

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2005-06

CROSSRAIL BILL

P E T I T I O N

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:

THE TRUSTEES OF THE R. SMITH LIFE INTEREST TRUST AND THE S. EDWARDS
LIFE INTEREST TRUST

SHEWETH as follows: —

- 1 A Bill (hereinafter referred to as (“the Bill”)) has been introduced into 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 the Secretary of State for Transport (hereinafter called “the Promoter”).

Relevant clauses of the Bill

- 3 Clauses 1 to 20 of the Bill together with Schedules 1 to 9 make provision for the construction and maintenance of the proposed works including the main works set out in Schedule 1. Provision is included to confer powers for various building and

engineering operations, for compulsory acquisition and the temporary use of and entry upon land, for the grant of planning permission and other consents, for the disapplication or modification of heritage and other controls and to govern interference with trees and the regulation of noise.

4 Clauses 21 to 44 of the Bill together with Schedule 10 make provision for the application with modifications and the disapplication in part of the existing railways regulatory regime which is contained in and in arrangements made under the Railways Act 1993 and associated legislation. In particular, they provide for the disapplication of licensing requirements, the imposition of special duties on the Office of the Rail Regulator (“ORR”), the modification of railway access contract and franchising arrangements and the disapplication of railway closure requirements and of the need for consent from Transport for London in relation to impacts on key system assets. Provision is also included to enable agreements to be required as between the nominated undertaker and controllers of railway assets, to govern the basis for arbitration and to provide for the transfer of statutory powers in relation to railway assets.

5 Clauses 45 to 59 of the Bill together with Schedules 11 to 14 contain miscellaneous and general provisions. These include provision for the making of transfer schemes, the designation of nominated undertakers, the devolution of functions and as respects other actions to be taken by the Secretary of State. Provision is also made in particular for the disapplication or modification of various additional miscellaneous controls, for the treatment of burial grounds, for the application of provisions of the Bill to future extensions of Crossrail, for the particular protection of certain specified interests and as respects arbitration.

Your Petitioners and their properties

6 Your Petitioners are the Trustees of the R. Smith and S. Edwards Life Interest Trusts.

7 Your Petitioners own the freehold title in 20 Hanover Square in the City of Westminster, which is a Grade II* listed building in office use (parcel number 442) and also own the premises to the rear of the listed building (parcel number 441) and

the car park and premises in Dering Yard, to the rear of parcel number 441 (parcel number 440). All these titles were recently acquired from A. Brooks Properties Limited.

8 In addition, your Petitioners have the benefit of a right of way along the private road in the archway beneath offices at 67-69 New Bond Street (parcel number 429) which provides the only means of access to the car park at parcel number 440 and the principal means of access to parcel number 441. These properties are subject to compulsory acquisition or use under the Bill.

9 Your Petitioners and their rights, interests and property are injuriously affected by the Bill, to which your Petitioners object for the reasons amongst others, here stated.

Your Petitioners' concerns

10 The Bill provides for a number of works which are set out in Schedule 1 to the Bill, namely Work Nos. 1/3A and 1/3B, including the construction and operation of an underground railway beneath or in the vicinity of your Petitioners' properties and in particular the development of a new station and associated works at Bond Street station, including a new Eastern Ticket Hall on the west side of Hanover Square.

11 Your Petitioners are not opposed in principle to the intended new railway. However, they are concerned that the powers proposed in the Bill as affecting their properties go beyond what is required. Further, no adequate provision has been made to secure that damage and disruption are kept to a minimum or to secure that in other respects their property interests are reasonably safeguarded. Accordingly, they object to the Bill for these reasons and having regard to the more detailed particulars referred to below.

Compulsory purchase and subsoil acquisition and related matters

12 Your Petitioners object to the provisions of Clause 6 of the Bill, which they apprehend could adversely affect and interfere with some of your Petitioners' properties. Under these provisions, and those in Clause 7, the Promoter would be able

to acquire compulsorily any one or all of those of your Petitioners' properties set out in paragraph 7 of this Petition as lie within the limits of deviation, or at least so much of the subsoil and undersurface thereof or such new rights therein, under or over as they may require for the purposes of the construction and use of the proposed works. In respect of these properties your Petitioners question the need for such extensive powers, fearing that their exercise could lead (by tunnelling, other construction works such as station works and the running of trains) to damage to these properties due to settlement or subsidence, and a serious detraction from your Petitioners' quiet enjoyment of them, with the result that significant loss and damage could be suffered by your Petitioners.

