

HOUSE OF COMMONS
SESSION 2005-06

CROSSRAIL

PETITION

Against the Bill – 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 (1) Whitefox Properties
Limited, (2) Bronzegate Limited, (3) Globewalk
Limited and (4) Roseport Limited

SHEWETH as follows :-

1. A Bill (hereinafter called "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. Clauses 1 to 20 set out the Bill's objectives in relation to the construction and operation of the railway transport system mentioned in paragraph 1 above. They include provision for compulsory acquisition, planning permission, heritage issues, trees and noise. Clauses 21 to 44 of the Bill establish a regulatory regime for the railway transport system and clauses 45 to 59 of the Bill deal with miscellaneous and general provisions.

3. The works proposed to be authorised by the Bill are specified in Schedule 1 to the Bill and the scheduled works are defined in the Bill as the works specified in Schedule 1 to the Bill which are works authorised to be constructed by the nominated undertaker (defined in the Bill and hereinafter referred to as "the nominated undertaker").
4. Your first and second Petitioners are Whitefox Properties Limited and Bronzegate Limited, both of which are companies formed under the Companies Act 1985. Your first and second Petitioners are the freehold owners of the Astoria Theatre at 157-165 Charing Cross Road, London W1, and which is shown as plot number 662 in the City of Westminster on the deposited plans which accompany the Bill. Your third and fourth Petitioners are Globewalk Limited and (4) Roseport Limited who are the freehold owners of 17 Oxford Street, London W1, which is so numbered 644 in the City of Westminster. Each of your four Petitioners is in the joint ownership of Haigside Limited and Emflag Properties Limited. The Bill would authorise compulsory acquisition of land or rights in land belonging to your Petitioners.
5. Your Petitioners allege that they and their property, rights and interests would be injuriously and prejudicially affected by the provisions of the Bill if passed into law in their present form and they accordingly object to the Bill for the reasons, amongst others, hereinafter appearing.

The Astoria

6. Plot number 662 described in paragraph 4 above is the site of the Astoria Theatre at 157-165 Charing Cross Road. As well as the theatre, the site comprises shops, a currency exchange, and offices. The Astoria Theatre itself is one of London's foremost live music venues and nightclubs. It has operated as a theatre on this site for many years, originally as a variety theatre and then music hall and now is the venue for contemporary music concerts and regular nightclub evenings.
7. The effect of the Bill's proposals on the Astoria can be seen by studying map number C5(iii) in volume 4a of the environmental statement deposited with the Bill. It is proposed that the premises will be

demolished and will become part of the site on which the Tottenham Court Road Station Eastern Ticket Hall will be built.

8. Your first and second Petitioners are gravely concerned about the impact of the proposed demolition of the building, for two main reasons. First, it will result in the loss of a substantial investment to your first and second Petitioners and secondly, it will affect the ability of your first and second Petitioners to let the property in the interim period, whether or not the Bill's proposals are implemented, due to the blight which will arise because of the threat of acquisition.
9. Your first and second Petitioners note that this is the third attempt in 15 years to seek Parliamentary powers to redevelop the underground station. The first occasion was the London Underground Underground (Safety Measures) Act 1991, which authorised a number of essential measures to be taken in the light of the Fennell Report into the King's Cross fire. The powers under that Act were not implemented by London Underground Limited. The second occasion was the previous attempt to promote a Crossrail Bill.
10. In the light of that failure and in the light of enormous cost of implementing the proposals under the Bill, the funding proposals for which are in doubt, your petitioners are seriously concerned about the long-term blighting effect of the Bill on their property. The Bill makes no provision for compensation for such blight and your first and second Petitioners submit that the Bill should be amended in that respect.
11. Your Petitioners are not convinced that the promoters have investigated every option for the construction of the Tottenham Court Road East ticket hall. In particular, your first and second Petitioners note that the previous Crossrail private bill would not have authorised the acquisition of the Astoria, but instead contemplated the use of another site on the east side of Charing Cross Road and to the south of Andrew Borde Street. Your petitioners respectfully request that the select committee which considers the Bill should satisfy itself that all alternatives have been explored before allowing the Bill to proceed in its current form.

