

IN PARLIAMENT  
HOUSE OF COMMONS  
SESSION 2005-06

**Crossrail Bill**

Against – 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 MUIRGOLD LIMITED.

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 promoted by Her Majesty's Government.
- 3 (a) Clause 1 authorises the construction and maintenance of the works for the delivery of the railway transport system, which is known as Crossrail Line 1. The works are listed in Schedule 1 and shown on the plans and sections deposited with the Bill.
- (b) Clauses 2 and 3 authorise ancillary works and give effect to Schedules 2 and 3 respectively.
- (c) Clause 5 and Schedule 5 enable the nominated undertaker for Crossrail to take temporary possession of land in connection with the Crossrail works.
- (d) Clause 6 authorises the Secretary of State compulsorily to acquire so much of land within the limits shown on the plans and sections accompanying the Bill as may be required for the Crossrail works. Clause 6(3) and Parts 2 and 3 of Schedule 6 apply certain legislation relating to compulsory purchase compensation, subject to modification. The power of

compulsory acquisition is subject to a five year time limit, extendable by order of the Secretary of State.

- (e) Clause 7 provides, among other things, authority for the Secretary of State by further compulsory purchase order to acquire land outside the limits shown on the plans and sections or land within the limits but not subject to the powers under clause 6, if required in connection with the Crossrail works.
- (f) Clause 8 extinguishes private rights of way over land within the limits of deviation and within the limits of land acquired and held in connection with the authorised works.
- (g) Clause 10 provides for the grant of deemed planning permission for development authorised by the Bill and Clause 10(5) in particular applies Schedule 7 which sets out certain controls in favour of local planning authorities over detailed aspects of the Crossrail works.
- (h) Clause 11 provides that deemed planning permission for the scheduled works will be subject to a 10 year time limit, extendable by order of the Secretary of State.
- (i) Clause 15 and Schedule 8 disapply controls relating to historic buildings. Clause 16 provides for a right of entry in respect of listed buildings.
- (j) Clause 19 modifies Sections 60 and 61 of the Control of Pollution Act 1974 so that appeals relating to control of noise from construction sites are dealt with by the Secretary of State or through arbitration as opposed to the Magistrate's Court.
- (k) Clause 20 prohibits an order being made by the Court in the event that any proceedings are brought by a person aggrieved by a statutory nuisance, in circumstances where (a) the nuisance complained of is noise emitted from premises or noise emitted by vehicles machinery or equipment in a street and (b) these arise in consequence of the exercise of powers under the Bill in accordance with notices or consents issued under the Control of Pollution Act 1974.
- (l) Clauses 45 and 46 make provision for transfer schemes and nomination of undertakers respectively.
- (m) Clause 47 and Schedule 12 disapply and modify certain statutory controls.
- (n) Clause 50 applies Section 10(1) Compulsory Purchase Act 1965 (compensation for injurious affection) subject to the proviso that liability for compensation for land injuriously affected by the Crossrail works falls to the nominated undertaker, as opposed to the Secretary of State.
- (o) Clause 54 provides a power to modify deposited plans or the book of reference if they are inaccurate.

### **Introductory**

- 4 Your Petitioner is the owner of the long leasehold interest in The Paddington Hilton Hotel, a 355-bedroom, four star international hotel with conference and leisure facilities, situated at the front of Paddington Station, London. The main façade faces Praed Street and the north-west and south-

east facades front onto Eastbourne Terrace and London Street, respectively. The accommodation is on six floors and comprises five zones:

- (a) A block on the Praed Street façade;
- (b) B block on the Praed Street façade;
- (b) C block, facing London Street;
- (c) D block, a later addition, situated between the original hotel building and the railway station, over the "Lawn" area within the station;
- (d) E block (forming part of Macmillan House), facing Eastbourne Terrace and extending over the Horse Arch to Paddington Station.

