



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 THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS.

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 presented by Mr Secretary Darling, supported by The Prime Minister, Mr Chancellor of the Exchequer, Secretary Margaret Beckett, Mr Secretary Hain, Secretary Alan Johnson, Secretary Tessa Jowell, and Derek Twigg.
- 3 Schedule 12 of the Bill, by virtue of Clause 47, provides for the disapplication and modification of miscellaneous controls including *inter alia* duties imposed by the Wildlife and Countryside Act 1981 (as amended) ("the 1981 Act"), concerning the protection of Sites of Special Scientific Interest ("SSSIs").
- 4 Clause 51 of the Bill applies any provision of the Bill (with specified exceptions) to future extensions of Crossrail which may be brought forward in an order under section 1 of the Transport and Works Act 1992.
- 5 Your Petitioner the Royal Society for the Protection of Birds ("the RSPB") is a body incorporated by Royal Charter dated 3 November 1904 and by Supplemental and Confirmatory Charter dated 24 April 1996. The RSPB's principal office is at The Lodge, Sandy, Bedfordshire, SG19 2DL. Its regional office headquarters with responsibility over the areas affected by Crossrail are in Brighton (South East England Regional Office), Banbury (Central England Regional Office) and Norwich (East England Regional Office). The RSPB manages 190 nature reserves in the UK covering an area of over 129,337 hectares (319,599 acres). The RSPB is the largest nature conservation organisation in Europe, with a membership of over one million. The principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to all international,

EU and national law, policy and guidance that assist in the attainment of this objective. The RSPB campaigns throughout the UK and in international fora for the development, strengthening and enforcement of such law and policy. The RSPB works with other bird and habitat conservation organisations in a global partnership called BirdLife International.

- 6 Your Petitioner's interests are injuriously affected by paragraph 8 of Schedule 12 and Clause 51 of the Bill, to which your Petitioner objects for reasons amongst others, hereinafter appearing.
- 7 SSSIs are the best sites for wildlife and natural features in England, supporting many characteristic, rare and endangered species, habitats and natural features. The purpose of SSSIs is to safeguard for present and future generations a series of sites that are individually of high natural heritage importance. SSSIs also make a fundamental contribution to the ecological processes upon which we all depend and to human quality of life. The importance attached to SSSIs is recognised in the adoption by Defra of the Public Service Agreement for SSSIs, that 95% of SSSIs, by area, should be in favourable or recovering condition by 2010.
- 8 The Wildlife and Countryside Act 1981 (as amended) incorporates measures for the notification, protection and management of SSSIs. Paragraph 8 of Schedule 12 of the Bill will, if enacted, remove the protective measures and duties imposed by four sections of the 1981 Act in relation to any operation carried out for the purposes of, or in connection with the Bill, or in the exercise of any powers conferred by the Bill, with respect to works. The disapplied sections of the 1981 Act are described as follows.
- 9 Section 28E (1) of the 1981 Act is disapplied by subclause 8 (1) of Schedule 12 of the Bill. This removes the duty on owners and occupiers of land included in a SSSI to notify English Nature ("EN") of their intention to carry out, cause or permit to be carried out any operation likely to damage a SSSI (or SSSIs).
- 10 Section 28G (1) of the 1981 Act is disapplied by subclause 8 (2) of Schedule 12 of the Bill. This removes the general duty on statutory undertakers to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the special features of SSSIs.
- 11 Section 28H of the 1981 Act is disapplied by subclause 8 (3) of Schedule 12 of the Bill. This removes *inter alia* the duty on statutory undertakers to give notice to EN seeking their assent for the carrying out of operations likely to damage the special features of a SSSI (or SSSIs) and, where EN has refused consent, as far as is reasonably practicable, to carry out those operations in such a way as to minimise damage and restore the site to its former condition.
- 12 Section 28I of the 1981 Act is disapplied by subclause 8 (4) of Schedule 12 of the Bill. This removes *inter alia* the duty on statutory undertakers to give notice to EN seeking their advice before permitting the carrying out of an operation likely to damage the special features of a SSSI (or SSSIs).

