OBJ/0054	Mr O Pascall
OBJ/0055	Ms B Morton
OBJ/0056	Mr T Williams
OBJ/0057	Mr R Hanney
OBJ/0058	Mr C Worsley
OBJ/0059	Ms A Dickerson
OBJ/0060	Mr H Grissell
OBJ/0061	Mr E Flint
OBJ/0062	Ms P Brett
OBJ/0063	Mr T Black
OBJ/0064	Ms N Flint
OBJ/0065	Ms H Grissell
OBJ/0066	Ms G Augarde
OBJ/0067	Mr & Mrs K & L Godfrey
OBJ/0068 and OBJ/0068A	Mr P Smith
OBJ/0069	Mrs A Rogers
OBJ/0070	Mr C Polak
OBJ/0071	Mr D Webster
OBJ/0072	Mr S Taylor
OBJ/0073	Mr G Watts
OBJ/0074	Mr M Pritchard
OBJ/0075	Ms A Rowsell
OBJ/0076	Ms V Wise
OBJ/0077	Mrs M Todd
OBJ/0078	Mr & Mrs S & A Cutler
OBJ/0079	Mr/Ms H Grigg
OBJ/0080	Ms S Whiteman
OBJ/0081	Mr & Mrs C & V Dachtler
OBJ/0082	Mr D Govett
OBJ/0083	Ms J Taylor
OBJ/0084	Ms N Cardinale
OBJ/0085	Mr D Marsh
OBJ/0086	Ms M Duckett
OBJ/0087	Mr J Hawkins
OBJ/0088	Mr R Keel
OBJ/0089	Ms J Mynard
OBJ/0090	Mr & Mrs D W & A M Chivers

OBJ/0091	Mrs S-A Hart MP
OBJ/0092	Mrs A Birrell
OBJ/0093	Ms C Wright
OBJ/0094	Mr S Kennedy
OBJ/0095	Ms C Kennedy
OBJ/0096	Mrs Y Baker
OBJ/0097	Ms A Ross
OBJ/0098	Mr M Rex
OBJ/0099	Mr E Hardwick
OBJ/0100	Mr H Wills
OBJ/0101	Mr G Munn
OBJ/0102	Dr E Elliot-Pyle
OBJ/0103	Mr R Baker
OBJ/0104	Mrs L Ballard
OBJ/0105	Ms L Jeal
OBJ/0106	Ms C Harding
OBJ/0107	Ms J Beeching
OBJ/0108	Ms C Cordell
OBJ/0109	Mr C Rowsell
OBJ/0110	Ms E Blaydon
OBJ/0111	Mr C Baldwin
OBJ/0112	Ms E Baldwin
OBJ/0113	Mr J Baldwin
OBJ/0114	Mrs M Castelino
OBJ/0115	Mr M Reed
OBJ/0116	Mr I Castello-Cortes
OBJ/0117	Mrs S Paine
OBJ/0118	Mr G Clark
OBJ/0119	Ms J Hoad
OBJ/0120	Mr M Totten
OBJ/0121	Dr D G Clayton Jones
OBJ/0122	Mr B Resch
OBJ/0123	Mr N Wilson
OBJ/0124	Mr D Kent
OBJ/0125	Mr A Cole
OBJ/0126	Ms C Everest
OBJ/0127	Ms M Crouch
OBJ/0128	Mrs T Briffitt
OBJ/0129	Mr & Mrs J & S Ball
OBJ/0130	Mr N Guest
OBJ/0131	Mr H Monro
OBJ/0132	Ms H Cunningham
OBJ/0133	Ms K Bell
OBJ/0134	Ms E Strangman
OBJ/0135	Mrs P Marsh
OBJ/0136	Mr B Stevens

OBJ/0137	Ms K Crofton
OBJ/0138	Mr P Norton
OBJ/0139	Mr A Standivan
OBJ/0140	Mr L Hardy
OBJ/0141	Ms T Conway-Grim
OBJ/0142	Mrs J Jones
OBJ/0143	Ms G Jackson
OBJ/0144	Ms J Carr Taylor
OBJ/0145	Ms C Neville
OBJ/0146	<i>Number Not Used</i>
OBJ/0147	Mr B Sargeant
OBJ/0148	Mrs A Prodinge
OBJ/0149	Mr & Mrs P & K Walczak
OBJ/0150	Mr K McGuinness
OBJ/0151	Ms E Benstead
OBJ/0152	Mr B Hobbs
OBJ/0153	Mrs M J L Stapleton
OBJ/0154	Mr D Kindersley
OBJ/0155	Mrs V Kindersley
OBJ/0156	Mr & Mrs R & L Pearson-Wood
OBJ/0157	Ms C Gregory
OBJ/0158	Ms F Gregory
OBJ/0159	Ms R Webster
OBJ/0160	Miss H Keen
OBJ/0161	Ms S Wills
OBJ/0162	Mr N Hoad
OBJ/0163	Ms D Turner
OBJ/0164	Mr A Neill
OBJ/0165	Mr I Van Heerden
OBJ/0166	Ms S Barbour
OBJ/0167	Mr G Van Zyl
OBJ/0168	Mr S Turner
OBJ/0169	Mr & Mrs T Boucher
OBJ/0170	Mr B M Neilson
OBJ/0171	Ms C Keen
OBJ/0172	Ms P Kempton
OBJ/0173	Ms L Fraser
OBJ/0174	Mr R Pascall
OBJ/0175	Mr/Ms P Lewis
OBJ/0176	Mr/Ms J D Maltman
OBJ/0177	Mr R J Cross
OBJ/0178-0	Environment Agency
OBJ/178-1	Environment Agency-partial withdrawal
OBJ/0179	Ms L Burvill
OBJ/0180	Mrs K Clark
OBJ/0181	Ms S De Vines

OBJ/0182	Mr G Braxton
OBJ/0183	Mr P Richardson
OBJ/0184	Mr M Johnson
OBJ/0185	Mr C Brinsley
OBJ/0186	Mrs J Nailard
OBJ/0187	Mrs V Hughes
OBJ/0188	Robertsbridge Cricket Club
OBJ/0189	Mr N Young
OBJ/0190	Mr D MacVicker
OBJ/0191	Ms A Tidmarsh
OBJ/0192	Mr R Buckman
OBJ/0193	Mr W Everett
OBJ/0194	Mr D Devitt
OBJ/0195	Mrs S MacGregor
OBJ/0196	Mr I Longley
OBJ/0197	Ms M Ambler
OBJ/0198	Mr C Keen
OBJ/0199	Mr E Whitley
OBJ/200-600	Petition and signatories
OBJ/0601	Mr R Hudd
OBJ/0602	Mrs J Scott
OBJ/0603	Ms E Taylor
OBJ/0604	Mr L Wrightson
OBJ/0605	Ms M Webster
OBJ/0606	Mrs M Burkinshaw
OBJ/0607	Ms H Pack
OBJ/0608	Ms M Hellmuth
OBJ/0609	Mr A Spinks
OBJ/0610	Mr J Diss & Ms K Cruttenden
OBJ/0611	Ms E Hoad
OBJ/0612	Mr D Waterhouse
OBJ/0613	<i>Number Not Used</i>
OBJ/0614	Ms P Gregory
OBJ/0615	Mr J Dench
OBJ/0616	Mr N Pearson
OBJ/0617	Mr & Mrs E & S Woodsell
OBJ/0618	Ms A Foster
OBJ/0619	Ms Z Wilmoth
OBJ/0620	Ms C Pearson-Wood
OBJ/0621	Ms J Hancock
OBJ/0622	Ms G Marfleet
OBJ/0623	Mr D Sturgess
OBJ/0624	Ms J Ainslie
OBJ/0625	Ms C Caulkin
OBJ/0626	Mrs H Bailey
OBJ/0627	Ms C Ward