- 5 Your Petitioner's hotel was originally built in 1851-1854, with later additions, and is Grade II listed. The hotel has recently undergone a major £55 million refurbishment. The hotel is operating at high occupancy rates (approximately 90% capacity). This level of occupancy is associated with both the extensive conference facilities and the Heathrow Express rail link, which provides a high speed service between Heathrow Airport and Paddington Station and allows the hotel to serve international travellers.
- 6 The extensive conference facilities include 15 meeting rooms and the main ballroom suite which can be used for up to 400 delegates. The conference facilities are normally in use during the day and evening. The hotel includes an extensive reception area and coffee lounge, a large bar and a restaurant. The local planning authority, Westminster City Council, recently resolved to grant planning permission for a casino located in the lower ground floor area, adjacent to Departures Road and Eastbourne Terrace. The casino is expected to operate between Midday and 5:00 am.
- 7 Your Petitioner understands that subsurface interests under a small part of the hotel (identified in the Book of Reference accompanying the Bill as plots 106 and 107) may be required for the proposed works. In the vicinity of the hotel a new station will be constructed in a 200 metre long cut and cover box in Eastbourne Terrace. In addition, an underground pedestrian subway ("the Circle Line Link") between the proposed Crossrail station at Paddington and the existing Circle and District Line station will be constructed, again using the cut and cover method for at least the part of its length across Praed Street. Other parts of the works in close proximity to the hotel include the station entrance under MacMillan House from the Paddington ticket hall and permanent ventilation shafts rising from the new station in Eastbourne Terrace.
- 8 Your Petitioner and its rights, interests and property are injuriously affected by the Bill. Your Petitioner does not object to the principle of the proposed railway transport system. However, Your Petitioner is greatly concerned by the provisions of the Bill as they may affect the hotel. For this reason and having regard to the more detailed particulars referred to below, Your Petitioner objects to the Bill.

#### **Structural Damage**

- 9 Your Petitioner is greatly concerned by the extent of excavation and tunnelling works in the immediate vicinity of the hotel and in particular the station box along Eastbourne Terrace and the

Circle Line Link. Your Petitioner fears that associated ground settlement and subsidence could jeopardise the stability and structural integrity of your Petitioner's listed hotel building. Your Petitioner's property is identified by the Promoter itself in the Environmental Statement accompanying the Bill as one of the properties which is at significant risk of ground settlement.

10 Your Petitioner is also extremely concerned about the possible structural response of the hotel to ground-borne vibration caused by the proposed works. Insufficient data has been provided by the Promoter in the Environmental Statement to understand the likely affects of vibration on the structure and the effectiveness of any mitigation measures.

11 Ground settlement, subsidence and ground-borne vibration arising from the works could cause your Petitioner significant loss and damage and interfere with your Petitioner's enjoyment of the property. Your Petitioner questions the need for such extensive excavation in this area. Inadequate consideration has been given in the Environmental Statement accompanying the Bill to alternative construction methods, configurations and locations for the proposed station. Your Petitioner humbly submits that the Promoter should not be permitted to interfere with your Petitioner's private property rights and interest unless and to the extent (if any) that this is demonstrated to be strictly necessary and in the public interest, having regard to a full and comprehensive assessment of these matters.

12 If, which is not admitted by your Petitioner, the powers sought by the Promoter in this regard can be justified, your Petitioner submits that there is insufficient provision for mitigating the risk of or actual damage to the hotel. Your Petitioner submits that the Promoter be required:

- (a) To take all reasonably practicable measures to prevent damage to the hotel;
- (b) To conduct a full survey of the condition of the hotel before and after construction of the works and to undertake comprehensive monitoring of the structure during the works;
- (c) To carry out a full geotechnical survey in the vicinity of the hotel before commencement of the works;
- (d) To give advance notice of each phase of the works and undertake advanced consultation in relation to their construction;
- (e) To use all available working methods to minimise the risk of settlement and subsidence including undertaking agreed underpinning and strengthening works to your Petitioner's hotel.

13 Your Petitioner seeks provision within the Bill and further or alternatively binding assurances from the Promoter to ensure Your Petitioner is fully and sufficiently indemnified in respect of any loss, damage, costs and claims associated with the impact of the works on the structure of Your Petitioner's property.

#### **Environmental consequences of construction**

14 Your Petitioner is greatly apprehensive about the environmental effects of the extensive works in the immediate vicinity of the hotel and in particular noise and vibration from the excavation, tunnelling and piling associated with the proposed station box in Eastbourne Terrace and the proposed Circle

Line Link across Praed Street. Your Petitioner's hotel includes extremely sensitive uses on every floor, including lower ground and ground floor levels, as well as the 355 guest rooms on the upper floors, many of which overlook Eastbourne Terrace and Praed Street. Your Petitioner is concerned that these uses will be adversely affected and that the revenue they generate will be significantly reduced.

