

Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order

Statement of Case by Highways England

Role of Highways England

1. On 1 April 2015 Highways England was appointed by the Secretary of State for Transport as a strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed 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. In the vicinity of the Proposed Development the SRN comprises the A21 Trunk Road.
2. Highways England operates under a Licence 'the Licence' granted by the Secretary of State for Transport which is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431389/strategic-highways-licence.pdf

In conformity with Section 5.29 of the Licence, Highways England is directed by the Secretary of State to have due regard to relevant Government policy. Of particular relevance to the proposed development is Department for Transport Circular 02/2013 "The Strategic Road Network and The Delivery Of Sustainable Development" 'the Circular':

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/237412/dft-circular-strategic-road.pdf

Prior to 1 April 2015 our predecessor organisation the Highways Agency was responsible for the safe and effective operation of the SRN including the A21 where it would be crossed by the proposed railway.

3. A significant issue with the application is the lack of information and evidence which ought to be provided to support a scheme of this sort. This lack of information is one reason why the Order cannot be made, as its effects cannot be ascertained and assessed with an appropriate level of accuracy and certainty. Highways England has done the best it can to consider the impacts of the scheme, and has set out its position in this statement of case, but it reserves the right to add or amend to its case as necessary if and when further information is provided by the Applicant.

Summary Position

4. Highways England objects to the proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order for the following reasons, which will be covered in more detail later in this Statement of Case:
 - a. Highways England considers that the installation of a level crossing on the A21 will be detrimental to safety on the A21;
 - b. Highways England considers that the installation of a level crossing on the A21 will adversely impact the free movement of users along the A21;
 - c. The Environmental Statement (ES) accompanying the application is out-of-date and deficient in respect of traffic and transportation matters.
 - d. The design of the proposed railway where it crosses the A21 Trunk Road does not conform to the Design Manual for Roads and Bridges (DMRB) contrary to the policy in paragraph 11 of Circular 02/2013 which states: “Local authorities and developers will be required to ensure that their proposals comply in all respects with design standards. Where there would be physical changes to the network, schemes must be submitted to road safety, environmental, and non-motorised user audit procedures, as well as any other assessment appropriate to the proposed development. DMRB sets out details of the Secretary of State’s requirements for access, design, and audit, with which proposals must conform.” More generally, the state of design of the proposals is such that there can be no certainty about the cost and deliverability of the proposals and the land required for them, and the impacts of the scheme.
 - e. There are no protective provisions in the draft Order to protect the reasonable and legitimate interests of Highways England were the Order to be made.
 - f. Also, the draft Order provides that the A21 would be temporarily stopped up, thus denying the right of the public to use it and for utilities to retain their plant in it.

History of Highways Agency/Highways England’s involvement with the proposed development

5. Rother Valley Railway (RVR) initially approached the Highways Agency about the proposed level crossing on 21 March 2012 and on 23 March 2012 provided documents including a report dated October 2011 titled ‘Rother Valley Railway Proposed Level Crossings Traffic Impact Study’ prepared by Mott Macdonald and a letter dated 20 January 2012 from ORR.

6. On 5 November 2013 RVR provided a Stage1 Road Safety Audit (RSA) to the Highways Agency. The Audit Report noted a number of pieces of information were not provided to the Audit Team including Departures from Standard and road accident history. Furthermore, the Audit Brief and Audit Team were not approved by the Highways Agency. As a consequence the RSA is deficient and does not comply with the requirements of DMRB.
7. On 18 November 2013, RVR wrote to the Highways Agency on a number of matters. The letter included an undertaking that: "The full economic benefit analysis for the railway, which will include evaluation of the minimal traffic delay, will form part of the supporting information submitted as part of our Transport & Works Act Order".
8. On 30 May 2017 Highways England received an approach from safety auditors appointed by RVR to carry out a Stage 2 RSA and asking for approval of the Audit Team. On 1 June 2017 Highways England responded noting that the audit was premature in the absence of an agreed Departure from Standard for the proposed level crossing. Also a brief for the RSA had not been provided.

