

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2005-06

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

DERWENT VALLEY CENTRAL LIMITED,
DERWENT VALLEY LONDON LIMITED AND
DERWENT VALLEY PROPERTY DEVELOPMENTS 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 and as respects arbitration.

Your Petitioners and their properties

6 Your Petitioners are wholly owned subsidiaries of Derwent Valley Holdings plc and carry on business in the ownership and development of property. They hold significant interests in properties in Central London.

7 Derwent Valley Central Limited owns the freehold interest in properties currently in mixed office and retail use at Nos 133-155 (including No.135A) Charing Cross Road and 12 Sutton Row. They together occupy the site referred to in the Environmental Statement as the Goslett Yard site and are shown on the deposited plans as plots 673 and 674 in the City of Westminster. These properties are subject to compulsory acquisition or use under the Bill.

8 Derwent Valley London Limited owns the freehold interest in property in Eastbourne Terrace, shown on the deposited plans as plots 109 and 110 in the City of Westminster. These plots fall within a site at the junction of Eastbourne Terrace and Bishops Bridge Road which is currently being redeveloped to provide new office accommodation pursuant to a planning permission issued by Westminster City Council on 24 November 2004. The building known as Telstar House, which until recently stood upon the site, has been largely demolished pursuant to that redevelopment. Derwent Valley London Limited has exchanged contracts with the Prudential Assurance Company for the sale of its freehold interest in the property, although the transfer of this interest has not yet taken place. These plots are subject to compulsory acquisition or use under the Bill.

9 Derwent Valley Property Developments Limited owns the freehold interest in the following group of buildings at the junction of Oxford Street and Rathbone Place;

- (i) Holden House (formerly Evelyn House), 54-62 Oxford Street
- (ii) 50A-58 Rathbone Place
- (iii) Dumbarton House, 68 Oxford Street
- (iv) 1 and 1A Perry's Place

and whilst they are not subject to compulsory acquisition or use under the Bill the properties (the "Oxford Street/Rathbone Place Properties") are in the immediate

vicinity of the proposed works and liable to be injuriously affected by them. Holden House is a Grade II listed building.

- 10 Your Petitioners and their rights, interests and properties are injuriously affected by the Bill, to which your Petitioners object for reasons amongst others, here stated.

Your Petitioners' concerns

- 11 The Bill provides for a number of works which are set out in Schedule 1 to the Bill, including the construction and operation of an underground railway beneath or in the vicinity of your Petitioners' properties and in particular the development of new stations and associated works at Paddington and at Tottenham Court Road.
- 12 Your Petitioners are not opposed in principle to the intended new railway. However, they are concerned that the powers proposed in the Bill as affecting their properties go beyond what is required. Further, no adequate provision has been made to secure that damage and disruption are kept to a minimum or to secure that in other respects their property interests are reasonably safeguarded. Accordingly, they object to the Bill for these reasons and having regard to the more detailed particulars referred to below.

Properties in Charing Cross Road/Sutton Row – The “Goslett Yard” site – plots 673 and 674

- 13 According to the supplementary documents to the Bill, Derwent Valley Central Limited's property at the “Goslett Yard” site, as referred to in the Crossrail Environmental Statement, is proposed to be permanently acquired for the purpose of a work site for the construction of the proposed Tottenham Court Road Crossrail Station. The Environmental Statement, at paragraph 8.7.17, indicates that a ventilation and emergency intervention shaft is currently proposed to be built upon part of the Goslett Yard site, although it is understood that the design and hence the precise position of this and other elements of the proposed new station has yet to be settled. It is intended to demolish the buildings that currently stand upon the site in which the Company has invested substantially over the years and there are indicative proposals for the redevelopment of the majority of the Goslett Yard site shown in the

Crossrail Environmental Statement at Appendix C2 in figures C2.11 and C2.12 (“over site development” (OSD)).

