

Solicitors and
Parliamentary Agents

Minerva House
5 Montague Close
London
SE1 9BB

DX: 156810 London Bridge 6

Switchboard 020 7593 5000
Direct Line 020 7593 5174
www.wslaw.co.uk

By Email and Post

The Secretary of State for Transport
TWA Orders Unit
General Counsel's Office
Department for Transport
Zone 1/18
Great Minster Road
33 Horseferry Road
London
SW1P 4DR

For the attention of Colin Dunn and Shenaz Chaudhury

Our Ref: JEW/33916/00001/PFI

8 March 2019

Dear Sirs

**Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order
Request for deferral of public Inquiry**

As you know, Winckworth Sherwood is instructed by Rother Valley Railway Limited (RVR) in relation to the promotion of the proposed Rother Valley (Bodiam to Robertsbridge Junction) Order under the Transport and Works Act 1992.

Before writing this letter, we have sought the views of both Highways England (HE) and the Office of Rail and Road (the ORR). I attach for your convenience an email of today's date from Ian Skinner, Head of Heritage, Trams and Light Rail at the ORR in which he confirms that the ORR has no objection to such a postponement. HE has not (yet) responded.

The application for the proposed Transport and Works Act Order (TWAO) was made on 19 April 2018 and was compliant in all respects with the requirements of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 ("the Applications Rules").

Prior to submission of the application for the Order, and as is customary for promoters of heritage railway lines, RVR had obtained planning consent (RR/2014/1608/P) for the development of the railway from Rother District Council. The consented development specifically and deliberately includes level crossings of the A21 trunk road at Robertsbridge, Northbridge Street in Robertsbridge, the B2244 Junction Road at Udiam, and Bridleway S&R 36b south of Salehurst.

That planning permission is dated 17 March 2017. It is accompanied by a suite of conditions, including Grampian conditions and incorporating a number of conditions imposed at the direction of the Highways Agency and agreed by RVR to ensure the safety, effectiveness and free-flow of traffic on the A21 and to ensure that the Secretary of State or relevant highway authority is suitably indemnified from any future costs associated with the crossing of the A21.

When directing these conditions, the Highways Agency wrote to the local planning authority in the following terms:

We would have preferred consideration of other options such as a bridge across the A21. However, we do appreciate that the limited nature of a level crossing for a heritage railway will have less impact than a crossing for a main line railway.

Over the course of many years leading up to the submission of the application for planning permission for the development, RVR had been engaged in consultation with the ORR and was in receipt of a number of letters from HM Inspector of Railways (including the Principal Inspector of Railways) confirming the following:

- That the level crossing of the A21 could be operated safely
- That the ORR had no objection to the principle of any of the proposed level crossings
- That a bridge over or tunnel under the A21 at this location was not practicable.

The respective policy contexts in which the Highways Agency and ORR operated at the time of providing this input have remained unchanged throughout.

Following submission of the application, however, HE submitted an objection to the proposed Order which was followed by a Statement of Case on 20 September 2018. RVR and HE have been engaged in constructive dialogue to establish whether and, if so, how HE's concerns about the crossing might be addressed so as to facilitate the withdrawal of its objection. The parties have, together, identified a scope of work which, once completed, is expected to provide HE with the information, and comfort, it requires. In order to achieve this end, it is necessary for this work to be carried out prior to the commencement of the public Inquiry. RVR has appointed a specialist transport consultant to work with HE and RVR is prepared to fund these work streams in advance of receiving the statutory powers to which they relate.

The position with the ORR is that, if it is to comply with its internal guidance as currently drafted, consideration must be given by its expert panel as to whether, in its opinion, there are exceptional circumstances to justify the creation of new level crossings. This internal guidance requires the ORR to report its opinion one way or the other to the Inspector hearing the Inquiry into the TWAO. Despite its long-standing engagement with the ORR, RVR was not advised of its intention to hold an expert panel hearing and the requirement was not mentioned in the ORR's letter to the TWAOU dated 29 May 2018 in response to the submission of RVR's application (REP/17). It was only recently that the intention of the panel was discussed with RVR. In particular, it was only at a meeting on 13 February 2019 that the ORR advised RVR's representatives of the full extent of information that it requires on options/alternatives for each proposed crossing (i.e. level crossing/tunnel/bridge options), including qualitative risk assessments to demonstrate gross disproportion between the costs of each option when weighed against its safety benefits. RVR has no doubt that relevant information can be provided, and is prepared to fund this work, but is concerned that it will take some time to agree instructions with an appropriate consultant and to collate any information required to facilitate such assessment. This will be a bespoke assessment, will need to be carried out by a suitably qualified consultant and will take a relatively long time to prepare and consider. HE has also explained that it requires consistency of information between itself and the ORR.

