

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2005-2006

CROSSRAIL BILL

PETITION

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 (1) RANGEPOST LIMITED (2) SIDEZONE LIMITED (3) MEANFIDDLER.COM LIMITED (FORMERLY ELFCROWN LIMITED)

SHEWETH as follows:

- 1 A Bill (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 Bill is presented by the Secretary of State for Transport (the Secretary of State).

Your Petitioners

- (1) Rangepost Limited
- (2) Sidezone Limited
- (3) Meanfiddler.com Limited (formerly Elfcrown Limited)

- 3 Your First Petitioner is the underlessee of premises known as the Astoria Cinema and Dancehall at 157/159 Charing Cross Road, London WC2H 0EN (for simplicity the premises as a whole are referred to as "the Astoria"). Your First Petitioner holds the Astoria under an underlease dated 1st January 1994 for a term expiring on 31st December 2008, whereby Marler Estates Limited demised to it all that parcel of land and building upon it known as the Astoria. Your First Petitioner's underlease has security of tenure and is the subject to the provisions of the Landlord and Tenant Act 1954.
- 4 Your Second Petitioner is the sub-underlessee of the ground floor stalls, level basement and sub-basement of the Astoria (excluding all parts of the structure and certain parts of the plant as defined in the sub-underlease). Your Second Petitioner holds under a sub-underlease granted by your First Petitioner dated 1st January 1994, for a term of 15 years less one day. Your Second Petitioner's sub-underlease has security of tenure and is the subject to the provisions of the Landlord and Tenant Act 1954.
- 5 Your Third Petitioner is the sub-underlessee of all those parts of the ground floor, stalls level, circle level, circle bar, and mezzanine level above the circle bar, of the Astoria (excluding all parts of the structure and certain parts of the plant as defined in the sub-underlease) granted by your First Petitioner under a sub-underlease dated 1st January 1994 for a term of 15 years less one day. Your Third Petitioner's sub-underlease has security of tenure and is the subject to the provisions of the Landlord and Tenant Act 1954.
- 6 Your Petitioners are all wholly owned subsidiaries of Mean Fiddler Holdings Limited. Mean Fiddler Holding Limited is owned by the Mean Fiddler Music Group which carries on business in the music and entertainment industry. Mean Fiddler Music Group PLC has a management agreement with the Glastonbury Festival, the Homelands festival near Winchester, and the Leeds and Reading Festivals. In addition to the Astoria, the

Mean Fiddler Holding Limited has leasehold interests and operates music venues at the Forum at 97 Highgate Road, London NW5, the G-A-Y Bar at 30 Old Compton Street, London W1, the Jazz Café at 5 and 7 Parkway, London NW 1, the Garage at 12/24 Highbury Corner, London N5, the Mean Fiddler at 24/28 High Street Harlesden, London NW10, Borderline and Shaun and Joe at 127/133 Charing Cross Road, London WC2, the Media at the basement, first, second and third floor at Elite Building Upper, Parliament Street, Nottingham and Sugar at Womanby Street, Cardiff as well as the lease of a cinema at Piccadilly House, 216/217 Piccadilly, London SW1 and the lease of office premises at the ground floor of 16/18 High Street, Harlesden, London NW10.

- 7 Your turnover of Mean Fiddler Holdings Limited for the year ending December 2003 was £26m. The turnover for the Astoria for the same period (excluding Jeremy Joseph's turnover for operating G-A-Y; see below) was £6.2m. For the year ending December 2004 the turnover of Mean Fiddler Holding was £30m and for the Astoria (excluding Jeremy Joseph's turnover) £5.75m.
- 8 Your Petitioners have an interest in the property ("the Astoria plot") which is subject to compulsory acquisition or use under the Bill. These interests, as referred to in the book of reference, are in the City of Westminster and are as lessee and under lessees respectively of the land and premises at 157/159 Charing Cross Road (plot 662).
- 9 The Bill would authorise the permanent acquisition of plot 662 (section 6(1)) for the purpose of 'the provision of access and provision of a working site' (Schedule 6, para 1).
- 10 Petitioners and their rights, interests and property are injuriously affected by the Bill, to which your Petitioners object for reasons, among others, hereinafter appearing.