- 14 Whilst your Petitioner accepts the principle of building a station in this location as part of Crossrail if the scheme proceeds, they respectfully submit that the Promoter needs only the land below the surface for the purpose of the scheme together with such land above ground as is strictly needed for the purpose of above ground operational structures. There is therefore no operational or other justification for the Promoter seeking to compulsorily acquire the entirety of your Petitioner’s land above the proposed station, together with its development potential.
- 15 Accordingly, your Petitioner objects to the powers contained in the Bill for this purpose and the related policy documentation relating to land acquisition and possible OSD and that even if, in the event, its whole interest is acquired, then the Company ought to be entitled to have returned to it the same interest as it had previously, less that which is strictly necessary for the station works. Your Petitioner also calls upon the Promoter now to join with it in jointly advancing an OSD for this site, particularly as your Petitioner is a highly experienced company in the business of owning and developing property and considers that it would be inappropriate for the Promoter to use the powers provided for in the Bill to itself undertake any OSD upon the Goslett Yard site.
- 16 Further your Petitioner does not accept that the indicative proposals for redevelopment of the Goslett Yard site as shown in the Crossrail Environmental Statement at figures C2.11 and C2.12 of Appendix C2 are appropriate. Your Petitioner is keen to ensure that the optimum OSD solution is achieved, which meets the reasonable needs of the Promoter for the purposes of Crossrail but which also produces an attractive and effective townscape solution for the site as a whole. Your Petitioner considers that a redevelopment to a height greater than that illustrated in Appendix C2 of the Crossrail Environmental Statement is appropriate and can be supported by a full contextual analysis and is justified in view of the relevant planning context.

17 Further, your Petitioner is concerned that the existence and proximity of the proposed works will affect the development potential of the site and give rise to restrictions on vertical loading that would or might impinge upon any redevelopment of the site above the station works and that accordingly your Petitioner should be fully consulted by the Promoter about any matters potentially affecting the capacity of the site to accommodate above ground development in this location.

18 Your Petitioner is also concerned about the effects of noise and vibration upon a redeveloped building upon the site bearing in mind particularly the location of the proposed ventilation and emergency intervention shaft upon the Goslett Yard site which would be adjacent to any new building on the site. Your Petitioner submits that the Promoter should be compelled to use the best available techniques in the construction and operation of the railway to ensure that the adverse effects of such noise and vibration are minimised to the fullest extent practicable.

Paddington – the Telstar House site – including plots 109 and 110

19 Derwent Valley London Limited is currently the freehold owner of property at the junction of Eastbourne Terrace and Bishops Bridge Road upon which it is at present undertaking a substantial office redevelopment. It has exchanged contracts on this property with the Prudential Assurance Company Limited but has not yet completed the transfer of the freehold interest. Once the sale has been completed, the company will continue to have a role in the management of the redevelopment that has now begun. The building which once stood upon this redevelopment site, called Telstar House, has been largely demolished and the replacement building is due to be ready for occupation from mid-2007.

20 Two relatively small plots of land identified in the Crossrail Bill fall within this larger development site, namely plot 109 (“subsoil beneath offices, steps, platform, basement, cellar and premises”) and plot 110 (“yard, path, steps, spiral staircase and premises”). These plots are subject to compulsory purchase or use under the Bill.

21 The Crossrail Environmental Statement explains, in section 8.4, that a new Crossrail Station at Paddington will be constructed beneath Eastbourne Terrace, including ventilation structures at each end of the new station that will incorporate emergency

intervention facilities. The station is expected to take approximately five years to complete and will involve Eastbourne Terrace (and other areas in the vicinity) being used as a worksite. Substantial enabling works are required including the diversion of a sewer that currently runs beneath Eastbourne Terrace (Work No 1/12).

