

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2013–14

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

Against – on Merits – 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:

DB SCHENKER RAIL (UK) LIMITED, DB SCHENKER RAIL INTERNATIONAL LIMITED
and RAIL EXPRESS SYSTEMS LIMITED

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.

Clauses of the Bill

- 3 Clauses 1 to 3 of the Bill, together with Schedules 1 to 4, make provision for the construction and maintenance of the proposed works including the ‘Scheduled Works’ set out in Schedule 1. Provision is included to confer powers for various works and operations, including railway, highway and other building and engineering works and operations. Powers are also included to enable entry onto and interference with land and buildings for investigatory, protective and other purposes, together with powers to enable occupiers to be required to undertake works to trees, powers to use watercourses, public sewers and drains for drainage purposes and powers temporarily to interfere with and use waterways.
- 4 Clauses 4 to 18 of the Bill, together with Schedules 5 to 15, make provision for the compulsory acquisition and the temporary use of land and for the extinction or

exclusion of certain rights in land. Provision is also included for the application or variation of compensation provisions.

- 5 Clauses 19 to 36 of the Bill, together with Schedules 16 to 26, make provision for the grant of planning permission and other consents and for the disapplication or modification of various controls, including those relating to heritage, water, building control, party walls, street works, lorries, noise and local legislation.
- 6 Clauses 37 to 42 of the Bill, together with Schedules 27 and 28, make provision for railway matters. Provision is included for the application (with modifications) and disapplication in parts of the existing railways regulatory regime, enabling agreements to be required to be entered into between the nominated undertaker and controllers of railway assets and other railway facilities and for the transfer of statutory powers in relation to railway assets.
- 7 Clauses 43 to 65 of the Bill, together with Schedules 29 to 31, contain general and miscellaneous provisions. These include provision for the designation of nominated undertakers, the making of transfer schemes, provision for statutory undertakers, provision for the compulsory acquisition of land for regeneration and for relocation purposes, and powers for the reinstatement of land. Provision is also included to apply powers of the Bill to further high speed works, to confer a power of entry for further high speed works, as to the application of the Environmental Impact Assessment Regulations and as respects the application of arbitration.

Your Petitioners and their properties

- 8 Your Petitioners are DB Schenker Rail (UK) Limited, a private limited company (Company No. 02938988) DB Schenker Rail International Limited, a private limited company (Company No. 03232475) and Rail Express Systems Limited, a private limited company (Company No. 2938991) (together referred to hereinafter as “your Petitioners”) Your Petitioners trading as part of the DB Schenker Rail Group constitute the largest rail freight operator in the United Kingdom. They also operate open access (charter) passenger services. Your Petitioners employ over 3,200 people nationwide and operate around 750 freight trains per day. Your Petitioners’ registered office is Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire, DN4 5PN. Your Petitioners hold licences under section 8 of the Railways Act 1993 (c. 43) (“the 1993 Act”) to operate specified railway assets throughout Britain and are party to access agreements approved or entered into pursuant to section 17 or 18 of the 1993 Act, which give your Petitioners permission to use the entire national railway network including the routes that cross or use part or all of, the HS2 Phase 1 route identified by the Bill.

- 9 Your Petitioners own or have an interest in the following properties, which are subject to compulsory acquisition or use under the Bill:

BOROUGH OF CAMDEN

Parcel: 143, 144, 156 and 160

Property: Euston, Granby Terrace Maintenance Depot

Description: Land and maintenance depot

BOROUGH OF EALING

Parcel: 130, 143, 144, 145, 146, 147 and 155

Property: Willesden Euroterminal

Description: Land used for storage and manufacturing operations

CITY OF BIRMINGHAM

Parcel: 157g, 157n, 159, 190, 191, 213, 220, 221, 226 and 227

Property: Washwood Heath Up and Down Yard

Description: Service yard for manufacturing operations

Parcel: 313, 314, 315 and 316

Property: Saltley Depot

Description: Train crew welfare facility

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

Your Petitioners' concerns

- 11 Your Petitioners are not opposed in principle to the construction of the new railway transport system for which the Bill provides, but are concerned as to the impact that the works and system will have on their business and property. The scheduled works detrimentally interfere with and affect the property and apparatus of your Petitioners and their customers at many points along the line of the route.
- 12 Your Petitioners object to the Bill on the grounds that it does not afford sufficient safeguards to the continued and future operation of facilities and routes used in the

daily operation of your Petitioners' and their customers' businesses in the areas concerned, and that as a result your Petitioners will suffer reduced rail freight carriage tonnage which will be displaced onto the roads.

