

**IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2013–14**

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

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 TANGO REAL ESTATE LLP

SHEWETH as follows:-

1. A Bill (hereinafter referred to as "the Bill") has been introduced and is now pending in your Honourable House intituled "A bill to make provision for a railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Old Oak Common in the London Borough of Hammersmith and Fulham to a junction with the Channel Tunnel Rail Link at York Way in the London Borough of Islington and a spur from Water Orton in Warwickshire to Curzon Street in Birmingham; and for connected purposes."
2. The Bill is presented by Mr Secretary McLoughlin (referred to in this Petition as the "the Promoter"), supported by The Prime Minister, The Deputy Prime Minister, Mr Chancellor of the Exchequer, Secretary Theresa May, Secretary Vince Cable, Secretary Iain Duncan Smith, Secretary Eric Pickles, Secretary Owen Paterson, Secretary Edward Davey and Mr Robert Goodwill.

Clauses of the Bill

3. Clauses 1 to 23 of the Bill together with Schedules 1 to 16 to the Bill make provision for the construction and maintenance of the proposed works specified in Schedule 1 to the Bill ("the Scheduled Works") being works for the construction of Phase One of High Speed 2 ("HS2") and works consequential on, or incidental to, such works. 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 extinction and exclusion of certain rights over land, and for the grant of planning permission and other consents.

4. Clauses 24 to 36 of the Bill together with Schedules 17 to 26 to the Bill make provision for the disapplication or modification of certain controls such as those relating to heritage, trees, commons and open spaces, street works and noise.
5. Clauses 37 to 42 of the Bill together with Schedules 27 to 28 to the Bill make provision for railway matters such as the application (with modifications) and disapplication in part of the existing railways regulatory regime. In particular, they provide for the inclusion of the proposals in the objectives of the Office of Rail Regulation, the disapplication of certain licensing requirements, the disapplication of railway closure requirements, as well as the application (or disapplication) of other railway legislation. Provision is also included to enable agreements between the nominated undertaker and controllers of railway assets and to provide for the transfer of statutory powers in relation to railway assets.
6. Clauses 43 to 65 of the Bill together with Schedules 29 to 31 to the Bill contain general and miscellaneous provisions. Particularly, these provide for the designation of nominated undertakers, the making of transfer schemes, the power to carry out regeneration and reinstatement works, the application of certain powers in the Bill to future high speed rail works, the treatment of Crown Land, the effect of the Environmental Impact Assessment Regulations and the application of arbitration.

Your Petitioner

7. Your Petitioner is Tango Real Estate LLP, which is wholly owned and funded by various investors including Prologis (UK) Limited, a subsidiary of Prologis Inc. Your Petitioner is the freehold owner and developer of Prologis Park Fradley, in the Parish of Fradley, Staffordshire, situated at South of Fradley, Lichfield ("the Site").
8. Prologis Inc. is the leading owner, operator and developer of industrial logistics real estate across the Americas, Europe and Asia. It has \$51 billion in total assets under management and approximately 574 million square feet of industrial logistics real estate owned, managed or under development. Its operating portfolio is approximately 3,000 industrial properties in 21 countries across the Americas, Europe and Asia.
9. Prologis Inc. is a publicly traded Real Estate Investment Trust (REIT) on the New York Stock Exchange (NYSE) and is a member of the Standard and Poor's 500 (S&P 500). It is also among the top 100 most sustainable companies in the world.
10. Through Prologis Inc's wholly owned subsidiary, Prologis (UK) Limited is the leading provider of distribution buildings in the UK. Working with retailers, manufacturers and

third party Logistics operators the company owns and manages 20 million sq ft of industrial space in prime locations across the United Kingdom. Prologis Inc is one of the few real estate companies able to take a leading role in both global and regional markets in the United Kingdom – as a property developer, owner and manager, providing customers and investors with modern accommodation that is designed and built to high standards of sustainability.

