

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:

BNP PARIBAS JERSEY UNIT TRUST CORPORATION LIMITED AND ANLEY
TRUSTEES LIMITED AS TRUSTEES OF HENDERSON CENTRAL LONDON OFFICE
FUND

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 property

- 6 Your Petitioners are BNP Paribas Jersey Unit Trust Corporation Limited and Anley Trustees Limited as Trustees of Henderson Central London Office Fund.
- 7 Your Petitioners have a long leasehold interest in a property at 152/160 Wardour Street and 2 Sheraton Street, London W1 ("the Property") some of the subsoil of which is subject to compulsory acquisition under the Bill (Parcel 557 in the City of Westminster). The Property is a Grade II listed building consisting of red brick with stone dressings.
- 8 In addition, the Property is in the immediate vicinity of the proposed works and liable to be injuriously affected by them.
- 9 Your Petitioners and their rights, interests and property are injuriously affected by the Bill, to which your Petitioners object for the reasons amongst others, here stated.

Your Petitioners' concerns

- 10 Your Petitioners are the sub-landlords of the Property, which is occupied by a number of business tenants. Part of the subsoil below the Property is being acquired under the Bill for the construction of two twin-bore tunnels and other tunnels and subsurface passageways which, according to the Environmental Statement, will pass underneath the Property at a depth of around 16 metres below ground level, though this may vary within the limits of deviation. In addition, in the vicinity of the Property will be the western ticket hall for the proposed Crossrail Tottenham Court Road Station.
- 11 As a result of the proposed acquisition of subsoil and construction beneath the Property, your Petitioners are concerned about settlement effects on the Property. There may be differential settlement of more than 100mm across the building resulting in cracking to the structure and finishes of the building if proposed settlement mitigation measures are not successfully implemented. Accordingly, your Petitioners would wish to see an effective and agreed monitoring system in place before commencement and during construction of the works, to measure the exact

effect of any settlement on the Property. Your Petitioners wish to have a involvement in the proposed monitoring system, and would seek reimbursement for the cost of appointment of a suitably qualified supervisor to oversee the monitoring system. There must in your Petitioners' submission be a threshold agreed between your Petitioners and Promoter for ground movement within the vicinity of the Property and distortions of its structure. If that threshold is exceeded then it is imperative that the nominated undertaker 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. This is particularly important as the Property is Grade II listed.

- 12 Further, your Petitioners are concerned that construction works beneath the Property may cause damage to the basement, particularly in respect of waterproofing, and your Petitioners seek an undertaking from the Promoter that it will reimburse your Petitioners for the cost of any necessary works to the basement arising from damage caused by the proposed works.
- 13 Generally, your Petitioners have concerns relating to the proximity of the proposed tunnels to the Property and seek confirmation from the Promoter that works beneath the Property will not be closer than 14 metres below ground level in order to protect the Property and its basement.
- 14 Your Petitioners also require that the construction beneath the Property not come within 14 metres of ground level in order to ensure the proposed works would not unduly impact upon any future redevelopment proposals for the Property.
- 15 Your Petitioners request that they be given at least 21 days' notice of the intended passage of the tunnel boring machines beneath the Property and that any necessary safeguarding or remedial measures are agreed between your Petitioners and the nominated undertaker.
- 16 Tunnelling of the station platform tunnels is proposed to be carried out using the Sprayed Concrete Lining (SCL) method, poor execution of which has been attributed to a number of tunnel collapses in the recent past. Your Petitioners seek assurance that this technique is to be carried out safely and correctly, and seek to ensure that

appropriate independent review of the methodology is carried out prior to the tunnels being constructed, and that sufficient independent controls are in place during construction.

- 17 Your Petitioners are concerned to ensure that compensation grouting carried out to mitigate these settlement effects be carried out to a high standard to ensure minimum damage to the Property during the period of construction works. Further, your Petitioners are concerned about the effect of fixing monitoring instrumentation on the building façade and within the building and would wish to agree the locations with the nominated undertaker in advance of commencement of the compensation grouting works. On completion of works in the vicinity of the Property, your Petitioners seek reimbursement from the Promoter for the cost of reinstating the Property to its condition prior to commence of the works.
- 18 In respect of compensation grouting, the Bill makes provision for the construction of a grout shaft on Sheraton Street. Your Petitioners are concerned about the impact of the Sheraton Street shaft upon the Property. In particular, they have concerns regarding the visual impact of the shaft, disruption to traffic, the disturbance of construction traffic accessing the shaft and noise, dust and dirt created by works at the shaft. Your Petitioners are concerned that this will adversely affect the value of the Property as rental premises. Your Petitioners respectfully submit that the shaft would be better located elsewhere in order to minimise this disruption to the Property and surrounding premises. Your Petitioners request that the Promoter investigates alternative sites for shaft and relocate it to a more appropriate position.
- 19 If the shaft is not to be relocated, your Petitioners ask that the scope of paragraph 5 of Schedule 2 to the Bill be extended to include all potential remedial measures, including compensation grouting, and that all works at the shaft apart from the essential injection of grout be carried out during restricted working hours to minimise disturbance to tenants at the Property. Further, your Petitioners seek confirmation from the Promoter that the shaft and surrounding hoardings only be constructed and erected immediately in advance of compensation grouting works and that the shaft and related works be concluded and closed as soon as practicable once compensation

grouting works have been carried out to avoid unnecessary long-term disturbance at the Property.