- 13 Your Petitioners consider it imperative that the powers proposed to be conferred by the Bill should only be exercised so that there is no interruption with or interference to the operation of rail freight services or rail freight customers. If, however, interruption or interference is inevitable then your Petitioners consider that any such interruption or interference should be kept to an absolute minimum and that it is only appropriate that your Petitioners and their customers should be fully compensated for all losses, costs and expenses incurred and suffered as a result.

Site-specific concerns

Euston

- 14 Your Petitioners hold a long lease of four acres of land at Granby Terrace/Park Village East, to the north of Euston Station. The site has not been used operationally for several years and your Petitioners have developed proposals for a very significant redevelopment of the site comprising some 440 new dwellings. The local authority has previously welcomed the scheme as it meets many of the criteria designed to alleviate the housing shortage in central London. Currently the intended use of the land by the Promoter is unclear, but it is believed that the land will be significant for the proposed redevelopment of Euston Station. Your Petitioners submit that the Bill should be amended so that the Promoter may not acquire the land permanently for the purposes of Clause 1 of the Bill. Further your Petitioners submit that the Bill should be amended to require the Promoter to provide proposals for the redevelopment of Euston Station that do not conflict with your Petitioners plans for the housing development.

Willesden Euroterminal

- 15 Your Petitioners are leasehold owners of a site at Willesden Euroterminal held under a long lease that expires in 2119. When the lease was acquired by DB Schenker Rail International Ltd (or, as it was known at the time, Railfreight Distribution Limited) in 1997, your Petitioners were required to enter into ring-fencing arrangements in order to protect the use of the site as it currently stands for the purpose of use for Channel Tunnel freight traffic. The subsequent deed entered into requires that the Willesden Euroterminal site cannot be disposed of without the permission of the Secretary of State and the British Railway Board.

- 16 Your Petitioners lease units in the site to ten different tenants who currently are:
- 16.1 Colas Limited whose lease expires on 15 June 2017 who use the site for offices and plant storage;
 - 16.2 Double 4 Limited who have four separate leases for different parts of the site which expire between 2014 and 2018. The site is used for parking, workshops, offices and container storage;
 - 16.3 National Grid Plc whose lease expires on 21 October 2020 who use the site as a work site with offices and plant storage;
 - 16.4 Flash Film Transport who hold two separate leases that expire on 31 July 2014 and 3 February 2024. The sites are used for offices, a film studio, storage and parking;
 - 16.5 Network Rail whose lease expired on 30 September 2013 (to be renewed to expire in 2024) who use the site for a high output ballast operation;
 - 16.6 Falcon Surfacing whose lease expires on 16 April 2019 who use the site for a portacabin office and storage;
 - 16.7 Reston Waste Management Ltd whose lease expires on 8 August 2015;
 - 16.8 Sandy Joseph whose lease expires on 31 August 2018 and use the site for the storage of a portacabin café;
 - 16.9 Lynch Plant Hire Ltd whose lease expires on 3 October 2014 and use the site for a muck away operation.
 - 16.10 Tarmac Ltd whose lease expires on 27 November 2023 and use the site as a cement plant.
- 17 The site provides much needed commercial property in central London and allows a substantial number of profitable businesses to operate with the appropriate rail connected infrastructure. Your Petitioners' rental income from the site is in excess of £1 million per annum.

- 18 Your Petitioners submit that the Bill should be amended to require the Promoter to provide an alternative proposal that would avoid disruption to the Willesden Euroterminal site, your Petitioners and their tenants. If, however, site interruption is required for the works authorised by Clause 1 of the Bill, your Petitioners submit that such interruptions should be kept to an absolute minimum and that suitable alternative property and facilities should be made available to your Petitioners by way of mitigation, either on a temporary or permanent basis depending on the Promoter's proposed long term use of the site.

