

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:

ORANGE PERSONAL COMMUNICATIONS SERVICES 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 (including your Petitioners) and as respects arbitration.

Your Petitioners and their interests

6 Your Petitioners are Orange Personal Communications Services Limited. Your Petitioners own and operate a national telecommunications network and are the operator of an electronic communications code network within the meaning of Schedule 17 to the Communications Act 2003 (c. 21).

7 Your Petitioners have electronic telecommunications apparatus (“apparatus”) located in, on, under or over land which is subject to compulsory and temporary acquisition or use under the Bill.

8 In addition, your Petitioners own and operate apparatus in land, including public highways, which, whilst not subject to the compulsory purchase proposals of the Bill, is in the immediate vicinity of the proposed works and liable to be injuriously affected by them.

9 Therefore, and having regard to the more detailed particulars referred to below, your Petitioners object to the Bill and they contend that they and their rights and interests are injuriously and prejudicially affected by the Bill for the reasons (amongst others) here stated.

Your Petitioners’ concerns

10 Whilst your Petitioners have no objection to the Crossrail project in principle, they have substantial concerns that the exercise of the powers conferred by the Bill will compromise the operation of your Petitioners’ undertaking and, in particular, will interfere with use of elements of your Petitioners’ apparatus in the vicinity of the proposed works.

11 Your Petitioners are concerned that Schedule 14 which specifies protective provisions to the Bill provides inadequate protection to providers of electronic communications services and networks. Your Petitioners contend that the enactment of the Bill in its current form will adversely affect your Petitioners’ ability to carry out their undertaking and to comply with their statutory and regulatory obligations.

Protective provisions – Part 4 of Schedule 14

12 Part 4 of Schedule 14 to the Bill (protection of electronic communications code networks) sets out measures to provide for the protection of the apparatus of providers of electronic communications services. Your Petitioners respectfully submit that these protective provisions do not adequately protect their interests and seek the following amendments and assurances.

Relocation of apparatus

- 13 Paragraph 4 of Part 4 of Schedule 14 relates (inter alia) to the relocation of apparatus where a highway is stopped up in consequence of the scheduled works. Your Petitioners are concerned that protection (including compensation for costs) is not provided in relation to apparatus which is in land other than a highway. Your Petitioners seek clarification that the electronic communications code contained in Schedule 2 to the Telecommunications Act 1984 (c. 12) shall apply (save to the extent that it is disapplied by paragraph 2 of Part 4 of Schedule 14 to the Bill) to all apparatus not situated within a highway, or alternatively seek amendments to the Bill to ensure that equivalent protection is provided.
- 14 In addition, your Petitioners are concerned that the Bill, if enacted in its current form, could impose an onerous burden on your Petitioners with regard to the relocation of apparatus more generally. Where a requirement arises for apparatus to be relocated from the highway onto, over or under private land, it would be for your Petitioners to negotiate agreements with the landowners concerned or to use statutory procedures to secure the necessary facilities and rights. Your Petitioners note that, under the protection provided to undertakers under Paragraph 3 of Part 2 of Schedule 14, the Promoter is required to afford such undertakers the requisite facilities and rights for the construction of alternative apparatus in land available for such purpose. As a minimum your Petitioners submit that the same protection should be afforded to electronic communications network operators.
- 15 In addition, your Petitioners respectfully submit that the Bill should be amended to provide that the Promoter will assist with the acquisition of any necessary facilities or rights and will bear the costs reasonably so incurred. Further, your Petitioners seek an assurance or amendment to the effect that, should your Petitioners be required to exercise any of their statutory powers over private land to obtain the necessary facilities and rights to construct alternative apparatus, your Petitioners shall not be liable for any loss, delay, or disruption to the works authorised by the Bill or the Crossrail project more generally, by virtue of the due process required in relation to obtaining such facilities and rights, including any

objection, complaint, or appeal from any person with an interest in such private land.

Costs and expenses

16 Your Petitioners also respectfully seek clarification of the costs and expenses recoverable under paragraph 4 of Part 4 of Schedule 14. In particular your Petitioners seek assurances, or amendments to the Bill to ensure, that costs recoverable under this paragraph include costs in connection with securing any rights (including alternative sites or additional facilities and rights in land, as described above) and facilities required for the relocation of apparatus throughout the period of time your Petitioners are liable to incur such costs. Further, your Petitioners seek assurances, or amendments to the Bill to make clear, that they would be able to recover costs actually incurred in relation to the proposed works rather than costs based on estimates.

17 Your Petitioners note that sub-paragraph 4(8) of Schedule 14 disapplies the Bill's provisions relating to the recovery of costs in circumstances where the authorised works constitute major highway works or major transport works for the purposes of Part 3 of the New Roads and Street Works Act 1991 (c.22), and that in such cases compensation will be determined in accordance with the provisions of that Act. Your Petitioners respectfully observe that that the operation of these provisions will result in a sharing of costs between your Petitioners and the nominated undertaker. Your Petitioners contend that the costs of relocation works required as a consequence of the exercise of the powers under the Bill should be borne by the Promoter, as appears to be envisaged in relation to gas, water, electricity and sewerage undertakers under Part 2 of Schedule 14 to the Bill. Your Petitioners seek an amendment to the Bill to give similar protection to electronic communications code network operators.