OBJ/0628	Mr/Ms J Hosmer
OBJ/0629	Mrs A Gallop
OBJ/0630	Mr N Norton
OBJ/0631	Mr/Ms C J de Q Ferrier
OBJ/0632	Mr D Woodd
OBJ/0633	Mrs T Hooker
OBJ/0634	Mrs J Clayton Jones
OBJ/0635	<i>Number Not Used</i>
OBJ/0636	Mr/Ms C G Hosmer
OBJ/0637	Mrs K Kneller
OBJ/0638	Mrs P Higgs
OBJ/0639	Mrs B Cracknell
OBJ/0640	Ms A Goodwin
OBJ/0641	Miss E Griffin
OBJ/0642	Ms P Russell
OBJ/0643	Mr A Sallis
OBJ/0644	Mr R Newcomb
OBJ/0645	Mr A Roxburgh
OBJ/0646	Ms S Liesching
OBJ/0647	Mrs P Weddle
OBJ/0648	Mr D Povey
OBJ/0649	Ms A M Tassoni
OBJ/0650	Lady H Williams
OBJ/0651	Mrs S Birch
OBJ/0652	Professor N Leigh
OBJ/0653	Mr J Redmond
OBJ/0654	Mr A Wedmore
OBJ/0655	Mr J Rawdon-Mogg
OBJ/0656	Mr/Ms D Nightingale
OBJ/0657	Mr/Ms L Meer
OBJ/0658	Ms S Fathers
OBJ/0659	Mrs S J Blanford
OBJ/0660	Ms P Seymour
OBJ/0661	Dr C Lloyd
OBJ/0662	Ms F Parker
OBJ/0663	Mr A Barclay
OBJ/0664	Mrs D Sturges
OBJ/0665	Mr J Wood
OBJ/0666	Mr A Ainslie
OBJ/0667	Ms J Pickworth
OBJ/0668	Mr C Rebbitt
OBJ/0669	Ms S White
OBJ/0670	Mr S Fathers
OBJ/0671	Ms J Turner
OBJ/0672	Ms J Bramwell
OBJ/0673	Mr A Conn

OBJ/0674	Mr & Mrs R & A Morton
OBJ/0675	Dr T Newman
OBJ/0676	Mr & Mrs S A & FM King
OBJ/0677	Mr S Goodwin
OBJ/0678	Mr/Ms J Milborne
OBJ/0679	Ms C Wedmore
OBJ/0680	<i>Withdrawn</i>
OBJ/0681	Mr J Watson
OBJ/0682	Ms K Collings
OBJ/0683	Ms K Hutton
OBJ/0684	Ms A Fenton
OBJ/0685	Ms J Dean
OBJ/0686	Mr A Clarke
OBJ/0687	Mr C Knowles
OBJ/0688	Ms C Everett
OBJ/0689	Mr L Hickish
OBJ/0690	Mr C Keen
OBJ/0691	Ms A McIntyre
OBJ/0692	Mr H Spence
OBJ/0693	Ms A Shiels
OBJ/0694	Mr S Edlin
OBJ/0695	Ms H Klotz
OBJ/0696	Mr B Glancy
OBJ/0697	Ms C Griffin
OBJ/0698	Ms V Gregg
OBJ/0699	Mr W Wellesley
OBJ/0700	Ms P Brinsley
OBJ/0701	Mr & Mrs J & S Rogers
OBJ/0702	Mrs C Knowles
OBJ/0703	Ms C Lawrence
OBJ/0704	Ms J Hughes
OBJ/0705	Mr/Ms G Grissell
OBJ/0706	Ms S Freeland
OBJ/0707	Mr T Tidmarsh
OBJ/0708	Ms M Kent
OBJ/0709	Mr R Lamb
OBJ/0710	Ms I Crouch
OBJ/0711	Mrs D Grissell
OBJ/0712	Mrs E Wilson
OBJ/0713	Mr R Waters
OBJ/0714	Ms N de Quincey
OBJ/0715	Ms K Hoad
OBJ/0716	Ms M C Zanatta
OBJ/0717	Mr D Goodale
OBJ/0718	Ms L Roberts
OBJ/0719	Mr S Fraser

OBJ/0720	Mr D Chapman
OBJ/0721	Ms J Carter
OBJ/0722	Ms J Hill
OBJ/0723	Ms S Johnson
OBJ/0724	Ms T Jeeves
OBJ/0725	Mr I Roberts
OBJ/0726	Mr A Vidler
OBJ/0727	Ms Z Vidler
OBJ/0728	Mr J Smith
OBJ/0729	Mr N Moor
OBJ/0730	Dr E Innes
OBJ/0731	Ms D Le Lacheur
OBJ/0732	Mr M Tidmarsh
OBJ/0733	Ms C Vidler
OBJ/0734	Mr & Mrs A & S Church
OBJ/0735	Mr R Everest
OBJ/0736	Vinehall School – Miss Y Hopkins
OBJ/0737	Ms J Wilks
OBJ/0738	Ms A Roxburgh
OBJ/0739	Ms A Newcomb
OBJ/0740	Ms A Worssam
OBJ/0741	Mr N Truett
OBJ/0742-1	Mr P Seeley
OBJ/0742-2	Mr A Turner
OBJ/0743	Ms L Singer
OBJ/0744	Mr J Fairbain
OBJ/0745	Ms J Elvidge
OBJ/0746	Ms S Davies
OBJ/0747	Ms S Gooders
OBJ/0748	Ms H Taylor
OBJ/0749	Ms M Keen
OBJ/0750	Ms R Ingrouille
OBJ/0751	Ms J Lightbody
OBJ/0752	Ms P Lightbody
OBJ/0753	Mr P Dunmall
OBJ/0754	Ms C Fairbain
OBJ/0755	Miss B Williams
OBJ/0756	Mr T Bamford
OBJ/0757	Mr G Stoke
OBJ/0758	Ms J Rogers
OBJ/0759	Mr J Morgan
OBJ/0760	Ms R Pattison
OBJ/0761	Mr M Putland
OBJ/0762	Ms E Wood
OBJ/0763	Mr P Joyce
OBJ/0764	Mr R Hedger

OBJ/0765	Ms S Geldard
OBJ/0766	Mr M Davies
OBJ/0767	Ms E Ainslie
OBJ/0768	Ms J Carter
OBJ/0769	Ms J Rainsbury
OBJ/0770	Dr K T Murray
OBJ/0771	Ms F Woolgar
OBJ/0772	Mr & Mrs W Hopwood
OBJ/0773	Mr & Mrs S & K Apps
OBJ/0774	Ms J Joyce
OBJ/0775	Miss E Harrison
OBJ/0776	Ms S Hawkins
OBJ/0777	<i>(deceased)</i>
OBJ/0778	The Rt Hon Greg Clark MP
OBJ/0779	Ms R Paine
OBJ/0780	Mr R & N Norman
OBJ/0781	Mr D Bates
OBJ/0782	Highways England (now National Highways)
OBJ/0783	<i>Number Not Used</i>
OBJ/0784	Mr W Everett
OBJ/0785	Mr R Thompson
OBJ/0786	Ms J Smith
OBJ/0787	Ms M Blaser-Smart
OBJ/0788	<i>Number Not Used</i>
OBJ/0789	Ms C Moore
OBJ/0790	Mr R Saxby
OBJ/0791	Mr A Augarde
OBJ/0792	Mrs N Gaffney
OBJ/0793	Mrs N Tidmarsh
OBJ/0794	Miss R Yardley
OBJ/0795	Mr & Mrs G & R Hudd
OBJ/0796	Mr D Rudling
OBJ/0797	Ms F Kennedy-Holland
OBJ/0798	Ms A Yardley
OBJ/0799	Ms E Ogilvie
OBJ/0800	<i>Number not used</i>
OBJ/0801 - 0973	Petition and signatories
OBJ/1000	Mr J de Montaignac
OBJ/1001	Mr & Mrs P & J Christensen
OBJ/1002	Mr & Mrs A Hoad & the Executors and Trustees of the Noel de Quincey Estate – Mr D Warman
OBJ/1003	Ms R Turner
OBJ/1004	Mr I Roxburgh
OBJ/1005	Ms E Barnes
OBJ/1006	Ms L Fane
OBJ/1007	Mr R Rainsbury
OBJ/1008	Mrs K J Dipper

