

Petition for BA against Crossrail Hybrid Bill

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 British Airways plc

SHEWETH as follows:-

1. A Bill (hereinafter referred to as "the Bill") has been introduced and is now pending in your honourable House intituled "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 presented by Mr Secretary Darling, supported by The Prime Minister, Mr Chancellor of the Exchequer, Secretary Margaret Beckett, Mr Secretary Hain, Secretary Alan Johnson, Secretary Tessa Jowell, and Derek Twigg. In this Petition the term the "Promoter" refers to the Secretary of State for Transport.

Relevant clauses of the Bill

3. The Bill makes provision for the construction and maintenance of the proposed works in Clauses 1 to 20 and in Schedules 1 to 9. The main works are described in

BRITISH AIRWAYS



Schedule 1. These clauses and schedules include provisions for the construction and maintenance of scheduled works, the compulsory acquisition of land, planning, heritage issues, the power to deal with trees and noise.

4. Clauses 21 to 44 of the Bill together with Schedule 10 deal with railway matters. In particular they make provision for modifications to the existing railways regulatory regime with regard to, the direction of facility owners to enter into access agreements, the modification of existing access agreements and the disapplication of certain franchise and access exemptions.
5. Clauses 45 to 59 of the Bill together with Schedules 11 to 14 deal with miscellaneous and general matters. These clauses and schedules include amongst other matters, powers to make transfer schemes, provision for the devolution of certain functions and powers, and provision for the protection of certain specified interests.

Your Petitioner and its interests

6. Your Petitioner is British Airways plc, which is the Country's leading international airline and operates principally from its base at London Heathrow airport. Your Petitioner's annual turnover in 2004/5 was £7.8 billion, of which nearly £7 billion was generated by flights to and from its global network hub at Heathrow. From 2008 your Petitioner's Heathrow operations will be consolidated in the new Terminal 5, which will also be the place of reporting for work for some 20,000 of its ground staff, flight and cabin crew. Rail services to Terminal 5 will therefore be of great importance to your Petitioner's daily operational efficiency and international competitiveness.
7. Your Petitioner is a member of the AirTrack Forum, which represents local authorities, businesses and community organisations from Surrey and Berkshire as well as Transport for London's Rail Directorate, the South East England Regional Assembly, the South East England Development Agency, the Highways Agency and the South West London Transport Conference partnership (SWELTRAC). This group has been instrumental in developing proposals for the AirTrack scheme.
8. Your Petitioner supports the proposed Bill and welcomes the decision to construct Crossrail. There are, however, matters regarding the construction of Crossrail works between Paddington and Heathrow, and arrangements for Crossrail services at Heathrow airport and their affect on the existing Heathrow Express and Heathrow

BRITISH AIRWAYS

Connect services arising from proposals in the Bill, which cause your Petitioner great concern. In addition the possible affects of the works and services allowed by the Bill on facilities at Heathrow safeguarded for future western rail connections also cause your Petitioner great concern. Your Petitioner is hopeful that these concerns can be satisfied by negotiation with the Promoter and subsequently dealt with by means of amendments to the Bill.

9. Your Petitioner and their interests are injuriously affected by the Bill, to which your Petitioner objects for reasons amongst others, hereinafter appearing.

Your Petitioner's concerns

10. Your Petitioner's concerns fall into four broad categories, as summarised in the following paragraphs.
- a. The Secretary of State has not brought forward any firm proposals regarding the funding of the Crossrail project. Your Petitioner is concerned that the funding mechanism may require British Airways to contribute to the capital and operating costs of the project in a way that is disproportionate to the benefits that it will receive.
 - b. The Bill provides for the nominated undertaker to construct, operate and maintain the scheduled works within, and in certain circumstances beyond, the Limits of Deviation. There are insufficient details in the Bill and supporting documents to enable your Petitioner to assess whether the works will have a detrimental effect on its business activities or property interests, and in particular how access to and from Heathrow for its staff and passengers will be affected. Your Petitioner wishes to be assured that the works will be designed, planned and executed in a manner that will cause the minimum disturbance to its activities and interests, and if disruption is caused then appropriate mitigating measures are implemented.
 - c. In the Bill the Promoter seeks powers that give wide-ranging rights over property and interests in property. Much of the property affected is part of, or supports, the existing Heathrow Express and Heathrow Connect railway services at the airport. This property has been provided by BAA and your Petitioner has contributed a significant proportion of the costs of these facilities through the aviation regulatory regime. Your Petitioner wishes to be

BRITISH AIRWAYS

assured that the introduction of Crossrail to the airport will not reduce the availability of these facilities for use by its customers and staff in accessing the airport.

