

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005-06

Crossrail Bill

Against – 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 DR NICKOLAUS HENSEL

SHEWETH as follows:-

- 1 A Bill (hereinafter referred to as “the Bill”) has been introduced 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 Her Majesty’s Government.
- 3 (a) Clause 1 authorises the construction and maintenance of the works for the delivery of the railway transport system, which is known as Crossrail Line 1. The works are listed in Schedule 1 and shown on the plans and sections deposited with the Bill.
(b) Clauses 2 and 3 authorise ancillary works and give effect to Schedules 2 and 3 respectively.
(c) Clause 5 and Schedule 5 enable the nominated undertaker for Crossrail to take temporary possession of land in connection with the Crossrail works.
(d) Clause 6 authorises the Secretary of State compulsorily to acquire so much of land within the limits shown on the plans and sections accompanying the Bill as may be required for the Crossrail works. Clause 6(3) and Parts 2 and 3 of Schedule 6 apply certain legislation relating to compulsory purchase compensation, subject to

modification. The power of compulsory acquisition is subject to a five year time limit, extendable by order of the Secretary of State.

- (e) Clause 7 provides, among other things, authority for the Secretary of State by further compulsory purchase order to acquire land outside the limits shown on the plans and sections or land within the limits but not subject to the powers under clause 6, if required in connection with the Crossrail works.
- (f) Clause 10 provides for the grant of deemed planning permission for development authorised by the Bill and Clause 10(5) in particular applies Schedule 7 which sets out certain controls in favour of local planning authorities over detailed aspects of the Crossrail works.
- (g) Clause 11 provides that deemed planning permission for the scheduled works will be subject to a 10 year time limit, extendable by order of the Secretary of State.
- (h) Clauses 45 and 46 make provision for transfer schemes and nomination of undertakers respectively.
- (i) Clause 47 and Schedule 12 disapply and modify certain statutory controls.
- (j) Clause 50 applies Section 10(1) Compulsory Purchase Act 1965 (compensation for injurious affection) subject to the proviso that liability for compensation for land injuriously affected by the Crossrail works falls to the nominated undertaker, as opposed to the Secretary of State.
- (k) Clause 54 provides a power to modify deposited plans or the book of reference if they are inaccurate.

Introductory

- 4 Your Petitioner is the leasehold owner of two apartments at 27 St Anselm's Place in London W1K 5AF and a major shareholder in the company Elan Properties Limited which owns the headlease to the property.
- 5 The Bill makes provision for the acquisition of the subsoil which lies more than nine metres below the Property which will be acquired for the construction of the Crossrail line coming to the New Bond Street station. The Bill also provides for the temporary stopping up of the whole of St Anselm's place and part of Gilbert Street.
- 6 Your Petitioner understands that the subsoil of its interests in its premises (identified as plot 331) are sought to be acquired, to allow tunnelling and access for the new Bond Street Stations.
- 7 Your Petitioner understands that during construction of the ticket halls at New Bond Street part of Gilbert Street and the whole of St Anselm's Place will be closed to traffic.
- 8 The proposed works include tunnelling and potentially potential excavation works associated with sub-surface structures for Bond Street Station directly beneath your Petitioner's premises.
- 9 Your Petitioner and its rights, interests and property are injuriously affected by the Bill. Your Petitioner does not object to the principle of the proposed railway transport system. However, your Petitioner is greatly concerned by the provisions of the Bill as they may affect his properties. For

this reason and having regard to the more detailed particulars referred to below, your Petitioner objects to the Bill.