Washwood Heath

- 19 Your Petitioners are the long leasehold owners of two areas of land at Washwood Heath; the Washwood Heath Up Yard and the Washwood Heath Down Sidings. Your Petitioners have sub-leased the majority of the land at Washwood Heath Down Sidings under separate leases to Cemex UK Operations Limited and to Hanson Quarry Products Europe Limited. Cemex UK Operations Limited use the site to manufacture concrete products and for ancillary uses. Hanson use the land as a depot for producing, storing and as a base for the delivery of concrete and concrete products. The property is served by rail which is utilised in order to transport aggregates to and from the Cemex depot. There are currently three daily train movements; one operated by your Petitioners and two operated by Freightliner Heavy Haul Ltd. The land at Washwood Up Yard is used for the stabling of unused rolling stock but is not currently in operational use.
- 20 Your Petitioners submit that the whole site at Washwood Heath encompassing the Up Yard and Down Sidings comprises perhaps the only viable opportunity to provide additional container handling capacity in the urban West Midlands. If the rail freight industry is to meet adopted governmental targets for growth of (predominately) intermodal traffic it needs new handling facilities: those existing freight terminals in the region are at or very close to capacity. Your Petitioners conducted an initial market assessment in 2011/2012 which indicated that the Washwood Heath site could be developed as an intermodal rail freight terminal which has the potential to accommodate around six long-distance container trains each way every day. Each of those trains could carry around forty 40' or 45' containers. If the Promoter were to acquire and develop the whole of the site this would frustrate this potential development and there would be significant environmental consequences in the inability of the rail freight industry to accept the transfer of freight traffic from road to rail. The projected freight trains could take the equivalent of around 240 long-distance lorry journeys off the road every day.
- 21 Your Petitioners submit that the Bill should be amended to require the Promoter to provide an alternative proposal that would avoid disruption to the Washwood Heath area. If, however, site interruption is required for the works authorised by Clause 1 of the Bill, your Petitioners submit that such interruptions should be kept to an absolute minimum and that suitable alternative property and facilities should be made

available to your Petitioners by way of mitigation, either on a temporary or permanent basis depending on the Promoter's proposed long term use of the site.

- 22 Your Petitioners submit that one possible proposal would be to require the Promoter to restrict any acquisition of land in the Washwood Heath area to the land that is currently unused operationally by your Petitioners in the Washwood Heath Up Yard. Your Petitioners submit that if the Washwood Heath Down Sidings was preserved for your Petitioners with a rail connection, it may be capable of accommodating the business needs of one or more of your Petitioners sub-tenants and will allow them to continue to operate.

Saltley Depot

- 23 Your Petitioners are the freehold owner of the land which accommodates the Saltley depot. The depot is currently used as a train crew welfare facility with offices and associated parking. This site has strategic significance as it is the only accessible location in the Birmingham area where the trains travelling between South Wales and North Eastern destinations beyond Derby are able to stop without impeding passenger services and so provides a suitable position where train crews are able to change. There are no other similar locations in the vicinity that would provide this base. In addition, European Metal Recycling Limited hold rights of pre-emption over the site that do not expire until 2030. Your Petitioners submit that the Bill should be amended to require the Promoter to provide an alternative proposal that would avoid disruption to the Saltley depot. If, however, site interruption is required for the works authorised by Clause 1 of the Bill, your Petitioners submit that such interruptions should be kept to an absolute minimum and that suitable alternative property and facilities should be made available to your Petitioners by way of mitigation, either on a temporary or permanent basis depending on the Promoter's proposed long term use of the site.