11. The Site extends to some 60 acres in all and is currently farm land. Of this land a number of plots are identified in the Bill for acquisition by the Promoter as more particularly described below.
12. Your Petitioner is directly and specially affected by the Bill as the freehold owner of the Site part of which is subject to the powers of compulsory acquisition.
13. The Book of Reference (Volume 3.2) deposited with the Bill by the Promoter lists 8 plot numbers in which your Petitioner holds an interest. These are plot numbers 220, 222, 224, 230, 231, 232, 233 and 236 in the Parish of Fradley.
14. Your Petitioner's interests in a number of these plots are subject to the general unrestricted power of acquisition granted to the Promoter under Clause 4 of the Bill. Certain plots are subject to limitations on this power as they are listed in Schedule 5 to the Bill. As a result, these plots can only be acquired for, amongst other purposes:
 - (i) the provision of a worksite and access for construction;
 - (ii) the provision of environmental mitigation;
 - (iii) the diversion or installation of, or works to, utilities and apparatus; and
 - (iv) the provision of drainage, flood mitigation and associated works.
 - (v) the provision of a new right of way
15. Certain plots are also subject to Schedule 8 to the Bill where only rights may be acquired compulsorily.
16. A number of Scheduled Works contained in the Bill affect the above listed plots. These include:
 - (i) Scheduled Work Number 3/48 which authorises the construction of a railway (19.23 kilometres in length) commencing by a junction with the termination of Work No. 3/36 passing northwards and terminating at a point 760 metres north-west of the junction of Netherstowe Lane with Wood End Lane. Work No. 3/48 includes viaducts over Langley Brook, Black Brook, Cappers Lane, the Wyrley and Essington Canal, West Coast Main Line, South Staffordshire Line, Rykneld Street, Rykneld Street off-slip onto Burton Road, Trent and Mersey Canal, Works Nos. 3/89A and 3/107A and a bridge over Work No.

3/68.

- (ii) Scheduled Work Number 3/91 which authorises the diversion of Mare Brook commencing at a point 500 metres south-west of the junction of Nanseawen Road with Wood End Lane and terminating at a point 255 metres north-west of its commencement;
 - (iii) Scheduled Work Number 3/91A which authorises an access road commencing at a point 180m south west of the roundabout at the end of Nanseawen Road and terminating at a point 15m south-west of that roundabout.
17. The Site has the benefit of a planning permission dated 10 December 2008 granted by Lichfield District Council (Reference No.07/00774/OUTM). This planning permission grants your Petitioner planning permission to construct approximately 914,000 sq. ft. of industrial buildings and distribution warehouses on the Site, subject to conditions precedent being carried out, and reserve matters being approved. This permission was subsequently renewed on 7 June 2011.
18. Furthermore, your Petitioner, had actively marketed the Site prior to the announcement of the route of HS2 in 2010 and had secured serious interest in the Site from a major retailer who wished to use the main warehouse to be built on the Site as a major distribution centre. This potential customer for the Site withdrew once the HS2 proposals became known.
19. Further interest was shown in the development by a drinks distributor, but this interest was subsequently withdrawn.

Your Petitioner's concerns

20. Your Petitioner supports the principle of the Bill, but is concerned that the Bill in its current form will result in the HS2 scheme preventing or seriously curtailing the proposed development by your Petitioner on its land which has planning permission as referred to above. Your Petitioner has funding for the development through its funders and is not reliant on third party debt. All the relevant permits and a public access diversion order, necessary for immediate construction of the development have been obtained.
21. Your Petitioner submits that without relevant amendments to the Bill relating to the effect on your Petitioner's Site the development will be rendered not feasible with the inevitable consequence of a substantial loss of investment into the area, consequential loss of business rates, local employment and significant future opportunities for economic growth in the local community.
22. The specific issues and effects of the current HS2 proposals on your Petitioner are set

out in more detail below.