- 15 The Environmental Statement accompanying the Bill recognises that the Praed Street and Eastbourne Terrace façades to the hotel will experience a significant, adverse noise impact. However, the Environmental Statement provides inadequate data to ascertain the likely actual effects. Measurements of existing noise conditions were not taken from the façade of the hotel where noise will be experienced by hotel residents. In addition, the noise monitoring location used for the assessment of existing conditions was located close to Praed Street where the effects of traffic noise on existing conditions are greater and more exaggerated. The most significant effects of air-borne noise will be experienced at the hotel on the Eastbourne Terrace façade for which there are no measurements or predicted levels of noise. No data is given for ground-borne noise. This means that the baseline position established by the Promoters for the purpose of assessing the impact of noise on your Petitioner's hotel within the Environmental Statement is erroneous and the likely significant effects have not been fully considered.
- 16 In relation to vibration, inadequate consideration is given by the Promoter in the Environmental Statement accompanying the Bill to the perceived nuisance effects of both vibration and noise. No information is included on the likely subjective response of individuals to such effects and your Petitioner is greatly concerned by this omission in the context of the sensitive uses at the hotel.
- 17 A further concern to your Petitioner is the visual impact of the works on the hotel. In particular, the guest rooms on the Praed Street and Eastbourne Terrace façades will overlook extensive worksites with significant excavated areas equipment and construction traffic, which your Petitioner is concerned, will adversely affect visual amenity and deter guests from using the hotel. The Promoter has given inadequate consideration to this aspect of the works and proposes no mitigation measures to deal with it.
- 18 Your Petitioner is also greatly concerned by the likely dust generation of the construction works and the effects of this on the environmental quality of the area immediately around the hotel, human health and the maintenance requirements for the hotel building and associated plant. Your Petitioner is concerned that this could add significantly to hotel operating costs and could deter guests and customers.
- 19 The Promoter recognises that adverse environmental effects will be caused by the construction of the works and proposes a code of construction practice, a series of individual agreements under the Control of Pollution Act 1974 and statements of policy to which the Promoter will purportedly adhere. Your Petitioner is concerned that none of these measures will take into account the particular sensitivity of your Petitioner's hotel and the significant scale of the works in the immediate vicinity. Your Petitioner requires that the effects of the works be fully and properly explored by the Promoter and that all mitigation measures be thoroughly assessed. Your Petitioner also requires the Promoter

to be bound personally by a specific code of construction practice for works in the vicinity of the hotel in order to mitigate and regulate all environmental and operational effects.

**Other consequences of construction**

20 Your Petitioner is extremely anxious about the operational impacts of the works in the vicinity of the hotel and in particular:

- (a) Services diversion in Eastbourne Terrace and Praed Street;
- (b) The partial closure of Eastbourne Terrace and the closure of the Departures Road of Paddington Station throughout the construction period;
- (c) The reduction of carriageway width along Praed Street and the restriction on westbound traffic;
- (d) The general disruption to traffic circulation in the area from as early as the site preparation works and associated services diversions;
- (e) The disruption to rail services, in particular, Heathrow Express and mainline trains.

21 Each of these impacts will have a significant adverse effect on the operation of the hotel. Road access by guests and service vehicles will be adversely affected. Access by rail will, according to the Promoter itself, be interrupted on occasion during the period of construction and continuously for a minimum period of 6 weeks. In addition, the proposed compulsory acquisition, closure and use of Eastbourne Terrace and the Departures Road and the works in the vicinity of Praed Street, threaten to obstruct the Petitioner's rights of emergency escape from the hotel onto and along the Departures Road and across Eastbourne Terrace and to prevent or obstruct access to the existing assembly point for evacuation from the hotel. Your Petitioner fears that this could mean that the hotel would be forced to close for all or part of the duration of the works.

