

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 PRUDENTIAL ASSURANCE COMPANY LIMITED,

PRUDENTIAL HOLBORN LIFE LIMITED,

FOX COURT 1 LIMITED

FOX COURT 2 LIMITED

KLEINWORT BENSON (GUERNSEY) TRUSTEES LIMITED AND

BORROWDALE NOMINEES 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 and their properties

- 6 Your Petitioners are major property owners in the United Kingdom and between them own the following freehold and leasehold properties in the vicinity of the railway proposed to be authorised by the Bill:—
- (a) in the City of Westminster, 2 Eastbourne Terrace (formerly Telstar House) (including the adjoining public house on Cleveland Terrace) (numbered 109 and 110 on the deposited plans) (being an equitable interest in this property as at the date of this Petition, pending completion of its purchase from Derwent Valley Holdings PLC), 13 Stratford Place (numbered 324 on the deposited plans), 360-366 Oxford Street (Avon House) (numbered 325 on the deposited plans) and 67-69 New Bond Street (numbered 429 on the deposited plans);
 - (b) in the City of Westminster, 65, 66, 67-69, 70-71, 96 and 104 New Bond Street (numbered 431, 430, 428, 427, 402 and 409 respectively on the deposited plans and referred to collectively as “the New Bond Street properties”), 5 Great Marlborough Street (numbered 500 on the deposited plans) and in the London Borough of Camden 138-142 Holborn Bars (numbered 235 on the deposited plans); and
 - (c) in the City of Westminster, (Podium Level and Floors 7-9) 3 Sheldon Square: Paddington Central, 90-92, 94-98, 100-102, 104-108, 110, 112-114 Oxford Street, 87-91 Newman Street, 1 and 2 Berners Street, 297 Oxford Street (15 Hanover Square), 283 Oxford Street (11 Princes Street) and 391-393 Oxford Street, in the London Borough of Camden 14 Gray’s Inn Road (Fox Court) and 147-150 High Holborn and in the City of London 16-18 Finsbury Circus (19-25 Eldon Street) and 99 Bishopsgate.

Your Petitioners’ concerns

- 7 Your Petitioners support the concept and desirability of an east-west rail link between Maidenhead and Shenfield, and the improvement of public transport provision 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 relevant local authorities (in particular the City of Westminster) to facilitate the provision of Crossrail.

- 8 Your Petitioners are, however, apprehensive of the provisions of the Bill as they may affect the properties of your Petitioners described above (hereinafter referred to as "your Petitioners' properties"). For this reason, and having regard to the more detailed particulars referred to below, your Petitioners object to the Bill and its provisions hereinbefore referred to and they allege and are prepared to prove that they and their property, rights and interests are injuriously and prejudicially affected by the Bill for the reasons (amongst others) hereinafter appearing.

Compulsory purchase and subsoil acquisition and related matters

- 9 Your Petitioners object to the provisions of Clause 6 of the Bill, which they apprehend could adversely affect and interfere with some of your Petitioners' properties. Under these provisions, and those in Clause 7, the Promoter would be able to acquire compulsorily any one or all of those of your Petitioners' properties set out in sub-paragraph (a) of paragraph 6 above as are within the limits of deviation, or at least so much of the subsoil and undersurface thereof or such new rights therein, under or over as the Promoter may require for the purposes of the construction and use of the proposed works. In respect of these properties your Petitioners question the need for such extensive powers, fearing that their exercise could lead (by tunnelling, other construction works such as station works and the running of trains) to damage to these properties due to settlement or subsidence, and to a serious detraction from your Petitioners' and their tenants' quiet enjoyment of them, with the result that significant loss and damage could be suffered by your Petitioners.

- 10 Your Petitioners also object 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 Petitioners' properties set out in sub-paragraph (b) of paragraph 6 above as are within the limits of deviation. Your

Petitioners make this objection because of a similar fear to that expressed in the paragraph above that the exercise of these powers could lead to damage to these properties and a serious detraction from your Petitioners' and their tenants' quiet enjoyment of them.