OBJ/1009	Mrs S Pateman
OBJ/1010	Miss H Dipper
OBJ/1011	Mr R Dipper
OBJ/1012	Mr J Smith
OBJ/1013	Mr C Everett
OBJ/1014	Mr & Mrs N & A Eastwood
OBJ/1015	Dr E Crouch
OBJ/1016	Mr T Higgs
OBJ/1017	Ms E Nicol
OBJ/1018	Ms S de Montaignac
OBJ/1019	Ms L Murdoch
OBJ/1020	Ms J McNulty
OBJ/1021	Mrs P Reed
OBJ/1022	Ms V Akerman
OBJ/1023	Mr D Gould
OBJ/1024	Mr R Barnes
OBJ/1025	Miss V de Quincey
OBJ/1026	Ms N Wetherell
OBJ/1027	Mr G Selmon
OBJ/1028	Mr & Mrs D & S Allen
OBJ/1029	Mrs M Mitchell
OBJ/1030	Mrs M Brinsley
OBJ/1031	Ms E Bennett
OBJ/1032	Mr R Norton
OBJ/1033	<i>Withdrawn</i>
OBJ/1034	The British Horse Society
OBJ/1035	Mr C Wyndham
OBJ/1036	Ms J Coker
OBJ/1037	Mr D Faithfull
<b>LETTERS OF SUPPORT</b>	
SUPP/001	Mr S Fisher
SUPP/002	Mr G R Bishop
SUPP/003	Mr P Lane
SUPP/004	Mr & Mrs V & D Noakes
SUPP/005	Kent & East Sussex Railway – Mr I Legg
SUPP/006	Mr I Legg
SUPP/007	Mr K Harriss
SUPP/008	Mr M Bates
SUPP/009	Mr A Colquhoun
SUPP/010	Mr J Sreeves
SUPP/011	Mr & Mrs J & D Epps
SUPP/012	Mr M Walker
SUPP/013	Mr M Best
SUPP/014	Mr J Whitmore
SUPP/015	Mr M Curtis

SUPP/016	Mr D Wiffen
SUPP/017	Mr H Luke
SUPP/018	Mr P Bolwell
SUPP/019	Mr P Broomhead
SUPP/020	Mr A P Turner
SUPP/021	Mr M Grigg
SUPP/022	Mr P Beale
SUPP/023	Mr D Furness
SUPP/024	Ms K Green
SUPP/025	Mr N Brewer
SUPP/026	Mr D Yates
SUPP/027	Mr B Hart
SUPP/028	Mr D Holdstock
SUPP/029	Mr T Griffin
SUPP/030	Mr J Schultz
SUPP/031	Mr J Carrick
SUPP/032	<i>deceased</i>
SUPP/033	Mr B Marks
SUPP/034	Mr R Dann
SUPP/035	Mr D May
SUPP/036	Mr D Osborn
SUPP/037	Mr J Baker
SUPP/038	Mr J Channon
SUPP/039	Mr A Willis
SUPP/040	Mr S Gilboy
SUPP/041	Mr A Scott-Villiers
SUPP/042	Mr I Mantel
SUPP/043	Mr F Hugh-Smith
SUPP/044	Mr A Bryan
SUPP/045	Mr & Mrs R & D Cooper
SUPP/046	Mr G T Bessant
SUPP/047	Mr M Bennetts
SUPP/048	Mr A Garner
SUPP/049	Mr B Fisher
SUPP/050	Mr J Martin
SUPP/051	M Edwards
SUPP/052	Mr J Conlin
SUPP/053	Mr & Mrs P & D Tomsett
SUPP/054	Mrs Clayton
SUPP/055	Mr Clayton
SUPP/056	Reverend J Emmott
SUPP/057	Ms A Bassam
SUPP/058	Ms H Bagg
SUPP/059	Mr C Edwards
SUPP/060	Mrs K Middleton
SUPP/061	Mr M Grant

SUPP/062	Mr D Crum
SUPP/063	Mrs S Watts
SUPP/064	Mr J Weller
SUPP/065	Mr S C Tombleson
SUPP/066	Mr V Grigg
SUPP/067	Mr/Ms B Martin
SUPP/068	Mr T Crum
SUPP/069	Mr C Davis
SUPP/070	Mr/Ms A Bone
SUPP/071	Mrs S Edwards
SUPP/072	Mr S Woods
SUPP/073	Mr N Murrells
SUPP/074	Mr R Madge
SUPP/075	Mr S Neave
SUPP/076	Mr C Strangeways
SUPP/077	Mr H Atkinson
SUPP/078	Mr/Ms D Smith
SUPP/079	Mr/Ms Z Bruce
SUPP/080	Network Rail Infrastructure Limited
SUPP/081	Ms P Scales
SUPP/082	Mr J H Williams
SUPP/083	Ms S Hopper
SUPP/084	Mr B L Hopper
SUPP/085	Mr R S Clymo
SUPP/086	Mr B Bassam
SUPP/087	Mr C Tyler
SUPP/088	Mr D Broom
SUPP/089	Ms Rebecca
SUPP/090	Dr R Mellish
SUPP/091	Mr B Bone
SUPP/092	Mr A Worsfold
SUPP/093	Mr C Meachen
SUPP/094	Mr R Salmon
SUPP/095	Mr B A MacPhee
SUPP/096	Mr D Hazeldine
SUPP/097	Mr M Crow
SUPP/098	Mr R Adam
SUPP/099	Mr M Butler
SUPP/100	Mr M Thompson
SUPP/101	Mr D Nibloe
SUPP/102	Mr D Andrews
SUPP/103	Ms M Jackson
SUPP/104	Mr T Lovell
SUPP/105	Mr P Hopgood
SUPP/106	Mr I Coleby
SUPP/107	Mr & Mrs Measor

SUPP/108	Ms S Ferguson
SUPP/109	Mr T Thorpe
SUPP/110	Mr K Wilson
SUPP/111	Mr R Harper
SUPP/112	Mr A Dawes
SUPP/113	Tenterden Town Council
SUPP/114	Mr R Blake
SUPP/115	Mr G Crouch
SUPP/116	Ms K Falzani-Phillips
SUPP/117	Mr P Smith
SUPP/118	Ms R M White
SUPP/119	Mr J Gribble
SUPP/120	Rother Valley Railway Supporters Association
SUPP/121	Mr T Lewis
SUPP/122	Mr M Riches
SUPP/123	Mr A Knight
SUPP/124	Mr R Halton
SUPP/125	Mr J Jenkins
SUPP/126	Mr R Weller
SUPP/127	Mr M Cooper
SUPP/128	Mr M Jones
SUPP/129	Mr R Tyler
SUPP/130	Mr J Clark
SUPP/131	Mr P Coombs
SUPP/132	Mr W Shelford
SUPP/133	Mrs J Chatfield
SUPP/134	Mr A Austin
SUPP/135	Mr S Chatfield
SUPP/136	The Occupier
SUPP/137	Mr M Short
SUPP/138	Mr P Pope
SUPP/139	Mr R Childs
SUPP/140	Mrs A Childs
SUPP/141	Mr & Mrs G & DM Forsythe
SUPP/142	Mr & Mrs Smith
SUPP/143	Mr M Goodsell
SUPP/144	Mrs G Goodsell
SUPP/145	Mr D Helliwell
SUPP/146	Mr D Lowe
SUPP/147	Mrs L Smith
SUPP/148	Mr G Moody
SUPP/149	Mr P Bonninga
SUPP/150	Mr R Usher
SUPP/151	Mr D Jacobs
SUPP/152	Mr R Bickersteim
SUPP/153	Mr R Browning



SUPP/154	Mr G May
SUPP/155	Mr J Wilkes
SUPP/156	My Tenderden
SUPP/157	Mr G Williams
SUPP/158	Mr M Isaacs
SUPP/159	Mr R Arblaster
SUPP/160	Mr D Post
SUPP/161	<i>Not Used</i>
SUPP/162	Mr R Male
SUPP/163	Mrs C Mitchell
SUPP/164	Mr M Pugh
SUPP/165	Mr R Prentice
SUPP/166	Mr R Bancroft
SUPP/167	The Occupier
SUPP/168	Mr P Bourne
SUPP/169	Mr D Dee
SUPP/170	Mr S Marsh
SUPP/171	Mr N McGregor
SUPP/172	Cllr E Kirby-Green
SUPP/173	Mr M Barton
SUPP/174	Mr C Woodland
SUPP/175	Mr I Bowskill
SUPP/176	Mr M Chantler
SUPP/177	Cllr I Hollidge
SUPP/178 and SUPP/178a	Mr H Cloutt
SUPP/179 and SUPP/179a	Mrs C Greenfield
SUPP/180	Mr J Hunt
SUPP/181	Mr G Hukins
SUPP/182	Mr J Elston
SUPP/183	Ms M Ruston
SUPP/184	Mr D Hipkin
SUPP/185	Mr M Cresswell
SUPP/186	Cllr S Prochak
SUPP/187	Heritage Railway Association
SUPP/188	Mr T Burnham
SUPP/189	Mr P Simpson
SUPP/190	Mr J Chow
SUPP/191	Mr R Gascoine
SUPP/192	Mr K Hammond
SUPP/193	Mr P Skinner
SUPP/194	Mrs N Attwood
SUPP/195	Mr & Mrs Ms L&P Walter
SUPP/196	Ms S Vidler
SUPP/197	Mr E Vidler
SUPP/198	Mr J Crawford
SUPP/199	Mr T Hannocks