The Astoria

- 11 The Astoria was originally a Crosse and Blackwell pickling factory but has since become one of London's premier music venues. Over the last decade or so it has hosted some of the most famous acts in rock music including Nirvana, Black Sabbath and David Bowie.

The lease to the Astoria was bought by Mean Fiddler in 2000 and the premises have since continued to host a wide range of music events.

- 12 The Astoria in fact contains two different music venues: the Astoria itself ("the Astoria Venue") and the Mean Fiddler. The Astoria Venue is both a live music venue and provides the home to G-A-Y. The Mean Fiddler, formerly known as the London Astoria 2, or "LA2", is also a live music and nightclub venue.

The Astoria Venue

- 13 The Astoria Venue is one of the largest and longest-established venues in the West End of London. It opens at 7:00 pm, has a capacity of 2000 with a mezzanine floor and five bars. The Astoria Venue attracts artists of global status. Those who have performed at the Astoria Venue include U2, Eminem, Morrissey, Nirvana, Oasis, Radiohead, David Bowie, Alice Cooper, Motorhead, Gary Numan, the Pet Shop Boys, the Rolling Stones, Travis, Elvis Costello, the Darkness, Moby, INXS, Billy Idol and Prince. Live shows from such artists typically occur prior to G-A-Y.

G-A-Y

- 14 The Astoria Venue is also home to G-A-Y, London's, and possibly Europe's, largest gay, lesbian, bisexual and transsexual music club. G-A-Y opens at 11:00 pm. It has launched many major live music acts and hosted the first live performances for The Spice Girls, Westlife, Boyzone, Sugababes and All Saints.
- 15 G-A-Y, however, is not a nightclub in the conventional sense. It provides a club for gay people to meet and enjoy themselves in a non-threatening and friendly atmosphere. Moreover it differs from other "gay" clubs due to the type of music it plays. G-A-Y plays mainstream pop whereas other such clubs play more hardcore, largely beat orientated electrical, music. G-A-Y therefore appeals to a certain type of person and to a broad spectrum of ages.

- 16 G-A-Y is also a commercial pop music brand used by record companies to promote artists and groups.
- 17 G-A-Y has an iconic status in the lesbian, gay, bisexual and transsexual community. It has been involved in many political campaigns such as those concerning the age of consent, section 28 and other laws against discrimination.
- 18 G-A-Y operates on Monday, Thursday and Friday from 11:00 pm to 4:00 am and on Saturday evenings from 10:30 pm to 4:30 am. Tickets may be bought either in advance or by queuing on the night. Saturday is the biggest night when the club operates to its capacity of 2000 and live music is played. However, G-A-Y is not just a club. G-A-Y is a community, with more regulars than other venues. Nearly 6000 lesbians and gay men, along with other members of the lesbian, gay, bisexual and transsexual community, come to its 4 club nights each week. G-A-Y has a membership via the internet of over 20,000.
- 19 Artists who have performed at G-A-Y include Mariah Carey, Christina Aguilera, Kylie Minogue, Will Young, Pussycat Dolls, Girls Aloud, LeAnn Rimes, Kelly Osbourne, Geri Halliwell, Texas, Spice Girls, Melanie C, Victoria Beckham, Westlife, Mis-Teeq, Ms. Dynamite, Blue, Daniel Bedingfield, Atomic Kitten, Sugababes, Samantha Mumba, Emma Bunton, All Saints, Donna Summer, Boyzone, Ronan Keating, Billie Piper, The Human League, Bananarama, Vengaboys, Republica, Alex Parks, Gabrielle, Belinda Carlisle, Dannii Minogue, Steps, RuPaul, Chaka Khan, Lisa Stansfield, Heather Small, Gloria Gaynor, Ash, Martine McCutcheon, Bjork, Deborah Harry, Soft Cell, Gareth Gates, Appleton, Daniel Bedingfield, Natasha Bedingfield, S Club, Busted, JC Chesez and Scissor Sisters.
- 20 Presenters who have hosted shows at G-A-Y include Lily Savage, Graham Norton, Michelle Collins, Julie Hesmondhalgh, Supergirly, Adam Rickitt, Ruby Wax, Denise Van Outen, Julian Clary, Jo Brand, Zoe Ball, Jamie Theakston and Patsy Palmer.

