

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:

MANAGEMENT CONSORTIUM BID LTD, FREIGHTLINER LTD, FREIGHTLINER HEAVY HAUL LTD, FREIGHTLINER RAILPORTS LTD.

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 Management Consortium Bid Ltd (Company No. 02957951), Freightliner Ltd (Company No. 03118392), Freightliner Heavy Haul Limited (Company No. 03831229) and Freightliner Railports Ltd (Company No. 05928006) (hereinafter referred to as "your Petitioners"), whose business is predominantly concerned with the transport by rail of deep sea freight containers and heavy haul bulk freight. Your Petitioners currently haul over 700,000 deep sea shipping containers and 20 million tonnes of bulk freight each year and operate on average over 850 services each week. Your Petitioners' registered office is The Podium, 1 Eversholt Street, London, NW1 2FL. Your Petitioners hold licences under section 8 of the Railways Act 1993 (c. 43) ("the 1993 Act") to operate railway assets throughout Great Britain and are party to access agreements approved or entered into pursuant to section 17 or 18 of the 1993 Act which are for routes that cross, or use part of the route identified by the Bill.
- 9 Your Petitioners own or have an interest in property, railway apparatus and running rights in the areas of Landor Street Intermodal Terminal in Birmingham and have a

leasehold interest in office space at 'the Podium' in Euston which are subject to compulsory acquisition or use under the Bill:

LONDON BOROUGH OF CAMDEN

Parcels: 29 and 29a

Property: The Podium

Description: Office accommodation

CITY OF BIRMINGHAM

Parcels: 323, 324, 326a, 334, 345, 349 and 374

Property: Freight Terminal in Birmingham

Description: Intermodal rail freight terminal

- 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 stated.

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 greatly 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, their tenants and their customers at locations 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 continuous operation of facilities 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 other modes, most likely roads. The works proposed by the Bill will disrupt and impact on the ability of your Petitioners to manage its business operations during, and after, construction works.
- 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 (including terminal operations) 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.

Property Specific Concerns

Freight Terminal in Birmingham

- 14 Your Petitioners hold a long leasehold interest in the Landor Street Intermodal Terminal. Network Rail is the freeholder. Your Petitioners have granted separate sub-leases over parts of the site to Pete's Haulage as an occupier tenant and to Network Rail. Your Petitioners have granted a long lease of a distribution centre at the terminal to DB Schenker.
- 15 This is a critical freight facility and is your Petitioners' second busiest intermodal terminal in the UK. The terminal handles 16 daily intermodal trains and over 150,000 containers a year and is vital to the national economy, the regional economy of the West Midlands and the local Birmingham economy.

During Construction

- 16 Your Petitioners strongly object to the temporary land acquisition proposed in the Bill. Your Petitioners submit that occupying the scale of land indicated during construction would render continued operations at the terminal commercially unviable. This is as a result of the loss of storage and rail loading access areas that will be experienced at the terminal, as well as the acquisition of the site occupied by Pete's Haulage.
- 17 Your Petitioners submit that the acquisition of the land including Pete's Haulage will drastically reduce the capability of the freight terminal. The loss of the storage and rail access areas during construction severely limits the handling capacity and operational efficiency of the terminal whilst the area dedicated to Pete's Haulage provides a facility for a core and valued service (haulage services) to your Petitioners' largest single customer. The loss of this area, alongside the loss of the handling capacity (storage and loading access), represents a fundamental commercial risk to your Petitioners' business.
- 18 Furthermore, the temporary acquisition of land proposed in the Bill undermines the £4m investment made in two rail head gantry cranes in 2009 alongside other

investment in staff training, terminal infrastructure, rolling stock and operational processes with the aim of improving service quality and reducing unit cost.