Although there is an overlap between the information to be provided to HE and the ORR and although RVR has already carried out, or instructed consultants to carry out, much of the work

now considered necessary by these bodies, it is simply not possible to appoint a further consultant and complete all the work as now sought by the bodies, and the expert panel hearing consequent upon much of it, in advance of the scheduled commencement of the public inquiry.

RVR considers that a relatively long postponement is required to allow the information to be gathered and properly considered by both HE and ORR in pursuance of their respective statutory functions and that it would be appropriate to defer the inquiry until the early part of 2020.

The information (together with the conclusions of HE and the ORR) will ultimately be of assistance both to the Inspector hearing the Inquiry and to the Secretary of State determining the application. It may also be helpful to the owners of the land either side of the proposed level crossing of the A21 that is subject to compulsory powers under the proposed Order and those other objectors who have, despite the comprehensive planning conditions, expressed concern about safety and free flow of traffic on the A21.

It has also been brought to the attention of RVR today that the Inspector has raised a number of questions regarding the proposed Inquiry venue and is concerned about how practical it would be to reach the venue by public transport. Given the rural nature of the location of the proposed scheme and limited availability of venues, if it is determined that an alternative venue must be secured, we suspect that it may well be impossible to do so for the 18 June.

Rule 23 of the Transport and Works (Inquiries Procedure) Rules 2004 provides that the Secretary of State may, at any time, allow further time for the taking of any step which is required or enabled to be done under the Inquiries Procedure Rules. The Government's Guide to TWA Procedures puts it like this:

*"As a general principle, the Secretary of State would not wish to extend any of the time limits set out in the Rules without very good reason, as otherwise this would undermine the objectives of those time limits and the discipline that they seek to impose. Furthermore, where a time limit commonly applies to a number of people (for example, a requirement to provide a statement of case within 6 weeks) it could be unfair to make an exception for one party without doing the same for all, which could then threaten the timing of subsequent steps. **Nevertheless, it is recognised that from time to time there may be a very convincing reason to extend a time limit, in the interests of ensuring a smooth and efficient inquiry process for that particular case. This might arise where, for example, there is good reason to suppose that allowing a bit more time for something to be done before an inquiry could save more time later, at the inquiry itself.** This would, however, be the exception, and the Secretary of State would wish to look critically at any request to extend a time limit."*

We respectfully suggest that this is one such case. As explained above, there is every reason to believe that a postponement of the Inquiry until early in the New Year would save time in the long run and would ensure a smooth and efficient Inquiry insofar as relates to this key element of the proposed Order. It is likely to save a good deal of effort and public money by eliminating or, at least, narrowing the issues to be heard involving HE and the ORR.

The alternative, given the grant of planning permission and the clear identification of the railway as being in the public interest would be the withdrawal of the application for the TWAO followed by its subsequent resubmission, with the consequent waste of public resource, as well as the cost to the charity promoting the railway.

Given the background to this application, RVR considers that no interested parties will be prejudiced by a delay of this nature. The issues relating to the A21 crossing, in particular, are also matters raised by the majority of other objectors, including the landowners.

We respectfully ask the Secretary of State to exercise his discretion to delay the commencement of the public Inquiry to a date to be fixed in the New Year to allow for the preparation and consideration of the recently requested material.

It follows from this that we must also request a postponement of the pre-Inquiry meeting currently arranged for 27 March pending the decision of the Secretary of State and we therefore ask that this request is considered as soon as possible. We look forward to hearing from you.

Yours faithfully

Winckworth Sherwood LLP

Winckworth Sherwood LLP

DT 020 7593 5174

DF 020 7593 5199

jwakeham@wslaw.co.uk

Jane Wakeham

From: Skinner, Ian <Ian.Skinner@orr.gov.uk>
Sent: 08 March 2019 16:25
To: Jane Wakeham
Cc: Skinner, Ian
Subject: Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order

This message originated outside Winckworth Sherwood

Dear Ms Wakeman

We understand that RVR wishes the Secretary of State to postpone the public inquiry into the application for the above proposed Order. We confirm that the ORR does not object to such postponement.

Yours sincerely

Ian A Skinner

Ian A Skinner | Head of Heritage, Trams and Light Rail | Office of Rail and Road | 07798 928 746

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd.**