- 13 Your Petitioners also object to the provisions of Clause 6 of the Bill, and those in Clause 7, insofar as the same would enable the Promoter to acquire rights in the subsoil and undersurface of your Petitioners' properties as lie within the limits of deviation. Your Petitioners make this objection because of a similar fear to that expressed in the paragraph above that the exercise of these powers could lead to damage to these properties and a serious detraction from your Petitioners' quiet enjoyment of them.
- 14 The exercise by the Promoter of its powers for the compulsory acquisition of land or of interests in land could result in the development potential of some of your Petitioners' properties being severely constrained, since the load-bearing capacity of the soil underneath them could be significantly reduced by the proposed works with the result that the type and size of building which the ground would be able to support could be different to that which exists today. For these reasons too your Petitioners further object to the provisions of the Bill as they might affect your Petitioners' properties.
- 15 Your Petitioners are especially concerned that the proposed limits of lateral and vertical deviation in Clause 1 of the Bill would permit the route for Works Nos 1/3A and 1/3B to be varied so as to bring the Works closer to (either vertically or horizontally) some of your Petitioners' properties. The provisions of Clause 1 of the Bill could therefore well result, your Petitioners apprehend, in an inadequate vertical distance between the soffit of the tunnels forming part of Works Nos. 1/3A and 1/3B

and the bottommost part of the basements of some of your Petitioners' properties. The resulting noise, vibration and, possibly, damage would therefore cause your Petitioners great inconvenience and loss. Your Petitioners therefore submit that such deviation could and should be more closely restricted wherever possible.

16 Your Petitioners therefore humbly submit that the Promoter should not be permitted by means of the Bill to interfere with private property rights and interests unless, and except to the extent (if any) that, this can be demonstrated both to be necessary for the purposes of the Bill and to be in the public interest. Your Petitioners have not been provided with full justification for the proposals in the Bill affecting their properties and they are not satisfied that it is necessary or appropriate for the limits of deviation of Works Nos. 1/3A and 1/3B to be drawn so widely so as to include as many of your Petitioners' properties as the limits of deviation currently do or that it is necessary or expedient for the other powers of the Bill to apply at all or in the manner or to the extent proposed.

17 Accordingly your Petitioners humbly submit that the Promoter should demonstrate and be put to strict proof of the need for and desirability of the proposals in the Bill, as affecting your Petitioners' properties and that the limits of deviation of Works Nos. 1/3A and 1/3B, the resulting powers for the compulsory acquisition of land or of interests in land, the power to construct works and the exercise of works and ancillary powers within the limits of deviation should be restricted in relation to your Petitioners' properties to the extent (if any) to which they can be strictly justified and so as to minimise or prevent interference with those properties. In particular, your Petitioners contend that any interest in their properties acquired by the Promoter (in terms of the area over which it is to subsist, the form in which it is to take at law and any express or implied constraints which may be imposed upon the remainder of your Petitioners' properties) should be strictly limited only to that which is absolutely necessary for the construction, safe operation and maintenance of the proposed works.

Subsidence, settlement and associated damage to properties

- 18 Your Petitioners also submit that the Promoter should be constrained to construct the works proposed beyond, or, so far as practicable, away from the subsoil and undersurface of your Petitioners' properties in such a way as to avoid or, if necessary, minimise any diminution in the load-bearing qualities of that undersurface and subsoil. Your Petitioners further ask, insofar as the subsoil and undersurface beneath their properties may be affected, that they may nevertheless continue to have the facility to construct such foundations as may be necessary to support any future development on the site and that the compulsory purchase powers which are proposed be limited accordingly. Furthermore, your Petitioners will argue that they should be properly compensated by the Promoter for any loss of development value of any of their properties and that they should be fully indemnified in respect of any additional design or construction costs incurred by your Petitioners in carrying out such development.
- 19 Your Petitioners are particularly concerned about settlement effects on 20 Hanover Square, which is a Grade II* listed building of special architectural and historic interest. Your Petitioners fear that significant damage could be caused to this property as a result of the works.
- 20 Tunnelling of the station tunnels is proposed to be carried out using the Sprayed Concrete Lining (SCL) method, which has been attributed to a number of tunnel collapses in the past. Your Petitioners seek assurance that this technique is to be carried out correctly, and seek to ensure that appropriate independent review of the methodology is carried out prior to the caverns being constructed, and that sufficient independent controls are in place during construction.
- 21 Your Petitioners humbly submit that the Promoter should be required, inter alia:-
- (a) to take all practical measures to prevent damage and injurious effects, including constructing the proposed works at the greatest practical depth;
 - (b) to conduct at their own expense a full survey of the condition of your Petitioners' properties both before and after the construction and

commencement of operation of the works, with details of all such surveys being provided to your Petitioners;

- (c) to submit plans and detailed proposals (including confirmation of anticipated ground and building movements, as well as notification of proposed construction methods) for the works under or affecting your Petitioners' properties to your Petitioners for their reasonable approval and to give your Petitioners proper notice of the commencement of and full consultation upon all works affecting your Petitioners;
- (d) to agree a threshold with your Petitioners for ground and building movement within the vicinity of your Petitioners' properties, to the effect that if that threshold is exceeded the Promoter should be obliged to cease construction until such time as remedial measures are in place which will minimise settlement affecting your Petitioners' properties;
- (e) to agree necessary safeguarding or remedial measures with your Petitioners, to be carried out at the expense of the Promoter;
- (f) to carry out prior subsoil investigation and survey;
- (g) to use all available grouting, de-watering, freezing and pressure-working methods; and
- (h) to carry out agreed underpinning and strengthening works.