- 22 The Telstar House site is bounded on three of its sides by highways, namely Bishops Bridge Road, Eastbourne Terrace and Cleveland Terrace all of which are subject, in the immediate vicinity of the Telstar House site, to the provisions authorising temporary stopping up in Section 3, Schedule 3, paragraph 5 of the Bill. Westbourne Terrace, in the near vicinity of the site, is also subject to those provisions.
- 23 Your Petitioner is not satisfied that adequate justification exists for the compulsory acquisition of plots 109 and 110 and in the case of plot 110 (which is not confined to subsoil) this clearly falls within the area to be occupied by the redeveloped office building. However, it is acknowledged that the Promoter's agents have recently indicated that the compulsory purchase of plot 110 will only be required to the extent necessary to protect the subterranean infrastructure of the new station, involving no use of plot 110 above the surface and the that remainder of plot 110 and plot 109 will only be required temporarily for the erection of hoardings in order to protect the general public from the construction work. Accordingly, your Petitioner objects to the provisions in the Bill for their compulsory acquisition and submits that the Promoter should not be permitted to acquire any part of plots 109 and 110 beyond that strictly necessary for the works and not so as to prejudice the ongoing redevelopment of Telstar House.
- 24 It is apparent that there will be a great deal of construction activity within the vicinity of the Telstar House Site over a considerable period of time and your Petitioner is concerned that the construction, marketing, letting and general operation of its forthcoming office development, is not unduly or unfairly prejudiced by the Crossrail Scheme works proposed. Your Petitioner is therefore concerned to see that adequate arrangements are agreed between the Promoter and your Petitioner with specific reference to its Telstar House redevelopment to ensure that the timing of the Crossrail works and the specific nature of them, including matters such as the timing

of any road closures, hours of working, the use of any noisy machinery, the provision of adequate security lighting and other such matters is adequately regulated by reference to agreed method statements and/or codes of construction practice substantially in advance of any such works or activities taking place and that full compensation is paid by the Promoter to your Petitioner for any losses that are sustained on account of such works or activities.

- 25 Without prejudice to the generality of paragraph 24 your Petitioner is concerned about a number of issues as appearing in paragraphs 26 to 33 below.
- 26 Your Petitioner is concerned about dust and dirt produced during the proposed Crossrail works in the vicinity of the redeveloped Telstar House site. Your Petitioner would wish to see binding commitments imposed on the Promoter to require adherence to agreed measures to reduce dust and dirt, and to carry out additional mitigation if dust and dirt nonetheless continue to be a nuisance. Your Petitioner further requests that provision be made to ensure that the Promoter takes responsibility for the reimbursement of additional expense caused by dust and dirt such as more frequent cleaning of the property and more frequent replacement of air conditioning filters.
- 27 Your Petitioner notes the obligation under paragraph 5(2) of Schedule 3 to the Bill to provide reasonable access for pedestrians going to or from premises abutting a highway that is to be temporarily stopped up. Your Petitioner requests that save to the extent that the Promoter demonstrates that an interference with the public highway is strictly necessary for the purpose of the Crossrail works, that good and open access be maintained in all cases, such as in the event of the erection of hoardings and scaffolding, use of the footway next to the property, the placing of equipment and apparatus upon the highway, and the parking, loading and unloading of vehicles. Your Petitioner is concerned that adequate vehicular access to the Telstar House site be maintained and that full compensation be awarded for any costs or losses incurred through any inability adequately to service the building or park vehicles on the site. Furthermore, your Petitioner is concerned that the construction and operation of the railway does not interfere unduly with your Petitioner's ability to comply with its responsibilities in respect of the provision of

disabled access to the Telstar House site and that, should it do so, the Promoter will compensate or indemnify your Petitioner against any loss incurred as a result.

28 Significant increases in lorry movements will compound the disruptive effect of the construction works in the vicinity of the Telstar House site. Volume 8b of the Environmental Statement in map C2(iv) indicates that lorries will be travelling along Eastbourne Terrace and Bishops Bridge Road and delivering spoil directly to worksites immediately adjacent to the Telstar House site. Having regard to the scale of disruption which is envisaged, your Petitioner wishes to be satisfied that all possible measures have been or will be taken to limit the surface impact of the scheme and submits that the Promoter should be required to demonstrate that its proposals will result in the least adverse effects as is practicable and that it will take all possible steps to mitigate such disturbance as cannot be avoided and will adhere to an effective code of construction practice that meets your Petitioner's concerns.