SUPP/200 F	Mr W Pooke
SUPP/201	Ms W Waddington
SUPP/202	Mr B Fagg
SUPP/203	Mr C Gre
SUPP/204	Mr D Rains
SUPP/205	Mr/Ms M Seager
SUPP/206	Mr & Mrs M & P White
SUPP/207	Mr M McGrath
SUPP/208	Mr R Elliot
SUPP/209	Dr R Williams
SUPP/210	Mr M Justice
SUPP/211	Mr R Woolhouse
SUPP/212	Mr/Ms P Underhill
SUPP/213	Mr R Wiltkins
SUPP/214	Mr J Humphery
SUPP/215	Mr N Skinner-Simpson
SUPP/216	Mr S Lewis
SUPP/217	Ms T Strapp
SUPP/219	Mr D Wilson
SUPP/220	Mr R Young
SUPP/221	Mr A Robins
SUPP/222	Campaign for Better Transport – East Sussex
SUPP/223	Mr Huw Merriman MP
SUPP/224	Mr Richard Broyd OBE

**LETTERS OF REPRESENTATION**

REP/01	Ms G Branford
REP/02	Mr D King
REP/03	Mr J Fox
REP/04	Ms P O'Higgins
REP/05	Ms A Wells
REP/06	Historic England – Mr P Roberts
REP/07	Mr I Norley
REP/08	Ramblers Association – Mr A Bonnett
REP/09	Ms C Wood
REP/10	Mr R Wrenn
REP/11	Salehurst & Robertsbridge Parish Council - Ms K Ripley
REP/12	Mr J Shirky
REP/13	Open Spaces Society, Wealden District – Mr B Clegg
REP/14	Mr H Hedges
REP/15	Rother District Council – Mr M Cathcart
REP/16	Natural England – Ms S Jenkins
REP/17	Office of Rail and Road – Mr I Skinner
REP/18	East Sussex County Council – Mrs C Warwick
REP/19	Mr S Yardley

REP/20	Mr R Collins
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## APPENDIX 4 – STATEMENTS OF CASE (SoC)

<b>Rother Valley Railway (RVR)</b>	
RVR/65	Statement of Case
RVR/66	Updated Statement of Case submitted 10 May 2021
RVR/67	Agricultural Impact Report January 2020 including Appendices
RVR/68	Supplemental Agricultural Impact Report April 2020
RVR/69	Letter from ORR to RVR 21 May 2020
<b>Objectors</b>	
<b>Paul Smith</b>	
OBJ/0068	Statement of Case dated 6 August 2018
<b>Sally-Ann Hart MP</b>	
OBJ/091	Statement of Case dated 18 September 2018
<b>Eric Hardwick MBE</b>	
OBJ/099	Statement of Case dated 5 July 2018
<b>Kathryn Bell</b>	
OBJ/0133	Statement of Case (Objection Letter received 21 May 2018)
<b>Environment Agency</b>	
OBJ/0178	Statement of Case
<b>Highways England (now National Highways)</b>	
OBJ/0782	Statement of Case dated 20 September 2018
<b>Andrew Hoad, Lynn Hoad, Thomas Hoad and William Hoad; the Trustees of the Noel de Quincey Estate (Vanessa de Quincey, Cherida Michell and Michael Conroy) and Emma Ainslie</b>	
OBJ/1002-0	Statement of Case
OBJ/1002-1	Appendices to Statement of Case
<b>Representations</b>	
<b>Office of Rail and Road</b>	<b>Ian Skinner</b> , Assistant Chief Inspector of Railways
REP/017-0	Statement of Case dated 31 January 2020
REP/017-1	Addendum to Statement of Case dated 21 May 2021
REP/017-2	Appendix A to Addendum to Statement of Case dated 21 May 2021
REP/017-3	Appendix B to Addendum to Statement of Case dated 21 May 2021

<b>Supporters</b>	
<b>Ian Hollidge</b>	
SUP/177	Statement of Case dated 18 September 2018

## APPENDIX 5 – PROOFS OF EVIDENCE

<b>Rother Valley Railway (RVR)</b>	
<b>David Gillett (RVR) – Overview and Need</b>	
RVR/W1/1	Proof of Evidence
RVR/W1/2-01	K&ESR Articles of Association - Extract
RVR/W1/2-02	Email from ESCC in Respect of Traffic Calming Measures, 27 June 2018
RVR/W1/2-03	Extract from National Trust Annual Report 2019/20
RVR/W1/2-04	Summary of Expenditure on Reconstruction
RVR/W1/2-05	Email on behalf of Secretary of State for Transport in Respect of Bridges Managed by HE HRE, 28 January 2021
RVR/W1/2-06	Summary of Engagement with Landowners
RVR/W1/2-07	Letter from Environment Agency to Secretary of State for Transport, 26 March 2019
RVR/W1/2-08	Letter from ORR to RVR, 20 January 2012
RVR/W1/2-09	Newspaper Article, Hastings & St Leonards Observer, 10 May 2018
RVR/W1/2-10	Email from High Weald AONB Unit, 30 May 2012
RVR/W1/2-11	Robertsbridge Station Car Park Survey, 2012 (excel)
RVR/W1/2-12	Letter from Rother District Council to RVR, 9 April 2019
RVR/W1/3	David Gillett Summary Proof of Evidence
RVR/W1/4	David Gillett Rebuttal
RVR/W1/5-1	Rebuttal Appendix 1
RVR/W1/5-2	Rebuttal Appendix 2
RVR/W1/5-3	Rebuttal Appendix 3
RVR/W1/5-4	Rebuttal Appendix 4
<b>Thomas Higbee (Steer Davies &amp; Gleave Limited) - Economics</b>	
RVR-W2-1	Thomas Higbee - Proof of Evidence
RVR/W2/2-01	RAIL Magazine, 'Heritage Railways Receive Combined £6.7m Culture Recovery Fundlifeline', 13 October 2020 RVR/W2/2-02 UK Parliament Public Accounts Committee, COVID-19: Culture Recovery Fund
RVR/W2/2-02	UK Parliament Public Accounts Committee, COVID-19: Culture Recovery Fund
RVR/W2/2-03	De La Warr Pavilion, 'Tourism is Even Bigger Business for 1066 Country', 21 October 2019
RVR/W2/2-04	1066 Country Membership Summary
RVR/W2/2-05	Route #12 Bus Timetable, Maidstone – Tenterden

