

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:

J. FERGUSON ESTATE 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 Petitioner and its properties

- 6 Your Petitioner is a property investment company which holds a substantial portfolio of properties in central London, as well as other properties outside London.
- 7 Save in respect of station premises below ground your Petitioner owns the freehold interest in two adjacent properties that are subject to compulsory acquisition or use under the Bill, both of which are located in the City of Westminster. They are 19-23 Oxford Street (parcel 643) and 1-6 Falconberg Court (parcel 659), as shown on sheet 10 of the plans deposited with the Bill.
- 8 Your Petitioner and its rights, interests and properties are injuriously affected by the Bill, to which your Petitioner objects for the reasons amongst others, here stated.

Your Petitioner's concerns

- 9 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 and in the vicinity to your Petitioner's properties and in particular the development of a new station at Tottenham Court Road (Work Nos. 1/3A and 1/3B).
- 10 Your Petitioner is not opposed in principle to these works or the intended new railway generally. However, it is concerned that the powers proposed in the Bill as affecting its 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 its property interests are reasonably safeguarded. Accordingly, it objects to the Bill for these reasons and having regard to the more detailed particulars referred to below.

Compulsory acquisition

- 11 Your Petitioner maintains that there is no adequate justification for it to be deprived permanently of the entirety of its property interests at 1-6 Falconberg Court and 19-23 Oxford Street and seeks to retain its interest less that which is strictly necessary for the station works. In the event that the whole of the company's interests are acquired, then in your Petitioner's submission, it should be entitled to have returned to it the same interest as it had previously less that strictly needed for the station works.

1-6 Falconberg Court – Over-site development

- 12 Volume 2 of the Environmental Statement indicates at paragraph 8.7.25 that 1-6 Falconberg Court is amongst those buildings intended to be demolished for the purposes of a work site for the construction of the proposed Tottenham Court Road Crossrail station.
- 13 It is further understood, on the basis of discussions and correspondence with the Promoter's agents, that whilst the design of the new station has yet to be settled and so could change, it is currently proposed that a fire fighting and passenger escape shaft, together with accommodation for plant and equipment, is to be located underground and at street level upon a part of the site now occupied by the building. The remainder of this site would be the subject of an over site development in conjunction with adjoining land, some of which is currently owned by London Underground Limited.
- 14 Your Petitioner is experienced in the business of property investment and the development of its properties. Accordingly, your Petitioner considers that it would not be appropriate for the Promoter to use the powers provided for in the Bill to undertake any redevelopment itself of your Petitioner's properties and that the appropriate and sensible course of action would be for your Petitioner and London Underground Limited now to proceed to make arrangements, together with others as appropriate, to jointly undertake an over-site development at this important junction location.

- 15 Your Petitioner submits that it would be appropriate for an over site development in this location to incorporate the site of 1-6 Falconberg Court together with the other plots of land within the Crossrail work site area that lies between Falconberg Court and Oxford Street. A number of these plots are, according to the Crossrail Book of Reference, already owned or reputedly owned wholly or in part by London Underground Limited, namely numbers 645, 646, 647, 648 and 660, all in the City of Westminster.
- 16 Your Petitioner would mention that a similar course of action was followed in the early 1990's when London Underground Limited was proposing a redevelopment of Tottenham Court Road Underground Station pursuant to the London Underground (Safety Measures) Bill. The works then in contemplation involved the demolition of properties (including property owned by your Petitioner) in order to construct a new ticket hall and arrangements were made between London Underground Limited, your Petitioner and others in the form of an undertaking for them to participate in an above ground redevelopment following the reconstruction of the station.
- 17 Your Petitioner has had some initial discussions with the Promoter's agents in this regard but no formal arrangements have been made.

19-23 Oxford Street – Over Site Development

- 18 19-23 Oxford Street (plot 643) lies outside the area of the proposed work site and therefore is not included in the list of buildings proposed to be demolished in paragraph 8.7.25 of the Environmental Statement. Your Petitioner understands, however, following discussions with Cross London Rail Links Limited, that on account of its proximity to the station works and in part depending upon its structural condition, the Promoters may wish to demolish 19-23 Oxford Street (plot 643) and for similar reasons 17 Oxford Street (plot 644).
- 19 Your Petitioner submits that in those circumstances plots 643 and 644 ought to be incorporated in the over site development referred to above and subject to the joint arrangements that your Petitioner wishes to put in place to undertake it.

20 Regarding the nature of any over-site development in this location, whether or not plots 643 and 644 are incorporated within it, your Petitioner does not accept that the indicative proposals for redevelopment of this junction site as shown in the Environmental Statement at Figure C1.10 in Volume 7 are appropriate for the site. Your Petitioner is keen to ensure that the optimum over-site development solution is achieved, which meets the reasonable needs of the Promoter but which also produces an attractive and effective townscape solution for the site.

21 Further, your Petitioner is concerned that the existence and proximity of the proposed works will affect the development potential of its properties and give rise to restrictions on vertical loading that would or might impinge upon any redevelopment of the sites 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.