- d. The Bill proposes to change the basis of regulating access to both the Reading Railway and the Airport Railway in such a way that gives primacy to Crossrail passenger services. Crossrail passenger services are not defined but can be set by the Promoter. The Promoter is seeking the power to modify existing access contract, direct that new access contracts be entered into and make other modifications to access contracts. The Bill also provides for the Promoter to make these directions in a way that effectively changes the Heathrow railway into a regulated railway. Your Petitioner is concerned that these services could be specified and introduced in such a way as to undermine the current services to Heathrow and prevent future safeguarded services from the West to Heathrow.

Construction and Maintenance of the Works

11. Clauses 1 and 2 give the Promoter's nominated undertaker the power to construct and maintain the works specified in Schedule 1 and works not specified but described by type in Schedule 2. Your Petitioner is concerned that these works have the potential to affect the existing Heathrow Express and Heathrow Connect services over a considerable period of time and in a number of separate locations. The efficiency and reliability of these services is vital to maintaining the numbers of passengers and staff using rail to access the airport.
12. Specified Works to the Heathrow Express Railway and the Reading Railway in the vicinity of Airport Junction are indicated in the Environmental Statement as lasting almost 4 years. Your Petitioner is concerned that the amount of interference and disruption to the Heathrow Express and Heathrow Connect services as they join and leave the Reading Railway cannot be assessed with the information currently available.
13. The Specified Works at the stations between Hayes & Harlington and Paddington have the potential to cause disruption to the Heathrow Connect services. Your Petitioner is concerned that these works should be undertaken in a manner that will

BRITISH AIRWAYS

minimise the effect on Heathrow Connect and other services, and be planned so that any unavoidable disruption is kept to individual stations at any one time and that if appropriate mitigating measures are implemented by the nominated undertaker. The Heathrow Connect service has been designed specifically to offer airport staff an attractive alternative to travelling to work by car work. The first service commences from Paddington before 5.00 am and the last service leaves Heathrow after midnight, and any works should be planned and executed in a way that allows services to continue to operate at these times.

14. According to the Environmental Statement, the Specified Works at Paddington will require the closure of rail access into Paddington for 2 to 4 weeks during the construction phase as well as significant periods of major works to the station itself.
15. During the closure or blockade, Heathrow Express and Heathrow Connect passenger services and other services on the Reading Railway will terminate at Ealing Broadway where passengers will be expected to transfer to other forms of transport for the remainder of their journeys. This will require Ealing Broadway to act as a temporary interchange for a significant number of displaced rail passengers. Your Petitioner considers that the temporary condition at Ealing Broadway should be the subject of detailed studies and proposals by the Promoter, to enable suitable measures to be designed and implemented in sufficient time to ensure the safety and convenience of the affected passengers. Your Petitioner is concerned that this disruption could result in temporary or permanent loss of patronage to the rail services serving the airport. Your Petitioner may suffer direct losses and claims from passengers and wishes to see in place replacement services or facilities that are equally convenient for staff and passengers travelling between the airport and central London.
16. Your Petitioner wish to be assured by the Promoter that the Works at Paddington shall be undertaken with the minimum of impact on Heathrow Express and Heathrow Connect services. The works should be planned and co-ordinated with the Heathrow Express Operating Company so as to maintain the service levels and reliability of the airport services.
17. Specified works at Old Oak Common may disrupt the operations of Heathrow Express and Heathrow Connect and your Petitioner wishes to be assured that these

BRITISH AIRWAYS

works are planned and co-ordinated with the Heathrow Express Operating Company so as to maintain service levels and reliability.

Land and Property Interests

18. Clauses 6 and 7 authorise the Promoter to acquire land and property or rights over land and property within limits shown on the plans and under certain circumstances beyond those limits. These powers are very broad, have the potential to introduce considerable uncertainty over existing and future railway operations at Heathrow airport, and may prevent the operation of a railway service to Terminal 5 from the West.
19. Your Petitioner is concerned that the exercise of these powers over facilities at Heathrow airport could prejudice the operation of the existing Heathrow Express and Heathrow Connect services. These existing services will form the basis of encouraging an increase in the number of staff and passengers who use rail to access the airport and assist in meeting the policy objectives set out in the Aviation White Paper of December 2003, *The Future of Air Transport*, Cm 6046.
20. If these powers are exercised over facilities at Terminal 5 they may disrupt the existing Heathrow Express and Heathrow Connect services and prevent the AirTrack scheme being implemented and accessing the infrastructure provided for future western railway connections at Terminal 5. The safeguarded infrastructure is provided to fulfil the objectives anticipated in the safeguarding provisions imposed on Terminal 5 by the Secretary of State in his planning decision letter of November 2001.
21. Your Petitioner suggests that these powers be deleted from the Bill or that the Promoter provides an undertaking not to implement them without agreement from the airport operators and users. If the Promoter is unable to reach such agreement, then the matter should be referred to an independent dispute resolution procedure.

