

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:

RAIL FREIGHT GROUP

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 and their interests

6 Your Petitioners are the Rail Freight (Users & Suppliers) Group, known simply as the Rail Freight Group, Company Number 03324439, a company limited by guarantee, whose registered office is 17 Queen Anne’s Gate, London SW1. Your Petitioners are the representative body of the UK rail freight industry, whose

purpose is to grow the volumes of freight carried by rail in the United Kingdom. It comprises about 160 commercial organisations as members, ranging from infrastructure managers (such as Network Rail and Eurotunnel), through freight train operators, terminal operators, local authorities, contractors and consultants to ports and other major customers of the railways.

7 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.

8 Your Petitioners, together with the Freight Transport Association, have recently produced forecasts of future rail freight traffic which suggest significant growth over 2003 traffic levels by 2030. Particularly strong rail freight growth is forecast in the south-east of England, on two of the existing national rail network lines which the Bill would permit Crossrail to acquire compulsorily – the Great Western Main Line (GWML) from London Paddington to Maidenhead, and the Great Eastern Main Line (GEML) from Liverpool Street to Shenfield. These forecasts were developed at the request of the Government to enable it, in conjunction with its own passenger forecasts, to provide the Office of Rail Regulation and Network Rail with the High Level Output Statement as required under the Railways Act 2005 (c.14).

9 Currently, up to 114 freight trains per day use the GWML between Reading and Paddington, the majority conveying building materials for distribution in the south-east. The number is forecast to increase substantially by 2014. On the GEML between Liverpool Street and Shenfield, there are currently up to 107 freight trains per day. Many of these serve the deep sea container market. This number is expected to increase substantially, particularly in the deep sea container market. In addition, the recently-announced decision by the Secretary of State for Transport that he is 'minded to approve' the London Gateway Port development will increase the number of trains running along the GEML at Forest Gate and Stratford.

- 10 Your Petitioners welcomed the 19 July 2005 Written Statement on rail freight by the Rt. Hon. Alistair Darling MP, the Promoter of the Bill. The statement noted that rail freight's market share had increased from 8.5% to 11.5% since rail privatisation, and that this growth was anticipated to continue. The Promoter's clear policy aim is to see goods being moved in a sustainable way, which maximises benefits to the economy and to society. The statement continued 'we believe rail therefore has a crucial role to play in goods transport alongside other modes, and we wish to see freight travelling by rail instead of road wherever this makes most sense. We will therefore ensure that our policies and regulations do not put unnecessary obstacles in the way of future growth.'
- 11 Your Petitioners remind your Honourable House that it is the Government that provides for the operation of passenger rail services through the provision of franchises to privately-owned operators. In the rail freight sector, however, there are no such franchises and rail freight operators compete in the open market for business. With the large majority of your Petitioners' membership concentrated in the private sector, it is imperative to your Petitioners' members' interests that there is as little as possible interference with the market from the Government, in order to promote continued investment and growth.
- 12 The importance of providing long term confidence to investors in the rail freight industry is frequently recognised in Government statements. The Promoter's rail freight statement of 19 July 2005 has provided the industry with some confidence in the future of rail freight business in the United Kingdom; the Bill, however, undermines this confidence with its proposals of regulatory interference and preferential treatment of the Crossrail operators and operations.

Your Petitioners' concerns

Sole use or priority on surface lines

- 13 Your Petitioners concerns about the Bill as drafted are that its members will be restricted in the number of freight trains that can be expected to be allowed to

operate, not only in respect of those trains for which they have contractual rights, but those which they might reasonably wish and expect to operate in the future. This could have severe and long-lasting detrimental effects on their businesses. It is respectfully submitted that the Bill should not be allowed to pass into law without making provision for the operation of current and future rail freight services.

14 This is exemplified by Clauses 21 to 44, which effectively allow the Promoter to instruct the Office of Rail Regulation to change existing track access contracts and give the Promoter's trains priority or sole use of the GWML and GEML. This could result in all other trains that wish to use these lines being confined to the other pair of tracks.