Differences in the Role of Highways England Compared with the Highways Agency

9. On 1 April 2015 the Highways Agency ceased to exist as an executive agency of the Department for Transport. At the same time Highways England was established as a public company owned by the Secretary of State for Transport and acting as a strategic highway company under the terms of a Licence from the Secretary of State.
10. The Infrastructure Act 2015 amended the Highways Act 1980 to introduce section 175B which provides that "access to or from a trunk road in England must not be constructed, formed or laid out without the consent of the highway authority for the trunk road." This consent is required from Highways England but had not previously been required from the Highways Agency. The Licence sets out at paragraph 5.36 how Highways England must respond to requests for access. These requirements should be read in conjunction with the Circular, and in particular its paragraphs 37 to 44, but broadly the Licence requires Highway England to specifically take into account safety and economic impacts. Highways England is not prepared to provide this consent.
11. Paragraph 8 of the Office of Rail and Road (ORR) Internal Guidance at http://orr.gov.uk/data/assets/pdf_file/0003/16527/rig-2014-06-new-level-crossings-orrs-policy-and-approach-to-handling-requests-for-new-or-reinstated-crossings-on-the-mainline-or-heritage-networks.pdf notes that: "Network Rail also has a general "no new crossings" policy. The heritage

sector is encouraged to publish details of crossings on its network and any planned closures. The Highways Agency has a policy of no new accesses on the strategic road network other than in exceptional circumstances where it can be sufficiently demonstrated that there is a net benefit to the network.”

Safety implications of the proposed level crossing

12. Highways England has concerns over the safety implications of installing a level crossing on the A21. The addition of a level crossing will undoubtedly have a negative impact on the safety of persons travelling on the A21. Highways England considers that the installation of a level crossing on the A21 will be detrimental to safety on the A21 and regards these negative safety impacts as unacceptable.

Impact on the movement of traffic on the A21

13. No adequate assessment of the impact of the level crossing on vehicle movement on the A21 has been undertaken. The Mott Macdonald Traffic Impact Study is dated 2011 and is out of date, this is discussed further below. Highways England considers that the installation of a level crossing on the A21 will adversely impact the free movement of users along the A21. Highways England regards these impacts as unacceptable.

Lack of an economic assessment

14. Until 19 September 2018 no economic assessment had been provided to Highways England to demonstrate the case for the level crossing. Highways England is now reviewing the document provided but it is too early to say whether it provides evidence to support the claimed benefits of the scheme.

Environmental Statement out-of-date and deficient

15. The Scope and Methodology Report for the EIA in Volume 3 of the ES is dated October 2013. Pages 63 to 66 deal with Traffic and Transport. Appended to the Report is a letter from our predecessor organisation the Highways Agency dated 29 November 2013. The letter states that “The transport chapter of the EIA is likely to be influenced by the outcome of our ongoing discussions ...” and that “The scope indicates that the baseline conditions for the EIA will in part be based on the 2011 Mott Macdonald Traffic Impact Study” and “we recommend that the latest TRADS data for the A21 is interrogated within the EIA to help inform the baseline and provide the most up to date picture for the SRN.” Section 13.2.4 of ES Volume 2 acknowledges “The Highways Agency have requested that the latest TRADS

data for A21 is included within the EIA to provide the most up to date picture for the SRN.”

16. The ‘2011 Mott Macdonald Traffic Impact Study’ is not on the Applicant’s website but we take it to be the same document as provided to the Highways Agency on 23 March 2012. Section 2.2.1 of the Report sets out that traffic data for the A21 Trunk Road is based on 2010 TRADS data. It is clear therefore that the baseline conditions considered by the ES are now in excess of seven years old. DfT traffic count information is available at <http://www.dft.gov.uk/traffic-counts/cp.php?la=East+Sussex>. Two sites are relevant, Count Point ID 46261 just to the north of Robertsbridge and Count Point 26262 some distance south of Robertsbridge. ID 46261 has a 2010 24hr AADT flow of 15,626 vehicles. The latest flow available (2016) is 18,053, an increase of 15.6%. ID 26262 has a 2010 AADT flow of 10,454 vehicles. The latest flow available (2016) is 12,842, an increase of 22.3%. It is noted that Section 5 of the 2011 Traffic Assessment Report states in the final bullet of the first section “Traffic is forecast to grow by 5-6% between 2010 and 2016 and a further 8-11% up to 2021.” The Applicant ought to have assessed the Traffic and Transport impacts of the proposed development taking into account current flows on the A21 Trunk Road and the current programme for implementation of the proposal. Similarly, the Personal Injury Accident Data at Section 3.3.3 of the 2011 Traffic Impact Study is out-of-date.
17. The ES provides a qualitative explanation as to why a bridge cannot be provided as an alternative to the proposed level crossing of the railway over the A21 Trunk Road, but no costings are provided. Highways England notes that the letter from ORR dated 20 January 2012 referred to above states “Any proposal to build a crossing would have to be shown to the most practicable option which means demonstrating that constructing a bridge, either for road or rail, would be disproportionately expensive compared to the benefit achieved.”
18. The ES is contradictory when explaining how the level crossing of the A21 will be constructed. Section 2.9.5 first says that construction of the crossing would be undertaken without a full closure of the highway, but then says that there will be “a short night time closure to drop in the full length rails. However, Section 2.9.8 then states that “The level-crossings would be constructed utilising pre-cast concrete blocks with the running rail already installed”. The Applicant should clarify the construction method to be used and the ES should reflect the consequent construction impacts including those relating to traffic diversions for periods of full closure.
19. The ES at Volume 2 paragraphs 7.3.5 and 7.3.6 invokes DMRB as justifying that the effects of the proposed development on air quality can be considered to be ‘neutral’ or of ‘insignificant’ effect. However DMRB does not

