

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 POLLEN ESTATE TRUSTEE COMPANY LIMITED

SHWETH 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 Petitioner and its properties

6 Your Petitioner is the Pollen Estate Trustee Company Limited, which is a private limited company that owns the freehold interest in 42-43 Great Malborough Street (title number NGL 767447) and 55-57 Great Malborough Street (title number NGL 767426) (both of which are located on the south side of Great Malborough

Street) and additionally owns the subsoil to the public road fronting 10-12 Great Malborough Street, all of which fall within the City of Westminster and are set out in the Book of Reference under parcel numbers 487, 495 and 476, respectively.

- 7 In addition, whilst not subject to the compulsory purchase provisions of the Bill, your Petitioner owns the freehold interest in 10 Great Malborough Street and 20 Ramillies Place (title number LN 136226), 12 Great Malborough Street and 18 Ramillies Place (title number 316723), and 10-12 Great Malborough Street (even numbers) and 19 Ramillies Place (title number NGL 814328), which are all in use as offices and are located on the north side of Great Malborough Street and would be affected by the proposed works.
- 8 Your Petitioner and its rights, interests and property are injuriously affected by the Bill, to which your Petitioner objects for the reasons amongst others, here stated.

Your Petitioner's concerns

- 9 The Promoter seeks to compulsorily acquire the subsoil interest or new rights in the Petitioner's properties for the purpose of constructing and operating a railway, part of which will lie directly under your Petitioner's properties. The Environmental Statement that accompanied the Bill indicates that the proposed works are likely to have a significant effect on the stability of your Petitioner's properties. Furthermore, these works would also include the construction of a station at Bond Street station, as well as the construction of other stations (Work Nos.1/3A and 1/3B). These works are likely to generate significant impacts in terms of dust, noise and other nuisances in addition to significant movements of traffic and disruption to the local highway network.
- 10 Your Petitioner is not opposed in principle to the intended new railway. However, it is concerned that the powers proposed in the Bill as affecting its property 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 its property interests are reasonably safeguarded, particularly in view of the depth of the properties' foundations, and generally its structural

characteristics. Accordingly, it objects 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

- 11 Your Petitioner objects to the provisions of Clause 6 of the Bill, which it apprehends could adversely affect and interfere with some of your Petitioner's properties. Under these provisions, and those in Clause 7, the Promoter would be able to acquire compulsorily so much of the subsoil and undersurface of your Petitioner's properties 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 Petitioner questions the need for such extensive powers, fearing that their exercise could lead (by tunnelling, other construction works and the running of trains) to damage to these properties due to settlement or subsidence, and a serious detraction from your Petitioner's quiet enjoyment of them, with the result that significant loss and damage could be suffered by your Petitioner.
- 12 For the same reasons, your Petitioner also objects 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 those of your Petitioner's properties as are within the limits of deviation.
- 13 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 Petitioner's 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 Petitioner further objects to the provisions of the Bill as they might affect your Petitioner's properties.
- 14 Your Petitioner is 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 Petitioner's properties. The provisions of Clause 1 of the Bill could therefore well result, your Petitioner apprehends, 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 Petitioner's properties. The resulting noise, vibration and, possibly, damage would therefore cause your Petitioner great inconvenience and loss. Your Petitioner therefore submits that such deviation could and should be more closely restricted wherever possible.

- 15 In addition, your Petitioner asks, insofar as the subsoil and undersurface beneath its properties may be affected, that it 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 Petitioner will argue that it should be properly compensated by the Promoter for any loss of development value of any of its properties and that it should be fully indemnified in respect of any additional design or construction costs incurred by your Petitioner in carrying out such future development which would not have occurred but for the provisions of the Bill.

Settlement and associated damage to properties during and after construction

- 16 Your Petitioner is concerned about settlement effects on its properties, particularly as the Environmental Statement acknowledges that the stability of buildings along Great Malborough Street may be affected by the proposed construction and operation of the tunnels that pass directly beneath them.
- 17 Your Petitioner submits 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 Petitioner's 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 Petitioner also seeks assurances, as noted above

under paragraph 15 of this Petition, that it will continue to have the facility to construct such foundations as may be necessary to support development on the site, that the compulsory purchase powers which are proposed be limited accordingly, and that your Petitioner will be properly compensated by the Promoter for any loss of development value and fully indemnified in respect of any additional design or construction costs incurred by your Petitioner in carrying out such development.

18 Your Petitioner humbly submits 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 the Promoter's own expense a full survey of the condition of your Petitioner's properties, including subsoil investigations and surveys, both before and after the construction and commencement of operation of the works, with details of all such surveys being provided to your Petitioner;
- (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 Petitioner's properties to your Petitioner for its reasonable approval and to give your Petitioner proper notice of the commencement of and full consultation upon all works (including the boring of the running tunnels) affecting your Petitioner;
- (d) to implement an effective and agreed monitoring system before commencement and during construction of the works, to measure the exact effect of any settlement on your Petitioner's properties;
- (e) to agree a threshold with your Petitioner for ground and building movement within the vicinity of your Petitioner's 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 Petitioner's properties;

- (f) to agree necessary safeguarding or remedial measures with your Petitioner, to be carried out at the expense of the Promoter;
- (g) to use all available grouting, de-watering, freezing and pressure-working methods; and
- (h) to carry out at the Promoter's expense any underpinning and strengthening works that may be agreed between your Petitioner and the Promoter and are deemed necessary for the protection of the building.