Means of ensuring access to apparatus

18 Your Petitioners note that sub-paragraph 4(1) of Part 4 of Schedule 14 preserves rights of access to apparatus in any part of the highway which ceases to be part of a highway. However this paragraph does not specify how such provision will be made. Your Petitioners respectfully submit that powers to inspect, repair,

maintain, renew, remove or use any apparatus should also be preserved, and that easements or wayleaves should be granted to such effect, to ensure that your Petitioners continue to have all the rights necessary to carry out their business.

Abandonment of apparatus

- 19 Your Petitioners respectfully request that the Bill be amended to provide that, should any requirement of the Promoter or nominated undertaker in exercise of the powers to be conferred by the Bill result in apparatus being left in place so as to be regarded (for the purposes of the electronic communications code) as abandoned apparatus, then that apparatus will fall outside the relevant provisions of that code so that no liability would attach to the operator in respect of it.

Disputes

- 20 Paragraph 6(2) of Part 4 of Schedule 14 provides that any person appointed by the Secretary of State to determine a dispute between the nominated undertaker and an undertaker should have regard to any such matters as may be specified by the Secretary of State on making the appointment. Your Petitioners respectfully submit that this provision is unfairly prejudicial to your Petitioners and creates a conflict of interest by granting the Promoter, in an arbitration regarding provisions of the Bill, both the power to specify the arbitrator and also to specify which matters should be adjudged. In the interests of fairness, your Petitioners seek an amendment to the Bill to ensure that the person nominated by the Secretary of State to arbitrate any dispute will be independent and will not be bound by directions from the Promoter, or alternatively that the Secretary of State should specify in what circumstances he would exercise his discretion to set out matters to be considered and to specify the types of matters he would be concerned with in such circumstances.

Apparatus on buildings etc.

- 21 Your Petitioners are concerned that apparatus associated with their statutory undertaking, including apparatus fixed to buildings and other structures subject to the powers in the Bill (including powers of demolition), may be affected by the Bill's provisions. In particular there may be apparatus not identified in the Book

of Reference or other documents associated with the Bill which will be interfered with as a result of the Bill. Your Petitioners respectfully submit that appropriate protection should be afforded to your Petitioner in respect of such apparatus as and when identified as being liable to interference under the powers of the Bill.

Other concerns

- 22 Your Petitioners have a number of concerns relating to other provisions of the Bill which are set out below along with the assurances or amendments sought.

Wayleaves

- 23 Your Petitioners object to any extinguishment of any rights such as wayleaves conferred by an agreement under paragraph 2 of the electronic communications code by virtue of clause 8 (extinguishment of private rights of way) of the Bill. Your Petitioners respectfully request that the Bill be amended to ensure that such wayleaves are excluded from the ambit of clause 8.

Noise, dust and vibration

- 24 Your Petitioners have concerns regarding the potential impact of noise, dust and vibration on their equipment and apparatus, both during construction and once Crossrail is operational. Much of the equipment employed by your Petitioners is sensitive to dust and vibration. Your Petitioners are concerned that the Bill as it stands provides no adequate protection for interruption to services caused by dust and vibration once construction has been completed.
- 25 In view of the powers under the Bill to acquire the subsoil or new rights under or over apparatus, your Petitioners are concerned that the proposed works could lead (by tunnelling, other construction works and the running of trains) to damage to the apparatus and the loss of supply of electronic communication services to your Petitioners' customers. They also apprehend that this could cause them significant loss and damage. Accordingly your Petitioners submit:
- (a) That the Promoter should be under a duty, in carrying out the work, to use all means available to minimise damage or injurious affection to the apparatus;

- (b) That the Promoter should be required to submit plans and detailed proposals and justification for the works and route of the works affecting the apparatus (including consideration of any alternative routes whether within or without the Bill's proposed limits of deviation);
- (c) An effective and agreed monitoring system should be in place before commencement and during construction of the works, to measure the exact effect of any settlement on the apparatus;
- (d) To agree a threshold with your Petitioners for ground and building movement within the vicinity of the apparatus, to the effect that if that threshold is exceeded the Promoters should be obliged to cease construction until such time as remedial measures as agreed with your Petitioner are put in place which will minimise settlement affecting the apparatus; and
- (e) That full indemnity and compensation should be provided for all costs, loss (including consequential loss such as loss of income, regulatory fines or drop in your Petitioners' business status) and damage (structural or otherwise) to your Petitioners' apparatus and operations, caused by the proposed works.

26 As a general matter, 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.

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

28 It is of concern to your Petitioners that the undertaking is to be transferred from the Promoters to another body (the nominated undertaker). Your Petitioners wish to be assured that the Promoter and nominated undertaker will be jointly bound to

adhere to all or any contractual arrangements which the Promoter may enter into with your Petitioners.

Conclusion

- 29 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners and 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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