envisage level crossings being provided on the SRN and their impacts on air quality should not be assumed to be 'neutral' or of 'insignificant' effect.

20. The Order cannot lawfully be made when the ES is so fundamentally defective.

Highways England and ORR Design Requirements

21. The ORR's 2014 'policy and approach to handling requests for new or reinstated crossings on the mainline or heritage networks' is available at: http://orr.gov.uk/_data/assets/pdf_file/0003/16527/rig-2014-06-new-level-crossings-orrs-policy-and-approach-to-handling-requests-for-new-or-reinstated-crossings-on-the-mainline-or-heritage-networks.pdf ("the Policy").
22. The letter from the ORR dated 24 August 2011 at Appendix 13 of the Report on Consultation accompanying the Application predates the 2014 ORR policy. As noted elsewhere in this statement of case, the traffic and transport analysis is outdated and the 'full economic benefit analysis for the railway' promised by the Applicant has not been provided. Paragraph 24 of the Policy sets out the information that the Applicant is expected to provide to the expert panel. This includes:
 - (a) a description of what other options have been considered, such as bridges and underpasses, and why these have been discounted; and
 - (b) information about the road and rail traffic at any proposed crossing including the results of censuses.
23. Separately from an assessment by the ORR, DMRB does not contain design requirements for level crossings on the SRN and therefore the Applicant must apply for a Departure from the DMRB in accordance with para 1.31 of GD 01/15 Introduction To The Design Manual For Roads And Bridges (DMRB) <http://www.standardsforhighways.co.uk/ha/standards/dmr/vol0/section1/gd0115.pdf>.
24. Paragraphs 1.32 to 1.35 of GD 01/15 set out the information and analysis that are required to justify a Departure. Paragraph 1.32 states "The justification for a Departure or Relaxation shall include an assessment of the benefits, adverse impacts, hazards and risks associated with the design incorporating the Departure or Relaxation when compared with a design fully in accordance with requirements." In the context of the proposed level crossing, a 'design fully in accordance with requirements' would be a structure carrying the proposed railway over or under the A21 Trunk Road (ie not a level crossing).
25. The Applicant has made no submission to Highways England for a Departure and there is no evidence of a case being made to ORR's expert panel that exceptional circumstances apply that would justify the proposed level crossing on the A21.

26. Following our objection to the draft Order we met with the Applicant on 23 August 2018. On 12 September 2018 we received some further information from the Applicant which is currently being assessed. The Applicant has also promised further information in particular:
- a. an analysis of level crossing options; and
 - b. an economic assessment.

The analysis of level crossing options has not yet been provided.

27. The precise impact of the proposed level crossing on the A21 will depend upon how the level crossing will operate. This is not clear from the application. Without information such as this the Order cannot be made as the impacts of the scheme cannot be ascertained and assessed.
28. It is a requirement of DMRB that a Walking, Cycling and Horse Riding Assessment should be carried out in accordance with HD 42/17. The Applicant has not provided one.
29. A long section of the proposed railway is provided in the Land Plans at Drawing RVR–S-001 (Sections CH 0-2100). This shows the proposed railway on embankment to either side of the A21 Trunk Road. At the proposed A21 Trunk Road level crossing (Ch 1122.431) the railway drops in level in the opposite direction to the camber on the A21 Trunk Road. This has the potential to create a hump and/or dip in the carriageway where the proposed railway crosses the A21 Trunk Road, which could cause drivers of road vehicles to lose control and crash. If the scheme was to be safe, it would be necessary for the railway and the A21 Trunk Road cross on the same plane, with the requirements of DMRB being satisfied for the alignment and profile of the A21 Trunk Road.
30. Article 13 of the draft Order seeks powers to form and lay out means of access etc to the A21 Trunk Road at locations marked A1 and A2. No layouts are provided for these accesses with the Order documents. It is noted that Article 13 (1)(b) requires the approval of the highway authority. However, Highways England doubts that an acceptable layout will be possible. There is nothing to demonstrate that it is possible to provide at least one layout conforming with DMRB which permits vehicles to freely leave and enter the A21 in a forward gear whilst providing space within the working area for wheel washing to take place.
31. In Schedule 7 of the draft Order it is proposed to take temporary possession of plot 29 as a Worksite and access for construction of the authorised works. This plot does not appear large enough to be used for this purpose whilst maintaining visibility splays necessary to protect the safety of those using the A21 Trunk Road. Also the Walking, Cycling and Horse Riding Assessment referred to above should assess the impact of the proposed use on these users.