Land affected by HS2 and HS1 link

- 24 The Bill as originally introduced contained a rail link between HS2 and HS1. The Promoter has given a commitment not to undertake this work and your Honourable House has instructed the Select Committee to whom the Bill is referred not to consider petitions on this issue, even though the link remains part of the Bill. The link would have substantial implications for your Petitioners' infrastructure and business. Therefore, if for any reason the proposal for the link is not removed from the Bill, your Petitioners would wish to make representations to the committee on the subject

Network-specific concerns

Reservation of Released Capacity for Rail Freight

25 Your Petitioners operate rail freight and open access (charter) passenger services on Network Rail's network and have three network track access agreements providing access for rail freight and open access (charter) passenger services throughout the network as follows:

- (a) A Track Access Contract (Freight Services) dated 9 February 2006
- (b) An Unregulated Track Access Agreement (Non-passenger services for the provision of Network services); and
- (c) A Track Access Contract (Charter Passenger Services) dated 31 August 2009

26 The Environmental Statement suggested that HS2 could release capacity on the classic network that could be used to increase the number of freight services on the West Coast Main Line. However, your Petitioners are concerned that the Bill makes no provision for the capacity released to be allocated to freight services in this way, and are concerned that without any requirement for released capacity to be shared by freight and passenger services, it will all be taken up by passenger services. The West Coast Main Line is a critical artery for rail freight and the released capacity which Phase 1 delivers is essential to allow freight to be delivered to the major conurbations in the West Midlands and the North West. Substantial investments have been made to gauge clear this route, which is used by 95% of all intermodal trains at some part of their journey. Network Rail's 2013 Freight Market Study forecasts rail freight volumes could double in size by 2043 driven by growth in the intermodal sector. The Network Rail forecasts show that additional capacity along the West Coast Main Line will be crucial to support this growth, with an extra three paths per hour in both directions between London and Crewe being required by 2033. By releasing capacity on the classic network HS2 provides the opportunity to accommodate this growth.

27 Your Petitioners aver that there is a compelling economic case for supporting growth in rail freight volumes. The value to the UK economy of delivering freight by rail is clear with productivity, environmental and congestion benefits currently worth £1.5bn a year to the UK economy. As rail freight volumes grow over the next three decades, estimates suggest that these benefits could be worth over £4bn per annum.

- 28 Your Petitioners submit that reserving the released capacity on the West Coast Main Line following the completion of Phase 1 of HS2 will be crucial to ensure the predicted and desired growth of rail freight and to increase the economic benefits to the UK. Your Petitioners therefore respectfully submit that the Bill should not be allowed to pass into law without ensuring that sufficient network capacity released by Phase 1 is reserved for rail freight growth. This requires a minimum binding commitment that three additional paths per hour off-peak on the West Coast Main Line between London and Crewe will be reserved for rail freight.

Commitment to expedite Phase 2 to Crewe

- 29 Your Petitioners welcome the statement from Sir David Higgins that Phase 2 should be built to Crewe at the earliest opportunity. This is critical, as a significant bottleneck would occur where HS2 trains rejoin the West Coast Main Line at the Handsacre Junction prior to the completion of Phase 2. The West Coast Main Line is a key artery for freight traffic with an average of over three freight trains per hour operating along this part of the line in both directions, and it is crucial that this traffic is protected. Forecasts indicate significant growth over this section, with an additional three paths per hour off-peak required to satisfy demand by 2033. Therefore your Petitioners submit that the Bill should not be allowed to pass into law without a binding commitment from the Promoter that Phase 2 to Crewe will be expedited and completed at the earliest possible opportunity to facilitate freight growth, and that the period during which trains join and leave the West Coast Main Line at Handsacre is at best eliminated or at least minimised.

Protection of Freight Capacity Following Completion of Phase 1

- 30 Your Petitioners recognise that if the Handsacre junction becomes operational, there will be an intervening period between the completion of Phase 1 and the completion of Phase 2 to Crewe, where HS2 trains will rejoin the West Coast Main Line and create a bottleneck. Although your Petitioners have not seen any timetable analysis they understand that without the extension to Crewe at the Handsacre Junction, seven HS2 trains will rejoin the classic network per hour, compared with the estimated three inter-city services which will have been removed. These additional services will need to fit onto the existing network through bottlenecks at Colwich Junction and other locations. Your Petitioners' understanding is that these additional services on the classic line could not be accommodated alongside rail freight growth. Your Petitioners respectfully submit that the Bill should not be allowed to pass into law without a binding commitment from the Promoter that makes provision for ameliorating measures that will accommodate freight growth until Phase 2 to Crewe is complete. Such measures could include reservation of additional paths for freight or an acceptable diversion.

