

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:

FREIGHT TRANSPORT ASSOCIATION 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. In particular, they provide for the disapplication of licensing requirements, the imposition of special duties on the Office of Rail Regulation (“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

6 Your Petitioners are the Freight Transport Association Limited (Company Number 00391957), a private company limited by guarantee whose registered offices are located at Hermes House, St. John’s Road, Tunbridge Wells, Kent, TN4 9UZ. Your Petitioners are a professional organisation with over 12,000 members comprising companies moving goods by road, rail, sea and air. Your Petitioners’ members operate over 200,000 goods

vehicles, which is almost half the United Kingdom fleet. In addition they consign over 90 per cent of the freight moved by rail and 70 per cent of sea and air freight.

- 7 Your Petitioners have an interest in maintaining and enhancing freight transport capacity throughout the United Kingdom on behalf of your Petitioners' members and their clients and customers. Whilst not objecting in principle to the provision of a passenger transport scheme through central London from Maidenhead to Shenfield and Abbey Wood, there are provisions in the Bill that will reduce overall freight transport capacity in the United Kingdom and have an adverse impact on the businesses of your Petitioners' members.
- 8 Your Petitioners' members and their rights and interests are injuriously affected by the Bill, to which your Petitioners object for the reasons amongst others, hereinafter stated.

Your Petitioners' concerns

- 9 Your Petitioners are concerned that the potential and actual exercise of powers proposed to be provided to the Promoter by the Bill will induce uncertainty in the freight transport industry so as to stifle growth and future investment. Specifically the property acquisition powers provided by Clause 6 of the Bill provide the Promoter with the power compulsorily and exclusively to acquire the rail network along the entire length of the proposed Crossrail route, which is currently used by the rail freight industry to carry freight into, out of and through central London.
- 10 Your Petitioners believe that the passing into law of the Bill in its present form would be contrary to the undertakings provided by the Secretary of State for Transport to Parliament on 19 July 2005 (Rail freight: market growth and support from Government), which supported the need for certainty of rail network access and stated that appropriate compensation would be provided should the interests of freight companies or others be impaired by lack of rail network access. The Secretary of State also undertook to ensure that regional and local planning decisions were determined in a manner that would reflect Government priorities relating to the sustainable movement of goods, including private investment in rail freight facilities. It is clear that if the Bill is passed in its current form this undertaking will not be met and as a result your Petitioners' members,

who include rail freight-dependant businesses, may suffer a decrease in investment and growth and loss of business, and an increase in costs.

Capacity

- 11 It is clear that any increased passenger rail service traffic on the existing rail network will reduce capacity if additional network infrastructure is not also provided. The proposed Crossrail scheme will increase the amount of rail traffic on a network that is already highly congested. It is clear that even with the minimum level of Crossrail services proposed in the Environmental Statement and associated technical documents existing rail service levels could not be accommodated and future capacity growth would not be possible without additional infrastructure. Your Petitioners respectfully submit that the Bill should not be allowed to pass into law without provision for future network capacity growth through placing an obligation on the Promoter to provide additional rail infrastructure capacity to accommodate proposed Crossrail services and future growth in existing rail traffic.

- 12 The recent London Gateway Port public inquiry and the subsequent announcement by the Secretary of State that he was minded to approve the proposed new port facility, highlighted the Government's preference for a 25 per cent share of the port's freight to be cleared by rail, which will place extra rail freight services on the south-eastern section of the proposed Crossrail route. Your Petitioners are concerned that the Bill fails to take into account the increased rail freight services, predicted to be up to 32 a day, that will serve the completed London Gateway Port. It is respectfully pointed out that the Promoter, in drafting the Bill, has failed to take a consistent or integrated approach to the support and delivery of rail freight growth to the transport industry and its customers. It is submitted that the Bill should not be allowed to pass into law without providing for the expected increase in rail freight services that will follow from the construction and operation of the London Gateway Port.

- 13 There are further concerns regarding the viability of providing rail connections to the other proposed port developments at Bathside Bay and Felixstowe as the national rail network would be unable to cope with the increased traffic without capacity

enhancements. It is further submitted that the Bill should not be allowed to pass into law without accounting for the national rail network capacity issues that are likely to emanate from future port and other rail-served facility development.

Viability

- 14 There is a number of concerns that have remained throughout the Crossrail project development process relating to the economic viability of operating the scheme. These were highlighted in the Montague review of the Crossrail business case in July 2004, as was the ability to operate at the planned train throughput levels given the multiple interfaces with the national rail network. The Promoter's solution to the problem appears to be the displacement of existing services using the national rail network through the exercise of the powers in clauses 22-35 of the Bill, which would provide the Promoter with priority access to the entire rail network along the proposed route and displace existing and future users. In the interests of fairness and economic stability to your Petitioners' members, it is submitted that these Clauses should be omitted from the Bill before it is allowed to pass into law. The Promoter must be required to compete with all other users of the national rail network, for the right to operate services, through the existing access arrangements provided by the Railways Act 1993 (c. 43).

