

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 Sainsbury's Supermarkets Ltd referred to herein as 'Your Petitioner'

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, Secretary Peter Hain, Secretary Alan Johnson, Secretary Tessa Jowell, and Derek Twigg.
- 3 Clause 1 authorises the construction and maintenance of the works for the delivery of a 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. Clauses 1 to 20 (together with Schedules 1 to 9, 13 and 14) set out the mechanisms for authorising and constructing the railway transport system, including: authorising ancillary works; taking temporary possession and compulsory acquisition of land (and interests in land) in connection with the works; compulsory acquisition of land outside the limits shown on the plans and sections or land within the limits but not subject to other powers; the extinguishment of private rights of way over land within the limits of deviation, and within the limits of land acquired and held in connection with the authorised works; the grant of deemed planning permission for development authorised by the Bill; the disapplication of controls relating to historic buildings; the modification of Sections 60 and 61 of the Control of Pollution Act 1974; the prohibition of orders being made in proceedings brought by a person aggrieved by a statutory nuisance, in specified circumstances.
- 4 Clauses 21 to 44 of the Bill establish a regulatory regime for the proposed railway transport system. Clauses 45 and 46 make provision for transfer schemes and nomination of undertakers respectively. Of the miscellaneous provisions in clauses 45 to 59, Clause 47 and Schedule 12 disapply and modify certain statutory controls and Clause 50 applies Section 10(1) Compulsory Purchase Act 1965 (compensation for injurious affection, so that liability for compensation for land injuriously affected by the Crossrail works falls to the nominated undertaker, rather than to the Secretary of State).
- 5 Your Petitioner is a company formed under the Companies Act 1985 objects to the following Clauses of the Bill:
 - (i) Clause 1 and Schedules 1 and 2

- (ii) Clause 10 and Schedule 7 – Planning
- (iii) Clause 20 – Statutory Nuisance
- (iv) Clauses 6, 7 and 50 and schedule 6 - Compensation

6 Your Petitioner holds the interests shown in the following properties and carries on business as a supermarket and convenience store retailer from those properties:

Lessee and occupier of part of ground floor of 135-145 Charing Cross Road (Plot 674 City of Westminster)

- a) Occupier of right of access Paddington Station (Plot 101 City of Westminster)
- b) Lessee and occupier, part of station, shop basement and subsoil beneath offices (Macmillan House), station, shop and premises Paddington Station (Plot 105 City of Westminster)
- c) Lessee and occupier, station, shop basement and premises, Paddington Station (Plot 106 City of Westminster)
- d) Lessee and occupier of car park, footway, canopy and land at 1 Cambridge Heath Road including subsoil beneath adjoining public highway Brady Street and Cambridge Heath Road (Plot 279 London Borough of Tower Hamlets)
- e) Lessee and occupier of car park, access road and land (Sainsbury's Superstore), 1 Cambridge Heath Road including subsoil beneath adjoining public highway Cambridge Heath Road (Plot 287 London Borough of Tower Hamlets)
- f) Lessee and occupier of access road, land and premises, 1 Cambridge Heath Road (Plot 288 London Borough of Tower Hamlets)

Your Petitioner also carries on business at premises owned by a subsidiary company at:

- g) the yard, car park and premises, The Brewery Shopping Centre, Waterloo Road, Romford (Plots 87 and 94 London Borough of Havering)

7 Your Petitioner and its rights, interests and property are injuriously affected by the Bill, to which your Petitioner objects for reasons, amongst others, hereinafter appearing. 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 its stores (in the ways detailed below).

8 For these reasons and having regard to the more detailed particulars referred to below, Your Petitioner objects to the Bill on the grounds that it authorises the scheduled works without making provision for the protection of the rights, interests and property of your Petitioner, either absolutely or compared to others who might be affected.

9 Your Petitioner will be affected by the scheduled works in a number of ways which, without provision being made to protect it, will seriously affect its occupation and enjoyment of their property, and their ability to carry on business from it. In this context, to the extent that the works and the operation of the railway (once constructed) affects the ability of your Petitioner to provide the service expected of it by its customers, or directly affects the ability of customers to undertake their usual shopping and associated trips at your Petitioner's premises, will have an adverse effect on the rights, interests and property of your Petitioner.