Possessions Regime

- 31 Your Petitioners accept that the Promoter will require engineering access to the classic network in order to undertake necessary work to facilitate the construction of HS2. However, there needs to be a balance between access for works and business as usual, noting that rail freight customers have a choice of transportation and will transfer their business to road if their services are severely disrupted.
- 32 Rail freight companies operate in the private sector and the five largest operators compete with each other and with other modes of transportation. Restricting access to the classic network during construction of HS2 would create uncertainty and instability for all rail freight companies and risks undermining the £2bn of rail freight operator investments made since privatisation. Disruption on the classic network could mean rail freight companies are unable to fulfil customer contracts or meet customer expectations which risks damaging confidence in the sector. In addition, rail freight companies will not be able to utilise their capital assets which will undermine their business operations. Your Petitioners submit that disruption to network access should be kept to an absolute minimum and where access is required the Bill be amended to require the promoter to agree access via Network Rail, using normal industry processes. In particular, nothing in the Bill should disapply Network Rail's Network Change policy or override the policy and current practices on agreeing possessions.

Use of Rail Freight to Support Construction

- 33 Your Petitioners are concerned that while the Bill makes provision for some rail served construction compounds it does not compel the promoter to make maximum use of rail freight during construction. Experience of other projects such as HS1, Heathrow Airport Terminal 5, Crossrail and the Olympic Park has shown that rail freight can play a pivotal role in the supply of materials, removal of waste and in construction activities. There are also compelling economic and environmental benefits for maximising the use of rail freight in the construction of HS2. Rail freight reduces congestion by removing HGVs from the roads and produces around 76% less CO₂ than the equivalent journey by road, making a significant contribution to the UK's carbon reduction targets. Your Petitioners respectfully submit that the Bill should not be allowed to pass into law without an amendment requiring the Promoter to make maximum use of rail freight during construction and also to ensure a guaranteed minimum level of rail freight services to support construction.

HS2 to be Built Freight Capable

- 34 While recognising that HS2 is principally a passenger railway, your Petitioners strongly believe that HS2 should be constructed to be freight capable. This would ensure that at some future point freight may be able to utilise the line, as the gradients and platforms would be suitably constructed. HS2 should therefore be built in accordance with European Union rules on GC Gauge (decision 2008/217/EC). Your Petitioners submit that the Bill should not be allowed to pass into law without a binding commitment from the Promoter that they will build HS2 to be freight capable. In particular, the commitment should ensure that the Promoter will not seek exemptions to European Union rules on GC Gauge, including requirements for station platform dimensions.
- 35 Your Petitioners have operated international freight trains on the HS1 network between Poland and Barking (via the Channel Tunnel) since November 2011 and have recently added further services operating between Spain and Dagenham. The services which your Petitioners operate on HS1 are able to take advantage of larger containers and the use of standard sized European wagons, which offer cost advantages to customers. There is an expanding market for the use of high gauge rail freight from Europe to the UK. Your Petitioners strongly believe that HS2 should be also be built in such a way that it will be capable to take high gauge freight at some point in the future. Your Petitioners submit that the Bill should not be allowed to pass into law without a requirement that HS2 is built to be freight capable, with particular reference to the Interoperability standards and gauge requirements.
- 36 While not questioning the removal of the HS1-HS2 link at Old Oak Common, your Petitioners remain supportive of a strategic link from HS1 to HS2 at some future point. Were such a link to be promoted then you Petitioners submit that future capacity on HS2 should be reserved for rail freight, and also that freight would be capable of using the line 24 hours a day.
- 37 For the foregoing and connected reasons your Petitioners respectfully submit that, unless the Bill is amended as proposed above, so far affecting your Petitioners, the Bill should not be allowed to pass into law.

38 There are other clauses and provisions of 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.

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 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 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.

Bircham Dyson Bell LLP

Parliamentary Agents for DB Schenker Rail (UK) Limited, DB Schenker Rail International Limited and Rail Express Systems Limited

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PETITION OF
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Systems Limited

AGAINST, By Counsel, &c.

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Solicitors and Parliamentary
Agents

15 May 2014