- 21 G-A-Y is a major part of many record companies' promotional strategy for both singles and albums. For example, in the first week in September 2005 the Pussycat Dolls (now number one in the charts) played one of their only three live performances in G-A-Y as part of their UK promotion. G-A-Y is also involved with TV programmes and appears regularly on mainstream television as a result. This has included ITV's "Popstars" programme in which Hear'say were filmed performing for the first time once the band had been chosen. In the next few weeks G-A-Y will be part of the "X Factor". Each week the public will vote contestants off the show. Whoever is evicted will come straight to G-A-Y to perform. On the night of the final, once the public has voted, the winner will come on to G-A-Y to perform as the endpiece of the series.
- 22 G-A-Y has been based at the Astoria Venue for over 12 years and cannot move to another venue. There is simply no other venue in the West End that is suitable for it to move to; Soho is the centre of the lesbian, gay, bisexual and transsexual community in London. Furthermore, no other venue has the layout to provide both live shows and a club night where 2000 people can view the stage.

The Mean Fiddler

- 23 The Mean Fiddler is located on the ground floor, level basement and subbasement of the Astoria. It is the most central 1000 person capacity music venue in London. The Mean Fiddler offers a vital path between smaller music venues such as the Garage and the small number of larger 2000 capacity venues, such as the Astoria Venue. Artists who have performed at the Mean Fiddler include Blur, Foo Fighters, Ash and Garbage. The venue is frequently used as a warm up for acts performing at the Reading Festival.

The unique character of the Astoria

- 24 The character of the use made of the Astoria is unique for at least two reasons: (a) its iconic status for the lesbian, gay, bisexual and transsexual community and (b) its vital contribution to wider cultural issues as a live music venue of its particular size.

25 The Environmental Statement recognises something of the cultural significance of the Astoria, identifying the City of Westminster's pre-inquiry UDP (Autumn 2002) policy TACE 6. The Environmental Statement goes on to acknowledge:

5.19.3 The construction of Crossrail will result in the demolition and loss of the Astoria venue on Charing Cross Road to construct the Crossrail Tottenham Court Road station and upgraded London Underground station. The Astoria has been used as a theatre but is currently used as a nightclub and live music venue. It is anticipated that, in accordance with local planning policies, any replacement development which came forward could be required to include entertainment use to mitigate against this loss.

26 Furthermore, London Plan of the Mayor of London published on 10th February 2004, envisages "appropriate intensification and mix of uses" through Policy 2A.3 (para.2.3, 2.9) and the Tottenham Court Road area is identified in the London Plan as one for "intensification" at map 2A.1.

The lesbian, gay, bisexual and transsexual community

27 The Environmental Statement does not attach sufficient, or indeed any, importance to the Astoria's significance for the lesbian, gay, bisexual and transsexual community. Policy 3A.14 of the London Plan aims to address the needs of a diverse population and specifically requires that existing facilities that meet the needs of particular groups should be protected; and that policies should seek measures to address them proactively. The London Plan at para.370 states that London has the largest lesbian, gay, bisexual and transsexual population in the country which has been estimated to be 10% of the capital's population. The London Plan aims to develop and promote arts and culture by policy 3D.4. "Culture" includes night-time entertainment and, due to the Astoria's unique status as venue for live music/G-A-Y, would include its use.

28 The lesbian, gay, bisexual and transsexual community is different from other London communities in several important ways.

29 Firstly the community is spread across the whole of London. Indeed the community that G-A-Y serves spreads much further than the boundaries of London itself. The community

needs a central meeting point. It cannot be served by smaller venues elsewhere in the way that conventional communities can.

30 Secondly the community has, as is well known, been the subject of discrimination and, worse, verbal and even physical abuse. Although the position has improved there are those in the wider public who continue to attack the community. It is a fact that members of the community feel safer in and around the Soho area than in other parts of London.