Railway Matters

22. The Aviation White Paper of December 2003, *The Future of Air Transport*, Cm 6046, sets out national policy, which supports expansion of airport capacity in the South East through a combination of greater use of existing infrastructure and planning

interalia for a new runway at Heathrow in the period 2015-2020. It requires airport operators to develop and bring forward access plans to support both objectives, and states specifically that major expenditure will be required at Heathrow on improved surface access. Your Petitioner wished to be assured by the Promoter that the introduction of Crossrail services to Heathrow and the works necessary to facilitate them will be planned, executed and operated in such a way as not to compromise future expansion of capacity at the airport in accordance with the White Paper. Your Petitioner respectfully suggests that, in the event of the two projects being taken forward on similar timeframes, the Promoter undertakes to coordinate the design, planning and execution of the Crossrail works with works associated with the future expansion of capacity at Heathrow.

23. Clause 23 allows the Promoter to specify minimum operating levels for Crossrail passenger services, and clauses 26 and 27 provide for the Promoter and the Office of Rail Regulation to modify existing access contracts to allow Crossrail passenger services to operate.
24. Your Petitioner is concerned that the Promoter could specify minimum operating levels for Crossrail such that it takes up capacity at Heathrow Terminal 5 and takes over paths on the Reading Railway currently allocated to Heathrow Express and Heathrow Connect. Such a specification would be detrimental to the Heathrow Express and Heathrow Connect services and could prevent AirTrack or similar services from accessing Terminal 5 from the West
25. Your Petitioner respectfully submits that some limits be set in the Bill for the level and configuration of specifying "minimum operating levels" for Crossrail passenger services. These limits should be set such that Crossrail services to Heathrow are within the capacity of the lines and stations at the airport to accommodate existing Heathrow services including preserving their time-span and so as not to prejudice future operations from the West into Heathrow that utilise the safeguarding for railway connections which have been incorporated into the infrastructure at Terminal 5.
26. Clause 31 provides that the Promoter may give directions requiring a facility owner to enter into an access contract that allows Crossrail passenger services to use the owner's railway facilities. For the purposes of this clause, the Promoter proposes to

BRITISH AIRWAYS

- include the Heathrow Express railway (and its extension to Terminal 5) as a facility that can be subject to an access contract entered into at his direction.
27. Approximately £750 million has been invested in improving rail services to Heathrow since the early 1990s. More than £600m of this has been used to provide the original Heathrow Express and further developments, notably to serve Terminal 5. Your Petitioner has been a major contributor to this investment through its payment of some 40% of airport charges at Heathrow. As one of Heathrow's major customers and the principal tenant of Terminal 5, your Petitioner has a keen interest in how this investment is used to provide rail services that meet the needs of its passengers and staff.
28. Your Petitioner is concerned that in making such a direction, the Promoter may require that Crossrail be granted access to facilities at Terminal 5 in such a way as to interfere with or degrade the existing Heathrow services and prevent additional rail connections to the airport from the West, South West or North West from being made. With over 20,000 of your Petitioner's staff and some 30 million passengers per annum using Terminal 5, it is vital that public transport services offer the widest and most sustainable range of journey opportunities to the new terminal. Your Petitioner has been involved very closely in the planning and development of Terminal 5 and considers that the best use of the facilities so that it can contribute to the delivery of Government policy for expansion at Heathrow would be achieved by providing rail services in the order of priority; Heathrow Express, AirTrack (or similar services to & from the West) and Crossrail.
29. Your Petitioner respectfully submits that the Promoter be obliged to implement these powers in such a way as not to degrade the existing Heathrow services or prejudice future utilisation of the safeguarding for railway connections to the West, which has been incorporated into the infrastructure at Terminal 5.
30. Clause 32 provides that the Office of Rail Regulation may make necessary amendments to access contracts made under clause 31 to facilitate Crossrail passenger services. Your Petitioner respectfully submits that any powers of the ORR under this clause be limited to the same extent as suggested for the Promoter powers in respect of clause 31 in the preceding paragraph.

