

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 ENVIRONMENT AGENCY

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 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 (including your Petitioners) and as respects arbitration.

*Your Petitioners*

- 5 Your Petitioners are the Environment Agency, a non-departmental public body established by the Environment Act 1995. Your Petitioners' principal purpose is to protect and enhance the environment and in doing so to make a contribution towards the objective of achieving sustainable development. Your Petitioners have a broad range of functions which include flood risk management, navigation, water quality, conservation, fisheries, recreation, land quality, waste management, water resources, integrated pollution control and radioactive substances regulation.
- 6 The proposals under the Bill will have a significant impact upon your Petitioners' functions to which your Petitioners object for the reasons amongst others, here stated.

*Your Petitioners' concerns*

- 7 Notwithstanding the inclusion in Part 3 of Schedule 14 to the Bill of specific provisions for the protection of your Petitioners in the exercise of their statutory functions and the Promoter's intention to provide additional safeguards through an Environmental Memorandum and other documents (currently in draft), your Petitioners have a number of concerns regarding the impact of the Bill's proposals and the adequacy of the safeguards provided for in relation to the environment. They have, however, been engaged in constructive discussions with the Promoter and are hopeful of resolving all outstanding issues of concern to them in further discussions. Nevertheless, there are some matters, particularly in respect of flood defence and conservation, which they have concluded should be pursued through this Petition in case they cannot be so resolved.

*Flood defence concerns generally*

- 8 The Bill should not give rise to new or enhanced flood defence risks. To that end, your Petitioners are particularly concerned both about loss of flood storage capacity at West India Dock and about residual flood risks and they consider that it will be necessary for some additional studies to be undertaken which, if the Promoter so agrees and these are undertaken sufficiently in advance of the prospective works, it may be possible to deal with through the mechanism of the approval procedures contained in the protective provisions in Part 3 to Schedule 14 of the Bill. In relation to such studies, your Petitioners have particular concerns regarding, amongst other matters, the absence or inadequate assessment of hydraulic and sediment modelling to determine the impact on the inter-tidal foreshore from proposed works or operations (such as transportation of arisings from tunnels) and how this will adversely affect the stability of the flood defences, river bed stability and the estuarine habitat.

*Temporary and permanent loss of flood storage capacity in West India Dock*

- 9 The Bill makes provision for the construction of 6 metre diameter twin-bore tunnels and a new Isle of Dogs Station under West India Dock North.
- 10 Your Petitioners are concerned that the construction of the tunnels and the new station will result in the loss of flood storage capacity in West India Dock, on a permanent basis due to the construction of the Isle of Dogs station and on a temporary basis during the construction of the tunnels and the station. Your Petitioners consider this loss of flood storage capacity to be unacceptable, and this is supported by the stance taken in the published Thames Tideway Encroachment Policy (2001) and the National Encroachment Policy which has now been agreed by all the Regional Flood Defence Committees. Loss of flood storage capacity will increase flood risk from the River Thames and set an unacceptable precedent for future development which encroaches into tidal waters.
- 11 Your Petitioners contend that the appropriate course is for the Promoter to take steps to mitigate this loss of flood storage by providing compensatory flood storage and provision for this should be made in the Bill.

*Residual flood risk*

- 12 The Bill proposes significant lengths of tunnelling and other works in the floodplain of the River Thames, specifically the tunnel between Plumstead Portal and North Woolwich Portal under the River Thames and the tunnel from Victoria Portal westwards towards Central London. The floodplain, which encompasses most of the Docklands area, is defended by means of the existing tidal flood defence structures along the River Thames and its tidal tributaries. Your Petitioners are concerned that adequate provision has not been made in the Bill to survey and monitor flood defences (including breach modelling where appropriate) to assess and mitigate against any residual risks arising from failure of the flood defences (during tunnelling, dredging and other construction activities).

- 13 Your Petitioners are concerned that failure of the current flood defences would result in flooding of these tunnels, posing a risk to passengers using the rail network proposed by the Bill. In addition, the flooding of these tunnels may result in the transfer of floodwaters through the tunnels resulting in flooding in other parts of the tunnel network, and possible transfer of pollutants.
- 14 Your Petitioners are further concerned by the absence of provision for securing that new and altered buildings (e.g. stations) and other structures within the flood zone (such as ventilation shafts) are so designed as to protect against enhanced flood risks.
- 15 Having regard to the principles embodied in Planning Policy Guidance 25, including the need, highlighted in paragraphs 35, 69 and Appendix A paragraph 3, to take account the risks of flooding, the standards of existing flood defences and the ability to improve them, and the application of the precautionary principle, your Petitioners are concerned that the proposed works should incorporate a high standard of flood defence. It should be emphasised that the existing flood defences can reduce but not eliminate the risk of flooding.
- 16 Your Petitioners do not believe that the proposals under the Bill mitigate the risk of flooding identified, though they believe that there are engineering solutions available which would mitigate this risk. Accordingly, your Petitioners respectfully submit that the Promoter should undertake further investigations to identify measures which could be implemented to mitigate this risk, and agree with your Petitioners arrangements for the implementation of such measures.