19 Your Petitioner submits that it should also be entitled to make its claim for compensation in respect of damage arising to its properties by the execution of the works, or for injurious affection thereof by the execution or working of those works, separately from any claim for compensation in respect of the acquisition of any land (or interests therein) from your Petitioner 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

20 Noise and vibration arising from the construction and operation of the railway and its associated works and structures also concerns your Petitioner. Your Petitioner submits 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 Petitioner wishes to see strict standards set to which the Promoter must be made liable to comply. There must, in your Petitioner's submission be a threshold agreed between your Petitioner and the Promoter of the Bill. If that threshold is exceeded, the nominated undertaker should be obliged to cease construction until such time as remedial measures are in place which will reduce noise levels below the agreed threshold.

21 Your Petitioner is concerned about dust and dirt produced during construction of the proposed works. Your Petitioner 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 Petitioner's properties. Your Petitioner requests that provision be made to ensure that the Promoter takes responsibility for the reimbursement of your Petitioner for additional expense caused by dust and dirt such as more frequent cleaning of its affected properties, and more frequent replacement of air conditioning filters.

22 Your Petitioner is concerned about the effect of these matters on its properties and, having regard to the scale of disruption and disturbance envisaged, your Petitioner therefore seeks protection in relation to such effects. In particular, your Petitioner 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 Petitioner submits that the Promoter should consult with it about proposed working methods and in relation to all aspects of likely environmental impact to your Petitioner's properties and that the Promoter should be obliged to agree a scheme of work with your Petitioner for the benefit of the occupiers of your Petitioner's properties, such scheme of work to include, amongst other things, reference to noise, vibration and general disruption.

23 Your Petitioner is concerned about vibration both during construction and on completion of the proposed works, particularly with regard to the concerns noted above relating to the prospect of ground settlement caused by the proposed works. Your Petitioner fears that damage will result both generally and from vibration if piles in the vicinity are driven rather than bored or hand-dug or as a result of the vibrations caused by tunnelling as the tunnel head passes beneath its properties, which would either cause disturbance or present a danger to the health and safety of occupiers and visitors to its properties. Your Petitioner requests that provision is made to ensure the absence of impact-induced vibration by the use of absorptive track beds or other means, and also to mitigate against damage to any part of your Petitioner's properties and avoid any disturbance or damage to the health and safety of occupiers and visitors to your Petitioner's properties that may occur as a result of the proposed works.

Interference with services

- 24 Your Petitioner wishes to be satisfied that there will be no disruption to statutory services provided to any of its properties as a result of the construction of the proposed works. In your Petitioner's submission, a co-ordinated programme of works to services leading into its properties needs to be established by the Promoter and the details provided to your Petitioner, to prevent a succession of statutory undertakers' works to and reinstatement of the area around and including Great Malborough Street.

Compensation

- 25 Your Petitioner respectfully submits that the proposals contained in the Bill are causing a blight on your Petitioner's properties. They are already blighted by the proposals contained in the Bill. Your Petitioner fears that existing and prospective lessees, prospective purchasers or developers, and any occupiers will state that the proposals would so blight the property that they would not be interested in acquiring or occupying any part of the property or that existing lessees or prospective purchasers and developers will demand a considerably reduced rent or consideration respectively, due to the prospect of the works. Moreover, the Bill does not contain adequate provisions for compensating such blight and your Petitioner respectfully suggests that it do so.
- 26 Your Petitioner further humbly submits that such provisions with regard to compensation in respect of compulsory acquisition and other matters as are proposed in the Bill are inadequate to compensate your Petitioner for the loss, damage and inconvenience which it might suffer as a result of the construction and subsequent use of the proposed works. Further provisions should, it submits, be included in the Bill including provisions respecting the making and assessment of claims for compensation, and indemnifying your Petitioner for any loss it might suffer as the result of unfavourable rent reviews respecting the leases currently affecting some of its 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 Petitioner's properties or for any loss (so attributable) which your Petitioner might suffer in the event of it not being able to re-let its properties (in whole or in part) to existing or new tenants or in the event of it only being able to do so at a reduced premium or rent.

General Concerns

- 27 Your Petitioner submits that the Promoter should be required to indemnify it 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

- 28 Your Petitioner submits that provision should be made for the Promoter to repay to your Petitioner 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 including the costs of any surveys, investigations, works or continued monitoring of your Petitioner's properties as are reasonably carried out or required in consequence of the Bill or of any provision thereof.
- 29 There are other clauses and provisions in the Bill which, if passed into law as they now stand, would prejudicially affect your Petitioner and its rights, interests and property and for which no adequate provision is made to protect your Petitioner.

Conclusion

30 Your Petitioner submits that the Bill fails adequately to safeguard and protect their interests and those of their lessees and tenants, and so should not be allowed to pass into law without these issues being addressed.

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 itself, its Counsel or Agents and with witnesses in support of the allegations of this Petition against so much of the Bill as affects the properties, rights and interests of your Petitioner and in support of other such clauses and provisions as may be necessary or expedient for its 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.

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