Structural Damage

- 10 Your Petitioner is greatly concerned by the extent of excavation and tunnelling works under and in the immediate vicinity of its property at 27 St Anselm's Place. Your Petitioner is anxious that associated ground settlement and subsidence could jeopardise the stability and structural integrity of your Petitioner's property.
- 11 Your Petitioner is also very concerned by the potential structural response of the relevant buildings to ground-borne vibration caused by the proposed works. Insufficient data has been provided by the Promoter to understand the likely affects of vibration on the structures of the buildings and the effectiveness of any mitigation measures.
- 12 Ground settlement, subsidence and ground-borne vibration arising from the works are likely to cause your Petitioner's significant loss and damage and interfere with your Petitioner's property. Your Petitioner submits that the Promoter should not be permitted to interfere with your Petitioners' rights and interests unless and to the extent (if any) that this is demonstrated to be strictly necessary and in the public interest and until a full and comprehensive assessment of the potential effects of the works on Your Petitioner's building has been undertaken, demonstrating that there will be no significant impact on Your Petitioner's property.
- 13 Your Petitioner submits that there is insufficient provision for mitigating the risk of or actual damage to Your Petitioner's property. Your Petitioner requires the Promoter:
- (a) To take all reasonably practicable measures to prevent damage to the relevant property;
 - (b) To conduct a full survey of the condition of the relevant property before and after construction of the works and to undertake comprehensive monitoring of the structures during the works;
 - (c) To carry out a full geotechnical survey in the vicinity of the relevant property before commencement of the works;
 - (d) To give advance notice of each phase of the works and undertake advanced consultation in relation to their construction;
- 14 To use all available working methods to minimise the risk of ground-borne vibration, settlement and subsidence including undertaking agreed underpinning and strengthening works to your Petitioner's property.
- 15 Your Petitioner seeks provision within the Bill and further or alternatively binding assurances from the Promoter to ensure Your Petitioner is fully and sufficiently indemnified in respect of any loss, damage, costs and claims associated with the impact of the works on the structure of Your Petitioner's property.

Environmental Effects of Construction

- 16 Your Petitioner is greatly concerned by the environmental effects of the works in the vicinity of its property and in particular noise and vibration from the tunnelling activities underneath your Petitioner's property at 27 St Anselm's Place, as well as the extensive excavation, piling and other construction activities in connection with New Bond Street works which will affect the residential use of his properties.
- 17 The Environmental Statement accompanying the Bill provides inadequate data to ascertain the likely actual noise and vibration effects at your Petitioner's properties. Further, inadequate

consideration is given by the Promoter in the Environmental Statement to the perceived nuisance effects of both vibration and noise. Your Petitioner submits that the Promoter should not be permitted to interfere with your Petitioner's rights and interests unless and to the extent that comprehensive assessments of the specific likely effects at your Petitioner's property have been undertaken, demonstrating that with effective mitigation measures to which the Promoter is bound there will be no significant impacts.

- 18 A further concern to your Petitioner is the visual impact of the proposed works on your Petitioner's property and in particular the impact associated with the New Bond Street Station which is in close proximity to your Petitioner's property. This extensive worksite will comprise significant excavated areas, equipment and construction traffic, which your Petitioner is concerned will adversely affect visual amenity and deter tenants. The Promoter recognises in the Environmental Statement accompanying the Bill that occupants of St Anselm's Place/Gilbert Street will suffer significant visual impact but has given inadequate consideration to this aspect of the works and the mitigation measures to deal with it.
- 19 Your Petitioner is also extremely concerned by the likely amounts of dust that will be generated by the construction activities in the vicinity of its property, and the effects of this on the environmental quality of the area around your Petitioner's property and the maintenance requirements for that property and the associated plant.
- 20 The Promoter recognises that adverse environmental effects will be caused by the construction of the works and propose a code of construction practice, a series of individual agreements under the Control of Pollution Act 1974 and statements of policy to which the Promoter is to adhere. Your Petitioner is concerned that none of these measures will take into account the particular circumstances and character of your Petitioner's property and the significant scale of the works in the immediate vicinity of your Petitioner's property.
- 21 Your Petitioner requires the Promoter fully and properly to explore the environmental effects of the construction of the works on your Petitioner's property and that provision be made for all necessary mitigation measures specific to your Petitioner's property to be employed. Your Petitioner requires the Promoter to be bound personally by a specific code of practice for works in the vicinity of Your Petitioner's property in order to mitigate and regulate all environmental effects and operational impacts.

Operational Impacts of Construction

- 22 Your Petitioner is extremely anxious about the operational impacts of the works in the vicinity of his properties and in particular:
- (a) Services diversions and potential interruption to supply;
 - (b) Closure of highways or parts of highway, diversions and other restrictions or modifications to road access;
 - (c) General disruption to traffic circulation from as early as the site preparation works.