15 Trains from the London Tilbury and Southend line (LTS) which currently use the GEML between Forest Gate and Stratford would no longer be able to do so, since one set of tracks would have to be able to have up to 24 Crossrail trains per hour per direction and the other pair of tracks would also have such a high frequency of trains that such movement would be impossible. The only other route onto the LTS is the Gospel Oak-Barking line, which crosses the GEML at Forest Gate by a bridge, but this is currently not capable of taking heavy axle load or high cube gauge freight trains, and has very limited capacity. It is respectfully submitted that the Bill should not be allowed to pass into law without making provision for capacity and heavy axle load and high cube gauge freight train enhancements along the Gospel Oak-Barking line.

Removal of the independence of the Office of Rail Regulation

16 Your Petitioners are also concerned about Clauses 21 to 44 of the Bill (the "Railway Matters" Clauses), which would allow the Secretary of State to give directions to the Office of Rail Regulation. Independent regulation is one of the essential elements of providing confidence to the private sector to invest, in that companies can be confident of being treated fairly and in having some protection against Government changing rules, legislation or regulations. Independent

regulation is the cornerstone of the Government's structure of the railways, as confirmed in the following Statement by the Secretary of State for Transport on 9 February 2004 (Col1237W): "The independence of economic regulation has already been clearly set out in my statement of 19 January. The Government also rules out any change to the rights of third parties, which will be protected. There is no question of weakening the effectiveness of economic regulation. The Government recognises that maintaining fully effective and independent economic regulation is critical for retaining investor confidence. There will be no diminution in the regulatory protection of the private sector investors in the railway."

- 17 Your Petitioners consider that the railway matters Clauses in the Bill indicate a considerable weakening of the principle of independent regulation and, as such, will seriously reduce the protection of the private sector investors in the railway which has been based, over the last ten years, on independent regulation coupled with due industry processes that are seen to be both transparent and fair to all the players.
- 18 These railway matters Clauses are not only serious in themselves in respect of Crossrail, but also set a precedent which will reduce business confidence and therefore investment in other parts of the railway. This is on the basis that, if the Government reneges on its firm commitments so soon after they are given, it can easily do so again. In fact it has already done so in the Olympics Bill, introduced into your Honourable House in July 2005.
- 19 Your Petitioners therefore conclude that, if these railway matters Clauses remain, their members' ability to continue with their businesses and grow the volumes of rail freight carried, as the Government clearly wants, would be seriously affected. Your Petitioners' members note that compensation may be payable in very limited circumstances, if at all, but this cannot substitute for the damage caused to their businesses. It is respectfully submitted that the Bill should not be allowed to pass into law without making provision for continued independent and unfettered regulation of the rail industry.

Discussions with the Crossrail team

- 20 Your Petitioners have had regular meetings with Cross London Rail Links Limited (CLRL) and with officials in the Department for Transport on matters of concern and were recently sent a draft working timetable to demonstrate how Crossrail trains could be integrated with other trains on the GWML and GEML.
- 21 The timetable provided did not require the sole use of one pair of tracks, as permitted in the Bill. The Bill is not consistent with the Environmental Statement deposited with it, as the assessed train frequencies per hour are much lower than the powers provided by the Bill would allow. For example, the Bill provides the power for sole use of sections of the rail network, which is likely to mean up to 24 trains per hour, but the proposed frequency of services set out in the Environmental Statement is well below that level. In the absence of any commitment from the Promoter, your Petitioners clearly have had to consider the worst case of sole use in preparing their Petition, as the Bill would provide the Promoter with the power to determine the minimum level of service on the Crossrail route and the Office of Rail Regulation would have a duty to approve the track access arrangements required to run the service at such levels. The provision of this track access would be to the detriment of other users of the rail network.
- 22 Your Petitioners recall that Railtrack PLC and Virgin Trains signed an agreement to upgrade the West Coast Main Line (WCML) which, although approved by the then Rail Regulator, did not take into account the contractual rights or future demand for rail freight or other passenger services, because the timetable had not been fully worked up with all interested parties before the agreement was signed and approved. The result was several years' delay, changes to the specifications to accommodate the trains and cost overruns of billions of pounds. Your Petitioners fear that Crossrail is currently at risk of suffering the same fate for the same reasons unless the detailed timetable is completed and agreed by all parties, including those who have existing contractual rights, before any commitment is made as to how many Crossrail trains can be operated on the surface sections of its route. The absence of such an agreed timetable could result in a very high cost

overrun on the surface sections, of a magnitude similar to that which occurred on the WCML.

