

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005–06

CROSSRAIL BILL

PETITION

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:

SME (HAMMERSMITH) LIMITED

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.

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 property

6 Your Petitioners are the underlessees of a ground floor restaurant at No 48 Cowcross Street, Farringdon, London EC1, which is part of the Cardinal Tower and Cardinal House block at 2a – 12 Farringdon Road and 48 – 52 Cowcross Street (together known as ‘Cardinal Tower’), on the corner of Farringdon Road and Cowcross Street, and which is the building shown numbered 19 in the London Borough of Islington on the plans deposited with the Bill. Your Petitioners hold the underlease of its restaurant for a period of 25 years from 14th September 1984. Your Petitioners are licensees of Kentucky Fried Chicken (Great Britain) Limited and a registered user of trade marks owned by Kentucky Fried Chicken Limited. As a result your Petitioners operate their restaurant under the “Kentucky Fried Chicken” label, selling chicken and other food products prepared by it in accordance with recipes invented by Colonel Harland Sanders and others. Your Petitioners, by their holding company SME Group Limited, also operate a number

of other Kentucky Fried chicken restaurants throughout the United Kingdom under similar such licences.

7 Your Petitioners opened their restaurant at 48 Cowcross Street in April 1990, and they had agreed with their licensor that the initial period of the License would be under 10 years, which two further 5 year renewal options. Under the terms of your Petitioners' licence agreement, which is lengthy and contains most detailed and strict provisions, your Petitioners have committed large sums of money in (inter alia) purchasing from the licensor certain items of equipment necessary and required for the preparation and sale of Kentucky Fried Chicken products and in converting the restaurant from its former condition to one acceptable to the licensor for the sale of Kentucky Fried Chicken products. Your Petitioners are also obliged, from time to time, to pay to its licensor a service charge of gross sales during a certain fixed period.

8 This considerable capital expenditure by your Petitioners is regarded as a wholly worthwhile investment in what is an excellent property so far as its location and business potential is concerned. Your Petitioners confidently expect to achieve a handsome return on this investment.

9 Your Petitioners are supportive of the concept and desirability of an East-West rail link and of the improvement of the provision of public transport in London and the surrounding areas, and are therefore supportive of the Bill in principle. Furthermore, your Petitioners seek to work together with Crossrail, the Government and the local authorities (in particular the London Borough of Islington) to facilitate the provision of Crossrail.

10 However, your Petitioners and their property are injuriously affected by some aspects of the Bill, to which your Petitioners object for the reasons amongst others, here stated.

Your Petitioners' concerns

11 Your Petitioners are concerned that the powers proposed in the Bill as affecting their property goes beyond what is required. Furthermore, 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.

Cardinal Tower: Compulsory purchase and subsoil acquisition and related matters

- 12 The Bill provides for a number of works which are set out in Schedule 1 to the Bill, including the development of an underground railway, northern tube, including (amongst others) a station at Farringdon (Work No 1/3A) and for the development of an underground railway, southern tube, including (amongst others) a station at Farringdon (Work No 1/3B). The Bill provides for the development of a Western Ticket Hall to Farringdon Station to be located on the site of Cardinal Tower. The Promoter seeks to compulsorily acquire the entirety of Cardinal Tower in order to demolish the building for the purpose of building the Western Ticket Hall.
- 13 The current proposals therefore contained in the Bill and associated documentation provide for, amongst others:
- (a) The compulsory acquisition of the freehold of Cardinal Tower;
 - (b) The demolition of the existing property;
 - (c) The construction of part of the Crossrail tunnels beneath the land; and
 - (d) The construction of a new ticket hall surface level with ventilation shafts and emergency intervention equipment.
- 14 Your Petitioners are greatly concerned with the provisions of the Bill as they would, by clause 6, enable to compulsory acquisition of your Petitioners' and every other interest in Cardinal Tower and its demolition. Your Petitioners apprehend that in this event it would suffer significant loss and damage which would not adequately be compensated by the provisions of the Bill. This is because at the current time, and indeed at the time when the Promoter is likely to enter your Petitioners' premises under the compulsory powers intended to be conferred by the Bill, the substantial investment which your Petitioners have made in the property would not be reflected in a proportionately higher market value.

As open market value would be the basis of the assessment of compulsory acquisition under the terms of the Bill, your Petitioners fear as a result that the compensation it would received under the Bill would be totally inadequate and unjust.