- 23 Each of these impacts will have a significant adverse effect on your Petitioner's property. Your Petitioner therefore seeks protection in relation to all operational consequences of construction activities in order to ensure that his properties may function as normally as possible during the works.

Operational railway impacts

- 24 Your Petitioner is greatly concerned by the impacts on his properties of the operational railway. In particular, your Petitioner is very apprehensive about the potential noise and vibration effects of

running trains in the tunnels and structures that pass underneath or close to its property. Your Petitioner considers that such effects will be accentuated in the vicinity of its property as trains accelerate and decelerate at the proposed station. Such effects would potentially be exacerbated should Crossrail be used by freight trains.

- 25 Insufficient data is included in the Environmental Statement accompanying the Bill to enable a proper assessment of the likely impacts of these operational effects. For example, there is inadequate information regarding the assumptions used in the assessment for train speed, track fixing and track foundations. The lack of information in this regard is a source of great concern to your Petitioner. Your Petitioner submits that the Promoter should be required to incorporate all reasonably available mitigation measures including track-laying and foundation techniques in order to ensure the vibration and noise effects of operating trains are minimised.

Ambit of powers

- 26 Powers sought to be conferred on the Promoter by the Bill are extremely wide and your Petitioner submits that such powers ought to be more constrained.
- 27 In particular, clause 7 authorises the Promoter to acquire compulsorily land outside the limits of deviation for the scheduled works and outside the limits of land to be acquired or used, where it is required for or in connection with the works authorised by the Bill or otherwise for or in connection with the proposed railway system.
- 28 Your Petitioner respectfully submits that such powers, particularly in the context of Central London, are unacceptably wide and threaten to blight property, including his own interests, in the immediate vicinity of the limits of deviation. Further express authority for the acquisition of land outside the limits should be necessary, and considered only in specific instances on its merits and given only if acquisition is proven at the relevant time to be necessary for the construction of the railway system.
- 29 Your Petitioner is also concerned that the provisions in the Bill for renewal of compulsory purchase powers and planning permission (clauses 6(7) and 11(2) respectively) are too widely drawn and prolong the period of blight suffered by your Petitioner's property and others. Whilst the renewal of compulsory acquisition powers is subject to special Parliamentary procedure, your Petitioner submits that greater protection should be given to owners and occupiers of land affected by the proposed works through regulation of the circumstances in which such renewal may be ordered. In the event that the validity of the powers or the planning permission is extended, your Petitioner seek provision for affected landowners and occupiers to be consulted and to be given the opportunity to make representations. Your Petitioner submits that as it currently stands the Bill fails to provide for such matters. This is a significant omission. During the time limit for compulsory acquisition powers (5 years) and for implementation of planning permission (10 years) circumstances can change significantly and so too the impact of the exercise of such powers or the implementation of such permission. It is essential that impacts should be comprehensively reassessed. Your Petitioner submits that the same considerations should apply to the power to correct deposited plans (Clause 54).
- 30 Your Petitioner is also concerned by the absence of any specific provision to compel the Promoter to implement mitigation measures identified in the Environmental Statement accompanying the Bill. Failure to include such provision will, your Petitioner submits, be contrary to the purposes of Council Directive 85/337/EC, as amended by Council Directive 97/11/EC.
- 31 Your Petitioner also submits that such compulsion should include an express obligation on the Promoter to undertake specific measures to limit structural and other damage to properties along the route of the works including your Petitioner's property. Such measures should include

establishing a schedule of condition prior to commencement of the works, the incorporation of specific measures agreed with owners of the affected properties in order to strengthen and protect individual buildings, continuous monitoring of properties during the course of the works, a revised schedule of condition following completion of the works and regular monitoring of properties in the first few years of railway operation. Without such provision, there is inadequate protection for landowners and occupiers against the potential effects of the works.