10 Accordingly, your Petitioner is sensitive to the effect on its customers of any works which might temporarily or permanently affect the shopping experience enjoyed by those customers. Your Petitioner will produce evidence to show that where a store undergoes works of refurbishment or extension, it takes 12 months before customers show the same level of satisfaction as before the works. Your Petitioner's experience is that customers' perception of disruption length is proven to have a direct impact on customer satisfaction: the longer the disruption, the more damage it does to customer satisfaction. As a result of disruption or temporary closure customers are likely to shop elsewhere and, depending on length of disruption/closure, are prone to continue shopping at the alternative store. It is your Petitioner's experience that

all stores show a fall in sales and customer numbers during disruption, and do not significantly improve until a significant (but variable) time after the completion of the scheme. Parking and road works are one of the most annoying aspects for customers during disruption and your Petitioner strives to keep the car park fully operational during disruption. Your Petitioner intends to produce evidence on the likely extent of the effect on the operation of their business and on the impacts on its customers at the stores in question

- 11 The potential harm to your Petitioner's rights, interests and property arises in the following ways:

Clause 1, Schedule 1, Schedule of Works and Schedule 2, Works: further and supplementary provisions

- 12 Your Petitioner's interests are affected by the Works in that interests in its properties and places of business referred to at a) –h) above will be acquired to facilitate the Crossrail works.

- 13 Your Petitioner therefore objects to the Bill as it will in the long term deprive it of its Charing Cross store and will seriously disrupt the operations of their Whitechapel, Paddington and Romford Brewery stores. The interference with trade at these stores during the works is likely to be so severe that the stores may be forced to close. In addition, the loss of parking spaces on an permanent basis may also have such an impact on the business of your Petitioner at the Whitechapel store that, even if it survives the temporary, long-term disruption caused by the works, it will not be able to operate on a viable basis in its present form. Your Petitioner requires an undertaking that suitable alternative premises will be made available for continued trading following acquisition and an undertaking in respect of the scheme programming to avoid disruption prior to acquisition and during the Crossrail works.

- 14 Your Petitioners intend to produce evidence as to the effects of the Crossrail works on their property at e) – h) above in terms of the following:

Construction Impacts -

- (a) Disruption to supplies and deliveries

It will be obvious that your Petitioner's business relies on the ability to provide fresh, high quality food and other convenience goods to customers and that this requires visits by service vehicles throughout the day. For health and safety, and security, reasons these deliveries must be managed by experienced staff in a controlled environment. The timing and or numbers of deliveries are at Paddington restricted by conditions attached to the planning permission for the store.

The works will result in long- and short-term disruption to and prevention of deliveries to all of Your Petitioner's stores. As well as affecting the ability to comply with planning conditions and leasehold covenants, it will prejudice the ability of your Petitioner to provide the service expected of it by its customers. It is not always possible to make and properly regulate deliveries other than along certain routes and using the service yards designed to serve stores. The loss of even a small part of your Petitioner's service yard will prevent deliveries at the Romford store, not least because it is required to be a certain size and configuration to accommodate modern delivery vehicles. The loss of safe and direct routes to the service yard across the car park at Whitechapel will also interfere with the ability of your Petitioner to meet its high standards of service to their customers.

There are no alternative means of servicing the stores and the resultant severe disruption to servicing will prevent effective operation of the stores. It is particularly disappointing to your Petitioners that little consideration appears to have been given to this impact and to the potential for alternatives, in particular in respect of the location of works compounds.

Your Petitioner seeks undertakings that strategies for avoiding (or, as a far less preferable alternative, reducing) the disruption to the ability to service and deliver to their Whitechapel, Paddington and Romford stores will be agreed with it prior to the relevant construction works taking place and thereafter adhered to. In addition, your Petitioner requires indemnities and compensation in respect of any losses, damage or expenses caused by or suffered as a result

of any loss of servicing (including, but not limited to, losses etc. suffered as a result in the loss of trade and/or the closure of the store) arising from the works.

(b) Loss of parking

Many customers to your Petitioner's stores expect and need to be able to undertake bulk shopping trips for which they use their car. The ability to park in a convenient location is an important determinant in where such customers will shop. The proposals result in the temporary, long-term loss of large numbers of parking spaces at your Petitioner's Whitechapel store. No alternative proposals have been offered.

It is unlikely that this store will be able to survive the loss of over 50% of its parking spaces for a period of more than three years. This store performs an important town-centre anchor function, which will be lost if it forced to close. Your Petitioner seeks undertakings that strategies for avoiding (or, as a far less preferable alternative, reducing) the loss of customer parking spaces at its Whitechapel store will be agreed with it prior to the relevant construction works taking place and thereafter adhered to. In addition, your Petitioner requires indemnities and compensation in respect of any losses, damage or expenses caused by or suffered as a result of any loss of parking spaces (including, but not limited to, losses etc. suffered as a result in the loss of trade and/or the closure of the store) arising from the works.

