

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 KENILWORTH GOLF CLUB LIMITED

SHEWETH as follows:–

- 1 A Bill (hereinafter referred to as “the Bill”) has been introduced and is now pending in your honourable House entitled “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 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 Petitioner

- 8 Your Petitioner is Kenilworth Golf Club Limited, a company limited by guarantee, which owns and operates the Kenilworth Golf Club (KGC). Your Petitioner's business is to provide high quality golf facilities to the population of Kenilworth and its surrounds.
- 9 Your Petitioner has an annual turnover of circa £1.0 million and reinvests its profits to improve its facilities and attract members. In a highly competitive market, KGC competes directly with 8 other golf courses within 10 miles. Your Petitioner employs 16 full time staff and up to a further 10 casual staff. In addition, your Petitioner retains a golf professional, whose tuition and retail business located on the site generates annual revenue of circa £200,000 and employs three permanent members of staff.
- 10 KGC is one of the oldest golf clubs in Warwickshire, founded in 1889, and has been on its current site, a parkland course of 123 acres situated to the east of Kenilworth, for 77 years. KGC has over 950 members, including 630 adult golf members, 78 junior members and social members. In addition, approximately 3,000 rounds of golf a year are played on the course by visitors.
- 11 The KGC course is a demanding parkland course, with mature woodland in predominantly tranquil surroundings and, from its elevated position, commands delightful views. Specification of the course is of the highest order, including extensive irrigation and drainage systems. Your Petitioner estimates that to build a comparable course would cost in the region of £7 million.

- 12 Your Petitioner owns or has an interest in the following properties that are subject to compulsory acquisition or use under the Bill:
- (a) The freehold interest in the land contained in plots numbered 1, 19, and 21 on sheet 2-110 of the deposited plans for the Bill and described in the Book of Reference as golf course and hedgerow in the Parish of Kenilworth in the District of Warwick in the County of Warwickshire.
 - (b) The freehold interest in the land contained in plots numbered 10, 13 and 14 on sheet 2-110 of the deposited plans for the Bill and described in the Book of Reference as agricultural land in the Parish of Kenilworth in the District of Warwick in the County of Warwickshire.
- 13 Your Petitioner and its interests and property are injuriously affected by the Bill, to which your Petitioner objects for reasons amongst others, hereinafter appearing.
- 14 The compulsory acquisition of your Petitioner's land along the 16th hole, adjoining the 2nd hole, at the 3rd hole and alongside the Practice Area will have a significant and irredeemable effect on the operation of the golf course, and at a minimum require a substantial redevelopment of the whole course to the detriment of at least four holes and therefore the business as a whole.
- 15 Your Petitioner also has concerns that the noise and disruption which will be caused by the construction and operation of HS2 along current proposals threatens the viability of its business.

Plot Nos. 19 and 21 – 16th hole

- 16 Plots 19 and 21 are at the border of your Petitioner's land with Dalehouse Lane and include a strip of land approximately 15m wide and 200m long along the length of the 16th hole. The land is being acquired to provide an access route for traffic involved in the construction of the new route of Dalehouse Lane. The construction traffic is expected to travel from the compound to the north east of the golf course and current location of Dalehouse Lane, through plots 19 and 21, across the current Dalehouse Lane and back towards the compound to the construction site.
- 17 The acquisition of this land will render the 16th hole unplayable. This is the conclusion reached by KGC and fully endorsed by England Golf, golf's governing body within England. Your Petitioner is also concerned that the loss of this land will threaten the viability of your Petitioner's business as a whole. The loss of one hole on an 18 hole golf course will make the operation of the course unsustainable; golf is a game played over 18 holes, upon which all handicapping systems and competitions are based.
- 18 If the current plans are adopted, then KGC will be forced to redesign the course to make up for the loss of the 16th hole. KGC has no opportunity to acquire land outside of its borders to replace the hole lost, and so any replacement will have to come from within its borders (unless the Promoter provides additional land for KGC). Any

internal redevelopment will be further constrained by the need to ensure that the flow of play follows naturally from the end of one hole (the green) to the start of the next (the tee). Due to the need to redesign within the existing course boundaries the redesign will require amendment to four holes and your Petitioner estimates the minimum cost for such works to be in the region of £620,000.