BRITISH AIRWAYS

31. Clause 35 provides for the Promoter to disapply certain franchising and access exemptions including those that affect the Heathrow Express railway and its stations. These powers are very broad, have the potential to introduce considerable uncertainty over existing and future railway operations at Heathrow airport, and in particular may prevent the operation of a railway service to Terminal 5 from the west.
32. Your Petitioner is concerned that the disapplication of these exemptions with regard to facilities at Heathrow airport may lead to Crossrail services accessing Heathrow airport in such a manner as to degrade the existing Heathrow passenger services and reduce the share of passengers using rail to access the airport, and prevent the AirTrack scheme being implemented and accessing the infrastructure provided for future railway connections to Terminal 5 from the west.
33. Your Petitioner respectfully submits that the Promoter be required to ensure that the use of these provisions shall not result in Crossrail serving Heathrow airport in such a way that degrades or compromises the existing Heathrow Express and Heathrow Connect services or prevents AirTrack utilising the safeguarding for railway connections to the west, which has been incorporated into the infrastructure at Terminal 5.
34. Your Petitioner cannot understand why the introduction of Crossrail should necessitate such significant changes to the railway regulatory regime. Existing services including the Heathrow Express and Heathrow Connect services operate on both regulated and non-regulated infrastructure, even though Heathrow Express is a non-regulated service.

Devolution of Functions

35. Clause 46 provides for the Promoter to appoint a nominated undertaker to carry out certain functions. Your Petitioner wishes to be assured by the Promoter that any such nominated undertaker shall be bound by all the Promoter's commitments with regard to the functions transferred and that the Promoter shall guarantee the performance of the nominated undertaker.
36. Clause 53 provides for the Promoter to devolve some of his functions and powers sought under the Bill to the Greater London Authority or Transport for London or both, and for him to fetter his discretion by agreement with the Mayor of London or Transport for London. Functions that may be transferred include the power to

BRITISH AIRWAYS

acquire land or interests in land, the power to enter into development agreements, the power to acquire land and exercise the statutory powers or duties of railway operators, and the power to specify the nominated undertaker. The Crossrail works at, and in the vicinity of, Heathrow airport and the services that the Bill authorises could have impact on the long term surface access provisions at Heathrow, which is the subject of National Policy as stated in the Aviation White Paper of December 2003, *The Future of Air Transport*, Cm 6046. For this reason your Petitioner considers it inappropriate for bodies with a remit focused primarily on London to be able to exercise devolved powers over facilities affecting the operation of the Heathrow airport railway which has a national role and lies at the boundary of London and several other local authorities. Your Petitioner wishes to be assured by the Promoter that any functions or powers devolved to the Mayor of London, the GLA or TfL cannot be applied to facilities or services that affect the operation of existing and planned rail services to Heathrow airport without the agreement of the airport operator. In any event that the Secretary of State shall retain such powers as necessary to ensure that the national interest is not prejudiced by the exercise of any such devolved powers or functions.

Summary

37. Your Petitioner's overriding concern is that the Bill makes provision for the Promoter to take wide ranging powers over railway services, land, property and facilities at Heathrow airport for the purposes of delivering Crossrail passenger services. However, there are no requirements for these powers to be used in a manner that both: (a) is consistent with National Policy as stated in the Aviation White Paper of December 2003, *The Future of Air Transport*, Cm 6046 and (b) limits the impact on existing Heathrow Express and Heathrow Connect services or secures the future use of infrastructure safeguarded at Terminal 5 specifically for the purpose of running railway services to and from the West. Your Petitioner submits that the Bill should not be allowed to pass into law without these matters being addressed.

BRITISH AIRWAYS

Conclusion

38. For the foregoing and connected reasons your Petitioner respectfully submit that, unless the Bill is amended as proposed above, clauses 1,2, 6, 7, 23, 26, 27, 31, 32, 35, 46 and 53 so far affecting your Petitioner, should not be allowed to pass into law
39. There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and their interests and for which no adequate provision is made to protect your Petitioner.

YOUR PETITIONER THEREFORE HUMBLY PRAY your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by their 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 their protection, or that 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.

BRITISH AIRWAYS PLC





BRITISH AIRWAYS

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2005–06

The Crossrail Bill 2005

PETITION OF British Airways plc

AGAINST, By Counsel, &c.

BRITISH AIRWAYS PLC

WATERSIDE, PO BOX 365, HARMONDSWORTH, UB7 0GB

TELEPHONE: 020 8738 6873