Independent regulation

- 15 Your Petitioners are gravely concerned that the duties imposed on the independent Office of Rail Regulation under Clauses 22-24 of the Bill (the duty to exercise its access contract functions in favour of Crossrail) will undermine current impartial and open regulation of the railways and in turn create a climate of uncertainty throughout the rail freight industry. Clauses 22-24 of the Bill further provide the Promoter with the power to extend the period of operation of the duty without reference to Parliament. Your Petitioners are especially concerned that open and fair regulation of the railways is maintained through an unfettered and impartial regulator so that your Petitioners' members' timetables, access rights and future freight capacity can be determined with certainty in the interests of their customers and the use of rail to carry freight generally.

16 Your Petitioners are again concerned that the Office of Rail Regulation is to have its regulatory independence further interfered with through the operation of Clause 27, which provides the Promoter with the power to direct the Office of Rail Regulation to make and amend directions it issues under section 17 of the Railways Act 1993 (c.43) (directions requiring facility owners to enter into contracts for the use of their railway facilities). The proposed power will undermine the confidence the rail freight industry has in the independence of the Office of Rail Regulation and because of its discriminatory nature places Clause 27 of the Bill in direct conflict with Article 5 of Directive 2001/14/EC, which entitles Member State rail service operators to non-discriminatory rail track access. Your Petitioners' members will be especially affected by the exercise of this power in gaining on-going access to track and terminal facilities along and adjacent to the proposed Crossrail route.

Congestion

17 It is anticipated that the increased congestion on the national rail network as a result of the proposed Crossrail services would displace many current rail freight services to road freight. Your Petitioners' members, including road freight operators, will be directly and specially affected by the increase in road traffic congestion and the increased cost of using road-based transport. It is submitted that the Bill should not be allowed to pass into law without requiring the Promoter to provide infrastructure to increase capacity on the national rail network to account for the proposed Crossrail scheme and prevent increased road congestion.

Uncertainty

18 Your Petitioners are greatly concerned that a number of their members have suffered and continue to suffer loss of property value, business revenue and future growth as a result of the uncertainty created by the property blight placed over the proposed Crossrail route and adjacent land. Businesses served by rail freight operators are especially affected as they are unable to rely on the continued connection to or running of rail freight services to their facilities and have frozen future development and investment accordingly. In the event that your Petitioners' members suffer loss as a result of the proposed Crossrail

scheme, property blight and/or the works authorised by Clause 1 of the Bill, it is submitted that the Promoter should be required to provide full compensation for all such loss incurred.

Environment

- 19 The Promoter, in exercising the compulsory acquisition powers that would be provided by Clause 6 of the Bill in relation to the national rail network inside the limits shown on the deposited plans, will be able to prevent your Petitioners' members from accessing the rail network along the route. Your Petitioners have undertaken rail freight forecasts in conjunction with the Rail Freight Group, that have highlighted a significant shortfall in the number of freight train paths on many of the strategic rail routes in and around London. Shortfalls are most acute on the lines to the east of London, shortfalls that are likely to be increased still further by Crossrail services. Without yet knowing the final timetable of Crossrail train services it is not possible to determine how many more forecast freight train paths will be taken away. A lack of network access by your Petitioners' members would undoubtedly have the effect of displacing significant volumes of freight from rail to road-based transport, adding to the already congested road network around London. This will also have a detrimental effect on CO² and other emissions, and noise levels and traffic congestion which the Promoter has failed to take into account in assessing the impacts of the proposed works and associated powers.
- 20 Your Petitioners are concerned that the Environmental Statement which accompanied the Bill when deposited in Parliament, makes no assessment of the Crossrail scheme's impact on freight transport. The Promoter has provided little information that would allow your Petitioners' members to gauge the impact the proposed scheme would actually have on their property and businesses, should the Bill be passed. This lack of information will create large amounts of uncertainty in the freight transport industry and may cause business deals to stall or fail if not quickly resolved. The Promoter must be required to provide adequate information on the impact the Crossrail scheme will have on the freight transport industry and the economy in general to remove industry uncertainty and promote growth, in addition to the provision of compensation.

General

- 21 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.
- 22 There are other Clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect the rights, interests and property of your Petitioners' members and for which no adequate provision is made to protect them.

Conclusion

- 23 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners' members, which would be adversely affected to a material extent by the provisions of the Bill and which should not be allowed to pass into law without the issues mentioned above 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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FREIGHT TRANSPORT ASSOCIATION
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