- 19 Even temporary possession of this land will have the effect of making the 16th hole unplayable, and therefore the course as a whole less attractive to members. If the course becomes unattractive members may leave, and, as referred to in more detail in paragraphs 27 and 28 below, even a small loss of members may lead to a spiral of decline that cannot be reversed.
- 20 Your Petitioner submits that there are alternative options available to the Promoter in its location of access routes which would not cause such a level of devastation to the golf course that the current proposals will do and which would also avoid construction traffic having to cross the busy Dalehouse Lane.
- 21 Your Petitioner strongly objects to its land being acquired and submits that the impact of the loss of this strip of land on its golf course and business is disproportionate to the use for which the Promoter seeks to acquire it. Your Petitioner submits that the land should not be taken and an alternative access route found.
- 22 Your Petitioner considers it feasible for the Promoter to carry out the relocation of Dalehouse Lane and construction of the railway without taking your Petitioner's land temporarily or otherwise. Your Petitioner, therefore, also submits that the Promoter, and its nominated undertaker appointed to exercise powers under the Bill, should be obliged to exercise its power to deviate in such a way as to avoid any encroachment on your Petitioner's land.

Plot No. 1 – 2nd and 3rd holes

- 23 Plot No. 1 comprises a strip of land approximately 160m long and 20m wide where your Petitioner's land borders the A46 and includes parts of the 2nd hole, the 3rd hole and the Practice Area. The compulsory purchase of this land will have the following effects:
 - (a) the loss of 40 metres to the length of the 3rd hole which, without a redesign of the course, will result in the downgrading of a critical course measure (standard scratch score) and therefore also diminish the attraction of the course to members;
 - (b) the loss of approximately 5 metres of land abutting the 2nd green which, without a redesign of the course, will render the 2nd hole unplayable; and
 - (c) the closure of the Practice Area for safety reasons due to the removal of the land and substantial tree screen between it and the A46 road.

- 24 The cost of redesigning the golf course to address the impacts that the loss of this land will have is estimated at not less than £490,000.
- 25 It would appear that this land is required to accommodate the repositioning of a lay-by on the A46. Your Petitioner strongly objects to its land being acquired and submits that there is no need for the lay-by to be re-constructed as there are existing lay-bys within 1 mile to the south and 1.8 miles to the north of the proposed lay-by site on the northbound carriageway. Abandoning the plan for a lay-by would remove the need for course redesign as set out above.
- 26 In the alternative, your Petitioner submits that the lay-by should be located 50m further south along the A46 towards the junction with the A452 and requests that the Promoter and its nominated undertaker should be obliged to exercise its power to deviate in such a way as to avoid any encroachment on the land contained in Plot No. 1. This would minimise the effect on the 2nd green and 3rd tee, although it would still result in the loss of the mature tree line which currently borders the golf course along the boundary with the A46. Your Petitioner therefore calls for protective screening on the northbound carriageway of the A46 for 500 metres to the south of the bridge over the HS2 rail line to minimise the visual and noise impact of the A46, which would now be exposed, on the golf course. It also calls for the erection of substantial safety netting required to replace the substantial tree screen and thereby protect traffic on the A46 from stray golf balls, hit from the practice ground.

Noise concerns

- 27 The KGC site and course will be bordered by HS2 for approximately 800 metres on its north eastern boundary. The substantial increase in noise levels identified in the Environmental Statement (ES) will adversely affect one third of the holes and significantly adversely affect at least 4 holes. This assessment is based on the ES definition (Volume 1, paras 8.9.27/29) of adverse (over 50dB) and significantly adverse (at 65dB) noise impact and the land / holes at KGC that fall within those parameters (ES map SV-01-048).
- 28 The proposed elevation of Dalehouse Lane, on the north west of its border, by at least 10 metres above its current height to cross the HS2 rail line, and the removal of the mature tree screen between the course and the A46 to extend the A46 embankment, will also increase noise levels.
- 29 No provision for sound insulation has been made for KGC as the Promoter has determined that a golf course be categorised with all other outdoor leisure facilities as transitory in their use. No provision has been made for the fact that golf courses are distinct from other outdoor leisure facilities in a number of ways: golf requires a quiet and tranquil setting, or at least a constant low level of background noise; a golf course is in near constant daily use, for example KGC is typically in play for around 70 hours per week; and the natural environment is used to add difficulty and character to the sport through individual course layout and landscaping. The intrusion of intermittent, sudden, loud noise as regularly as every two minutes from HS2 trains on a predominantly tranquil environment will seriously impair the

concentration of golfers. The lack of recognition of KGC's unique requirements means that no allowance has been made for the very serious commercial implications that the disruption of the tranquil environment by HS2 will have on your Petitioner's business.