22 Your Petitioner therefore seeks protection in relation to all operational consequences of construction activities in order to ensure the hotel is allowed as nearly as possible to function normally during the works. In particular, any interference with rights of escape and emergency assembly would be unacceptable to your Petitioner and in this respect your Petitioner requires the Promoter to be personally bound to your Petitioner by specific obligations to safeguard such rights and ensure their continuance throughout the period of the works.

**Operational railway impacts**

23 Your Petitioner is extremely concerned by the impacts on the hotel of the operational railway. In particular, your Petitioner is very apprehensive about the potential noise and vibration effects of running trains particularly as they accelerate and decelerate at the proposed station. Such effects would potentially be exacerbated should Crossrail be used by freight trains. Insufficient data is included in the Environmental Statement accompanying the Bill to enable a proper assessment of the likely impacts of these operational effects. For example, there is inadequate information regarding the assumptions used in the assessment for train speed, track fixing and track foundations. Given the sensitive nature of the uses in your Petitioner's hotel, the lack of information

in this regard is a source of great concern to your Petitioner. Your Petitioner submits that the Promoter should be required to incorporate all reasonably available mitigation measures including track-laying and foundation techniques in order to ensure the vibration and noise effects of operating trains are minimised.

- 24 Your Petitioner is similarly concerned about the noise effects of the proposed extraction fans at Eastbourne Terrace, once the railway becomes operational and seeks provision or binding assurances in order to minimise the noise disturbance caused by such fans.

#### **Ambit of powers**

- 25 The powers sought to be conferred on the Promoter by the Bill are extremely wide and your Petitioner humbly submits that such powers ought to be more constrained in the interests of your Petitioner and other members of the public.

- 26 In particular, clause 7 authorises the Promoter to acquire compulsorily land outside the limits of deviation for the scheduled works and the limits of land to be acquired or used, where it is required for or in connection with the works authorised by the Bill or otherwise for or in connection with the proposed railway system. Your Petitioner respectfully submits that such powers, particularly in the context of Central London, are unacceptably wide and threaten to blight property, including your Petitioner's hotel, in the immediate vicinity of the limits of deviation. Further express authority for the acquisition of land outside the limits of deviation should be necessary, considered in specific instances on its merits and granted only if it is demonstrated to be necessary at the relevant time for the construction of the railway system.

- 27 Your Petitioner is also concerned that the provisions in the Bill for renewal of compulsory purchase powers and planning permission (clauses 6(7) and 11(2) respectively) are too widely drawn and prolong the period of blight suffered by your Petitioner's property and others. Whilst the renewal of compulsory acquisition powers is subject to special Parliamentary procedure, your Petitioner submits that greater protection should be given to owners and occupiers of land affected by the proposed works through the regulation of circumstances in which such renewal may be ordered. In the event that the validity of the powers or the planning permission is extended, your Petitioner seeks provision for affected land owners and occupiers to be consulted and to be given the opportunity to make representations and for further assessments to be undertaken. Your Petitioner submits that as it currently stands the Bill fails to provide for such matters. This is a significant omission. During the time limit for compulsory acquisition powers (5 years) and for implementation of planning permission (10 years) circumstances can change significantly and so too the impact of the exercise of such powers or the implementation of such permission. It is essential that all future impacts should be comprehensively reassessed. Your Petitioner submits that the same considerations should apply to the power to correct deposited plans (Clause 54).

- 28 Your Petitioners are also concerned by the absence of any specific provision to compel the Promoter to implement mitigation measures identified in the Environmental Statement accompanying the Bill. Failure to include such provision will, your Petitioner humbly submits, be contrary to the purposes of Council Directive 85/337/EC, as amended by Council Directive 97/11/EC.

29 Your Petitioner also submits that such compulsion should include an express obligation on the Promoter to undertake specific measures to limit structural and other damage to properties along the route of the works including your Petitioner's property which is a Grade II listed building. Such measures should include establishing a schedule of condition prior to commencement of the works, the incorporation of specific measures agreed with owners of the affected properties in order to strengthen and protect individual buildings, continuous monitoring of properties during the course of the works, a revised schedule of condition following completion of the works and regular monitoring of properties in the first few years of railway operation. Without such provision, there is inadequate protection for property owners and occupiers against the potential structural effects of the works.