19-23 Oxford Street (if not demolished)

22 The Promoter proposes to acquire 19-23 Oxford Street, or rights in this site, in order to carry out the proposed works. The building comprises 6 storeys above ground and a basement. The basement is in use as a nightclub, the ground floor accommodation is in retail use and the remainder of the building is in educational use. In addition, Volume 2 of the Environmental Statement does not indicate that this building will need to be demolished, only that the Promoter proposes to construct part of the new Tottenham Court Road station beneath it.

23 If the building is to remain, it is apparent that there will be a great deal of construction activity within its vicinity and over a considerable period of time whilst the new station is constructed.

24 Accordingly, 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 impact of the works upon the property 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. Your Petitioner would have similar concerns should design changes to the works result in 1-6 Falconberg Court remaining instead of being demolished.

- 25 Without prejudice to the generality of paragraph 24 your Petitioner is concerned about a number of issues as appearing in paragraphs 26 to 30 below.
- 26 Your Petitioner is concerned about dust and dirt produced during construction of the proposed works. 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 continues to be a nuisance to your Petitioner's properties. Your Petitioner requests that provision be made to ensure that the Promoter takes responsibility for the reimbursement of your Petitioner for 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 proposed to be temporarily stopped up. A section of Oxford Street, within which 19-23 Oxford Street is situated, is subject to these provisions. Your Petitioner requests 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 near to these properties, the placing of equipment and apparatus, and the parking, loading and unloading of vehicles.
- 28 Your Petitioner is concerned about settlement effects upon the property in view of the proximity of the works and wishes to ensure that there is no damage caused to the property as a result of the proposed works and the operation of the railway. Accordingly, your Petitioner 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. There must in your Petitioner's submission be a threshold agreed between your Petitioner and 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 building. 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.

29 Your Petitioner is concerned by the affect of noise and vibration arising from the construction of the railway on the property and from the operation of the railway. Your Petitioner submits that the Promoter should be compelled to use the best available techniques in the construction and operation of the railway and its associated works and structures to ensure that these adverse effects are minimised. Furthermore, your Petitioner wishes to see strict standards set to which the Promoter must be made liable to comply. There must, in your Petitioner's submission, be a noise threshold agreed between your Petitioner 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.

30 Your Petitioner wishes to be satisfied that there will be no disruption to statutory services provided to any of its properties 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 its properties needs to be established by the Promoter and the details provided to your Petitioner, to prevent a succession of statutory undertakers' works to and reinstatement of the area in the vicinity of the property. In particular, your Petitioner is concerned that the proposed creation of a utilities culvert in Charing Cross Road will not disrupt services provided to any of your Petitioner's properties.

Compensation

- 31 Your Petitioner submits that it should be entitled to make its claim for compensation in respect of damage arising to its properties in Oxford Street by the execution of the works, or for injurious affection thereof by the execution or working of those works, separately from any claim for compensation in respect of the acquisition of any land (or interests therein) from your Petitioner under the powers of acquisition in the Bill and that any such deferred claim should be permitted to be made at any time before the expiry of 5 years following the opening of the relevant part of the proposed railway to public traffic.
- 32 Your Petitioner respectfully submits that the proposals contained in the Bill are causing a blight on your Petitioner's properties. They are already blighted by the proposals contained in the Bill. Your Petitioner fears that existing and prospective lessees and occupiers will state that the proposals would so blight the property that they would not be interested in acquiring or occupying all or any part of the property or that, in the case of existing lessees and occupiers, they will demand a considerably reduced rent, fee or other payment or concession, due to the prospect of the works. Moreover, the Bill does not contain adequate provisions for compensating such blight and your Petitioner respectfully suggests that it do so.
- 33 Your Petitioner further humbly submits that such provisions with regard to compensation in respect of compulsory acquisition and other matters as are proposed in the Bill are inadequate to compensate your Petitioner for the loss, damage and inconvenience which it might suffer as a result of the construction and subsequent use of the proposed works. Further provisions should, it submits, be included in the Bill including provisions respecting the making and assessment of claims for compensation, and indemnifying your Petitioner for any loss it might suffer as the result of unfavourable rent reviews respecting the leases currently affecting some of its properties insofar as the reduced rent payable (as it may differ from open market rent) is attributable to the proposed works and their effect on your Petitioner's properties or for any loss (so attributable) which your Petitioner might suffer in the event of it not being able to re-let its properties (in

whole or in part) to existing or new tenants or in the event of it only being able to do so at a reduced premium or rent.

General concerns

- 34 Your Petitioner submits that the Promoter should be required to indemnify it 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

- 35 As a general matter, your Petitioner submits that provision should be made for the Promoter to repay to your Petitioner all proper costs, charges and expenses (including the proper fees of such professional advisers as it may instruct) reasonably incurred in consequence of the Bill or of any provision made as a result of this Petition.
- 36 There are other clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect your Petitioner and its rights, interests and property and for which no adequate provision is made to protect your Petitioner.

Conclusion

37 Your Petitioner submits that the Bill fails adequately to safeguard and protect the interests of your Petitioner and those of its tenants and should not be allowed to pass into law without these issues being addressed.

YOUR PETITIONER THEREFORE HUMBLY PRAYS 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 itself, 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 Petitioner and in support of other such clauses and provisions as may be necessary or expedient for its protection or that such other relief may be given to your Petitioner in the premises as your Honourable House shall deem meet.

AND YOUR PETITIONER WILL EVER PRAY, &c.

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