

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 GLENART 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 and Clause 16 provides for rights of entry.
- (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) of the 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 owns a long leasehold interest in the property known as 25 Green Street, London W1 ("the Property"). The Property is in use as offices.

5 Your Petitioner was served with notice of acquisition of sub-surface interests at the Property. Clause 6 of the Bill authorises the compulsory acquisition of plot 232, being part of the Property.

6 The proposed works include tunnelling directly beneath the Property. The works also include the construction of the Park Lane ventilation shaft to be constructed in the central reservation of Park Lane, directly opposite Green Street.

7 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 but is greatly concerned by the provisions of the Bill as they may affect the Property. For this reason and having regard to the more detailed particulars referred to below, Your Petitioner objects to the Bill.

Structural Damage

8 Your Petitioner is greatly concerned by the extent of excavation and tunnelling works under and in the immediate vicinity of the Property. Your Petitioner is anxious that associated ground settlement and subsidence could jeopardise the stability and structural integrity of the Building at the Property.

9 Your Petitioner is also very concerned by the potential structural response of the Building to ground-borne vibration caused by the proposed works. Insufficient data has been provided by the Promoter to understand the likely effects of vibration on the structure of the Building and the effectiveness of any mitigation measures.

10 Ground settlement, subsidence and ground-borne vibration arising from the works are likely to cause your Petitioner significant loss and damage and interfere with the Property. Your Petitioner submits that the Promoter should not be permitted to interfere with your Petitioners' rights and interests unless and to the extent (if any) that this is demonstrated to be strictly necessary and in the public interest and until a full and comprehensive assessment of the potential effects of the works on the Property has been undertaken, demonstrating that there will be no significant impact on the Property.

11 Your Petitioner submits that there is insufficient provision for mitigating the risk of or actual damage to the Property. Your Petitioner requires the Promoter:

- (a) To take all reasonably practicable measures to prevent damage to the Property;
- (b) To conduct a full survey of the condition of the Property 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 Property before commencement of the works;
- (d) To give advance notice of the phase of the works affecting the Property and undertake advanced consultation in relation to their construction;
- (e) To use all available working methods to minimise the risk of ground-borne vibration, settlement and subsidence including undertaking agreed underpinning and strengthening works to the Property.

- 12 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 the Property.

Environmental Effects of Construction

- 13 Your Petitioner is greatly concerned by the environmental effects of the works in the vicinity of the Property and, in particular, noise and vibration from the tunnelling activities underneath the Property and noise and dust from the Park Lane shaft construction works in the vicinity of the Property. The Property includes sensitive office uses and your Petitioner is concerned that the offices will be adversely affected and that revenue from the Property and tenant interest will be adversely affected.
- 14 The Environmental Statement accompanying the Bill provides inadequate data to ascertain the likely actual noise, vibration and dust effects at the Property. Furthermore, inadequate consideration is given by the Promoter in the Environmental Statement to the perceived nuisance effects of vibration, noise and dust. Your Petitioner submits that the Promoter should not be permitted to interfere with your Petitioner's rights and interests unless and to the extent that comprehensive assessments of the specific likely effects at the Property have been undertaken, demonstrating that with effective mitigation measures to which the Promoter is bound there will be no significant impacts.
- 15 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 is to adhere. Your Petitioner is concerned that none of these measures will take into account the particular circumstances and character of the Property.
- 16 The Property is in commercial use. Your Petitioner submits that the Promoter ought to adopt working hours that are more flexible than those which presently appear in the standard code of construction practice published by the Promoter. Significant construction activity during business hours should be avoided and overnight and weekend working patterns should be adopted.
- 17 Your Petitioner requires the Promoter fully and properly to explore the environmental effects of the construction of the works on the Property and that provision be made for all necessary mitigation measures to be employed. Your Petitioner requires the Promoter to be bound personally by a specific code of practice for works in the vicinity of the Property in order to mitigate and regulate all environmental effects and operational impacts.

Other Impacts of Construction

- 18 Your Petitioner is anxious about the operational impacts of the works in the vicinity of the Property and in particular:
- (a) Services diversions and potential interruption to supply;
 - (b) Closure of highways or parts of highway, diversions and other restrictions or modifications to road access in the local area;

(c) General disruption to traffic circulation in the area from as early as the site preparation works.

19 Each of these impacts will have a significant adverse effect on Your Petitioner's property. Your Petitioner therefore seeks protection through provision in the Bill or binding assurances from the Promoter in relation to all operational consequences of construction activities in order to ensure that the Property may function as normally as possible during the works.

Operational railway impacts

20 Your Petitioner is greatly concerned by the impacts on the Property of the operational railway. In particular, your Petitioner is very apprehensive about the potential noise and vibration effects of running trains in the tunnels that pass underneath and close to the Property.

21 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. 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 and seeks provision to that effect in the Bill and further or alternatively binding assurances from the Promoter.

Ambit of powers

22 The powers sought to be conferred on the Promoter by the Bill are extremely wide and Your Petitioner submits that such powers ought to be more constrained in the interests of Your Petitioner and other landowners.

23 In particular, clause 7 authorises the Promoter to acquire compulsorily land outside the limits of deviation for the scheduled works and outside 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.

24 Your Petitioner respectfully submits that such powers, particularly in the context of Central London, are unacceptably wide and threaten to blight property, including its own interests, in the immediate vicinity of the limits of deviation. Further express authority for the acquisition of land outside the limits should be necessary, and considered only in specific instances on its merits and given only if acquisition is proven at the relevant time to be necessary for the construction of the railway system.

25 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 the Property. 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 regulation of the 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 landowners and occupiers to be consulted and to be given the opportunity to make representations. 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 impacts should be comprehensively reassessed. Your Petitioner submits that the same considerations should apply to the power to correct deposited plans (Clause 54).

- 26 Your Petitioner is 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 submits, be contrary to the purposes of Council Directive 85/337/EC, as amended by Council Directive 97/11/EC.
- 27 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 the Property. 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 landowners and occupiers against the potential effects of the works.

Compensation provision

- 28 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 losses costs and damage caused by the adverse effects of the proposed works, particularly during the construction period.
- 29 Your Petitioner submits that the Bill should be amended to ensure that Your Petitioner is entitled to claim compensation in such circumstances for structural damage to property caused 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.

30 Further, to the extent that the powers under the Bill are not exercised following its enactment, the Property may suffer blight and your Petitioner submits that there is no, or alternatively that there is inadequate, provision within the Bill for compensating your Petitioner in this regard.

31 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 Property caused by the proposed works, 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 the inclusion of provisions within the Bill to compel the Promoter to indemnify owners and occupiers of interests in affected properties from losses 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.

Human Rights

32 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 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.

Conclusion

33 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.

34 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 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 it 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 its 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.

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