

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005/2006

CROSSRAIL BILL

P E T I T I O N

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 GARDEN PROPERTIES LIMITED and FARNHAM PROPERTIES LIMITED

SHEWETH as follows:-

- 1 A Bill (hereinafter referred to as "the Bill") has been introduced and is now pending in your Honourable House, as a hybrid Bill, 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." The main purposes of the Bill are to secure the powers necessary for the construction and operation of a new railway connecting existing track to the west and east of London via a tunnel through Central London.

- 2 The Bill is promoted by the Secretary of State for Transport (hereinafter called "the Promoters").

- 3 Clauses 1 - 4 of the Bill would allow the nominated undertaker who shall be appointed by the Secretary of State in accordance with the provisions of Clause 46 of the Bill to construct and maintain the works specified in Schedules 1 and 2 of the Bill (hereinafter referred to as "the scheduled works"). The scheduled works include certain works affecting your Petitioners. Clause 5 of the Bill would confer on the nominated undertaker rights of entry, temporary possession and to the use of land specified in the schedule in connection with the construction of the scheduled works. Clause 6 of the Bill would confer

on the Secretary of State powers of compulsory acquisition of land for the purposes of in connection with the scheduled works.

4 Your Petitioners are companies incorporated in the following jurisdictions:

(1) Your Petitioner Garden Properties Limited ("Garden") is a company incorporated in and according to the laws of Gibraltar.

(2) Your Petitioner Farnham Properties Limited ("Farnham") is a company incorporated in and according to the laws of Gibraltar.

5 For the purposes of this Petition each of Farnham and Garden have an address for service in the United Kingdom care of Macfarlanes Solicitors, 10 Norwich Street, London, EC4A 1BD (Ref: AGWJ/CMF)

6 Your Petitioner, Garden, is the registered proprietor of a long leasehold interest in the property known as Hertsmere House, Marsh Wall, West India Dock, London, E14 4AB and hold their interest as head lessee under the terms of a Lease dated 31 March 1988 and granted for a term of 200 years from 29 February 1988 at a peppercorn rent and originally made between the London Docklands Development Corporation (1) and Mountleigh Investments Limited (2)

7 Your Petitioner, Farnham, is the registered proprietor of a long leasehold interest in the property known as Hertsmere House, Marsh Wall, West India Dock, London, E14 4AB and hold their interest as sub-lessee from Garden under the terms of an Underlease dated 29 April 1988 and granted for a term of 200 years (less 3 days) from 29 February 1988 at a peppercorn rent and originally made between Mountleigh Investments Limited (1) and Control Securities Plc (2).

8 The property which is the subject of both these leases is the same and is hereinafter referred to as "Hertsmere House". Hertsmere House is currently occupied as offices by Barclays Bank Plc and Morgan Stanley. The property also has the benefit of a planning permission dated 2nd March 2005 granted by the London Borough of Tower Hamlets under reference PA/03/00475 for the demolition of Hertsmere House and the erection of a 63 storey tower for office, hotel and serviced apartments, retail and leisure uses, with basement car parking and servicing (hereinafter "the planning permission").

9 Your Petitioner, Farnham, has received statutory notice (No.5273 dated 21 February 2005) from the Promoters that if the Bill passes into law certain powers of compulsory acquisition or use over its property will arise.

10 Your Petitioner, Garden, has received statutory notice (No.5298 dated 21 February 2005) from the Promoters that if the Bill passes into law certain powers of compulsory acquisition or use over its property will arise.

11 Your Petitioners note the fact that parcel numbers 712 and 714 are listed in Schedule A to the statutory notices but do not appear to be referred to in the Bill.

12 Your Petitioners allege that they, their property, rights and interests are injuriously affected by the Bill to which they object for the reasons, amongst others, hereinafter appearing. The concerns of your Petitioners relate to both the implications of the Bill on the current use of Hertsmere House and the implications for the proposed redevelopment and use authorised by the planning permission or which may be authorised by any other future planning permission.

13 Your Petitioners are concerned that the construction of the scheduled works on or near to any land retained by your Petitioners at the Hertsmere House site will cause grave loss and damage arising from the adverse effects of noise, dust, fumes, vibration and traffic congestion. In particular:

(1) Your Petitioners allege that the provisions of the Bill fail adequately, properly or fairly to protect the interests of the Petitioners and the occupiers of Hertsmere House during the lengthy construction period. Your Petitioners further allege that these failures would lead to disproportionate consequences to your Petitioners and arise from inadequacies in the Environmental Statement supporting the Bill. In particular the Environmental Statement deals with construction impacts in varying degrees of detail in respect of the site, but generally does not identify any mitigation and deals with this by the promise of a general Code of Construction Practice. Such an approach is not considered by your Petitioners to be appropriate in the circumstances.

(2) Your Petitioners further allege that the Environmental Statement fails to assess properly and in accordance with the Environmental Impact Assessment Directive 85/337/EEC and the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 (S.I No. 293) the cumulative environmental effects and disruption that would arise during the construction period.