RVR/W2/2-06	Route #2 / #2A Bus Timetable, Ashford – Tenterden (- Hastings)
RVR/W2/2-07	Route #349 Bus Timetable, Hastings – Bodiam – Hawkhurst
RVR/W2/2-08	National Rail London and the South East Rail Services Map
RVR/W2/2-09	Southeast Communities Rail Partnership 'Explore the Uckfield & East Grinstead Lines' Tourist Map
RVR/W2/2-10	Oxford Economics / Heritage Lottery Fund, 'The impact of heritage tourism for the UK economy', August 2016
RVR/W2/2-11	Deloitte / Oxford Economics, 'Tourism: Jobs and Growth – The Economic Contribution to the Tourist Economy in the UK', November 2013
RVR/W2/2-12	Office for National Statistics, 'Coronavirus and the Impact on the UK Travel and Tourism Industry', February 2021
RVR/W2/2-13	VisitBritain / VisitEngland, 2021 Tourism Forecast, 7 May 2021
RVR/W2/2-14	UK Parliament House of Commons Library, 'Home Sweet Home: How Popular is Domestic Tourism in Great Britain?', 5 November 2019
RVR/W2/2-15	Her Majesty's Treasury, 'Levelling Up Fund – List of Local Authorities by Priority Category', 29 March 2021 (only 'Level 1' areas shown)
RVR/W2/2-16	Her Majesty's Treasury, 'Levelling Up Fund: Prospectus', 29 March 2021
RVR-W2-3	Thomas Higbee - Summary Proof of Evidence
RVR-W2-4	Thomas Higbee Rebuttal
RVR-W2-5-1	Rebuttal Appendix 1
RVR-W2-5-2	Rebuttal Appendix 2
RVR-W2-5-3	Rebuttal Appendix 3
RVR-W2-5-4	Rebuttal Appendix 4
<b>Philip Hamshaw (i-Transport LLP) - Highways</b>	
RVR-W3-1	Philip Hamshaw - Proof of Evidence
RVR-W3-2	Philip Hamshaw - Appendices to Proof of Evidence
RVR-W3-2-H	Philip Hamshaw - Appendix H to Proof of Evidence
RVR-W3-3	Philip Hamshaw - Summary Proof of Evidence
RVR-W3-4	Philip Hamshaw Rebuttal
RVR-W3-5	Appendix to Rebuttal
<b>Jonathan Portlock (Arup Group Limited) – Level Crossing Design</b>	
RVR-W4-1	Jonathan Portlock - Proof of Evidence
RVR-W4-2	Jonathan Portlock - Summary Proof of Evidence
RVR-W4-3	<i>Not Used</i>

RVR-W4-4	Jonathan Portlock Rebuttal
<b>Robert Slatcher</b> (Temple Group Ltd.) - Environmental (General)	
RVR-W5-1	Robert Slatcher - Proof of Evidence
RVR-W5-2	Robert Slatcher - Appendices to Proof of Evidence
RVR-W5-3	Robert Slatcher - Summary Proof of Evidence
<b>Giles Coe</b> (Co-ecology Limited) - Ecology	
RVR/W6-1	Giles Coe - Proof of Evidence
RVR/W6-2-01	Sussex Biodiversity Records Centre (2021) – Ecological Data Search SxBRC/20/989, Land at Robertsbridge to Bodiam
RVR/W6-2-02	Sussex Ornithological Society (2021) – Additional Bird Records for Land at Robertsbridge to Bodiam (excel)
RVR/W6-2-03	Rother District Council (9 April 2019) Town and Country Planning Act 1990, Confirmation of compliance with conditions, 3, 5, 6 and 7 (ecology)
RVR/W6-2-04	The Ecology Consultancy (2019). Method Statement for a Dormouse European Protected Species Mitigation Licence . Unpublished
RVR/W6-2-05	The Ecology Consultancy (2019c). RVR Protected Species Plan. Unpublished
RVR/W6-2-06	The Ecology Consultancy (2019d). RVR Construction Environment Management Plan. Unpublished
RVR/W6-2-07	The Ecology Consultancy (2019f). RVR Landscape Ecological Management Plan. Unpublished
RVR/W6-2-08	Indicative Future Ecology Schedule for the Austen’s Bridge to Robertsbridge Section of the Rother Valley Railway
RVR/W6-3	Giles Coe - Summary Proof of Evidence
RVR-W6-4	Giles Coe Rebuttal
<b>Suzanne Callaway</b> (Capita Property & Infrastructure Ltd.) – Flood Risk	
RVR-W7-1	Suzanne Callaway - Proof of Evidence
RVR-W7-2	Suzanne Callaway - Appendices to Proof of Evidence
RVR-W7-3	Suzanne Callaway - Summary Proof of Evidence
RVR-W7-4	Suzanne Callaway Rebuttal
RVR-W7-5	Appendix to Rebuttal
<b>David Keay</b> (RVR) – Railway Safety and Level Crossings	
RVR-W8-1	David Keay - Proof of Evidence
RVR/W8/2-1	ORR Letter 20 January 2012
RVR/W8/2-2	ORR Letter 7 August 2018 - Record of Meeting 23 July 2018
RVR/W8/2-3	Health & Safety Executive publication - Reducing Risks and Protecting People



RVR/W8/2-4	British Horse Society - Advice on Width, Area and Height in England and Wales
RVR/W8/2-5	Heritage Railway Association/ORR Guidance Document for Footpaths and User Worked Crossings ref HGR-A0458
RVR/W8/2-6	Letter from East Sussex County Council -B2244 Junction Road - 27 June 2018
RVR/W8/2-7	Letter from Rother District Council - 13 August 2020
RVR-W8-3	David Keay - Summary Proof of Evidence
RVR-W8-4	David Keay Rebuttal
RVR-W8-5	Appendix to Rebuttal
<b>Shaun Dewey (K&amp;ESR) - Railway Operations</b>	
RVR-W9-1	Shaun Dewey - Proof of Evidence
RVR-W9-2	Shaun Dewey - Appendices to Proof of Evidence
RVR-W9-3	Shaun Dewey - Summary Proof of Evidence
<b>Peter Hodges (Lambert &amp; Foster Limited) – Land &amp; Agriculture</b>	
RVR-W10-1	Peter Hodges - Proof of Evidence
RVR-W10-2	Peter Hodges - Appendices to Proof of Evidence
RVR-W10-3	Peter Hodges - Summary Proof of Evidence
<b>Supporters</b>	
<b>Clr Susan Prochak</b>	
SUPP/186	Proof of Evidence
<b>Tom Lewis</b>	
SUPP/121-0	Proof of Evidence
Supp/121-1	Summary Proof of Evidence
<b>Huw Merriman MP</b>	
SUPP/223	(Original consultation response)
<b>Anthony Robins (The Ostrich Hotel)</b>	
SUPP/221	Proof of Evidence
<b>Derrick Coffee (Campaign for Better Transport–East Sussex)</b>	
SUPP/222	(Original Consultation Response)
<b>Steve Griffiths (Rother Valley Railway Supporters Association)</b>	
SUPP/120	(Original Consultation Response)
<b>Martin Bates</b>	
SUPP/8	(Original Consultation Responses)

<b>Sir Peter Hendy CBE</b> (Network Rail Infrastructure Limited)	
SUPP/80	(Original Consultation Response)
<b>Ian Hollidge</b> <sup>540</sup>	
SUPP/177	(Original Consultation Response/Statement of Case)
<b>Stephen Oates</b> (Heritage Railway Association)	
SUPP/187	Proof of Evidence (INQ/84)
<b>Kenneth Hammond</b>	
SUPP/192	(Original Consultation Response)
<b>John Jenkins</b>	
SUPP/125	(Original Consultation Response)
<b>Mike Carter</b> (Tenterden Town Council)	
SUPP/113	(Original Consultation Response)
<b>Graham Bessant</b>	
SUPP/046	Proof of Evidence (Did not appear at the Inquiry)
<b>R Arblaster</b>	
SUPP/159	Proof of Evidence (did not appear at the Inquiry)
<b>Simon Neave</b>	
SUPP/075	Proof of Evidence (did not appear at the Inquiry)
<b>Objectors</b>	
<b>OBJ/1002-Andrew Hoad, Lynn Hoad, Thomas Hoad and William Hoad; the Trustees of the Noel de Quincey Estate (Vanessa de Quincey, Cherida Michell and Michael Conroy) and OBJ/767-Emma Ainslie</b>	
<b>Ellie Evans</b> (Volterra Partners LLP) – Economic Impacts	
OBJ/1002/EE/1	Proof of Evidence
OBJ/1002/EE/2	Appendices to Proof of Evidence
OBJ/1002/EE/3	Summary Proof of Evidence
<b>Ian Fielding</b> (WSP UK Limited) – Highways Impacts	
OBJ/1002/IF/1	Proof of Evidence
OBJ/1002/IF/2	Appendices to Proof of Evidence
OBJ/1002/IF/3	Summary Proof of Evidence
<b>Philip Clark</b> (WSP UK Limited) – Level Crossing Matters	

<sup>540</sup> Appeared on his own behalf, not as a representative of Rother District Council.

