



Mrs Joanna Vincent
Programme Officer
on behalf of the Inspector

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Your Ref: JEW/33916/00001/PFI
Our Ref: DPI/U1430/18/21
(TWA/18/APP/02)
Date: 15 July 2020

Sent by email:

jwakeham@wslaw.co.uk

Dear Ms Wakeham

THE TRANSPORT AND WORKS ACT 1992 (the 1992 Act): PROPOSED ROTHER VALLEY RAILWAY (BODIAM TO ROBERTSBRIDGE JUNCTION) ORDER

THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006 (the 2006 Rules)

Application by: ROTHER VALLEY RAILWAY LIMITED (RVR)

Site Address: THE FORMER ROTHER VALLEY RAILWAY BETWEEN BODIAM AND ROBERTSBRIDGE

RESPONSE TO REQUEST FOR FURTHER ENVIRONMENTAL INFORMATION

Thank you for your letter reference JEW/33916/00001/PFI, dated 22 June 2020.

I have considered your comments regarding Schedule 1 and all of the transitional provisions of *The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017* (the 2017 Regulations). The transitional provisions in paragraph 8 of schedule 6 of the 2017 Regulations apply in relation to a qualifying scoping request. As your scoping request was made before the commencement date these provisions apply. This means that the amendments made to section 6 of the 1992 Act and to rules 4 and 8 of the 2006 Rules do not apply in relation your scoping request. However, having regard to paragraph 9(1) of Schedule 6 of the 2017 Regulations, please confirm whether you consider that the specific circumstances of your application and Environmental Statement submission satisfy the transitional criteria that allow disapplication of the changes made by Schedule 3 to the 1992 Act and made by Schedule 4 to the 2006 Rules and, if you do, why.

In any case, Rule 8(8) of the 2006 Rules makes it clear that the Secretary of State is not precluded from requiring an Applicant to provide further information in connection with any Applicant's statement of environmental information that may be submitted by that Applicant in connection with an application. Furthermore, with reference to the three matters referred to in paragraph 5 of your letter, I note, by way of example, it is highly likely that climate change would be relevant to the project, given the nature of it and the Applicant's consideration of flood risk issues. However, as set out in my letter dated 8 June 2020, where the Applicant is of the opinion that an aspect should not apply, justification may be provided to support this position. As things currently stand, I remain of the view that the requested information should be provided.

Turning to the second matter you raise, related to flood risk assessment. I consider, for a number of reasons, that it does not follow from the existence of a live planning permission for the scheme from 2017, that the purpose of the current Environmental Statement (ES) is reduced to satisfying a 'technical requirement' of the 2006 Rules. In light of the imposition of pre-commencement conditions, it appears unlikely that the details required in relation to flood risk, flood defence integrity and flood plain storage compensation were fully resolved or therefore scrutinised in detail when the planning permission was granted. In any event, it is conceivable that such matters may have particular implications when considering the proposed Order, for example in relation to the potential impact on the rights of those with an interest in affected land. Furthermore, in your letter, you acknowledge that some circumstances have changed since the grant of planning permission; accepting that further work is necessary to allow appropriate and proper consideration of the likely significant impacts of the scheme, having regard to the latest climate change allowances. To my mind, the purpose of the subject ES is to inform the decision-making process related to the proposed Order.

My letter dated 8 June 2020 sets out the information required to be supplied to the Inquiry, namely in this instance:

- *An updated flood risk assessment (FRA) making appropriate allowance for climate change in accordance with the Planning Practice Guidance on Flood Risk assessments, which incorporates the revised UKCP18 climate projections and gives specific guidance in relation to Flood Zone 3b-Functional Floodplain. The updated FRA should include detailed justification relating to the Exception Test. Reason: Subsequent to the 2016 Flood Risk Assessment submitted in the ES Addendum, the Met Office has published the higher resolution UKCP18 projections. The updated assessment is required to ensure that the flood model takes into account the most up to date river flow allowances, ensuring that any flood mitigation is of sufficient scope (for example, whether flood plain storage compensation is required and if it is, where it would be provided). An update to the Exception Test is required that demonstrates that the Proposed Development will provide wider sustainability benefits to the community that outweigh flood risk, that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall;*

It is for the Applicant, in discussion with its consultant team, to determine which of its options (or a hybrid of options) best satisfies the above requirements. Any updated assessment submitted should include the appropriate category of river flow allowance as set out in Government guidance. The allowances and assessment should be agreed with the relevant statutory bodies where possible.

I would be grateful for your response **within 2 weeks** of the date of this letter, including confirmation of the reasonably practicable date by which you will prepare the environmental information, so that an expected submission date can be identified. Please send your response for the attention of the Inquiry Programme Officer using the contact details at the head of this letter. Due to the current COVID-19 situation, please ensure that any hard copy submissions are accompanied by an electronic copy, submitted to the email address details above

A copy of this letter will be placed on the inquiry website:

<http://rother-valley.gateleyhamer-pi.com/docs>

Yours sincerely,

Ian Jenkins

**Inspector
(Signed with the authority of the Secretary of State)**

cc. The Transport Infrastructure Planning Unit, Department for Transport