



IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005-06

CROSSRAIL BILL

**PETITION AGAINST THE BILL – ON MERITS – PRAYING TO BE HEARD BY
COUNSEL &c.**

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED.

THE HUMBLE PETITION OF:

MR RODNEY CYRIL ALBAN FITZGERALD
of 32 SUSSEX SQUARE, LONDON W2 2SP

SHEWETH as follows :-

1. A Bill (“the Bill”) has been introduced into and is now pending in your Honourable House entitled “A Bill to make provision for a railway transport system running from Maidenhead, in the County of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich; and for connected purposes”.
2. The Bill is promoted by Crossrail Links Ltd and the Department for Transport (“The Promoters”).
3. The Bill provides, among other things, for the construction by the nominated undertaker of a new underground railway between, in the west, a tunnel portal at Royal Oak in the City of Westminster and, in the east, tunnel portals at Custom House and Pudding Mill Lane in the London Borough of Newham. It also provides that in constructing or maintaining any of the scheduled works the nominated undertaker may deviate laterally.
4. The Bill will, if enacted, enable the promoters to affect adversely in the ways set out below the property rights and interests of your Petitioner arising from his interest in the property, flat 32 Sussex Square, London W2 2SP (“the Property”) in the City of Westminster. This is a ground floor flat in the centre of the block of flats 10 – 72 Sussex Square, which comprises basement, ground and seven upper floors. The Petitioner’s flat 32 is directly above the proposed Crossrail tunnels.

5. The Honourable House requires under Standing Order 27A that appropriate Private Bills are accompanied by an Environmental Statement in accordance with European Community Directive 85/337. The Statement is required to describe the project and its likely environmental effects. The Statement is also required to describe the measures that will be taken to avoid or to reduce any adverse impact on the environment. Your Petitioner submits that the Honourable House should take into account the content of the Environmental Statement presented to it by the Promoters. Your petitioner nevertheless submits having regard to the level of information in the Statement and the lack of finality in the proposals of the Promoters generally it would be premature to enact the Bill as it stands.

Compulsory acquisition of land.

6. The Bill includes powers to acquire land for the purposes of the works, including a power to acquire subsoil or under-surface of the land comprising the Property which lies more than 9 metres beneath of the surface of the land. As your Petitioner understands it, clause 6 (6) of the Bill limits the period in which the powers of compulsory acquisition can be used to 5 years from the day on which the Act is passed. Your Petitioner objects to clause 6 (7) and (8) of the Bill, which allows the Secretary of State by order to extend that 5 year period. Your Petitioner recognises that such an order would be subject to special parliamentary procedure but nevertheless submit that they (and others similarly affected) are entitled to more certainty than these provisions provide in respect of the time period in which the powers of acquisition can be exercised.

Noise and vibration.

7. Your Petitioner objects to the lack of any provision in the Bill relating to the mitigation of noise and vibration resulting from either the carrying out of the works or the subsequent operation and maintenance of the railway. Your Petitioner also objects to the lack of provision in the Bill requiring the Promoters to ensure that the operation of the railway complies with suitable defined standards as to noise and vibration levels. Your Petitioner understands that the design objective for night-time noise level is 40dBL. Your Petitioner submits that the Promoter should undertake to achieve a maximum night-time noise disturbance level of 30dBL.
8. Your Petitioner respectfully submits that the Promoters should be required to ensure that ground-borne noise and vibration during the construction period, operation (throughout the lifespan of the railway) and maintenance is kept to an absolute minimum by the use of the most advanced tunnelling technology, machinery and other equipment.
9. Your petitioner believes the Bill as it stands fails to comply with the London Ambient Noise Strategy issued in 2004 under the Greater London Authority Act 1999. Key objectives of the strategy are to stimulate improvements in the current and future track quality and in maintenance of the rail network, to promote increased use of noise barriers and introduce quieter trains. Policy 36 urges promoters of major rail schemes to minimise any adverse impacts of noise and vibration, using the best available cost-effective technologies. Part 4B observes that investment in London's railways provides the opportunity to do so. The document identifies the key issues involved in railway noise management as:

track type and quality, quieter rolling stock and operation, railway structures and noise barriers, spatial planning and urban design, and building insulation. Your Petitioner submits that in respect especially of the latter five issues the current proposals are seriously inadequate in terms of applying the London Ambient Noise Strategy at the location described above.

10. Your Petitioner respectfully submits that the Promoters should be required to undertake to build the very highest quality track to include using such techniques as resiliently supported welded rails mounted on resiliently supported concrete track slab (known as "floating slab"). In addition trains using the tunnel should be constructed with the special bogey design to minimise vibration.

Settlement and other damage.