14 Your Petitioners submit that the Promoter should be required to undertake an Environmental Impact Assessment that fully and fairly assesses the cumulative impact on Hertsmere House during the construction period in accordance with the relevant European Directive and Regulations referred to above

(at paragraph 13(2) of this Petition). Your Petitioners submit that the Bill should be amended to require the nominated undertaker to agree with your Petitioners the terms of a code of construction practice relative to the Hertsmere House site to prevent or ameliorate any such adverse effects and to monitor the actions of all the relevant contractors (including any subcontractors) so far as they may affect the Hertsmere House site while constructing the scheduled works and to pay compensation to your Petitioners for any loss or damage arising from any such adverse effects or from damage caused by trespass committed by the employees of any relevant contractor or subcontractor while constructing the scheduled works.

15 Your Petitioners are further concerned with regard to the severe implications of the works authorised by the Bill for any redevelopment of Hertsmere House in accordance with the planning permission or otherwise. In particular:

- (1) The tunnels would pass directly under Hertsmere House. At the depth proposed the tunnels would impact directly on the existing piles. Consequently these would need to be removed prior to the tunnels being bored.
- (2) Your Petitioners understand that the Promoters anticipate that tunneling underneath Hertsmere House would commence in January 2009. This would be preceded, your Petitioners understand, by preparatory works over an eighteen month period and commencing in about July 2007. It is further understood by your Petitioners that once tunneling has commenced under or near to the site of Hertsmere House, which by then would have been demolished, there will be a period of ground settlement before any other subsurface works relating to the implementation of the planning permission would be able to take place. In principle it is therefore desirable that the foundations for the new building authorized by the planning permission, or any other new permitted development, should be completed prior to the Crossrail tunnels being started.
- (3) Your Petitioner Farnham has prepared a programme of works including demolition of Hertsmere House, extraction of existing piles, construction of new foundations and construction of a raft as a building platform which it is anticipated would take up to eighteen months to complete. Such works cannot reasonably commence until the market conditions are suitable, vacant possession of Hertsmere House has been achieved and the necessary funding has been secured. The timing of none of these is certain. Consequently there is no certainty that your Petitioners would be able to carry out and complete these works prior to January 2009.
- (4) The Promoters have stated that they would not consider any proposal whereby the foundation works necessary to carry out the development permitted by the planning permission could be carried out at the same time as the works on the tunnel under Hertsmere House (hereinafter referred to as "parallel working").

- (5) The cost of the subsurface works in preparation for the redevelopment of Hertsmere House would be increased significantly by the construction of the tunnel under Hertsmere House.
- (6) Consequently your Petitioners would be at a very serious disadvantage with regard to the development of Hertsmere House and could suffer grave loss and damage.
- (7) Your Petitioners submit that the Promoter should be required to justify its refusal to allow parallel working or alternatively suggest some other reasonable approach which avoids the potential grave loss and damage that your Petitioners could suffer.

16 Without prejudice to the above objections your Petitioners also object to the terms of acquisition proposed by the Bill in regard to matters affecting compensation; they do so for the following reasons (amongst others):

- (1) The provisions contained within the Bill for compensation for the compulsory purchase of property or of subsoil or new other rights will not enable your Petitioners to recover the full loss and expenses which they will incur in consequence of the exercise of such powers. Your Petitioners therefore submit that the Bill should be amended to rectify this.
- (2) Your Petitioners also object that the compensation provisions of the Bill are inadequate to compensate your Petitioners in circumstances where no land (or interests in land) is acquired by the Promoter under the Bill, but where the value of such land and the properties erected on it is reduced or where such land and the properties erected on it is otherwise adversely or injuriously affected by the construction or use of the proposed works. Your Petitioners therefore submit that the Bill should be amended to provide for claims for adequate compensation in respect of damage arising to their property by the execution of the works, or for injurious affection thereof by the execution or working of these works, separately from any claim for compensation in respect of acquisition of any land (or interest therein) from your Petitioners under the powers of acquisition.

17 Your Petitioners humbly submit that the nominated undertaker should not be permitted by means of the Bill to interfere with private property, rights and interests unless, and except to the extent (if any) that, this can be demonstrated both to be necessary for the purposes of the Bill and to be in the public interest. Your Petitioners have not been provided with any justification for the proposals in the Bill affecting your Petitioners' property. Accordingly, your Petitioners humbly submit that the nominated undertaker should demonstrate and be put to the strictest proof of the need for and desirability of the proposals in the Bill as affecting your Petitioners' property and that the limits of deviation of the scheduled works, the resulting powers for the compulsory acquisition of interests in the property, the power to construct works and the exercise of works and ancillary powers within the limits of deviation should be restricted in relation to your Petitioners' property to the extent (if any) to which they can be strictly justified and so as to

minimise or prevent interference with that land. In particular, your Petitioners contend that any interest in any of their land acquired by, or on behalf of, the nominated undertaker should be strictly limited both to the immediate needs of Crossrail and as respects any express or implied constraints which may thereby be imposed upon the remainder of your Petitioners' land.

18 Your Petitioners also submit that provision should be made for the Promoter to repay all your Petitioners' 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 any provision made as a result of this Petition.

19 There are divers other provisions in the Bill which, if passed into law as they now stand, will prejudicially affect the property, rights and interests of your Petitioners and to which they object.

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, their Counsel, Agents and Witnesses before the Committee of your Honourable House to whom the Bill may be referred against the clauses and provisions of the Bill and in support of other clauses and provisions 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.