23 Your Petitioners would remind the Promoter that, if he wishes to create a metro service with around 24 trains per hour per direction, then he must create a dedicated pair of additional tracks with no crossing movements. The establishment and running of a high-frequency metro service is what is provided for in the Bill, but without the necessary dedicated tracks on the surface sections of the route. If the Promoter wishes to create a tunnel under central London to connect two railway networks to allow some through running of passenger trains but without dedicated tracks on the surface, then he must accept that the number of Crossrail trains on the surface will be limited to that which the tracks can support whilst catering for other services, both freight and passenger.

24 Your Petitioners believe that the Promoter is seeking to provide low cost infrastructure through commandeering capacity for Crossrail trains from the existing national rail network, thus avoiding the costs of constructing an additional dedicated surface track that such a metro system would ordinarily require. To your Petitioners this appears very like attempted theft of capacity from those who have rights to it at present, have contributed to its maintenance, and have every reason to expect those rights to continue and grow.

Land

25 Your Petitioners are concerned about the amount of land that the Bill would allow the Promoter to acquire or use compulsorily, on a temporary or permanent basis, to provide for the construction and operation of the Crossrail scheme. Your Petitioners consider that the amount of land to be used or taken is excessive for the needs of the project. Your Petitioners' members are particularly concerned that some of the existing rail freight sites along the GWML will be lost, since the loss of these sites will reduce the ability of rail freight to service the construction industry in much of the south-east of England. It has taken many years to build up these businesses and it would not be easy to find alternative sites that have good

road and rail connections and that are in the best location for the businesses concerned.

- 26 Clearly it would be reasonable in relation to any alternative sites agreed by any of your Petitioners' members, that the Promoter identifies and makes all the arrangements necessary for the transfer of affected businesses to such sites as part of the provisions of the Bill. As the situation is at present, however, it appears that the development of proposals for the construction as well as the operation phase of Crossrail is in such a preliminary state that the Promoter is saying that no decisions can yet be made on the project's land needs. Your Petitioners believe that their members should not be penalised because of the apparent delay by the Promoter in firming up his plans and proposals. It is respectfully submitted that the Bill should not be allowed to pass into law without provision being made for the detailed justification, identification and classification of properties that would be compulsory acquired or used under the powers of the Bill.

Possible solutions

- 27 Your Petitioners believe that, in the absence of Crossrail, the future growth in rail freight on the surface lines concerned could be accommodated through the normal industry processes, in some cases with some comparatively small enhancements. It is not possible to state at this stage how many Crossrail trains could be accommodated on these tracks as well, since the work on the timetabling has not been completed. What is clear, however, even at this early stage, is that it will not be possible to accommodate either existing freight traffic or planned growth, alongside existing passenger services and the levels of Crossrail services allowed for in the Bill of up to 24 per hour in each direction.
- 28 Some mitigating measures are possible, either by upgrading alternative routes, such as the Ipswich-Peterborough-Nuneaton direct route or the Barking to Willesden via Gospel Oak route to allow for freight services to move east to west or west to east without going through central London, or by constructing additional tracks on the surface lines of the proposed Crossrail route. Your

Petitioners have already offered their help in working with CLRL to develop such schemes.

The importance of rail freight

29 Your Petitioners would remind your Honourable House of the success of rail freight in the United Kingdom since rail privatisation. In the last ten years, freight carried by rail has increased by over 50% and rail's market share compared with road has increased from 8.5% to over 11.5%.

30 Your Petitioners are keen to support Crossrail and believe that it should be possible to reach agreement on how many Crossrail trains can be accommodated on the surface lines without adversely affecting rail freight. However, there will be a limit to this number, which will be well below that allowed for in the Bill. Until the Promoter accepts this, and that the only way forward is to develop the timetable and the necessary options through the accepted industry processes, which have after all been set up as a result of Government policy and legislation, it will be necessary for your Petitioners, their members and rail freight in general to defend their interests by all means at their disposal.

31 Your Petitioners have urged Ministers on a number of occasions to clarify the Promoter's intentions with respect to the issues raised in this Petition. Your Petitioners urge your Honourable House to require the Promoter to do so with the minimum of delay.

General matters

32 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.

33 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

34 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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