11. The Environmental Statement indicates that the Promoters intend that various mitigation measures will be taken during construction to protect buildings from settlement that might otherwise affect their structural integrity.

12. The Block 10 – 72 Sussex Square was built in 1959 and has deep piled foundations. The Promoters will need to make careful inspection and calculations to ensure that no structural damage is caused to the foundations.

13. Your Petitioner submits that, given that the railway will run underneath the Property, the Promoters should undertake to your Petitioner to set up at the expense of the promoters and before commencing construction of so much of the works as will or may affect the Property, a continuous monitoring exercise to check for any movement in or damage to that Property. This monitoring exercise should include the drawing up of schedules of the block 10 – 72 Sussex Square, to be agreed with your Petitioner, of the condition of the building prior to the commencement of the works and following the completion of the works. Your Petitioner submits that the nominated undertaker should be required to rectify any damage found to have occurred as a result of the works, at its cost and to the satisfaction of your Petitioner.

14. Your Petitioner objects to the power of the nominated undertaker in paragraphs 5 and 6 of Schedule 2 of the Bill to underpin or strengthen a building within the relevant distance of the work for the following reasons. This power will appear to enable the nominated undertaker to enter the building of your Petitioner (and others) without notice in order to survey them in deciding how to exercise its powers in paragraph 5. The provision does not give the owners or occupiers of the building concerned the option to carry out the necessary underpinning or strengthening themselves (at the expense of the nominated undertaker). In addition the nominated undertaker is not to be under a duty to consult with the owners or occupiers of buildings concerned to agree, among other things, the specification, timing and means of the carrying out of the underpinning or strengthening, if such works should be carried out by the nominated undertaker.

15. More generally, the Bill empowers the Promoters to construct the works specified in the Bill but is silent on the proposed mode of construction of the tunnels included in the works. In particular, the Bill does not require that the works are constructed in accordance with the measures that the Promoters have indicated will be taken in the Environmental Statement. Your Petitioner accordingly objects to the provisions of the Bill on the basis of this omission. Your Petitioner

further submits that the Promoters should be required by the Bill to utilise the best available tunnelling method for minimising the impact of settlement on his property.

16. In the centre of Sussex Square there is a garden maintained by the owners of residential property in the square. Many of the trees in the garden are subject to tree preservation orders and some of the trees date back to the founding of the gardens in the 1840's. Your Petitioner submits that the Promoters should give an undertaking that their works will not have any detrimental effect on the roots of these trees.

Other.

17. Your Petitioner objects to paragraph 3 of Schedule 10 to the Bill insofar as it incorporates into the Bill provisions of the Railway Clauses Consolidation Act 1845, which have no justification in the urban environment of the Bill's proposals. Your Petitioner notes that the Promoters have stated that section 32 (power to take temporary possession of land without previous payment) of the Railway Clauses Consolidation Act 1845 could not apply in practice to the Property and submit that the Promoter should undertake to them that that will be the case.
18. The Petitioner objects to the lack of provision in the Bill obliging the nominated undertaker to ensure that any interference with supplies of power, water, drainage, telephones and other such essential services to the Property (and other properties) is kept to an absolute minimum during the construction, operation and maintenance of the works.
19. Your Petitioner objects to the powers given to the nominated undertaker in paragraph 9 of Schedule 2 of the Bill. For example, the power would appear to enable the nominated undertaker, having given notice to your Petitioner to enter into the Property and make trial holes on the land comprising them to investigate the nature of the surface layer and subsoil. Your Petitioner acknowledges that there is provision for compensation for damage incurred by way of such actions but nevertheless submits that the power is inappropriate for residential properties and that the nominated undertaker should only be able to take any such steps in relation to such properties with the consent of the owner.
20. Your Petitioner objects to the lack of provision in the Bill for the adequate compensation for loss and damage suffered by them as a result of the construction, operation or maintenance of the works, including by way of potential third party claims made against them.
21. In particular your Petitioner is concerned that he will be adversely affected once the Bill passes into Law by the diminution of value of his interest in the Property.
22. There are various other clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect your Petitioner and his rights, interests and property and for which no adequate provision is made to protect your Petitioner and other Clauses and provision necessary for this protection and benefit are omitted from the Bill.

YOUR PETITIONER therefore humbly prays your Honourable House that the Bill may not be allowed to pass into law as it now stands and that he may be heard by his counsel, agents and witnesses in support of the allegations of this petition, against so much of the Bill as affects the property, rights and interests of your Petitioner and in support of such other clauses and provisions as may be necessary or expedient for his protection or such other relief may be given to your Petitioner in the premises as your Honourable House shall deem meet..

AND your Petitioner will ever pray, &c.