OBJ/1002/PJC/1	Proof of Evidence
OBJ/1002/PJC/2	Appendices to Proof of Evidence
OBJ/1002/PJC/3	Summary Proof of Evidence
<b>Chris Patmore</b> (WSP UK Limited) – Flood Risk Matters	
OBJ/1002/CP/1	Proof of Evidence
OBJ/1002/CP/2	Appendices to Proof of Evidence
OBJ/1002/CP/3	Summary Proof of Evidence
<b>Andrew Highwood</b> (Savills (UK) Ltd.) – Impact on Farming Operation	
OBJ/1002/AH/1	Proof of Evidence
OBJ/1002/AH/2	Appendices to Proof of Evidence
OBJ/1002/AH/3	Summary Proof of Evidence
<b>Emma Ainslie</b>	
OBJ/1002/EA/1	Proof of Evidence (Statement)
<b>OBJ/782-Highways England (now National Highways)</b>	
<b>Paul Harwood</b> (Highways England) - Policy	
OBJ-782/W1/1	Proof of Evidence Paul Harwood
OBJ-782/W1/2	Proof of Evidence - Appendices Paul Harwood
OBJ-782/W1/3	Proof of Evidence – Summary Statement Paul Harwood
<b>David Bowie</b> (Systra Limited) – Technical Matters	
OBJ-782/W2/1	Proof of Evidence David Bowie
OBJ-782/W2/2	Proof of Evidence - Appendices David Bowie
OBJ-782/W2/3	Proof of Evidence – Summary Statement David Bowie
<b>OBJ/729-Nick Moor</b>	
OBJ/729	Proof of Evidence
<b>OBJ/61-Edward Flint</b>	
OBJ/61	Proof of Evidence (inc INQ/101)
<b>OBJ/19-Mike Le Lacheur</b>	
OBJ/19	Proof of Evidence (INQ/95)
<b>OBJ/189-Nick Young</b>	
OBJ/189	Proof of Evidence (INQ/106)
<b>OBJ/91-Sally-Ann Hart MP</b>	

OBJ/91	Proof of Evidence (INQ/119)
<b>OBJ/133-Kathryn Bell</b>	
OBJ/133	Proof of Evidence (INQ/116)
<b>OBJ/652 &amp; 1035-Nigel Leigh</b>	
OBJ/652 & 1035	Proof of Evidence (inc INQ/123)
<b>OBJ/99-Eric Hardwick</b> MBE	
OBJ/99	(Statement of Case)
<b>OBJ/1032-Ray Norton</b>	
OBJ/1032	(Original Consultation Response)
<b>OBJ/1037-David Faithfull</b>	
OBJ/1037	Proof of Evidence (INQ/124)
<b>OBJ/68-Paul Smith</b>	
OBJ/68	(Original Consultation Responses 68/68a)
<b>OBJ/1014-Anna Eastwood</b>	
OBJ/1014	Proof of Evidence (INQ/43, 98)
<b>OBJ/25-Emma Watkins</b>	
OBJ/25	Proof of Evidence (INQ/125)
<b>OBJ/71-David Webster</b> CMLI	
OBJ/71	Proof of Evidence (INQ/94 & 115)
<b>Representations</b>	
<b>REP/11-Nicholas Dashwood Brown</b> (Salehurst and Robertsbridge Parish Council, Chair)	
REP/11	Proof of Evidence

## APPENDIX 6 – INQUIRY DOCUMENTS

INQ/1	Highways England - Opening Statement
INQ/2-1	Filled up Order and Tracked Order (Superseded by INQ/093)
INQ/2-2	Replacement Sheet 3
INQ/2-3	Updated Book of Reference
INQ/3	RVR - Opening Statement
INQ/4	OBJ/1002 (Landowners) Opening Statement
INQ/5	Government Guide to TWA Procedures 2006
INQ/6	TWA Orders - A Brief Summary Guide 2006
INQ/7	Statutory Procedures Folder
INQ/8	Guidance on Compulsory Purchase Process and the Crichel Down Rules
INQ/9	Flood Risk and Coastal Change - GOV.UK
INQ/10	Spec for Station Footpath Bridleway and User Worked LC Extract
INQ/11-0	Technical Note on Section 68 RCCA - Superseded
INQ/11-1	Technical Note on Section 68 RCCA 1845
INQ/12	Sheet 2 Estimate of Costs (RVR/090)
INQ/13	Schedule of Withdrawals as at 8 July 2021
INQ/14	Summary of NMU Data (Oct 2020)
INQ/15	GG104 Safety Risk Assessment
INQ/16	A21 Level Crossing Maintenance
INQ/17	Temple ES Crossing Option Assessment
INQ/18	Highways England – Protective Provisions
INQ/19	Arup Drawing 239025-ARP-XX-XX-DR-CH-0010 (long section)
INQ/20	Arup Drawings 239025-ARP-XX-XX-DR-CH-0020, 21, 22, 23, 24, 25 and 26 - All Cross Sections
INQ/21	HE Protective Provisions, previously dated 14th May
INQ/22	G104 Risk Assessment Rev G
INQ/23	ITL14477-023 TN - Additional Transport Information
INQ/24	239025-ARP-XX-XX-SK-CH-0001
INQ/25	239025-ARP-XX-XX-SK-CH-0002
INQ/26	239025-ARP-XX-XX-SK-CH-0003
INQ/27	239025-ARP-XX-XX-SK-CH-0004
INQ/28	EA Consultation Response 2016-12-19
INQ/29	SES Email from Terry Carling 2021-06-09 REDACTED

INQ/30	RVR Email to ORR Regarding CCTV Provision 2021-06-08 REDACTED
INQ/31	Application for Departure From Standards
INQ/32	239025-ARP-XX-XX-TN-CH-0001 - CD109 Overtaking Assessment Rev A
INQ/33	Statement of Common Ground between RVR and Highways England
INQ/34	Documents referred to in Mr Clarke's Evidence on behalf of OBJ/1002
INQ/35	Agreed Note on Tests For Making TWAO
INQ/36	Technical Note on HE Bond
INQ/37	P Hamshaw - Omitted Accident Analysis Addendum
INQ/38	Salehurst and Robertsbridge Neighbourhood Plan - Adopted Jul 2018
INQ/39	RVR Response to Representation from David Webster (OBJ/71): Landscape and Visual Matters - Carly Tinkler, July 2021
INQ/40	Mr Dewey's Additional Evidence - Running a Charity
INQ/41	Additional Note on Signalmen on KESR
INQ/42	Note on Whistleboards
INQ/43	Note for Inspector on OBJ 1014 (Eastwood)
INQ/44	The Strategic Road Network and the Delivery of Sustainable Development 2013
INQ/45	Technical Note on Level Crossing Act and Regulations - July 9 2021
INQ/46	Adopted Core Strategy September 2014 Extracts
INQ/47	Setting Local Speed Limits - GOV.UK
INQ/48	Adopted Core Strategy September 2014
INQ/49	HWAONB Management Plan 2019
INQ/50	ECIA Guidelines 2018 Terrestrial Freshwater Coastal and Marine V1.1
INQ/51	Extracts of ESCC LTP3 2011-2026
INQ/52	Note on Implementation of Planning Permission with attachments
INQ/53	RVR/3/2 (P Hamshaw) Appendix E (missing Appendix A to Tech Note ITL 14477-016)
INQ/54	I-transport Speed Survey Location Plan ITL14477-GA-00
INQ/55	Extract from Dormouse Conservation Handbook
INQ/56	CA 185 Vehicle Speed Measurement
INQ/57	Clarification Memo - Visitor Numbers and Economic Impacts
INQ/58	Rother District Local Plan Extracts
INQ/59	Legislation (Referred to in Mr Hodge's evidence)
INQ/60	Signed Statement of Common Ground between RVR and HE
INQ/61	Extracts from Rother District Core Strategy, 2014
INQ/62	Association of Leading Visitor Attractions, 2017 Visitor Figures