29 Your Petitioner is concerned about settlement effects at the Telstar House site and having taken expert advice upon the matter your Petitioner wishes to ensure that there is no damage caused to the property including the pipes, cables, wiring and other service media as a result of the proposed works and the operation of the railway. Your Petitioner would wish to see an effective and agreed monitoring system in place before commencement and during construction of the Crossrail works, to measure the exact effect of any settlement on the property that your Petitioner proposes to erect on this site. There must in your Petitioner's submission be a threshold agreed with the Promoter for ground movement within the vicinity of this site. If that threshold is exceeded then it is imperative that the undertaker nominated to carry out the works is obliged to cease construction until such time as remedial measures are in place which will minimise settlement and consequently avoid distress to the property. Your Petitioner requests that it be given at least 14 days' notice of the intended passage of the tunnel boring machines in the vicinity of the property. Any necessary safeguarding or remedial measures should be agreed between your Petitioner and the nominated undertaker.

30 Your Petitioner wishes to be satisfied that there will be no disruption to statutory services provided to the Telstar House site as a result of the construction of the proposed works. In your Petitioner's submission a co-ordinated programme of

works to services leading into the property to be erected on this site ought to be established by the Promoter and the details provided to your Petitioner, to prevent an unnecessary succession of statutory undertakers' works to and reinstatement of Eastbourne Terrace, Westbourne Terrace, Cleveland Terrace or Bishops Bridge Road.

- 31 Your Petitioner is concerned about noise and vibration affecting the Telstar House site during the construction and operation of the proposed railway bearing in mind particularly the proximity of the proposed ventilation and emergency intervention shaft in Eastbourne Terrace to the Telstar House site. Your Petitioner submits that the Promoter should be compelled to use the best available techniques in the construction and operation of the railway to ensure that these adverse effects are minimised to the fullest extent practicable.
- 32 Your Petitioner is concerned that the redevelopment of Telstar House is subject to obligations in a planning agreement made under Section 106 of the Town and Country Planning Act 1990 (as amended) between Derwent Valley London Limited and Westminster City Council on 24 November 2004. This agreement requires, inter alia, Derwent Valley London Limited to undertake paving and other highway works in (or immediately adjoining) Cleveland Terrace, Eastbourne Terrace and Bishops Bridge Road prior to the occupation of the redevelopment and your Petitioner is concerned that the Promoter proposes works within the relevant limits of Cleveland Terrace, Eastbourne Terrace and Bishops Bridge Road as set out in the plans deposited with the Bill that would or might interfere or conflict with your Petitioner's contractual obligations under the planning agreement.
- 33 Your Petitioner is concerned that it is not prevented from fulfilling its obligations in respect of this planning agreement and that due provision should be made in this regard by the Promoter including for the Promoter to provide an indemnity in respect of any costs, charges or other losses incurred either wholly or partly arising in respect of your Petitioner's obligations in the planning agreement.

The Oxford Street/Rathbone Place Properties

- 34 Your Petitioner, Derwent Valley Property Development Limited, is concerned that notwithstanding that this group of properties is situated outside the limits of deviation shown on the deposited plans the buildings will be adversely affected by the Crossrail construction works taking place in the vicinity of them and over a substantial period of time. The works include a sewer diversion (Work No 1/16) in the vicinity of the buildings.
- 35 Separate lengths of Oxford Street and Tottenham Court Road in close proximity to the buildings (although not immediately adjoining them) are the subject of provisions in Section 3, Schedule 3, paragraph 5 of the Bill that provide for the temporary stopping up of those lengths of highway for the purposes of the works. Accordingly access to these buildings is liable to be hampered whilst these highways are stopped up and if not properly regulated this may significantly affect the flow of pedestrians passing next to the buildings along Oxford Street, pedestrian flow being a matter of particular relevance to the amount of passing trade that the retailers occupying the site can expect to attract. Your Petitioner therefore wishes to ensure that arrangements are in place to limit any such temporary closures to those demonstrated to be strictly necessary for the Crossrail works and that full compensation is awarded for any losses incurred on account of such closures.
- 36 In view of the proximity of the Oxford Street/Rathbone Place group of properties to the construction works, your Petitioner wishes to see an effective monitoring system in place before commencement of the works to measure the exact effect of any settlement occurring. In your Petitioner's submission there must be a threshold for ground movement agreed between your Petitioner and the Promoter which, if exceeded, will require construction work to cease until such time as appropriate remedial action has been taken. In particular, the property at Holden House, 54 to 62 Oxford Street, is a Grade II listed building, the structural stability of which may still be at risk notwithstanding its location outside the corridor identified by the Promoter's structural engineers within which they regard there to be a significant risk of settlement.
- 37 Having regard to the scale of disruption which is envisaged in the vicinity of these properties, your Petitioner wishes to be satisfied that all possible measures have been

or will be taken to limit the impact of the scheme upon these properties and submits that the Promoter should be required to demonstrate that its proposals will result in the least adverse effects as is practicable and that it will take all possible steps to mitigate such disturbance as cannot be avoided and will adhere to an effective code of construction practice that meets your Petitioner's concerns.