The importance of Your Petitioner's Development

23. The issues resulting from the Bill are now the only matters holding back the commencement of the construction phase of your Petitioner's development.
24. The consented development consists of a high quality industrial and logistics park with various substantial industrial premises, the largest being a 688,000 sq ft unit. The Site would provide substantial employment opportunities for the local community both during the construction phase and potentially 1000 permanent jobs on completion. If this development is not prevented by HS2 its size and quality is likely to provide the critical mass for further similar development opportunities in the vicinity and attract more business and growth for the local economy.
25. Sites able to support the development of accommodation of this size and quality are in very short supply nationally. Your Petitioner's development represents the opportunity for a different offer to the existing available units at Fradley Park.
26. In the conclusion of section 15 of *The Government Response to the HS2 Design Refinement Consultation* published by HS2 Limited in November 2013, the Secretary of State confirmed his decision that the realignment of the relevant stretch of the HS2 route was necessary and emphasised that one of the main reasons for his decision is to "reduce the impact of the [HS2] line on existing and proposed commercial development". The importance of securing the £30-35 million of investment and over 1000 jobs at your Petitioner's development was even singled out for mention in section 15.0.3 of the same section of that document.
27. Lichfield District Council have recognised the importance of bringing this major employment site forward and its future significance to the local community and have fully supported the development since its conception. Lichfield Council has been fully supportive of the representations made by your Petitioner to have the route realigned.
28. Originally, Your Petitioner intended to secure a pre-let of the main warehouse and had secured serious interest from a large scale retailer looking to use the main warehouse as a distribution hub. However, when it became clear that the development would be significantly impacted by HS2, so that the existing planning permission may not be implemented, the retailer withdrew and has now acquired an alternative building nearby that is not affected by HS2.
29. Your Petitioner has, in discussion with Lichfield District Council, produced a revised design which will substantially enable the development of the warehouses to proceed whilst permitting the construction and operation of HS2 to proceed with only minor

changes to the use and occupation by HS2 Limited of some of the land.

30. Your Petitioner was encouraged to pursue the alternative design by discussions with HS2 Limited on behalf of the Promoter, and understood that the proposed changes were acceptable to both the Promoter and your Petitioner.
31. However, on publication of the Bill it became apparent that the Bill has not followed the HS2 designs being discussed with HS2 Limited on behalf of the Promoter. As a consequence this has seriously affected your Petitioner's ability to progress this development rendering it incapable of being developed unless relevant amendments are made to the Bill.

Impacts of the scheme HS2 (issues)

32. As referred to above, the plots which the Promoter intends to acquire or take possession of under the powers granted by the Bill compromise the development of the Site in accordance with the existing planning permission.
33. Your Petitioner submits that the amount of its land proposed to be taken under the powers of the Bill is excessive and unnecessary for the purposes for which such land is required by the Promoter.
34. Your Petitioner contends that a smaller land-take would be appropriate to carry out the works authorised by the Bill, particularly in light of the amendments proposed below.

Plot Numbers 230 and 233

35. Plot numbers 230 and 233 in the Book of Reference (Volume 3.2, Parish of Fradley and Streethay) deposited with the Bill are authorised to be acquired under general powers of compulsory acquisition although it is not stated for what purpose it is to be used. However, the plans in the HS2 Environmental Statement ("ES") indicate a slither of the land on the east side of these plots is only required during the construction phase of the HS2 scheme, for storage or other purposes.
36. Your Petitioner is gravely concerned that either temporary or permanent acquisition of these plots will prevent your Petitioner's development proceeding.

Plot numbers 231 and 232

37. Plot numbers 231 and 232 which can be acquired for the 'Diversion or installation of, or works to, utilities apparatus' under Schedule 5 to the Bill, allow for permanent acquisition of the land. However, the plans in the ES indicate the plots are only required temporarily for the construction phase of the HS2 scheme. This requirement to permanently acquire these plots appears to be excessive and would intrude into the Site to such an extent as take up the full width of the proposed service yard,

preventing HGV loading access and circulation around the building. This would prevent your Petitioner's development from proceeding due to the already constrained nature of that development.

Plot number 224

38. Plot number 224 can be acquired under general powers of compulsory acquisition.
39. The plans in the ES indicate that the Site is only required temporarily for the construction phase of the HS2 scheme, although the requirement for its use remains unclear from the information set out in the Bill. Your Petitioner submits that the acquisition of this plot of land, whether temporarily or permanently, will prevent your Petitioner's development from proceeding.