INQ/63	Extract from 2019-20 East Sussex Council Plan
INQ/64	Extracts from South East Local Enterprise Partnership Strategic Economic Plan
INQ/65	Extracts from UK Industrial Strategy Tourism Sector Deal
INQ/66	Extract from VisitBritain GB Day Visitor Survey 2016
INQ/67	Data Extract for Rother District from VisitBritain GB Tourism Survey 2016
INQ/68	Summary of Multiplier Outputs from the Cambridge Tourism Economic Impact Model (As reported within Rother Valley Railway: Local Economic Impact Study, October 2013)
INQ/69	Extracts from Homes and Communities Agency, 'Additionality Guide', Fourth Edition 2014
INQ/70	GB Tourist Statistics 2012, VisitEngland Tourist Trips and Spend by Mode Used Data
INQ/71	UK Department for Transport, Transport Analysis Guidance: An Overview of Transport Appraisal, January 2014
INQ/72	Extract from Visit England, England Occupancy Survey, December 2020 Results
INQ/73	Flood Risk Assessments Climate Change Allowances - GOV.UK
INQ/74	Note on Tree Planting
INQ/75	What is the Vertical Accuracy of Your LIDAR Data – Defra Data Services Forum
INQ/76	Accounting for Residual Uncertainty: An Update to the Fluvial Freeboard Guide
INQ/77	Accounting for Residual Uncertainty - An Update to the Fluvial Freeboard Guide
INQ/78	Learn More About This Area's Flood Risk - GOV.UK
INQ/79	Documents referred to in Derrick Coffee's Evidence (SUPP/222)
INQ/80	Documents referred to in Cllr Prochak's Evidence (SUPP/186)
INQ/81	Note on Proposed Mill Stream Footpath Crossing (correction Note at INQ/096)
INQ/82	Election Map - Bexhill and Battle
INQ/83	Election Map - Hastings and Rye
INQ/84	Statement in Support of the Order from the Heritage Railway Association – Stephen Oates, 7 June 2021 (received 6 July 2021) (SUPP/187)
INQ/85	WSP Note on Institute of Environmental Management & Assessment – Transport (20 July 2021)
INQ/86	Note of confirmation of distances – Philip Hamshaw and Ian Fielding, 19 July 2021
INQ/87	Department for Transport Guidance Note - Restoring Your Railway Fund, update 2 June 2021
INQ/88	Kathryn Bell (OBJ/133) Proof of Evidence July 2021 (see INQ/116 below)
INQ/89	Kathryn Bell (OBJ/133) Replacement Summary Proof of Evidence (see INQ/117 below)
INQ/90	Guidelines for the Environmental Assessment of Road Traffic – Extract
INQ/91	Revised National Planning Policy Framework - July 2021
INQ/92	Technical Note on the Wetting and Drying of Cells in TUFLOW Software

INQ/93	Filled up Order and Tracked Order, 22 July 2021
INQ/94	David Webster (OBJ/71) Representation dated 27 June 2021'(see INQ/115 below)
INQ/95	Proof of Evidence and two attachments of Mike Le Lacheur (OBJ/19), 22 July 2021
INQ/96	RVR Correction Note, with plan, to INQ/081
INQ/97	Clarification Note from Ellie Evans on the Public Transport Catchment
INQ/98	Response from Nicholas and Anna Eastwood (OBJ/1014) to INQ/043 with Photograph
INQ/99	Table 3 - Flood Risk Vulnerability and Flood Zone Compatibility
INQ/100-0	RVR/75 -Missing Annexes to Submission on Northbridge Street Crossing
INQ/100 1	RVR/75 -Missing Annexes to Submission on Junction Road Crossing
INQ/100-2	RVR/75 -Missing Annexes to Submission on Bridleway 36b Redacted
INQ/101-0	Edward Flint (OBJ/0061) Appendix A to Proof of Evidence
INQ/101-1	Edward Flint (OBJ/0061) Appendix B to Proof of Evidence
INQ/101-2	Edward Flint (OBJ/0061) Appendix C to Proof of Evidence
INQ/101-3	Edward Flint (OBJ/0061) Appendix D to Proof of Evidence
INQ/102	RVR Note in Response to Nicholas and Anna Eastwood's (OBJ/1014) Further Comment (INQ/98)
INQ/103	RVR Schedule of Objection Issues and Where Addressed
INQ/104-0	Landowners' Note on the Implementation of the Planning Permission, 26 July 2021
INQ/104-1	Bundle of Authorities
INQ/105	Note on Stopping Sight Distance and Visibility – RVR and OBJ/1002
INQ/106	Nicholas Young (OBJ/189) Proof of Evidence with two appendices
INQ/107	Nicholas Moor, on behalf of Robertsbridge Cricket Club (OBJ/729) Note on Measurement of the Height of the Pavilion
INQ/108	Email from Edward Flint (OBJ/061) confirming qualifications, 27 July 2021
INQ/109	Email attaching two Photos from Nigel Leigh (OBJ/652), 27 July 2021
INQ/110	Adopted Core Strategy Policy EN5
INQ/111-0	Note agreed between Suzanne Callaway and Chris Patmore on Updates to the Guidance on Flood Risk Assessments: Climate Change Allowances
INQ/111-1	EA Guidance on Climate Change (22 July 2020 version)
INQ/111-2	EA Guidance on Climate Change (21 July 2021 version)
INQ/112	Footpath Diversion S&R 31 (SAL/31/1) Rail Levels and Appendices
INQ/113	Note on the Mill Stream Bridge and Footpath Diversion and the Calculation of Floodplain Storage Compensation
INQ/114	RVR Note: Floodplain Compensation Storage Provision North of Robertsbridge Station – Capita, 28 July 2021 (see INQ/131 below)
INQ/115	David Webster (OBJ/071) Proof of Evidence dated 29 July 2021'(see INQ/094)



INQ/116	Kathryn Bell (OBJ/133) Proof of Evidence 29 July 2021 (Supersedes INQ/088)
INQ/117	Kathryn Bell (OBJ/133) Summary Proof of Evidence 29 July 2021 (Supersedes INQ/089)
INQ/118	RVR Index of Volume II of the Drawings Relating to the Planning Permission at RVR/7
INQ/119-0	Summary Statement of Sally-Ann Hart MP(OBJ/091), 30July 2021
INQ/119-1	Emails from Sally-Ann Hart MP (OBJ/091) dated 30 July 2021
INQ/119-2	Extract of Economic Connectivity Review, July 2018
INQ/120	RVR Note on the Updated National Planning Policy Framework
INQ/121	Landowners' Submissions on the recent amendments to the National Planning Policy Framework
INQ/122	Nicholas Moor, on behalf of Robertsbridge Cricket Club (OBJ/729 – Note on the Updated National Planning Policy Framework
INQ/123	Summary Statement of Nigel Leigh (OBJ/652) and Charles Wyndham (OBJ/1035), 30 July 2021
INQ/124	Summary Statement of David Faithfull (OBJ/1037), 30 July 2021
INQ/125	Summary Statement of Emma Watkins (OBJ/025), 30 July 2021
INQ/126	Note from Mr Patmore -clarifying the Figures in Paragraph 6.2.35 of his Proof of Evidence
INQ/127	RVR Proposed Outline dated 22 July 2021 for the Modifications to the Draft Order Session
INQ/128-0	Application for Costs on behalf of (i) The Hoad Family of Parsonage Farm and (ii) The Trustees and Executors of the Noel de Quincey Estate and Mrs Emma Ainslie of Moat Farm) (OBJ/1002)
INQ/128-1	Application for Costs Appendix 1 – Department for Transport Circular 3/94, August 1994
INQ/128-2	Application for Costs Appendix 2 – A Guide for Applicants and Objectors, Department for Transport Pamphlet December 2007
INQ/128-3	Application for Costs Appendix 3 – Winckworth Sherwood letter dated 8 March 2019
INQ/128-4	Application for Costs Appendix 4 – Exchange of emails Richard Max & Co, 13 July 2020 and Winckworth Sherwood, 15 July 2020
INQ/128-5	Application for Costs Appendix 5 - Exchange of emails Richard Max & Co, 7 January 2021 and Winckworth Sherwood, 11 January 2021
INQ/129	RVR Note on Footpath 31 Level Crossing – Amendments to Filled Order, 2 August 2021
INQ/130	RVR Revised Filled-Up Order – Footpath 31 Alternative, August 2021
INQ/131	RVR Addendum: Note on Floodplain Compensation Storage Provision north of Robertsbridge Station – Capita, 30 July 2021 (see INQ/114 above)
INQ/131-1	RVR Addendum to RVR Note on Floodplain Compensation Storage Provision North of Robertsbridge Station (version 2) 3 August 2021 (see INQ/114 above)
INQ/132	Landowners' Technical Note on Compensation in Response to INQ/114 – Chris Patmore, 2 August 2021
INQ/133	Closing Submission of Sir Peter Hendy on behalf of Network Rail (SUPP/080)
INQ/134	Highways England email regarding Meeting about Departures Submissions, 3 August 2021
INQ/135	Response by Anna Eastwood (OBJ/1014) to RVR Cross-examination Questions