#### **Compensation provision**

30 Your Petitioner further submits that provisions within the Bill regarding compensation in respect of compulsory acquisition and other matters are not sufficient to compensate your Petitioner adequately for the loss, damage and inconvenience which it may suffer as a result of the construction and subsequent use of the proposed railway system. Your Petitioner seeks further provision within the Bill for indemnifying your Petitioner against loss of profits and revenue caused by the adverse effects of the proposed works, particularly during the construction period.

31 Of particular concern to your Petitioner is the likelihood that the Promoter will not find it necessary to acquire any part of the hotel or any interest in it from your Petitioner. In such circumstances, where the hotel is nonetheless adversely and injuriously affected by the construction of the proposed works and the operation of the railway system, the compensation provisions within the Bill are wholly inadequate.

32 Your Petitioner humbly submits that the Bill should be amended in this respect to ensure that your Petitioner is entitled to claim compensation in such circumstances for structural damage to the hotel by the execution of the works for interference with rights and for injurious affection caused by the execution of works and the subsequent operation of the railway system. Your Petitioner seeks provision to enable such claim to be made separately from any claim for compensation in respect of the acquisition of land or interests from your Petitioner under the powers of compulsory acquisition in the Bill. Furthermore, your Petitioner submits that any such claim should be permitted at any time before the expiry of 5 years following the opening of the proposed railway system for use by members of the public.

33 Further, to the extent that the powers under the Bill are not exercised following its enactment, your Petitioner's hotel will suffer significant blight and your Petitioner humbly submits that there is no or alternatively that there is inadequate provision within the Bill for compensating your Petitioner in this regard.

34 Your Petitioner submits that provision should also be made within the Bill to enable your Petitioner to recover its own reasonable expenditure including the full costs of making good any damage to the structure of the hotel, the full cost of any works undertaken in mitigation of the proposed works and your Petitioner's costs in co-operating with the Promoter during the project. Your Petitioner also seeks inclusion of provisions within the Bill to compel the Promoter to indemnify owners and

occupiers of interests in affected properties from all losses costs claims and demands suffered in consequence of the construction, use or maintenance of the works or any act or omission of the Promoter and the nominated undertaker including their contractors and agents.

### **Environmental Impact Assessment**

35 Your Petitioner has responded to the Promoter's request for comments on the Environmental Statement accompanying the Bill but your Petitioner submits that the Environmental Statement is deficient in several respects and therefore fails to satisfy the requirements of Council Directive 85/337/EC, as amended by Council Directive 97/11/EC. In particular:

- (a) There is inadequate description of the likely significant effects of the project, particularly in the vicinity of your Petitioner's hotel and no consideration given to direct and indirect effects - for example the effect on the local economy during the construction of the works.
- (b) Insufficient data has been provided in order to identify and assess the main effects of the works, particularly in the vicinity of your Petitioner's hotel where major works are proposed.
- (c) There is insufficient detail of proposed mitigation measures, no assessment of their effectiveness in avoiding reducing or remedying significant environmental effects and no provision within the Bill compelling the Promoter to undertake identified mitigation measures.
- (d) There is insufficient analysis of alternatives in the context of each work section and in particular in the vicinity of your Petitioner's hotel there is no analysis of alternative methods of construction, alternative configurations and alternative locations for the proposed new station and the Circle Line Link.

### **Human Rights**

36 Your Petitioner submits that in its current form and without further amendment or provision as sought by your Petitioner, the Bill is incompatible with the right of your Petitioner peacefully to enjoy its property and to carry on trade or business. The Bill would unfairly interfere with such right contrary to Article 1 of Protocol 1 to the European Convention on Human Rights and fails to provide your Petitioner with sufficient right of participation in future determinations of your Petitioner's rights (for example in relation to the extension of the time limit for planning permission) contrary to Article 6 of the Convention. In particular, in your Petitioner's humble submission, the wide and extendable powers available to the Promoter and the inadequate provision for compensation in the particular circumstances with which your Petitioner may be presented renders the Bill incompatible with the Convention.

### **General**

37 For the foregoing and connected reasons your Petitioner respectfully submits that, unless the Bill is amended as proposed above, the Bill should not be allowed to pass into law.

38 There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and its rights, interests and property and for which no adequate provision is made to protect your Petitioner.

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 they may be heard by its 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 and benefit, 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.

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AGAINST, By Counsel, &c.