20 Generally, your Petitioners are concerned that the condition of the Property will deteriorate as a result of the proposed works. The Property has recently undergone, at cost to your Petitioners, a sympathetic redevelopment behind part of its façade and a restoration of its listed features and is therefore in excellent condition. Your Petitioners have full repairing liability for the Property under their lease and are therefore responsible for all repair and maintenance of the structure and common parts of the Property. Should the works be authorised, your Petitioners intend to commission a condition survey of the Property shortly before the commencement of the works and shortly after their completion, and possibly at intervals during the works if damage is observed to have occurred. Your Petitioners request that the costs of carrying out such surveys, and of rectifying any deterioration in the condition of the Property found to be due to the works, be reimbursed by the Promoter.

21 Your Petitioners are particularly concerned about noise and disturbance occurring during the construction of the proposed works. There are tenants in occupation of the Property operating sensitive post-production film equipment. Accordingly, your Petitioners wish to see an effective noise mitigation and monitoring system in place before commencement and during construction of the works. There must in your Petitioners' submission be a threshold agreed between your Petitioners and the Promoter of the Bill. If that threshold is exceeded, the nominated undertaker should be obliged to cease construction until such time as remedial measures are in place which will reduce noise levels below the agreed threshold.

22 In addition, your Petitioners are concerned about vibration both during construction and on completion of the proposed works. Your Petitioners fear that vibrations caused by tunnelling and the operation of the railway will cause disturbance to the occupiers of their Property, in particular those occupiers with vibration and noise sensitive businesses. Your Petitioners request that provision is made to ensure the absence of groundborne vibration from future railway operation once the tunnel is completed, by the use of absorptive track beds or other means, and that the Promoter

reimburse them for the cost of installing noise and vibration reduction measures within the Property where required.

- 23 Your Petitioners are concerned about dust and dirt produced during the construction of the proposed works particularly resulting from the Sheraton Street shaft. Your Petitioners would wish to see binding commitments imposed on the Promoter to require adherence to agreed measures to reduce dust, and to carry out additional mitigation if dust continues to be a nuisance at the Property. Your Petitioners request that provision be made to ensure that the Promoter takes responsibility for the reimbursement of your Petitioners for additional expense caused by dust and dirt such as more frequent cleaning of the Property and more frequent replacement of air conditioning filters. Provision should also be made for regular street cleaning.
- 24 Your Petitioners' business tenants operate computer and post-production equipment at the Property and are concerned about the potential effects on such equipment of the construction and operation of the proposed works and the operation of high voltage cables and other electrical equipment. Your Petitioners submit that a full appraisal should be made and disclosed by the Promoter of the potential impacts and will wish to be satisfied that appropriate protective measures will be taken.
- 25 Your Petitioners wish to be satisfied that there will be no disruption to statutory services provided to the Property as a result of the construction of the proposed works. In your Petitioners' submission, a co-ordinated programme of works to services leading into the Property needs to be established by the Promoter and the details provided to your Petitioners, to prevent a succession of statutory undertakers' works to and reinstatement of Wardour Street and Sheraton Street.
- 26 Your Petitioners note 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 proposed to be temporarily stopped up. Your Petitioners request that good and open access be maintained in all other cases as well, 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 there, and the parking, loading and unloading of vehicles.

- 27 The Property has the benefit of 3 parking spaces for the temporary parking of cars and delivery vehicles, parking for motor and pedal bikes and 2 loading bay areas. Your Petitioners request that vehicular access to the Property be maintained at all times and that compensation be awarded for any costs incurred through inability to service or park at the Property due to the works. In addition, your Petitioners and their tenants require continuous access for pedestrians and service deliveries, often of a substantial nature, to retail units at the Property, specifically in respect of service doors located on Sheraton Street. Your Petitioners seek an undertaking from the Promoter that works and the erection of hoardings and scaffolding will not prevent continued retail use of the Property, and that such equipment will not be erected until such time as required for the purposes of carrying out the relevant works and removed promptly upon completion of the works.
- 28 Your Petitioners respectfully submit that the proposals contained in the Bill are causing a blight on the Property. The Property is occupied by a number of tenants with tenancies due to expire before commencement of the proposed works. Your Petitioners fear that prospective lessees will state that the proposals would so blight the Property that they would not be interested in acquiring any part of the Property, or that prospective or existing lessees will demand a considerably reduced rent, due to the prospect of the works. This concern relates in particular to those tenants operating post-production equipment who may be severely affected by the proposals under the Bill. Moreover, the Bill does not contain adequate provisions for compensating such blight and your Petitioners respectfully suggest that it should do so.
- 29 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.
- 30 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.

- 31 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

- 32 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners and of their subsidiaries and those of their tenants 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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