(c) Interference with customer access

An equally important part of your Petitioner's business comes from pedestrian trade: customers who make shopping trips on foot, or by a combination of walking and public transport. The proposals interfere with pedestrian access to your Petitioner's stores at Whitechapel, and Paddington, thereby making them less attractive to these types of customers and, in practice, making many customers choose to shop elsewhere. As noted above, it would not only be a harmful and avoidable impact to your Petitioner if customers chose to shop elsewhere. Your Petitioner's Whitechapel store performs an important function as the anchor (main retailer) in Whitechapel district centre. Such a function fulfils the aims of past and current government policy. To the extent that pedestrian customers chose, as a result of the inconvenience associated with the works at your Petitioner's store, to undertake their main shopping elsewhere, the policy aims will have been frustrated.

No alternative proposals have been made to your Petitioner to mitigate or address these impacts, which are reasonably foreseeable, and should have been anticipated by the promoters of the railway system. Accordingly, your Petitioner seeks undertakings that strategies for avoiding (or, as a far less preferable alternative, reducing) interference with customer access to its Whitechapel and Paddington stores will be agreed with it prior to the relevant construction works taking place and thereafter adhered to. In addition, your Petitioner requires indemnities and compensation in respect of any losses, damage or expenses caused by or suffered as a result of any disruption to customer access (including, but not limited to, losses etc. suffered as a result in the loss of trade) arising from the works.

(d) Noise

Throughout the whole of the construction period your Petitioner's properties will be detrimentally affected by noise associated with the works. The Environmental Statement (Volume 6a, Appendix B1, Paragraph 3.1.11) acknowledges that noise levels at some properties are expected to exceed recommended levels. Your Petitioner operates a trading environment which relies on the ability of its employees and customers to carry out their activities without noise interruption or disturbance.

Your Petitioner seeks undertakings that strategies for avoiding (or, as a far less preferable alternative, reducing) the impact of noise arising from construction works will be agreed with it prior to the relevant construction works taking place and thereafter adhered to. In addition, your Petitioner requires indemnities in respect of any losses, damages, claims and expenses caused by or suffered as a result of noise arising from construction works.

(e) Dust and emissions

The sale of food and other goods relies on a clean, safe environment and the use of sophisticated equipment to ensure that legal and commercial requirements are met. It is essential that customers, employees and the products being sold are not exposed to dust and other air-borne pollutants. Nor is it acceptable that your Petitioner's stores be perceived by existing and potential customers as being ones which, because of their proximity to works, do not meet relevant standards. Such a perception will act as a deterrent to customers accessing the store. Your Petitioner's business will be adversely affected unless measures are imposed on construction activities which prevent and minimise the effects of dust.

Your Petitioner seeks undertakings that strategies for avoiding (or, as a far less preferable alternative, reducing) the impact of dust and other emissions will be agreed with it prior to the relevant construction works taking place and thereafter adhered to. In addition, your Petitioner requires indemnities in respect of any losses, damages, claims and expenses caused by or suffered as a result of dust and emissions arising from the works.

(f) Vibration

Vibration, even of an intermittent nature, will have a critical effect on your Petitioners' business operations for which the Bill makes no provision as to mitigation. In particular, vibration may cause the unexpected failure of generators etc. with profound consequences for freezer and storage equipment and the sensitive food stores where disruption and even short-term disconnections will cause significant economic effects within a very short timeframe. Vibration is likely to cause long-term damage to the structure of buildings.

Your Petitioners seek undertakings that strategies for removing and/or reducing the impact of vibration will be agreed with them prior to the relevant construction works taking place, guarantees that such undertakings will be complied with and indemnities in respect of any losses, damages, claims and expenses caused by or suffered as a result of vibration.

(g) Disruption to utility supplies

It is of particular concern to your Petitioner that the use of such electrically powered equipment during the course of construction works may result in a depletion of electricity supply to the property or intermittent surges of electrical activity. Both of these instances would have a detrimental effect on the your Petitioner's operations. In addition, a constant supply of water and sewerage services is required, not least because your Petitioner operates under health and safety requirements in respect of the goods sold and services provided.

A constant and consistent electricity supply is of paramount importance to your Petitioners' operations. Your Petitioner is concerned that any disconnection of the electricity supply or sudden surges, be they intentional or accidental (for example, as a result of accidentally severed electrical cables), will seriously adversely impact on their business. Any surge/curtailment of power or temporary disruption to other utilities could result in substantial adverse economic effects to your Petitioner.