- 11 Your Petitioners are especially concerned that the proposed limits of lateral and vertical deviation in Clause 1 of the Bill would permit the route for Work Nos 1/3A, 1/3B and 1/12 to be varied so as to bring the works closer to (either vertically or horizontally) some of your Petitioners' properties. The provisions of Clause 1 of the Bill could therefore well result, your Petitioners apprehend, in an inadequate vertical distance between the soffit of the tunnels forming part of Work Nos. 1/3A, 1/3B and 1/12 and the deepest part of the basements of some of your Petitioners' properties. The resulting noise, vibration and, possibly, damage would therefore cause your Petitioners great inconvenience and loss. Your Petitioners therefore submit that such deviation could and should be more closely restricted wherever possible.
- 12 Your Petitioners therefore humbly submit that the Promoter should not be permitted by means of the Bill to interfere with private property rights and interests unless, and except to 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 have not been provided with full justification for the proposals in the Bill affecting their properties and they are not satisfied that it is necessary or appropriate for the limits of deviation for Work Nos. 1/3A, 1/3B and 1/12 to be drawn so widely so as to include as many of your Petitioners' properties as the limits of deviation currently do or that it is necessary or expedient for the other powers of the Bill to apply at all or in the manner or to the extent proposed.
- 13 Accordingly your Petitioners humbly submit that the Promoter should demonstrate and be put to strict proof of the need for and desirability of the proposals in the Bill, as affecting your Petitioners' properties and that the limits of deviation of Work Nos. 1/3A, 1/3B and 1/12, the resulting powers for the compulsory acquisition of land or of interests in 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' properties to the extent (if any) to which they can be strictly justified and so as to minimise or prevent interference with those properties. In particular, your Petitioners contend that any interest in their properties acquired by the Promoter (in terms of the area over which it is to subsist, the form in which it is to take at law and any express or implied constraints which may be imposed upon the remainder of your Petitioners' properties) should be strictly limited only to that which is absolutely necessary for the construction, safe operation and maintenance of the proposed works.

14 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, damage and inconvenience which they might suffer as a result of the construction and subsequent use of the proposed works. Further provisions should, they submit, be included in the Bill including provisions respecting the making and assessment of claims for compensation, and indemnifying your Petitioners for any loss they might suffer as the result of unfavourable rent reviews respecting the leases currently affecting some of their 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 Petitioners' properties or for any loss (so attributable) which your Petitioners might suffer in the event of them not being able to re-let their properties (in whole or in part) to existing or new tenants or in the event of them only being able to do so at a reduced premium or rent.

15 Your Petitioners also object to the compensation provisions of the Bill in that those provisions are totally inadequate to compensate your Petitioners in circumstances where no land (or interests in land) is acquired by the Promoter under the Bill, but where the value of such land and the properties erected thereon is reduced or where such land and the properties erected thereon is otherwise adversely or injuriously affected by the construction or use of the proposed works. Your Petitioners therefore submit that the Bill should be amended to provide adequate compensation in this regard.

Noise, vibration, disruption and disturbance

- 16 Noise and vibration arising from the operation of the railway and its associated works and structures (such as ventilation shafts) also concerns 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. Furthermore, your Petitioners wish to see strict standards set to which the Promoter and any other person exercising powers under the Bill must be made liable to comply.
- 17 Your Petitioners are concerned about dust and dirt produced during 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 to your Petitioners' properties. Your Petitioners 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 and painting of their affected properties, and more frequent replacement of air conditioning filters.
- 18 The surface works, particularly the use of work sites and the removal of spoil, will further impact upon the quiet enjoyment of properties in the vicinity. Major increases in lorry movements during the construction period are to be expected, the disruptive effect of which will be compounded by the permanent and temporary stopping up of nearby roads.
- 19 Your Petitioners have most severe reservations about the proposed work sites at Eastbourne Terrace, Bishop's Bridge Road, Davies Street, Dering Yard, Tenterden Street, Hanover Square, Finsbury Circus and Liverpool Street. Your Petitioners apprehend that these sites and the works proposed to be carried out within them will bring about a significant general disturbance and loss of amenity to the areas involved, arising especially from—
- (a) the temporary road closures proposed;

- (b) construction traffic;
- (c) restricted access to buildings (including some of your Petitioners' properties);
- (d) construction noise and vibration; and
- (e) visual impact.