31 If the lesbian, gay, bisexual and transsexual community's interests are to be adequately protected then the Astoria must be protected also.

Live Music

32 The Culture Strategy published by the Mayor of London in April 2004 actively promotes diversity; and recognises the Astoria as being a world class live music venue.

33 The importance of the live music scene has been further emphasised by the establishment of a Live Music Forum by the Department of Culture Media and Sport following the enactment of the Licensing Act 2003. On 5th January 2004, the Arts Minister, Estelle Morris MP, launched the new Forum chaired by Fergal Sharkey to promote the performance of live music and bring together members of the music industry, the Arts Council, local authorities and smaller venue owners. In launching the Forum Ms Morris stated:

A vibrant live music scene is a vital element of our cultural life. It gives grass roots musicians the opportunity to do what they love to do and gives us the opportunity to enjoy live performances while fostering future talent

34 The establishment of the Live Music Forum demonstrates the increasing importance that the government places on live music, and shows its commitment to make sure that the new licensing arrangements will deliver real benefits to musicians by creating more live venues. The loss of a live music venue such as the Astoria would therefore be contrary to government objectives to promote the performance of live music.

35 The Astoria Venue itself is unique in the Central Activity Zone of London, broadly the West End, as a 2,000 capacity live music venue. Other venues nearby, such as the Marquee and the Dominion Theatre, are no longer live music venues.

36 In addition the 1000 capacity of the Mean Fiddler also has particular significance. A music venue of that size is critical to the music industry in the UK as a launching pad for breaking bands, playing an important part in its transition of bands from becoming little-known to being widely known so that the band becomes commercially viable and can secure a recording contract. The only venue of comparable size is the Electric Ballroom in Camden, north London. The A&R community of most major record labels is based in London and bands will attempt to play in London as soon as they can to become noticed by this community. The wider economic significance of the UK music industry should not be minimised. For example, the UK is the second most prolific exporter of music, second only to the United States.

The lack of justification for acquiring the land

37 It is proposed that Tottenham Court Road Crossrail station will have ticket halls at Centre Point Plaza and Dean Street with ventilation shafts in Fareham Street and Goslett Yard. It is said that the Eastern Ticket Hall will require the acquisition of the Astoria plot.

38 Your Petitioners submit that the acquisition of the Astoria plot is unnecessary. The Environmental Statements states at paras 8.7.189 to 8.7.192 that consideration was given to four options in relation to the Eastern Ticket Hall which were rejected. However, your Petitioners submit that there are a number of design options for the Eastern Ticket Hall which avoid the acquisition of their plot.

39 Your Petitioners therefore submit that any benefit in acquiring the Astoria plot is significantly outweighed by the serious adverse impact that will be caused to your Petitioner's business. Harm to Your Petitioner's interests will be avoided by the deletion of plot 662 from the powers of compulsory acquisition or use.

The lack of justification for any permanent acquisition

- 40 Alternatively, if your Petitioners' primary case does not succeed, they would submit that the powers proposed are not justified in any event for the reasons explained below.
- 41 Your Petitioners would submit that the need to acquire the Astoria plot for the purposes of constructing the Tottenham Court Road station does not require permanent retention of the plot. So much was effectively acknowledged when your Petitioners' solicitors met with Crossrail on 12th September 2005. Crossrail said that it was not its intention to retain property acquired to construct the railway; it said that Crossrail intended to return the property to its original owners at market value in accordance with the "Crichel Down" principles.
- 42 The views expressed by Crossrail in fact appear to be at variance with the position taken in the Environmental Statement at para 3.8. The Environmental Statement explains that the Bill does not seek permission for any non operational development above stations or structures. It states that the intention is that all over station development should be applied for and determined under the normal planning process by the appropriate local planning authority (subject to a call in by the Secretary of State). It states that the Bill modifies the Environmental Impact Assessment Regulations so that any over station development will be subject to an environmental impact assessment where works are integral to the new works or where the local planning authority or where the local planning authority determines that such development will have significant environmental impacts.
- 43 However, the Environmental Statement states that many of the sites are extremely sensitive; and that it is most unlikely that only the operational works will be constructed, not least because (i) all the stations will be designed with assumptions being made about the size and dimensions of the buildings being constructed above them and (ii) the sites have very high land values which there will be a strong financial incentive to develop.