22 In addition, your Petitioners fear that damage could be caused to your Petitioners' properties including the pipes, cables, wiring and other service media as a result of the proposed works and the operation of the railway. Your Petitioners would wish to see an effective and agreed monitoring system in place before commencement and during construction of the works, to measure the exact effect of any settlement on their properties. There must in your Petitioners' submission be a threshold agreed between your Petitioners and the Promoter for ground movement within the vicinity of these properties. If that threshold is exceeded then it is imperative that the undertaker nominated to carry out the works is obliged to cease construction until such time as remedial measures are in place which will minimise settlement and consequently avoid distress to the buildings. Your Petitioners request that they be given at least 14 days' notice of the intended passage of the tunnel boring machines in the vicinity of

the properties. Any necessary safeguarding or remedial measures should be agreed between your Petitioners and the nominated undertaker.

- 23 Your Petitioners submit that they should also be entitled to make their claim for compensation in respect of damage arising to their properties by the execution of the works, or for injurious affection thereof by the execution or operation of those works, separately from any claim for compensation in respect of the acquisition of any land (or interests therein) from your Petitioners under the powers of acquisition in the Bill and that any such deferred claim should be permitted to be made at any time before the expiry of 5 years following the opening of the relevant part of the proposed railway to public traffic.

Noise, vibration, disruption and disturbance during the construction period

- 24 Noise and vibration arising from the operation of the railway and its associated works and structures (such as ventilation shafts) also concerns your Petitioners. Your Petitioners submit that the Promoter should be compelled to use best available techniques in the construction and operation of the railway and its associated works and structures to ensure that these adverse effects are minimised. Furthermore, your Petitioners wish to see strict standards set to which the Promoter must be made liable to comply.
- 25 Your Petitioners are concerned about dust and dirt produced during construction of the proposed works. Your Petitioners would wish to see binding commitments imposed on the Promoter to require adherence to agreed measures to reduce dust, and to carry out additional mitigation if dust continues to be a nuisance to your Petitioners' properties. Your Petitioners request that provision be made to ensure that the Promoter takes responsibility for the reimbursement of your Petitioners for additional expense caused by dust and dirt such as more frequent cleaning of their affected properties, and more frequent replacement of air conditioning filters.
- 26 Your Petitioners have most severe reservations about the proposed work sites in Dering Yard and Hanover Square. Your Petitioners apprehend that these sites and the

works proposed to be carried out within them will bring about a general disturbance and loss of amenity to the areas involved, arising especially from —

- (a) the temporary road closures proposed;
- (b) construction traffic;
- (c) restricted access to buildings (including some of your Petitioners' properties);
- (d) construction noise and vibration; and
- (e) visual impact.

27 Your Petitioners are concerned that the proximity of these sites and the works proposed to be carried out within them will have an adverse impact on their ability to re-let the property when the current leases expire in 2010, or to re-let them on terms at least comparable to those which exist at present. Your petitioners are particularly concerned about the impact of the proposed work site at Dering Yard, as this will have a significant impact on the ability to let the rear of the property (parcel number 441) as a self-contained unit, as Dering Yard would in such case be the sole serving and access route for this part of the property.

28 The surface works, particularly the use of working sites and the removal of spoil, will further impact upon the quiet enjoyment of properties in the vicinity. Major increases in lorry movements during the construction period are to be expected, the disruptive effect of which will be compounded by the permanent and temporary stopping up of nearby roads. Having regard to the scale of disruption which is envisaged, your Petitioners wish to be satisfied that all possible measures have been or will be taken to limit the surface impact of the scheme and submit that the Promoter should be required to demonstrate that its proposals will result in the least adverse effects as is practicable and that it will take all possible steps to mitigate such disturbance as cannot be avoided and will adhere to an effective code of construction practice that meets your Petitioners' concerns.

Vehicular and pedestrian access

29 Your Petitioners are concerned about the effect of these matters on their properties and having regard to the scale of disruption and disturbance envisaged your Petitioners therefore seek protection in relation thereto. In particular, your Petitioners would expect the Promoter to be bound to a code of construction practice to regulate these matters and to ameliorate any adverse effects caused by the works. Your Petitioners submit that the Promoter should consult with them about proposed working methods and in relation to all aspects of likely environmental impact to your Petitioners' properties and that the Promoter should be obliged to agree a scheme of work with your Petitioners for the benefit of the occupiers of your Petitioners' properties, such scheme of work to include, amongst other things, reference to noise, vibration, disruption and lorry movements.