*Disregard of the your Petitioners' nature conservation duties*

- 17 By virtue of sections 4 to 9 of the Environment Act 1995, your Petitioners have a principal aim, in discharging their functions, so to protect or enhance the environment as to contribute towards the objective of sustainable development and also certain more specific conservation and recreation duties. Those duties include a general duty, to such extent as they consider desirable, to promote conservation and recreation as there defined, a duty to have regard to conservation

in exercising their pollution control functions and, in the case of other functions, a duty to further conservation interests and a duty to take into account the effect which proposals would have on flora and fauna. Your Petitioners are also one of the authorities subject to the duty contained in 28G of the Wildlife and Countryside Act 1981, in relation to sites of special scientific interest, to take reasonable steps, consistent with and in the proper exercise of their functions, to further conservation as defined in that section.

18 The provisions of Part 3 of Schedule 14 to the Bill provide a mechanism for your Petitioners to exercise a degree of control over works and operations authorised by the Bill in the interests of the functions for which they have responsibility. However, those provisions currently make no reference to the discharge by your Petitioners of their conservation and recreation functions and, whilst the Promoter has now offered an amendment in relation to the definition of “drainage work” with a view to addressing this concern, your Petitioners have concluded that the proposed wording is not sufficient for that purpose.

19 Your Petitioners are particularly concerned that:

- (a) paragraph 2(3)(c) of Part 3 of Schedule 14 to the Bill includes reference to other functions of your Petitioners but makes no reference to conservation and recreation, although, as described above, your Petitioners have specific conservation and recreation functions and it is now common for there to be reference in such protective provisions to the discharge of their conservation and recreation functions. These are also matters that your Petitioners are specifically required to take into account when issuing any consent under section 109 of the Water Resources Act 1991 which the provisions at Part 3 of Schedule 14 are intended to replace;
- (b) whilst particular reference to the discharge of your Petitioners’ conservation and recreation functions was not made in the equivalent protective provisions of the Channel Tunnel Rail Link Act 1996, this gave rise to considerable difficulties for your Petitioners in practice;

(c) the Bill will inhibit your Petitioners' ability to ensure sustainable development as outlined in statutory guidance pursuant to your Petitioners' duty as set out in section 4 of the Environment Act 1995. The omission of reference to conservation and recreation in Part 3 of Schedule 14 will severely curtail your Petitioners' ability to undertake this statutory role.

20 Your Petitioners are prompted in raising these concerns both by a general concern at the wide-ranging potential impacts of the scheme for which the Bill provides so far as affecting conservation matters but also by a number of more particular concerns. These now include a particular concern respecting the dredging proposals at Bow Creek and the River Thames which may result in mobilisation of contaminants and movement of sediments causing hydraulic and ecological impacts. These are matters that your Petitioners believe require further assessment in order to avoid or mitigate adverse environmental impacts.

21 The Promoter has indicated that matters relating to nature conservation will be dealt with in its Environmental Minimum Requirements, Construction Code of Practice and Environmental Memorandum. These documents are in draft and subject to further discussion, but your Petitioners remain to be convinced that these documents can or will adequately address the need for your Petitioners' direct influence as respects the design and construction of the works so as to avoid or mitigate adverse environmental impacts. Furthermore, your Petitioners are concerned that omissions and conflicts may arise in the treatment of relevant matters partly through these documents and partly through the powers and protective provisions contained in the Bill.

22 Your Petitioners are further concerned by the absence of provision for your Petitioners to recover their reasonable costs, charges and expenses in examining and approving detailed Crossrail plans and proposals which are to be put to them. The burden of this exercise is likely to be exceptional when compared with more ordinary development applications and, for that reason in particular, the absence of provision to resource this is liable to compromise your Petitioners, both in

responding to the special demands of the project and in simultaneously undertaking their ordinary duties in relation to other development proposals.

- 23 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 and interests and for which no adequate provision is made to protect your Petitioners.

*Conclusion*

- 24 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, Counsel or Agents and with witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioners 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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