- 15 Your Petitioners humbly submit that the Promoters should not be permitted by means of the Bill to interfere with private property rights and interests unless, and except 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 do not consider that any proper reasoned justification has been given for the outright acquisition of the freehold and subsequent total demolition of Cardinal Tower. Your Petitioners believed that instead it may be possible for the need to demolish Cardinal Tower to be avoided altogether by a slight realignment of Work No. 1/3A and Work No. 1/3B (in so far as they apply to the provision of the Farringdon Road (Western) Ticket Hall) and by modifications to the design of the proposed Farringdon Road (Western) Ticket Hall. Alternatively, it might also be possible for only part of Cardinal Tower to be demolished without prejudice to the implementation and use of the proposed works. In this regard it is noteworthy and regrettable that the Environmental Statement accompanying the Bill does not make an adequate attempt to justify the dismissal of the alternatives (that were considered and reported at earlier stages) to those contained in the Bill and to which your Petitioners object.
- 16 Accordingly your Petitioners humbly submit that the Promoters should demonstrate and be put to strict proof of the need for and desirability of the proposals in the Bill as affecting your Petitioners' property (in particular, the need to totally demolish Cardinal Tower) and that the limits of deviation of Work No 1/3A and Work No 1/3B (in so far as they apply to the provision of Farringdon Road (Western) Ticket Hall), the resulting powers for the compulsory acquisition of the 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' property to the extent (if any) to which they can be strictly justified and so as to minimise or prevent interference with that property.

- 17 If however it is proven to your Petitioners' satisfaction that the complete demolition of Cardinal Tower is necessary and expedient, or at least that part in which your Petitioners have an interest has to be demolished, then your Petitioners will argue for proper compensation to be paid for the compulsory acquisition of its restaurant, such compensation property reflecting the investment made by your Petitioners in the recent past. Your Petitioners will argue the inadequacy of the Bill's present provisions and your Petitioners will demonstrate the unfairness and injustice which would flow as a result were such provisions to be applied as they currently stand.
- 18 In the event that it is proven to your Petitioners' satisfaction that the complete or partial demolition of Cardinal Tower is necessary and expedient, then your Petitioners do not accept that there is any operational or other justification for the Promoters, who need only the ground floor and everything below the surface for the provision of the station entrance, ticket hall and the station itself, in seeking to acquire the freehold of the airspace above the proposed station, together with its development potential. In the event that the whole interest is acquired, then your Petitioners submit that it would be entitled to have returned to them the same interest as they had previously had in that part above the ground floor. Your Petitioners object to the powers contained in the Bill for this purpose.
- 19 In the event that it is proven to your Petitioners' satisfaction that the complete or partial demolition of Cardinal Tower is necessary and expedient, and that they would require relocation under the provisions of the Bill and supporting documentation, it is not clear to your Petitioners that all steps will be taken to minimise adverse environmental effects rather than treating their relocation as an alternative to the maintenance of high environmental standards. Your Petitioners' site is particularly strategically positioned, and relocation to other areas will not necessarily take this into account. Your Petitioners therefore submit that they should be fully consulted in advance in relation to any need for and proposals for relocation, including the of proposed compensation. Your Petitioners further submit that they are adequately compensated for any such relocation in advance of the relocation for any disruption to business.

20 In the alternative event that Cardinal Tower can be saved from demolition, then your Petitioners also object to the Bill in the manner hereinafter appearing for the adverse affects and interference with their property which they apprehends nonetheless.

Settlement

21 First, in the event that Cardinal Tower is not wholly demolished, your Petitioners would be concerned about settlement effects on your Petitioners' property. Your Petitioners envisage that damage could be caused to your Petitioners' property as a result of the proposed works. 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 your Petitioners' property. In your Petitioners' submission, there would need to be an agreed threshold between your Petitioners and the Promoter for ground movement within the vicinity of your Petitioners' property and distortions of its structure. If that threshold is exceeded then it would be imperative that the undertaker nominated to carry out the works would be obliged to cease construction until such time as remedial measures are in place which will minimise settlement and consequently avoid distress to the building. Your Petitioners request that it would be given at least 28 days' notice of the intended passage of the tunnel boring machines beneath the property. Any necessary safeguarding or remedial measures would need to be agreed between your Petitioners and the nominated undertaker.

22 Tunnelling of the station platform 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. Should the proposed station at Farringdon be relocated and any part of the station was still to fall below Cardinal Tower, 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.

Noise

- 23 In the event that Cardinal Tower is not wholly demolished, your Petitioners would be concerned about noise during the construction of the proposed works. The noise and vibration arising from the construction of the railway and its associated works and structures (such as ventilation shafts) is a matter of significant concern to 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. Your Petitioners submit that strict standards should be set beyond those currently envisaged by the Promoter and to which the Promoter must be made liable to comply.
- 24 Your Petitioners therefore submit that provision should be made that noise and vibration are minimised by reference to such prescribed thresholds. If those thresholds are exceeded, the nominated undertaker should be obliged to cease construction until such time as remedial measures are in place which will reduce noise and vibration levels below the agreed threshold.