- 19 Given the competitiveness of the market and the importance of the location it is expected that any business lost due to temporary (anything greater than six months) capacity reduction is lost into perpetuity, or at least be very hard to recover to rail.
- 20 The consequence of the above is a reduction in rail freight carriage tonnage, much of which would be displaced onto roads. Your Petitioners are concerned about the damaging implications that this would have on their business and the wider local and national economy as a result. To your Petitioners' business it could necessitate a significant reconfiguration of your Petitioners' nationwide product offering and lead to the redeployment or possible return of its assets (possible only in the medium to long term).
- 21 Consequently, your Petitioners submit that the proposals in the Bill would threaten the jobs of staff employed locally at the Birmingham terminal, those employed elsewhere within the business and consequently those indirectly employed within the local supporting services economy. Freightliner is an important employer in a city with a high unemployment claimant rate. Birmingham has the highest unemployment claimant rate of any of the core UK cities at 8.3%. The Nechells ward, where Landor Street is located, has a claimant rate of over 16%.
- 22 Your Petitioners assert that it is not necessary to acquire the full amount of the land proposed in the Bill to facilitate the construction of HS2. By a reconfiguration of the terminal layout that includes the replacement of land acquired so as the usable footprint remains constant, your Petitioners will be able to maintain the scale of operations at the terminal, although may require additional resources to sustain the efficiency of operation. Meetings between your Petitioners and the Promoter indicate that this is a reasonable and achievable proposal. However your Petitioners require a binding commitment from the Promoter to this effect.
- 23 Your Petitioners submit that the Bill should be amended to require the Promoter to provide an alternative proposal that would avoid short and long term business impact to the freight terminal. 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 the Promoter should be required to provide suitable alternative property and facilities to your Petitioners, or the existing site should be reconfigured, by way of mitigation.

Post Construction

- 24 Your Petitioners aver that the compulsory acquisition presented in the Bill will impact on the long-term capabilities of the freight terminal. This would result in a permanent reduction in storage and impact on operations within the terminal. The permanent loss of land would reduce the terminal's capabilities which without re-modelling, would detrimentally affect the amount of traffic and number of containers which can be handled. With the 2013 Network Rail Freight Market Study forecasting significant growth in the intermodal sector the reduction in the capability of the terminal would have serious implications on your Petitioners' current and future business.
- 25 Your Petitioners submit that the Bill should be amended to require the Promoter to provide an alternative proposal that would avoid any permanent acquisition of land in to the freight terminal. If, however, permanent acquisition cannot be avoided it should be kept to an absolute minimum and the Promoter should be required to provide binding commitments to include land acquisition so the usable footprint remains constant and make suitable reconfigurations to the terminal by way of mitigation.

The Podium

- 26 Your Petitioners have a leasehold interest in office space in the site known as The Podium in Euston. Your Petitioners have utilised this site as its headquarters since 1996 and in the interests of business continuity had planned to continue occupation until at least the end of the tenancy in 2021.
- 27 The proposed scope and duration of the Promoter's use of compulsory acquisition powers over the site is not clear from the information that has been provided. This uncertainty over the Promoter's use of the site means that your Petitioners are unable to plan for future business needs or to formulate any medium or long term strategy for its office accommodation in London. Further, it is anticipated that severe disruption will be caused to the site by noise and vibration during the neighbouring construction and redevelopment works that will take place at Euston Station.
- 28 Your Petitioners submit that the Promoter should be required to give binding commitments that any disruption, including noise and general disturbance, should be kept to an absolute minimum. Where disruption is unavoidable suitable alternative property and facilities should be made available by way of mitigation

either on a temporary or permanent basis and all costs of disruption reimbursed depending on the Promoter's proposed long term use of the site.

Network-specific Concerns

Reservation of Released Capacity for Rail Freight

- 29 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.
- 30 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.
- 31 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

- 32 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 Promoters 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

- 33 Your Petitioners recognise that if the junction at Handsacre becomes operational, there may 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

- 34 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.

35 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 and to reimburse all costs and losses to the rail freight companies, whether via Network Rail or directly. 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

36 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.

Length of Compulsory Acquisition Powers

37 The Bill authorises the grant of compulsory acquisition powers for a period of five years from the date of Royal Assent. Clause 10 of the Bill allows for this period to be extended for a further five years by the Secretary of State. Your Petitioners consider that ten years is too long a period of time for landowners to be subject to the threat of compulsory acquisition as such uncertainty will stall redevelopment plans and lead to vacant properties. It is submitted that the Bill should not be allowed to pass into law without omitting Clause 10(2), 10(3) and 10(4),

38 As a general matter, your Petitioners submit that proper provision should be made for the Promoter to repay to your Petitioners all proper costs, charges and expenses

(including the proper fees of such professional advisers as they may instruct) reasonably incurred in consequence of the Bill or of any provision made as a result of this Petition.

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

40 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 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 Management Consortium Bid Limited, Freightliner Ltd, Freightliner Heavy Haul Ltd and Freightliner Railports Ltd.

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HIGH SPEED RAIL (LONDON –
WEST MIDLANDS) BILL

PETITION OF Management
Consortium Bid Ltd, Freightliner
Ltd, Freightliner Heavy Haul Ltd
and Freightliner Railports Ltd,

AGAINST, By Counsel, &c.

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15 May 2014