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HM Principal Inspector of Railways

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19 May 2020

Mr M Hart
Rother Valley railway Limited
Roberstbridge (RVR) station
Station Road
Robertsbridge
East Sussex
TN32 5DG



By email only

Dear Mr Hart,

**EXTENSION of KENT & EAST SUSSEX RAILWAY:
BODIAM TO ROBERTSBRIDGE - RAILWAY LEVEL CROSSINGS**

Thank you for your letter of 7 May 2020. It is important to stress that, in the context of the bridleway and accommodation crossings, ORR is not stating that a bridge or level crossing option might be safe or unsafe. It is likely that either could be constructed and if used properly provide a potentially tolerable level of safety. However the duty on the railway under the Health and Safety at Work etc. Act 1974 (HSWA) and subsidiary legislation is to reduce risks to as low as is reasonably practicable (ALARP), and hence choosing the option that balances the safety risk against the 'cost, time and trouble' of each option.

Your point 10 – the bridleway

Paragraph 40 of our Statement of Case was written on the basis of the information that the railway provided for a bridge, for a crossing, and for the risk profile of a crossing. We acknowledge in our statement of case that land take and environmental impact were additional factors that the railway had not considered, and as such the test made was primarily on 'reasonableness' in the bridge vs crossing comparison. We acknowledge that the 'practicability' issue has to be considered alongside this, but your submission did not contain any definitive statement on land availability or cost to allow us to take this into consideration.

If the railway shows that the land for a bridge cannot be purchased then this would of course be a significant issue in the practicability of a bridge. Similarly if the railway is unable to obtain permission to close the bridleway then this would exclude this as another practicable option.



If there are fundamental practicability issues to either closing the right of way, or to constructing a bridge then questions of reasonability become less relevant. In these circumstances it is understandable that an at-grade crossing could be the ALARP solution.

If railway analysis can show that the issues of land availability, land cost, bridge cost, level crossing cost, and level crossing risk level all come together to demonstrate that closure or a bridge are not reasonably practicable, and that there are level crossing solutions that deliver a tolerable level of safety then it is likely that you will have met your duties under HSWA to identify an ALARP arrangement.

In relation to the first part of your point 15, if the Secretary of State is minded to make the Order with a provision for an at-grade bridleway crossing then when the railway makes such an appropriate application ORR will of course progress a Level Crossing Order to ensure that the protective measures and operational controls can be agreed between the railway company and the Highway Authority.

Your points 14 and second part of 15 – accommodation crossings

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, 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 powers.

In conclusion I would remind you that it is not ORR that requires the analysis of risk to be conducted, it is a duty on the railway company under the law to demonstrate that risks are reduced so far as is reasonably practicable. ORR's role as health and safety regulator is to check that you have conducted this risk assessment in an appropriate way and acted on the findings.

Yours sincerely

A handwritten signature in blue ink that reads 'I. Raxton'.

Eur Ing Ian Raxton
HM Principal Inspector of Railways

cc. I Skinner, ORR