Dust

- 25 In the event that Cardinal Tower is not wholly demolished, your Petitioners would be concerned about dust and dirt produced during the 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 at Cardinal Tower. Your Petitioners would 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 the property and more frequent replacement of air conditioning filters.

Vibration

- 26 In the event that Cardinal Tower is not wholly demolished, your Petitioners would be concerned about vibration both during construction and on completion of the proposed works. Your Petitioners would fear that damage will result from

vibration if piles in the vicinity are driven rather than bored or hand-dug. Your Petitioners would also fear that vibrations caused by tunnelling, if the tunnel heading passes beneath their properties for each of the two tunnel drives would cause disturbance to the occupiers of their properties.

- 27 The operation of the railway (including the use of ventilation shafts and other ancillary uses) must also be expected to give rise to air and ground borne noise and vibration in respect of which the Promoter is subject to no limitations in the Bill or the Environmental Statement. Your Petitioners submit that the Promoter should be compelled to use best available techniques in the construction and operation for the railway to ensure that these adverse effects are minimised. Furthermore, your Petitioners submit that the nominated undertaker should also be required to consult with your Petitioners with regard to noise and vibration monitoring. Finally, they submit that strict standards for specific building types and uses should be set to which the Promoter must be made liable to comply.

Interference with services

- 28 In the event that Cardinal Tower is not wholly demolished, your Petitioners would wish to be satisfied that there will be no disruption to statutory services provided to Cardinal House as a result of the construction of the proposed works. In your Petitioners' submission a co-ordinated programme of works to services leading into Cardinal Tower would need to be established by the promoter and the details provided to your Petitioners, to prevent a succession of statutory undertakers' works to and reinstatement of Farringdon Road and Cowcross Street.

Deterioration of condition

- 29 In the event that Cardinal Tower is not wholly demolished, your Petitioners would be concerned that the condition of Cardinal Tower would deteriorate as a result of the any works in the vicinity. Should there be works in the vicinity, and should these works be authorised, your Petitioners would intend to commission a condition survey of the property shortly before the commencement of the works and shortly after their completion. Your Petitioners would request that the costs of carrying out such surveys, and of rectifying any deterioration in the condition of the property found to be due to the works, be reimbursed by the Promoter.

Access

- 30 Your Petitioners notes 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. In the event that Cardinal Tower is not wholly demolished, your Petitioners would request that good and open access be maintained in all other cases as well, 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 there, and the parking, loading and unloading of vehicles. Your Petitioner further request that vehicular access to Cardinal Tower be maintained where practicable and that compensation be awarded for any costs incurred through inability to service or park at Cardinal Tower due to the works.

Disturbance to business

- 31 In the event that your Petitioners remain in occupation of their restaurant during construction of the proposed works, then your Petitioners have severe reservations about the effect upon its business of the construction works and the general disturbance and loss of amenity to the area. In particular, your Petitioners are concerned with the following matters:

- (a) the possibility of there being a work site in close proximity to your Petitioners' premises;
- (b) the proposed temporary closures of Cowcross Street and Farringdon Road; and
- (c) the generation of unacceptable levels of construction traffic and of construction noise, vibration and dust (described in more detail above).

Your Petitioners are concerned about the effect of these matters on its property and business and having regard to the scale of disruption and disturbance envisaged your Petitioners therefore seek protection in relation thereto.

- 32 Your Petitioners further humbly submit 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 Petitioners for the loss of business and general disturbance it might suffer as a result of the construction of the works. Your Petitioners therefore urge that the Bill should not be allowed to proceed unless adequate provision is included in it to compensate your Petitioners for such loss and general disturbance.

General concerns

- 33 Your Petitioners submit that it should also be entitled to make its claim for compensation in respect of damage arising to its property by the execution of the works, or for injurious affection thereof by the execution or working of these works, separately from any claim for compensation in the respect of acquisition of any land (or interest therein) from your Petitioners under the powers of acquisition.
- 34 Your Petitioners respectfully submit that the proposals contained in the Bill are causing a blight on Cardinal Tower. It is already blighted by the proposals contained in the Bill. Moreover, the Bill does not contain adequate provisions for compensating such blight and your Petitioners respectfully suggest that it do so.
- 35 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.
- 36 As a general matter, 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.
- 37 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

38 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners and those 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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P E T I T I O N

of

SME (HAMMERSMITH) LIMITED

Against, the Bill – On Merits –

Praying to be heard by Counsel, &c.