Your Petitioners are concerned about the effect of these matters on their properties and having regard to the scale of disruption and disturbance envisaged your Petitioners therefore seek protection in relation thereto. In particular, your Petitioners would expect the Promoter to be bound to a code of construction practice, agreed with your Petitioners in advance of the commencement of works to regulate these matters and to ameliorate any adverse effects caused by the works. Your Petitioners submit that the Promoter should consult with them about proposed working methods and in relation to all aspects of likely environmental impact to your Petitioners' properties and that the Promoter should be obliged to agree a scheme of work with your Petitioners for the benefit of the occupiers of your Petitioners' properties, such scheme of work to include, amongst other things, reference to noise, vibration, disruption and lorry movements.

Vehicular and pedestrian access

- 20 Your Petitioners note 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. Your Petitioners 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 Petitioners particularly request that vehicular access to 2 Eastbourne Terrace (formerly Telstar House), 67-69 New Bond Street, 297 Oxford Street (15 Hanover Square), 360-366 Oxford Street and 13 Stratford Place be maintained where practicable and that compensation be paid for any costs incurred through the inability to service or park at these properties due to the works.

Subsidence, settlement and associated damage to properties during and after construction

- 21 The exercise by the Promoter of his powers for the compulsory acquisition of land or of interests in land could result in the development potential of some of your Petitioners' 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 Petitioners further object to the provisions of the Bill as they might affect your Petitioners' properties.
- 22 Your Petitioners therefore submit 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 Petitioners' 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 Petitioners further ask, insofar as the subsoil and undersurface beneath their properties may be affected, that they may nevertheless continue to have the facility to construct such foundations as may be necessary to support development on the site and that the compulsory purchase powers which are proposed be limited accordingly. Furthermore, your Petitioners will argue that they should be properly compensated by the Promoter for any loss of development value of any of their properties and that they should be fully indemnified in respect of any additional design or construction costs incurred by your Petitioners in carrying out such development.
- 23 Your Petitioners are particularly concerned about settlement effects on 2 Eastbourne Terrace, 360-366 Oxford Street, 391-393 Oxford Street, the New Bond Street properties, 297 Oxford Street (15 Hanover Square), 5 Great Marlborough Street, 14 Gray's Inn Road (Fox Court), 138-142 Holborn Bars and 16-18 Finsbury Circus. Your Petitioners have engaged expert advisers, who envisage that significant damage could be caused to these properties as a result of the works.

24 Tunnelling of the underground station boxes and related facilities 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. 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.

25 Your Petitioners humbly submit 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 his own expense a full survey of the condition of your Petitioners' properties both before and after the construction and commencement of operation of the works, with details of all such surveys being provided to your Petitioners for their agreement;
- (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 Petitioners' properties to your Petitioners for their reasonable approval and to give your Petitioners proper notice of the commencement of and full consultation upon all works affecting your Petitioners;
- (d) to agree a threshold with your Petitioners for ground and building movement within the vicinity of your Petitioners' 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 Petitioners' properties;
- (e) to agree necessary safeguarding or remedial measures with your Petitioners, to be carried out at the expense of the Promoter;
- (f) to carry out prior subsoil investigation and survey;
- (g) to use all available grouting, de-watering, freezing and pressure-working methods; and

(h) to carry out agreed underpinning and strengthening works.

26 In addition, your Petitioners require continuous monitoring of their properties to be undertaken during construction of the works and for arrangements to be made for the carrying out of remedial works at the Promoter's expense. All of these matters should be agreed with your Petitioners before your Petitioners' properties are allowed to be interfered with.

27 Your Petitioners submit that they should also be entitled to make their claim for compensation in respect of damage arising to their 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 Petitioners 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.

General concerns

28 Your Petitioners respectfully submit that the proposals contained in the Bill are causing a blight on your Petitioners' properties, and have done so for more than 15 years before the project's previous submission to Parliament. Your Petitioners fear that prospective purchasers and lessees will state that the proposals so blight the properties that they would not be interested in acquiring any part of them, or that prospective or existing lessees will demand a considerably reduced rent, due to the prospect of the works. Moreover, the Bill does not contain adequate provisions for compensating such blight and your Petitioners respectfully suggest that it should do so.

29 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.

30 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.

31 There are other Clauses and provisions in the Bill which, if passed into law as they now stand, would prejudicially affect your Petitioners and their rights, interests and property and for which no adequate provision is made to protect your Petitioners.

Conclusion

32 Your Petitioners submit 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 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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