12. If the Astoria block is to be demolished in order for the station to be built, then your first and second Petitioners can see no reason why they should not be entitled to retain the freehold ownership of some, if not all of their land. This could be achieved by your first and second Petitioners granting a long term lease to the promoters for so much of the land as is required for permanent station buildings, and a short term lease over the rest of the land for as long as is required for the construction of the station. Alternatively, a "flying freehold" could be retained by your first and second Petitioners, enabling them to redevelop the site themselves, thus protecting their valuable investment. Your first and second Petitioners understand that flying freeholds exist above other London Underground stations, so the situation is not unprecedented.

13. Your petitioners have noted the recent decision of the Secretary of State to refuse the application by London Underground Limited ("LUL") for a Transport and Works Order for the redevelopment of Camden Town underground station. There are many similarities between the factual circumstances of that application and those pertaining at Tottenham Court Road. Both require the demolition of above ground buildings to enable the redevelopment or construction of an underground station, and in both cases the buildings to be demolished are in a conservation area. It is noteworthy too, though not a point of any legal significance, that the proposals for Camden would have involved the demolition of a similar establishment to the Astoria, namely the Electric Ballroom. In the Camden Town case, the inspector recommended refusal, and the Secretary of State agreed, because he was dissatisfied with the proposals which LUL put forward in their application for deemed planning permission for the replacement above ground development. The inspector concluded that the development was inappropriate in terms of the conservation area. Having refused the application for deemed planning permission, the Secretary of State refused the application for the Transport and Works Order, because there was no reasonable prospect of it being implemented. In the case of the Bill, there are no proposals for above ground development at all, merely vague illustrations of what might be built, with no accompanying environmental impact assessment. Your petitioners question whether it is right that your honourable House should be asked by the Secretary of State to look upon the Bill's proposals in a

different way from the way he did himself in the Camden case and whether the Bill should be allowed to proceed without a proper environmental impact assessment of the above ground development having been carried out.

17 Oxford Street

14. 17 Oxford Street comprises a shop, forecourt, restaurant, offices basement and cellar. The plot comprising 17 Oxford Street is liable to be acquired compulsorily under the Bill, but according to the Environmental Statement it is not intended to be demolished either to form part of the proposed Astoria worksite or the proposed Eastern Ticket Hall. Map C5(iii) in volume 4a of the environmental statement deposited with the bill shows that sub-surface structures will be constructed underneath the premises. The map shows that the sub-surface structures will run between the two ticket halls underneath a number of premises on the south side of Oxford Street, including number 17. Furthermore, map C1.10 in volume 7 of the Environmental statement shows the elevation of the proposed Crossrail operating structures along Oxford Street south. It shows number 17 being retained with a temporary support structure on its eastern side, all the neighbouring properties on that side shown as being demolished. If the idea is to retain your third and fourth Petitioners' property, then they do not understand why the proposed powers of compulsory acquisition under the Bill are not limited to the subsoil of the property. The Bill should be amended accordingly, in your Petitioners' respectful submission.

Both Premises

15. If only the subsoil of number 17 were to be acquired under the Bill and number 17 were to be retained by your third and fourth Petitioners or if the Astoria were not to be acquired and demolished, then your Petitioners would have serious concerns about the effect of the proposed works at Tottenham Court Road station on both premises. In your Petitioners' submission, the Bill is deficient in various respects, in relation to your Petitioners' premises, as detailed below. They submit that the Bill should be amended to provide them proper protection in these respects. The matters in relating to which protection is requested are –

- (a) The construction of the works could cause damage to your Petitioners' premises. Your Petitioners would wish the promoters to agree that a schedule of condition should be prepared, in accordance with a specification to be agreed with your Petitioners, at the expense of the nominated undertaker, before the works commence. The effect of the works on the premises should be regularly monitored at the expense of the nominated undertaker, in accordance with arrangements to be agreed with your Petitioners so as to minimise interference with business at your Petitioners' premises and at the conclusion of the works a further schedule of condition should be prepared at the nominated undertaker's expense, to ascertain what matters require to be remedied;
- (b) Your Petitioners are particularly concerned that your Petitioners' premises may suffer settlement effects as a result of construction of the nominated undertaker's proposed works. Your Petitioners submit that the Promoters should be obliged to carry out suitable protective and preventative measures in relation to your Petitioners' premises, and the services thereto, to your Petitioners' satisfaction, to minimise settlement effects;
- (c) If, during the course of the construction of the works your Petitioners notice damage occurring to their property which requires attention, the nominated undertaker should be obliged, on request, to carry out the works of repair and suitable protective works, to your Petitioners' satisfaction, without waiting until the conclusion of the construction of the works;
- (d) Your Petitioners are concerned about impact of the proposed works on the foundations of your Petitioners' premises and about prejudice to future development of the premises. The nominated undertaker should be required to construct the underground works at such depth or in such a way that the foundations of and subsoil under your Petitioners' premises are unaffected and so that the load bearing capacity of the foundations and subsoil stratum underneath is not reduced;