Your Petitioner seeks undertakings that strategies for avoiding (or, as a far less preferable alternative, reducing) disruption to utility services will be agreed with it prior to the relevant construction works taking place and thereafter adhered to. In addition, your Petitioner requires indemnities in respect of any losses, damages, claims and expenses caused by or suffered as a result of disruption to utility services arising from the works.

Your Petitioner intends to produce evidence on the effect of the works in terms of these issues and seeks amendment Schedules 1 and 2 of the Bill to provide for mitigation of these adverse effects in an appropriate manner, including the creation of a process for monitoring disturbance.

15 **Long-term impacts**

(a) Loss of parking spaces

Your Petitioner is concerned that the proposals result in the permanent loss of 58 parking spaces at its Whitechapel store. No alternative proposals have been offered. Although it is unlikely that the store could survive the disruption associated with the works, even the loss of this number of spaces (over 30% of the total) will seriously prejudice the ability of the store to meet the needs of customers and operate viably.

(b) Noise & Vibration

Your Petitioner accepts that the noise and vibration from the development are expected to be negligible. Nevertheless they seek to include in the Bill provisions to mitigate any adverse long term effects which arise as a result of the eventual operation of the facility.

(c) Amenity

The development is a major intrusion into the surrounding area and, will encroach significantly on your Petitioner's property. The proximity and mass of the development will have a serious deleterious effect on the use of your Petitioner's Whitechapel car park area, its operation and its attractiveness to customers.

Your Petitioner intends to produce evidence on the effect of the works and seeks amendment to the Bill Schedules 1 and 2 to provide for mitigation of these adverse effects in an appropriate manner.

16 **Clause 1(3) - Deviation from Lines**

Clause 1(3)(b)(1) and (ii) authorise the undertaker to deviate from the level shown for work on the deposited sections to any extent not exceeding 3 metres upwards and to any extent downwards.

For reasons given above in connection with your Petitioner's properties at e) – h) above the effect of any such deviation either laterally or vertically would have an increased detrimental effect on the property. Such deviation should therefore not be undertaken without full consultation of those affected and the Bill should be amended to contain a procedure to this effect in Clause 1.

Your Petitioner seeks amendment to the Clause 1 of the Bill to provide for an effective consultation period where such deviations are proposed and an amendment to Schedules 1 and 2 to provide for mitigation of these adverse effects in an appropriate manner.

17 **Clause 10 - Planning**

Under this Clause the scheme receives deemed planning permission. Schedule 7 sets out the Planning Conditions and Paragraph 6(4) details the terms under which a local planning authority may refuse to approve plans and specifications of any operation or work mentioned in Column (1) of the following table. These terms are unnecessarily restrictive and do not provide sufficient and proportionate protection to your Petitioner's rights, interests and property.

Such a procedure does not permit of any meaningful consideration of the details submitted by the local planning authority or allow for consultation with affected parties (including your Petitioner) as to the impact of the details on their rights, interests and property.

Your Petitioner submits that Clause 10 and Schedule 7 should be amended to include a provision for local planning authorities to carry out meaningful consultation with those directly affected by specific submissions to enable full consideration to be given to the imposition of appropriate conditions to mitigate any adverse effects.

18 **Clause 20 - Statutory Nuisance**

This Clause disapplies and provides a defence against proceedings brought by persons aggrieved against statutory nuisance caused as a result of the works. This would seriously prejudice your Petitioner's rights to the statutory protection afforded by the Environmental Protection Act 1990 and the Bill makes no appropriate provision for persons aggrieved to seek redress against such nuisances. Your Petitioner seeks an amendment to Clause 20 to provide for a procedure to redress these adverse effects in an appropriate manner.

19 **Clauses 6, 7 and 50 and Schedule 6, Parts 2 and 3 – Compensation**

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 any loss caused by the adverse effects of the proposed works, particularly during the construction period.

Your Petitioner submits that provision should also be made within the Bill to enable your Petitioner to recover its reasonable expenditure including the full costs of making good any damage to the structure of its stores, 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, including the costs incurred by your Petitioner in engaging consultants and other third parties to act on its behalf. Your Petitioner also seeks inclusion of provisions within the Bill to compel the promoter to indemnify owners and occupiers of affected properties from claims and demands made 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.

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

21 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 its protection, or that such other relief may be given to your Petitioner in the premises as your Honourable House shall deem meet.

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