30 It is difficult to quantify the effect that the change to the local environment caused by HS2, both during construction and operation, will have on your Petitioner's business. With the increase in noise levels, the ability of KGC to attract players to the course will be dramatically impaired, and your Petitioner is concerned that the construction and operation of HS2 will mean that the course can no longer provide an acceptable environment for the playing of golf. Golfers are mobile and golf club joining fees in the area are not particularly high. Therefore members can, and do, go elsewhere if they are not happy with the facilities. For example, in 2001 poor drainage at KGC over one winter led to a loss of 100 members.

31 It is also clear that a loss of members may lead to a spiral of decline. KGC membership is renewed annually, with an average annual loss of 50 adult members (8% of total) who are replaced with new members. If that average increased to a loss of 12% of members, with a corresponding drop in new members to 4% of total membership, over three years membership numbers will fall by 150 members (24%). With a decline in visitor numbers, and the associated membership, bar and catering revenue, total revenue would decline by £240k a year, with only a very minimal reduction in costs. For these reasons your Petitioner considers HS2 a threat to the long term viability of your Petitioner's business, and therefore the viability of an important community sports facility and local employer.

32 Given the substantial and enduring noise impact HS2 will have on the KGC course when the railway is operational, your Petitioner's preferred and optimal solution would be for the railway to travel in a cut and cover tunnel between, at a minimum, the A46 and Dalehouse Lane. A cut and cover tunnel would address many of the detrimental effects that HS2 will have, when operational, on the overall quality of the KGC course and the consequential serious financial threat posed to the long term viability of your Petitioner's business. Your Petitioner submits that the provision of a cut and cover tunnel in this location merits further consideration. Your Petitioner therefore requests that the Promoter be directed to undertake a further assessment of providing a cut and cover tunnel in this location, and that this assessment must take into account the aspects of the sport of golf, detailed above, that make the KGC course distinct from other leisure facilities.

33 On the basis that a cut and cover tunnel may not prove to be a viable option, your Petitioner has given consideration to other potential mitigation measures that should be adopted as a minimum requirement. To minimise the impact of the operation and construction of HS2, and the consequential changes to the A46 and Dalehouse Lane which will have a significant cumulative detrimental effect on KGC, your Petitioner submits that noise barriers should be provided by the Promoter, in the following locations:

(a) trackside, on the west side of the track, from the A46 to Dalehouse Lane;

- (b) on the south side of the embankment of Dalehouse Lane; and
- (c) for 500 metres along the northbound carriageway of the A46 to the south of the bridge over the HS2 rail line.

34 Your Petitioner also submits that:

- (a) the best available noise barriers should be provided as regards the quality and design most suitable for their location;
- (b) the sound barriers should be erected at the earliest appropriate time to ensure maximum efficacy; and
- (c) the noise barriers provided should be subject to a review and upgrade every 10 years to ensure that developments in technology can be taken advantage of.

35 Your Petitioner notes that KGC currently has no opportunity to acquire additional land which could be used to develop the landscaping of the golf course and potentially mitigate the loss of tranquillity caused by HS2. Your Petitioner therefore submits that in partial recompense for the loss it will suffer the nominated undertaker should grant it a first option to purchase the agricultural land shown as part of plots numbered 3, 6, 16 and 23 on sheet 2-110 of the deposited plans adjacent to the golf course, and to be severed from the rest of the farm holding by HS2, once it is no longer required by the nominated undertaker or its current owner. Your Petitioner also requests that the land comprising the part of Dalehouse Lane which will be redundant once the new route is constructed be fully decommissioned and returned to the owners of the adjacent land, which would be KGC as to the eastern side of the redundant road.

36 Without prejudice to paragraphs 11 to 31, your Petitioner submits that any compensation should be calculated on the principle of equivalent reinstatement as it has continuously invested in, adapted and used the land as a golf club since 1937, and there is no general market for such a purpose.

37 For the foregoing and connected reasons your Petitioner respectfully submits that, unless the Bill is amended as proposed above, so far affecting your Petitioner, the Bill should not be allowed to pass into law.

38 There may be other clauses and provisions of 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.

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.

Bircham Dyson Bell LLP

Parliamentary Agents for Kenilworth Golf Club Limited

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WEST MIDLANDS) BILL

PETITION OF
Kenilworth Golf Club Limited

AGAINST, By Counsel, &c.

Bircham Dyson Bell LLP
50 Broadway
London
SW1H 0BL

Solicitors and Parliamentary
Agents

15 May 2014