30 Your Petitioners note the obligation under paragraph 5(2) of Schedule 3 to the Bill to provide reasonable access for pedestrians going to or from premises abutting a highway that is proposed to be temporarily stopped up. Your Petitioners request that save to the extent that the Promoter demonstrates that an interference with the public highway is strictly necessary for the purpose of the Crossrail works, that good and open access be maintained in all cases, such as in the event of the erection of hoardings and scaffolding, use of the footway next to the property, the placing of equipment and apparatus upon the highway, and the parking, loading and unloading of vehicles. Your Petitioners particularly request that vehicular access to Dering Yard via the private road in the archway beneath the offices at 67-69 New Bond Street, such road being parcel number 429, be maintained where practicable and that compensation be awarded for any costs incurred through the inability to service the Petitioner's properties or park in Dering Yard (parcel number 440) due to the works.

Disruption to statutory services

31 Your Petitioners wish to be satisfied that there will be no disruption to statutory services provided to your Petitioners' properties as a result of the construction of the proposed works. In your Petitioners' submission a co-ordinated programme of works

to services leading into these properties ought to be established by the Promoter and the details provided to your Petitioners, to prevent an unnecessary succession of statutory undertakers' works to and reinstatement of Hanover Square and Dering Yard.

Compensation and loss

- 32 The provisions contained within the Bill for compensation for the compulsory purchase of property or of subsoil or other new rights will not enable your Petitioners or other landowners to recover the full loss and expenses which they will incur in consequence of the exercise of such powers. Your Petitioners therefore submit that the Bill should be amended to rectify this.
- 33 Your Petitioners also object that the compensation provisions of the Bill are inadequate to compensate your Petitioners and others in circumstances where no land (or interests in land) is acquired by the Promoter under the Bill, but where the value of such land and the properties erected on it is reduced or where such land and the properties erected on it is otherwise adversely or injuriously affected by the construction or use of the proposed works. Your Petitioners therefore submit that the Bill should be amended to provide for claims for adequate compensation in respect of damage arising to their properties by the execution of the works, or for injurious affection thereof by the execution or operation of these works, separately from any claim for compensation in respect of the acquisition of any land (or interest therein) from your Petitioners under the powers of acquisition.
- 34 Your Petitioners further submit that the compensation provisions proposed in the Bill are inadequate to compensate your Petitioners for the loss, damage and inconvenience, attributable to blight to their properties, which it may now suffer as a result of the prospective construction and subsequent use of the proposed works. Your Petitioners are concerned that prospective lessees of properties will take the view that that the proposals may so blight some properties that they would not wait to acquire any part of the property, or that prospective or existing lessees will demand a reduced rent, due to the prospect of the works. Further provisions should, they

submit, be included in the Bill including provisions respecting the making and assessment of claims for compensation, and indemnifying your Petitioners for any loss they might suffer as the result of unfavourable rent reviews respecting the leases currently affecting some of their properties insofar as the reduced rent payable (as it may differ from open market rent) is attributable to the proposed works and their effect on your Petitioners' properties. Furthermore, compensation should be available for any loss (so attributable) which your Petitioners might suffer in the event of them not being able to re-let their properties (in whole or in part) to existing or new tenants or in the event of them only being able to do so at a reduced premium or rent.

- 35 Your Petitioners have a fundamental concern that despite its adoption as a Government-led project, Crossrail lacks appropriate levels of funding to carry out the scheme and that this lack of funding has prejudiced your Petitioners whose properties are nonetheless blighted.

General concerns

- 36 Your Petitioners submit that the Promoter should be required to indemnify them from all claims and demands which may be made in consequence of the construction, use or maintenance of the works under the Bill, or their failure or want of repair, or in consequence of any act or omission of the Promoter, his contractors or agents in carrying out the works under the Bill.

Costs

- 37 Your Petitioners submit that provision should be made for the Promoter to repay to your Petitioners all proper costs, charges and expenses (including the proper fees of such professional advisers as they may instruct) reasonably incurred in consequence of the Bill or of any provision made as a result of this Petition.
- 38 There are other clauses and provisions in the Bill, which, if passed into law as they now stand, will prejudicially affect your Petitioners and their rights, interests and property and for which no adequate provision is made to protect your Petitioners.

Conclusion

39 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners and should not be allowed to pass into law without these issues being addressed.

YOUR PETITIONERS 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 themselves, their Counsel, Agents and witnesses in support of the allegations of this Petition against so much of the Bill as affects their property, rights and interests and in support of other such clauses and provisions as may be necessary or expedient for their protection, or that such other relief may be given to your Petitioners in the premises as your Honourable House shall deem meet.

AND YOUR PETITIONERS WILL EVER PRAY, &c.

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