INQ/136	RVR Response to Robertsbridge and Salehurst Parish Council (REP/011) Letter Re. Plots 9 and 12
INQ/137	RVR – Notices in Respect of Plot 62 with Covering Letter – Hoad Family (OBJ/1002)
INQ/138	RVR Note in Response to Inspector’s Questions Regarding INQ/131 and Chris Patmore’s Evidence INQ/132 in Respect of Flood Compensation Storage Matters
INQ/139	Note of clarification in Respect of the Areas of Moat Farm within the High Level Scheme Agreement - Andrew Highwood, 4 August 2021
INQ/140	Revised Version of the Landowners Costs Application with Amendments Shown as Tracked Changes, 4 August 2021
INQ/141	Highways England (now National Highways) (OBJ/782) Response to Closing Submissions of Sir Peter Hendy on behalf of Network Rail (SUPP/080) – Paul Harwood, 4 August 2021
INQ/142	RVR response to Inspector’s Questions on Order Plan 5, 4 August 2021
INQ/143	Kathryn Bell (OBJ/133) Response to Sir Peter Hendy’s Closing Submission on behalf of Network Rail (SUPP/080)
INQ/144	Inspector’s Note following Adjournment, 5 August 2021
INQ/145	RVR/07-2 Title and Profile Plans associated with Planning Permission RR/2014/1608/P
INQ/146	RVR/07-3 Mill Stream Bridge Site Plan (RVR-UB12-001) associated with Planning Permission RR/2014/1608/P
INQ/147	Email trail in reference to RVR/7
INQ/148	RVR Response to Costs Application with Appendices, 13 August 2021 replaced 3 September 2021
INQ/149	RVR Letter to Inspector re. Land for Compensation and Mitigation, with Indicative Plan, 13 August 2021
INQ/150	RVR – Capita Technical Note on Floodplain Compensation Storage, with Appendices, 13 August 2021
INQ/151	Landowners’ Reply to RVR’s Response (see INQ/148 above) to their Application For Costs (see INQ/128 above), 20 August 2021
INQ/152	Landowners’ Technical Note on Review of Flood Compensation Options (see INQ/138, INQ/149 and INQ/150 above), 20 August 2021
INQ/153	Response to RVR submissions to Floodplain Compensation Storage (INQ/150) – Nicholas Moor on behalf of Robertsbridge Cricket Club (OBJ/729)
INQ/154	RVR Reply of 10 August 2021 to the Inspector’s Response (INQ/147) Regarding RVR/7
INQ/155	Email with two attachments dated 4 August 2021 regarding RVR Submitted Documents in Relation to Culverts – Nicholas Moor on behalf of Robertsbridge Cricket Club
INQ/156	RVR Response dated 4 August 2021 to Nicholas Moor (INQ/155)
INQ/157	RVR Note on Figures regarding Floodplain Compensation Storage Areas, 1 September 2021
INQ/158	Email and Photographs regarding flooding -Anna Eastwood (OBJ/1014), 1 September 2021
INQ/159	Closing Statement on behalf of Highways England (OBJ/782), 1 September 2021
INQ/160	RVR Floodplain Compensation Storage Appendix B Update, 2 September 2021
INQ/161	RVR Areas Relating to Land Shown Edged Red in Figures INQ/157

INQ/162	Closing Submissions on behalf of the Landowners (OBJ/1002), 2 September 2021
INQ/163	RVR - Areas Shown for "Area 4" and Plot 98, 2 September 2021
INQ/164	RVR Closing Submissions, 3 September 2021
INQ/165-0	RVR Further Response to Landowners' Costs Application, 2 September 2021(Amended Version)
INQ/165-1	RVR Letter to Landowners dated 29 January 2021
INQ/165-2	RVR Letter to Landowners dated 26 February 2021
INQ/166	Landowners' Response to RVR's Further Response to Costs Application (INQ/165), 3 September 2021

## APPENDIX 7 – ABBREVIATIONS

AEP	Annual event probability
ALCRM	All level crossing risk model
AONB	Area of outstanding natural beauty
APPG	All Party Parliamentary Group on Heritage Rail
AR	Anthony Robins
ARUP Report	Proposed Rail Extension-A21 (T) Crossings Option Feasibility Report
CEMP	Construction Environmental Management Plan
CFBT	Campaign for Better Transport
CLCA	County Landscape Character Area
CPE	Civil parking enforcement
CPO	Compulsory purchase order
CS	Rother Local Plan Core Strategy, 2014
DaSA	Development and Site Allocations Local Plan
DF	David Faithfull
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
DSA	Departure from Standards application
DW	David Webster
EA	Environment Agency
EF	Edward Flint
EH	Eric Hardwick
ES	Environmental Statement (see section 3.11)
ES 2014	Environmental Statement, 2014
ESa	Environmental Statement Addendum, 2017
Essig	Environmental Statement and supporting information guide (Explanatory Note)
ESu	Environmental Statement 2021 Update
ET	Exception Test
EW	Emma Watkins
FEI	Further Environmental Information
FP31	Footpath S&R 31
FRA	Flood Risk Assessment, June 2016
FRAa	Flood Risk Assessment Addendum, March 2021
Framework	National Planning Policy Framework
GLVIA	Guidelines for Landscape and Visual Impact Assessment Third Edition
HA	Highways Agency
HE	Highways England
HM	Huw Merriman MP
HRA	Heritage Railway Association
IH	Ian Hollidge
Inquiries Rules	Transport and Works Act (Inquiries Procedure) Rules 2004
IAQM Guidance	Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance
JJ	John Jenkins
KB	Kathryn Bell
KESR	Kent and East Sussex Railway
KH	Kenneth Hammond
LCA	Level Crossings Act 1983

LEMP	Landscape and ecology management plan
LPA	Local Planning Authority
Ltp3	East Sussex Local Transport Plan 3, 2011-2026
LVIA	Landscape and visual impact assessment
LVM	INQ/39- RVR Response to Representation: Landscape and Visual Matters, July 2021
MB	Martin Bates
ML	Mike Le Lacheur
MMU	Manchester Metropolitan University
Mod 1	See para 12.13.1.1
Mod 2	See para 12.13.1.2
Mod 3	See para 12.13.2.1
Mod 4	See para 12.13.4.1
MP	Member of Parliament
MP 2019	The High Weald Area of Outstanding Natural Beauty Management Plan, 2019
NAW	Nicholas and Anna Eastwood
NLCW	Nigel Leigh and Charles Wyndham
NNR	North Norfolk Railway
NO <sub>x</sub>	Nitrogen Oxides
NR	Network Rail
NY	Nick Young
NYMR	North Yorkshire Moors Railway
Order	Rother Valley Railway (Bodiam to Robertsbridge Junction) Order
Order scheme	Scheme subject of the Order
ORR	Office of Rail and Road
PPG	National Planning Practice Guidance
PS	Paul Smith
RCC	Robertsbridge Cricket Club
RDC	Rother District Council
RDLP	Rother Valley District Local Plan, 2006
RIS	Roads Infrastructure Strategy
RN	Ray Norton
RVR	Rother Valley Railway Limited
RVRSA	Rother Valley Railway Supporters Association
Secretary of State (SoS)	Secretary of State for Transport
SES	Highway England's Safety, Engineering and Standards Division
SH	Sally-Ann Hart
SP	Councillor Susan Prochak
SRN	Strategic roads network
SRNP	Salehurst & Robertsbridge Neighbourhood Development Plan
SRPC	Salehurst and Robertsbridge Parish Council
ST	Sequential Test
Steer Report	RVR/9- Steer 'Rother Valley Railway Economic Impacts Report, 2018
SoM	Statement of Matters
SSD	Stopping sight distance
TG16	Local Air Quality Management Technical Guidance, 2018
TISa	Addendum to Traffic Impact Study
TL	Tom Lewis
TTC	Tenterden Town Council
TWAO	Transport and Work Act Order
UWC	User worked accommodation level crossing

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WFDA	Water Framework Directive Assessment
WHR	Welsh Highland Railway