44 Your Petitioners therefore anticipate that the property acquired for the purpose of constructing the Tottenham Court Road station will not be left in an unfinished state; but will speedily be made subject to a planning application to permit over station development for the commercial benefit of Crossrail. To do otherwise would result in an unlawful development since an unfinished site in a highly sensitive area would have adverse environmental effects which were never subject to an environmental impact assessment as required by the Environmental Assessment Impact Regulations and, indeed, by European Directives.

45 It is, accordingly, plain that permanent acquisition of the Astoria plot is not needed. Your Petitioners would submit that the permanent acquisition of the site is therefore unlawful unless and until the Bill is amended to permit the appropriation of land for the purpose of permitting Crossrail to go into the property development business.

46 Your Petitioners therefore submit that unjustifiable harm to your Petitioners' interests will be avoided by the deletion of plot 662 from the powers of compulsory acquisition or use under the Bill.

The need to reinstate or relocate the Astoria

47 Alternatively if, contrary to your Petitioners' contentions, the permanent acquisition of the Astoria plot is properly justified, your Petitioners submit (for the reasons indicated above) that any over station development at the Tottenham Court Road station should require the reinstatement of the Astoria.

48 The replacement buildings following construction of the Eastern Ticket Hall at Tottenham Court Road Astoria plot must reflect the character of the Soho Conservation Area and the mixed use currently made at the sites: as stated in the City of Westminster's planning brief for the Eastern Ticket Hall which states that the Council would expect the construction of a replacement theatre at the Astoria site.

49 Your Petitioners submit that the public benefit of securing through its reinstatement the continuation of an institution which has an iconic status for the lesbian, gay, bisexual and transsexual community and which makes a vital contribution to wider cultural issues as a live music venue of its particular size substantially outweigh any private benefit to Crossrail which it might obtain by the construction of over station development for commercial purposes.

50 Alternatively, if it is demonstrated that reinstatement on site cannot in fact be achieved, your Petitioners submit that Crossrail must be required to obtain appropriate alternative premises for the Astoria in over station development at a site constructed other than for the Tottenham Court Road station.

51 Your Petitioners would accordingly ask that the Bill be amended to secure the reinstatement of the Astoria in the over station development at Tottenham Court Road or alternatively that Crossrail be required to obtain appropriate alternative premises for the Astoria in over station development constructed at a site other than for the Tottenham Court Road station.

The need to amend the statutory basis for compensating the Astoria

52 If, the permanent acquisition of the Astoria plot is properly justified and your Petitioners fail in their submission that the Astoria must be reinstated or relocated, then your Petitioners would become entitled to compensation.

53 However, compensation for the compulsory acquisition of leasehold interests is limited to the value of any profit rent, compensation for severance and injurious affection; and *compensation for disturbance*.

54 Your Petitioners submit that the principle limiting compensation to any difference between the passing rent and the current rental value fails to reflect the proper value of the Astoria to them. It is not practicable for your Petitioners to find a music venue of its size at such a prime location; the true value to the Petitioners is the scarcity value of

finding such an alternative location; compensation is normally awarded on the basis of putting an applicant into the position he would have been but for the wrongdoing; and the statutory code therefore fails to compensate them adequately for the loss of the commercial value of the site.

55 Your Petitioners would accordingly ask that the Bill be amended to ensure that they are compensated on the basis of putting your Petitioners into the position they would have been but for the compulsory acquisition of their land.

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 it may be heard by its officers, 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 Petitioners and in support of such other clauses, amendments and provisions as may be necessary or expedient for its 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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CROSSRAIL

PETITION

of

(1) Rangepost Limited

(2) Sidezone Limited

(3) Meanfiddler.com Limited
(formerly Elfcrown Limited)

AGAINST,

BY COUNSEL, &c.