- 13 Where a hybrid bill is predicted to give rise to damage to SSSIs, the duties discharged under the 1981 Act requiring further consent to be obtained can be disapplied, as the bill will be subject to Parliamentary scrutiny and then given Royal Assent. Your Petitioner accepts this position, since the operations in question and their predicted impacts on SSSIs would already have been considered by Parliament and consented by the Act. Further consent for works with predicted impacts would therefore be unnecessary. Similar provisions to those set out in paragraph 8 of Schedule 12 of the Bill are contained in paragraph 6 of Schedule 10 of the Channel Tunnel Rail Link Act 1996 (as amended).
- 14 However, the Crossrail Environmental Statement, Volume 1, Chapter 5, states that the works required to construct Crossrail do not affect any statutory nature conservation sites (which includes SSSIs). Your Petitioner, having scrutinised the plans accompanying the Environmental Statement, accepts that this statement is correct in relation to the proposed route for Crossrail. Your Petitioner therefore submits that the provisions of paragraph 8 of Schedule 12 of the Bill are in fact redundant in this respect.
- 15 Your Petitioner therefore submits that the case for these provisions has not been made out and that, accordingly, paragraph 8 of Schedule 12 be deleted from the Bill.
- 16 Notwithstanding the above, your Petitioner also objects to the effect of Clause 51 of the Bill, which seeks to apply any provision of the Bill (with specified exceptions) to future unspecified extensions to Crossrail, to be brought forward in an order under section 1 of the Transport and Works Act 1992 ("TWA 1992"). The exceptions to this clause do not include paragraph 8 of Schedule 12 (disapplication of duties in relation to SSSIs), which, as drafted, would apply to any future extension as it does to the current proposal.
- 17 The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 ("the Rules") set out the procedure for an application under section 6 of the TWA 1992 in relation to the making of an order under section 1 of that Act. Rule 10 requires the applicant to submit with their application a list of all consents, permissions and licences required under other enactments, for the purposes of the powers sought in the application, which have been obtained or applied for at the time the application is submitted. Where SSSIs are likely to be affected, this list would include the consent of EN under the 1981 Act.
- 18 Rule 13(3) of the Rules also requires the applicant to serve a copy of the application under section 6 of the TWA 1992 upon EN if the works specified in the application will affect a SSSI or are within 2 kilometres of a SSSI. This must be accompanied by a statement specifying *inter alia* the expiry date for objections made in accordance with the rules made under section 10 of the TWA 1992.
- 19 The Secretary of State, when granting an order under section 1 of the TWA 1992, is subject to the requirements of section 28I of the 1981 Act when

determining whether to grant the order. Clause 51 of the Bill does not affect this duty upon the Secretary of State.

- 20 Orders under section 1 of the TWA 1992 do not describe in detail the works to be consented by the order. In normal circumstances, an applicant who has been granted an order under section 1 of the TWA 1992, would be required to obtain consent from EN under the 1981 Act once the detail of the works is known and if additional damage to SSSIs is likely. The effect of Clause 51 is to remove the duties on the Bill's promoter and its successors to obtain consent from EN under the 1981 Act once the detailed impacts of the works on SSSIs have been identified.
- 21 Any order under section 1 of the TWA 1992 to which Clause 51 of the Bill would apply would be for currently unspecified extensions to Crossrail, involving works of a currently unidentified nature with unknown affects on SSSIs. Where such an order would be likely to give rise to damage to a SSSI (or SSSIs), EN, your Petitioner and any other interested party could raise an objection with the Secretary of State against the order in accordance with the rules made under section 10 of the TWA 1992. However, unless the force of such an objection persuaded the Secretary of State to require a modification of the order to avoid the SSSI, clause 51, as drafted, would explicitly exclude the applicant from having to comply with the requirement to notify EN under the 1981 Act (as disapplied by paragraph 8 of Schedule 12 of the Bill). It would also remove the duty on the applicant to comply with the general duty on all statutory undertakers to further the conservation and enhancement of SSSIs imposed by section 28G of the 1981 Act.
- 22 Your Petitioner objects to this clause as there is no reasonable justification for disappling these legislative safeguards to future unspecified extensions to Crossrail, when such safeguards apply to other statutory undertakers and other works brought forward by an order under section 1 of the TWA 1992. Your Petitioner considers that, in respect of an order brought forward under section 1 of the TWA 1992 pursuant to clause 51, these powers would significantly prejudice the proper conservation of SSSIs as envisaged by Parliament when it passed the amendments to the 1981 Act in the Countryside and Rights of Way Act 2000 (CROW Act 2000). The amendments made by the CROW Act 2000 provide a better ongoing control of operations likely to have an adverse effect on SSSIs than is likely to be provided in advance of those operations under an order made under Section 1 of the TWA 1992.
- 23 Your Petitioner therefore requests that Clause 51 (2) be appropriately amended, to include paragraph 8 of Schedule 12 in the list of provisions in the Bill excepted from the power conferred by subsection (1) (a) of that clause. However, if paragraph 8 of Schedule 12 of the Bill were deleted in accordance with your Petitioner's submission above, then no amendment to Clause 51 (2) would be necessary.
- 24 For the foregoing and connected reasons your Petitioners respectfully submit that, unless the Bill is amended as proposed above, paragraph 8 of Schedule

12 and Clause 51 (2), so far affecting your Petitioners, should not be allowed to pass into law.

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

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 it may be heard by their 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 its protection, 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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