Goslett Yard – Situation if existing properties not acquired

- 38 Your Petitioner, Derwent Valley Central Limited, notes that the design of the proposed new Crossrail Station at Tottenham Court Road has not been settled and accordingly could change. If such changes were to obviate the need to use the Goslett Yard site as a worksite the buildings now standing thereupon would be in the vicinity of the substantial works required to construct the new station and in those circumstances their use, amenity, quiet enjoyment and physical condition would or might be prejudiced. Accordingly your Petitioner submits that in those circumstances your Petitioner wishes to be satisfied that all possible measures have been or will be taken to limit the impact of the scheme upon these properties and submits that the Promoter should be required to demonstrate that its proposals will result in the least adverse effects as is practicable and that it will take all possible steps to mitigate such disturbance as cannot be avoided and will adhere to an effective code of construction practice that meets your Petitioner's concerns.

Compensation and loss

- 39 The provisions contained within the Bill for compensation for the compulsory purchase of property or of subsoil or other new rights will not enable your Petitioners or other landowners 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.
- 40 Your Petitioners also object that the compensation provisions of the Bill are inadequate to compensate your Petitioners and others in circumstances where no land (or interests in land) are 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 are 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 operation of these works, separately from any claim for compensation in respect of the acquisition of any land (or interest therein) from your Petitioners under the powers of acquisition.

41 Your Petitioners further submit that the compensation provisions proposed in the Bill are inadequate to compensate your Petitioners for the loss, damage and inconvenience, attributable to blight to their properties, which they have already suffered or may now suffer as a result of the prospective construction and subsequent use of the proposed works. Your Petitioners are concerned that prospective lessees or other occupiers of properties will take the view that that the proposals may so blight some properties that they would not wait to acquire or occupy any part of the properties, or that prospective or existing lessees and occupiers will demand a reduced rent, fee or other payment or seek concessions or further concessions, due to the prospect of the works. Further provisions should, they submit, be included in the Bill including provisions respecting the making and assessment of claims for compensation, and indemnifying your Petitioners for any loss it might suffer as the result of unfavourable rent reviews or other losses respecting the leases or other agreements currently affecting some of their properties insofar as the reduced rent or other payment payable (as it may differ from open market rent) is attributable to the proposed works and their effect on your Petitioners' properties. Furthermore, compensation should be available for any loss (so attributable) which your Petitioners might suffer in the event of them not being able to re-let or otherwise secure new occupiers to their properties (in whole or in part) to existing or new tenants or other occupiers or in the event of them only being able to do so at a reduced premium, payment or rent or subject to concessions or further concessions.

42 Your Petitioners are also very conscious that they and their property interests have been blighted for a very considerable time. No provision appears to be proposed to give any recognition to this detriment. In addition, the blight and uncertainty that has been suffered is now further compounded by the absence of any in principle or

other approval to funding, the consequence of which is that your Petitioners are being put to further loss, trouble and expense without any certainty that the project will be able to progress to implementation or that its implementation will not be further substantially delayed. Your Petitioners believe that there is no parallel for this in relation to other major projects and that it is generally unjustifiable as well as being contrary to a number of important elements of public policy.

General Concerns

- 43 Your Petitioners submit that the Promoter should be required to indemnify them from all claims and demands which may be made in consequence of the construction, use or maintenance of the works under the Bill, or their failure or want of repair, or in consequence of any act or omission of the Promoter, his contractors or agents in carrying out the works under the Bill.

Costs

- 44 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.
- 45 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.

Conclusion

46 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners and those of their tenants and other occupiers 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, their Counsel, Agents and witnesses in support of the allegations of this Petition against so much of the Bill as affects their property, rights and interests 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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