Plot number 229

40. Permanent rights of access are sought for Plot number 229 for the 'Provision of access for construction and maintenance' under Schedule 8 to the Bill. The powers sought could extend to the closure of this section of road to public traffic. This stretch of road appears in the book of reference (Volume 3.2) as a publically adopted highway owned by Staffordshire County Council. That is incorrect as plot 229 is privately owned by your Petitioner and it is not an adopted highway.
41. Your Petitioner is gravely concerned that the heavy construction traffic required for the bulk removal of earth, and other works to and from the HS2 site would prevent construction of your Petitioner's development, and may significantly disrupt the existing businesses (Flourette and Unimerco) that require the access road for the operation of their businesses. Significant disruption of these established businesses could ultimately lead to their extinguishment and result in the loss of a number of jobs. The uncertainty over the access, both temporarily and permanent, is also likely to make it impossible for your Petitioner to attract tenants to the development. In those circumstances, your Petitioner will not be able to commence the development on a speculative basis.

Plot numbers 220 and 222

42. Plot numbers 220 and 222 are proposed in the Bill to be acquired under general powers of compulsory acquisition and could provide the Promoter with exclusive ownership of the road identified in the ES plan CT-06-126 in the final HS2 scheme. Your Petitioner believes this to be an excessive use of the Promoter's necessary powers. As with Plot 229, an extension of the existing road is included in your Petitioner's planning consent for the Site and is required as a main access route into the consented scheme. Your Petitioner's grave concern is that even if the Promoter does not close the access to other entities, heavy traffic congestion resulting from

HS2 works would prevent your Petitioner's ability to develop, or let the Site.

Amendments to the Bill

43. Your Petitioner has already made considerable effort to redesign its current scheme to enable it to accommodate HS2 (as detailed above and below).
44. Your Petitioner respectfully submits that there are a number of amendments that could be put in place by the Promoter in order to minimise the impacts of the Bill to the fullest extent possible. These could be implemented either through the Bill or by private agreement between your Petitioner and the Promoter.
45. Your Petitioner hopes that the Promoter will enter into meaningful discussions with your Petitioner to resolve the issues which your Petitioner has identified. Your Petitioner's sole aim is to ensure that its development scheme remains viable, lettable and able to be constructed and operated effectively both during construction of the high speed rail line, and during its operation.
46. The amendments to the Bill proposed by your Petitioner are as follows:
Plot numbers 230 and 233 in the Parish of Fradley
47. For the Promoter to reduce the section of Plot numbers 230 and 233 currently forming part of our your Petitioner's Site by approximately 5m. This would allow the development site to be developed with a service yard conforming to 50m minimum industry standards.
Plot numbers 231 and 232 in the Parish of Fradley
48. For the Promoter to find an alternative site for 'Diversion or installation of, or works to, utilities apparatus' at Plot numbers 231 and 232. Without this amendment the development will not be feasible as the inclusion of these plots in the Bill prevents loading access from the completed building.
Plot number 224 in the Parish of Fradley
49. The acquisition of this plot, whether temporary or permanent, would make development of the Site not feasible. It is clear from the ES that the plot is only required temporarily but it is unclear from the Bill what it is required for. Your Petitioner therefore respectfully submits that it would be more appropriate for the Promoter and your Petitioner to come to an agreement as to regulating access to this plot for the required temporary works, rather than the Bill authorising acquisition of the land.
Plot numbers 220, 222 and 229 in the Parish of Fradley
50. Your Petitioner respectfully submits that an alternative route can be found for the

bulk earthwork movements to the HS2 works site during the construction period.

51. Your Petitioner is realistic about the Promoter's requirement for access to the sub-station and balancing pond on completion of the HS2 scheme and respectfully submits that it would be more appropriate for the Promoter to acquire post construction rights of access across Plot numbers 220, 222 and 229 to the sub-station and balancing pond.