32. Plot 34 is shown on the Land Plan and referenced in the Book of Reference but not in the draft Order. Similarly, Plots 30 and 35 are shown on the Land Plan and referenced in the Book of Reference but not in the draft Order. There is nothing to show the impact of the proposed development on Plots 30 and 35.
33. On the Land Plans there is an unshaded area where the proposed railway crosses the A21 Trunk Road. The land in this area is owned by Highways England and comprises both highway and non-highway. Within this land and immediately south of the centre line of the proposed railway is a structure beneath the A21 Trunk Road. It is entirely unclear how the proposed railway could affect this land and the structure beneath the A21 Trunk Road. To assess the impact would require detailed engineering drawings showing what is proposed by way of earthworks and structures but these are not provided by the Applicant.
34. When the design of the A21 works is complete the Applicant should carry out a Stage 1/2 RSA. In compliance with DMRB, the Audit Brief and Audit Team must be approved by Highways England's Project Sponsor and Highways England's Project Sponsor must direct the conduct of the RSA.
35. For the reasons given above, the Order proposals do not comply with the design requirements of Highways England and the ORR. The application documents are also inadequate and unreliable. The Order should not therefore be made to authorise the scheme.

Provisions of the Order

36. There is a relationship between the temporary stopping up for which powers are sought under Article 12 of the draft Order and temporary possession of parts of the A21 Trunk Road under Article 22 of the draft Order. Temporary possession of land constituting a highway cannot take place unless the highway is stopped up. Highways England does not consider that temporary possession or stopping up of part of the SRN is necessary or acceptable. Such powers would transfer responsibility of the A21 to the Applicant and require adoption of the section as a highway maintainable at public expense when the closure ended. Statutory undertakers would lose the right to retain their plant in the section. Temporary Traffic Regulation Orders should be used.
37. In order to protect the interests of Highways England Articles 14(1) and 15(4) of the draft Order should provide that no streetworks shall commence until an agreement has been entered into between the highway authority and the Company for the construction and maintenance of those works or the highway authority has advised the Company in writing that it does not require such an agreement.

38. In order to avoid any dispute as to whether requirements of the highway authority are reasonable the draft Order should provide that agreements for the construction and maintenance of works may provide for:
- a. The Company to indemnify the highway authority against any liability arising from the construction of works;
 - b. The Company to indemnify the highway authority against any liability arising from the operation and maintenance of level crossings;
 - c. The Company to maintain suitable public liability insurance in respect to the operation and maintenance of the level crossing of the A21 Trunk Road.
39. The draft Order should provide reserve powers for the Secretary of State to close the railway and the level crossing where it crosses the A21 Trunk Road and remove the level crossing and reinstate the A21 Trunk Road in the event of the level crossing falling into disrepair or disuse or the Company failing to maintain unlimited public liability insurance in respect of the operation and maintenance of the level crossing.
40. The draft Order should provide for a performance bond to be lodged in perpetuity by the Company sufficient to reimburse the costs of the Secretary of State in exercising the reserve powers referred to above.
41. It is normal practice for Orders of this nature to contain protective provisions to safeguard the interests of authorities affected. Protective provisions should be included to protect Highways England's interests in the event of the Order being made.
42. Without all the above matters being addressed, the Order should not be made due to the prejudice which would be caused to Highways England.

Documents

43. The documents which Highways England presently intends to refer to in evidence are those mentioned above. Highways England reserves the right to refer to additional documents, especially if and when the Applicant provides additional information.

Conclusion

44. The draft Order as submitted and the works it proposes to the A21 Trunk Road are inadequately prepared such that there are compelling reasons to believe that the works proposed in the draft Order would result in severe harm to the safe and effective operation of the SRN. Therefore, Highways England continues to object to the proposed development on the grounds stated in this Statement of Case. The Order should not therefore be made by the Secretary of State.

Highways England
20 September 2018