- (e) The construction of the works and exercise of other powers under the Bill could interfere with or cause disruption to services to and from your Petitioners' premises including power, drainage and telecommunications services. The nominated undertaker should be required to ensure that these services will be suitably protected and secured, that supplies and services will not be interrupted and that the capacity of supplies and services will not be impaired by reason of the works;
- (f) Your Petitioners are concerned about the exercise by the nominated undertaker, in relation to your Petitioners' premises, of the powers contained in paragraphs 4, 5 and 6 of Schedule 2 to the Bill relating to mitigating and safeguarding works to buildings including the associated powers of entry. Your Petitioners would wish to have control over such works, have the works overseen by independent engineers, be satisfied as to the quality of such works and be assured of proper and adequate access to your Petitioners' premises being maintained at all times. Your Petitioners seek assurances accordingly;
- (g) As regards the nominated undertaker's powers of entry under the Bill, your Petitioners submit that these should be restricted such that they cannot be exercised during working hours at your Petitioners' premises. Furthermore, the time of day when major structural works may be carried out should be restricted to outside working hours;
- (h) Your Petitioners are concerned about exercise by the nominated undertaker of the powers of paragraph 9 of Schedule 2 to the Bill with regard to preparatory works, and in particular the making of trial holes, and that the nominated undertaker could seek to do this at your Petitioners' premises. This power should only be exercisable with the consent of your Petitioners;
- (i) Your Petitioners are concerned about adverse effects of the nominated undertaker's proposed powers, on occupiers of your Petitioners' premises and their businesses and on the impact on your Petitioners' interests in relation to rental levels on rent reviews and rental income generally;

- (j) If the nominated undertaker were to construct the works without taking proper account of the day to day requirements of your Petitioners and their tenants, there could be a serious adverse effect on trade at your Petitioners' premises. In particular, your Petitioners are concerned about the effects of noise, dust and vibration and about access for vehicles as well as pedestrians, for the purpose of the delivery of goods. Free and convenient access should be maintained at all times for pedestrians. Creation of noise, dust and vibration which may affect your Petitioners' premises should be avoided during the hours of trading of the premises and during normal office hours.
- (k) Your Petitioners are concerned that exercise by the nominated undertaker of the powers of the Bill in relation to street and pavement closures or openings in streets or pavements could result in vehicular access to your Petitioners' property being denied or pedestrian access being impeded. Your Petitioners are particularly concerned about the adverse impact of possible access difficulties on your Petitioners' tenants. Your Petitioners require to be notified sufficiently in advance of any temporary road closures or obstructions in the vicinity of Oxford Street and Charing Cross Road;
- (l) Your Petitioners are concerned about the possible duration and programming of the proposed works. Your Petitioners require assurance that the nominated undertaker will notify them of the construction programme and timetable so far as practicable and that the nominated undertaker will arrange the construction programme and timetable so as to minimise disruption and disturbance to your Petitioners' premises;
- (m) For compensation purposes, your Petitioners submit that the nominated undertaker should be obliged to treat separately a claim for injurious affection from any claim which may be made in respect of land taken compulsorily under the Bill. The nominated undertaker should be obliged to indemnify your Petitioners fully against costs or loss to your Petitioners by reason of material damage to your Petitioners' premises or otherwise occasioned as a result of the Bill and its proposals

(n) If, as is proposed in the Bill, the northern end of Charing Cross Road is to be closed to traffic for a considerable length of time, then there will be severe consequences for traffic flows in the area. Your Petitioners consider that this proposal needs to be rethought.

16. There are other clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect the rights and interest of your Petitioners and other clauses and provisions necessary for their protection and benefit are omitted therefrom.

YOUR PETITIONERS THEREFORE
HUMBLY PRAY

your Honourable House that the Bill may not pass into law as it now stands and that they 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 the property, rights, and interests of your Petitioners and in support of such other clauses and amendments as may be necessary and proper for their protection and benefit.

AND YOUR PETITIONERS will ever pray,
&c.

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AGAINST,

BY COUNSEL, &c.