Engagement with the Promoter

52. Your Petitioner has been informed by HS2 Limited on behalf of the Promoter that a number of the plots marked for compulsory acquisition will only be required temporarily. However, there have been no formal assurances from the Promoter as to the extent of the referenced land that will actually be used, how this land will be used and whether the interests taken will be permanently acquired.
53. Your Petitioner and its representatives have been in dialogue with HS2 Limited on behalf of the Promoter, who has informally accepted the importance of the development being able to progress, both in terms of importance to the local economy and the likely compensation payable by the Promoter if the scheme fails to be delivered as a result of HS2.
54. The importance of your Petitioner's development proposal is also considered in the conclusion of section 15 of *The Government Response to the HS2 Design Refinement Consultation* published by HS2, as mentioned above in paragraph 27.
55. Your Petitioner and HS2 Limited on behalf of the Promoter considered ways in which the development and the HS2 scheme could be amended to allow both projects to proceed. After careful consideration HS2 Limited on behalf of the Promoter, along with its engineers, proposed a number of changes to the HS2 proposal that with reconfiguring of the current development layout by your Petitioner would allow both schemes to proceed.
56. This revised scheme prepared by your Petitioner was subsequently approved by HS2 Limited on behalf of the Promoter. After successful pre-application discussions with the local planning authority the client is ready to make the final application. Subject to the Promoter not using safeguarding powers to object to the plans, there are no known impediments to prevent final approval of the revised planning application.
57. However, despite positive discussions with HS2 Limited on behalf of the Promoter, the local planning authority and the hope that a resolution was possible, the ES and the Bill as deposited included additional ancillary land within the site boundary that had been marked for compulsory acquisition.

58. These additions, although not substantial, have the consequence of making even the revised scheme unfeasible.

59. From further dialogue with HS2 Limited representatives on behalf of the Promoter it is clear the changes had not been communicated prior to their inclusion in the Bill to those at HS2 Limited in dialogue with your Petitioner. HS2 Limited's engineers on behalf of the Promoter have subsequently provided verbal assurances to your Petitioner that alternative engineering solutions should be possible to allow the additions that have appeared in the ES and the Bill to be removed.

60. HS2 Limited on behalf of the Promoter informed your Petitioner of the following details with regards to the proposed use and requirement of the following plots:

Plot Numbers 220 and 222 in the Parish of Fradley

61. HS2 Limited on behalf of the Promoter and your Petitioner have agreed a design for a road system that would both facilitate your Petitioner's scheme and provide the Promoter with the access it requires to the completed HS2 scheme.

Plot Numbers 230 and 233 in the Parish of Fradley

62. Your Petitioner has been informed by HS2 Limited that the relevant portion of these plots will only be required for temporary material storage during the construction period. Your Petitioner has been informed by HS2 Limited that alternative sites could be used for this storage if necessary.

Plot numbers 231 and 232 in the Parish of Fradley

63. Your Petitioner has been informed by HS2 Limited on behalf of the Promoter that an alternative site could be found for the works required on these plots.

Plot number 224 in the Parish of Fradley

64. The plans included in the ES indicate that the land is only required temporarily as it is shown in the construction phase plan (CT – 05- 126) but not in the proposed (final) HS2 scheme plan (CT – 06 – 126).

65. Your Petitioner has been informed by HS2 Limited on behalf of the Promoter that although this plot was required for woodland management during the construction phase of HS2, an alternative site could be found.

Additional assurances

66. Your Petitioner requires that the Promoter provides assurances that the Promoter will not oppose the planning application submitted by or on behalf of your Petitioner for the revised development scheme on this Site. As previously stated extensive redesign of the consented scheme has been required for the sole purpose of finding a

practical solution to the matter of accommodating both the development and the HS2 scheme within the boundaries of this constrained plot of land. Assurance from the Promoter on this issue is vital as otherwise the consented scheme is not feasible even if the above mentioned revisions are made.

Conclusion

67. For the foregoing and connected reasons your Petitioner respectfully submits that the Bill fails to safeguard and protect and so injuriously affects the interests of your Petitioner and should not be allowed to pass into law without these issues being addressed.
68. There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and their rights, interests and property and for which no adequate provision is made to protect your Petitioner.

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 its 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 Petitioner and in support of such other 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.

BERWIN LEIGHTON PAISNER LLP

Agents for Tango Real Estate LLP

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