Compensation provision

- 32 Your Petitioner further submits that provisions within the Bill regarding compensation in respect of compulsory acquisition and other matters are not sufficient to compensate Your Petitioner adequately for the loss, damage and inconvenience, which it may suffer as a result of the construction and subsequent use of the proposed railway system. Your Petitioner seeks further provision within the Bill for indemnifying your Petitioner against loss of revenue caused by the adverse effects of the proposed works, particularly during the construction period.
- 33 Of particular concern to your Petitioner is any instance where it is not necessary to acquire compulsorily any part of a particular property and yet such property is nonetheless adversely and injuriously affected by the construction of the proposed works and the operation of the railway system. In those circumstances the compensation provisions within the Bill are inadequate.
- 34 Your Petitioner submits that the Bill should be amended in this respect to ensure that Your Petitioner is entitled to claim compensation in such circumstances for structural damage to property by the execution of the works, for interference with rights and for injurious affection caused by the execution of works and the subsequent operation of the railway system. Your Petitioner seeks provision to enable such claim to be made separately from any claim for compensation in respect of the acquisition of land or interests from your Petitioner under the powers of compulsory acquisition in the Bill. Furthermore, your Petitioner submits that any such claim should be permitted at any time before the expiry of 5 years following the opening of the proposed railway system for use by members of the public.
- 35 Further, to the extent that the powers under the Bill are not exercised following its enactment, your Petitioner's property may suffer blight and your Petitioner submits that there is no or alternatively that there is inadequate provision within the Bill for compensating your Petitioner in this regard.
- 36 Your Petitioner submits that provision should also be made within the Bill to enable your Petitioner to recover its own reasonable expenditure including the full costs of making good any damage to the structure of any of Your Petitioner's property caused by the proposed works, the full cost of any works undertaken in mitigation of the proposed works and your Petitioner's costs in co-operating with the Promoter during the project. Your Petitioner also seeks the inclusion of provisions within the Bill to compel the Promoter to indemnify owners and occupiers of interests in affected properties from losses claims and demands suffered in consequence of the construction, use or maintenance of the works or any act or omission of the Promoter and the nominated undertaker including their contractors and agents.

Environmental Impact Assessment

- 37 Your Petitioner submits that the Environmental Statement accompanying the Bill is deficient in several respects and therefore fails to satisfy the requirements of Council Directive 85/337/EC, as amended by Council Directive 97/11/EC. In particular:
- (a) There is inadequate description of the likely significant effects of the project, particularly the specific effects in the vicinity of Your Petitioner's property and no consideration given to direct and indirect effects - for example the effect on trade/local economy.

- (b) Insufficient data has been provided in order to identify and assess the main effects of the works, particularly in the vicinity of your Petitioner's property where tunnelling and major work sites are proposed.
- (c) There is insufficient detail of proposed mitigation measures, no assessment of their effectiveness in avoiding reducing or remedying significant environmental effects and no provision within the Bill compelling the Promoter to undertake identified mitigation measures.
- (d) There is insufficient analysis of alternatives in the context of each work section and no analysis of alternative methods of construction, alternative configurations and alternative locations for the proposed work sites and the tunnels.

Human Rights

38 Your Petitioner submits that in its current form and without further amendment or provision as sought by your Petitioner, the Bill is incompatible with the right of your Petitioner peacefully to enjoy his property. The Bill would unfairly interfere with such right contrary to Article 1 of Protocol 1 to the European Convention on Human Rights and fails to provide your Petitioner with sufficient right of participation in future determinations of your Petitioner's rights (for example in relation to the extension of the time limit for planning permission) contrary to Article 6 of the Convention. In particular, in your Petitioner's submission, the wide and extendable powers available to the Promoter and the inadequate provision for compensation in the particular circumstances with which your Petitioner may be presented renders the Bill incompatible with the Convention.

General

39 For the foregoing and connected reasons your Petitioner respectfully submits that, unless the Bill is amended as proposed above, the Bill should not be allowed to pass into law.

40 There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and its rights, interests and property and for which no adequate provision is made to protect your Petitioner.

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 they may be heard by its Counsel, Agents and witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioner and in support of such other clauses and provisions as may be necessary or expedient for their protection and benefit, 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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AGAINST, By Counsel, &c.