

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2013 - 2014

HIGH SPEED RAIL (LONDON TO WEST MIDLANDS) BILL

Against – 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 AFSANEH ZOE BOWER KNIGHT AND RUPERT COCKS

SHEWETH as follows:-

1. A Bill (hereinafter called "the Bill") has been introduced into and is now pending in your honourable House intituled "A Bill to make provision for a railway 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, supported by the Prime Minister, the Deputy Prime Minister, Mr Chancellor of the Exchequer, Mrs Secretary May, Mr Secretary Vince Cable, Mr Secretary Duncan Smith, Mr Secretary Pickles, Mr Secretary Paterson, Mr Secretary Davey and Mr Robert Goodwill.
3. The Bill is promoted by the Secretary of State for Transport (hereinafter called "the Promoter").

Relevant clauses of the Bill

4. Clause 1 (Power to construct and maintain works for Phase One of High Speed 2) of the Bill would enable the nominated undertaker to construct and maintain the works specified in Schedule 1 ("the scheduled works") and deviate within the limits of deviation.
5. Clause 2 (Further provision about works) of the Bill would enable the nominated undertaker to carry out the works in Clause 2 and Schedule 2 and Schedule 3 to the Bill.
6. Clause 3 (Highways) would enable the nominated undertaker to exercise the powers in Schedule 4 to the Bill.
7. Clause 4 (Power to acquire land compulsorily), Schedule 5 and Schedule 6 to the Bill would enable the Secretary of State to compulsorily acquire so much of the land within the Act limits (within the limits of deviation for the schedule works, or within the limits of

the land to be acquired or used) as may be required for Phase One purposes and sets out provisions about the application of compulsory purchase legislation.

8. Clause 5 (Acquisition of rights in land), Schedule 7 and Schedule 8 to the Bill would enable the Secretary of State to exercise the power under Clause 4 to create or acquire easements or other rights and impose restrictive covenants. Schedule 9 contains provisions about the application of compulsory purchase legislation to a compulsory acquisition under Clause 5.
9. Clause 6 (Acquisition of part of land) of the Bill would enable the provisions of Schedule 10 to apply instead of section 8(1) of the Compulsory Purchase Act 1965.
10. Clause 7 (Acquisition of airspace) of the Bill would enable the Secretary of State to exercise the power under Clause 4 in relation to air space over the land only. Clause 7 excludes the limitation on only selling part of a house, building, manufactory, park or garden belonging to a house under section 8(1) of the Compulsory Purchase Act 1965.
11. Clause 8 (Acquisition of subsoil or under-surface) and Schedule 11 of the Bill would enable the Secretary of State to exercise the power under Clause 4 in relation to subsoil or under surface of the land only. Clause 8 excludes the limitation on only selling part of a house, building, manufactory, park or garden belonging to a house under section 8(1) of the Compulsory Purchase Act 1965.
12. Clause 9 (Highway subsoil) of the Bill would enable the nominated undertaker to enter upon, take and use for the purposes of the works authorised by the Act so much of the subsoil of any highway within the Act limits as is required for the construction or maintenance of those works, without being required to acquire that subsoil or any interest in it. Clause 9 of the Bill would also enable Schedule 12 and restrictions on powers to use subsoil and acquire land.
13. Clause 10 (Termination of power to acquire land) of the Bill would set a termination date for exercising the power to acquire land to 5 years from the date the Act is passed. Clause 10 would also enable the Secretary of State to make an order extending the termination date for exercising the power to acquire land by 5 years and would enable Schedule 13 that contains provisions about a right to require acquisition where an order is made.
14. Clause 11 (Extinction of rights over land) and Schedule 14 of the Bill would enable the extinguishment of private rights of way, rights of common, easements, liberties, privileges rights, advantages, natural right to support and restrictions under contract.
15. Clause 12 (Extinction of rights of statutory undertakers) of the Bill would apply section 271 to 273 of the Town and Country Planning Act 1990 (extinguishment of rights of statutory undertakers) in relation to land held by the Secretary of State as being land which is required for or in connection with the works authorised by the Act as they apply in relation to land acquired or appropriated as mentioned in section 271(1) of that Act.
16. Clause 13 (Exclusion of new rights of way) of the Bill would exclude the acquisition of rights of way by prescription or user over land.

17. Clause 14 (Temporary possession and use of land) would enable the nominated undertaker to exercise the powers in Schedule 15 of the Bill including specified land and land within the limits of deviation.
18. Clause 15 (Use of roads) would enable the nominated undertaker to use roads situated on land specified in Schedule 8 and the table in paragraph 2 of Schedule 11.
19. Clause 16 (Cranes) of the Bill would enable the nominated undertaker to use airspace for the oversailing of Cranes.
20. Clause 17 (Enforcement of restrictions on land use) of the Bill would enable the Secretary of State to enforce the prohibition or restriction of use of land imposed by covenant or agreement between a person interested in the land (the promisor) and the Secretary of State against persons deriving title from or under the promisor.
21. Clause 18 (Compensation for injurious affection) of the Bill would enable section 10(1) of the Compulsory Purchase Act 1965 to have effect in relation to land injuriously affected by the execution of works under the Act by the nominated undertaker.
22. Clause 19 and Schedule 16 (Deemed planning permission) of the Bill would deem planning permission to be granted, impose planning conditions and require the nominated undertaker to submit details to the planning authorities for approval.
23. Clause 20 (Time limit on deemed planning permission) of the Bill would enable the Secretary of State to extend by order the time for beginning development beyond the 10 year time limit.
24. Clause 21 (Power to disapply deemed planning permission) of the Bill would enable the Secretary of State by order to provide that the deemed planning permission does not apply to development consisting of operations for the maintenance or alteration of the work which begins on or after a day specified in the order.
25. Clause 22 (Parking at Birmingham Interchange: limit on deemed planning permission) of the Bill would limit the application of the deemed planning permission in relation to development involving parking spaces at Birmingham Interchange.
26. Clause 23 (Development Consent) of the Bill would provide that the works authorised by the Act do not require consent under the Planning Act 2008.
27. Clause 24 (Listed buildings) and Schedule 17, Clause 25 (Ancient monuments) and Schedule 18, Clause 26 (Burial grounds) and Schedule 19, Clause 27 (Consecrated land), Clause 28 (Commons and open spaces), Clause 29 (Trees), Clause 30 (Overhead lines), Clause 31 (Water) and Schedule 20, Clause 32 (Buildings) and Schedule 21 and 22, Clause 33 (Street works) and Schedule 23, and Clause 34 (Lorries) and Schedule 24 of the Bill would disapply or modify statutory controls.
28. Clause 35 (Noise) of the Bill would enable Schedule 25 and provide the nominated undertaker with a defence in respect of statutory nuisance.
29. Clause 36 (Local Acts) and Schedule 26 of the Bill would disapply or modify statutory controls under local Acts relating to London, Oxfordshire, Staffordshire and the West Midlands.

30. Clauses 37 to 46 of the Bill, together with the associated schedules, confirm provisions relating to the modification and discharge of the railways regulatory regime as well as miscellaneous and general provisions relating to statutory undertakers and nominated undertakers and the transfer of functions.
31. Clause 47 (Compulsory acquisition of land for regeneration or relocation) of the Bill would enable the Secretary of State to compulsorily acquire any land if the construction or operation of Phase One of HS2 gives rise to the opportunity for regeneration or development of the land.
32. Clause 48 (Power to carry out reinstatement works) of the Bill would enable the nominated undertaker to carry out re-instatement works within the Act limits where the operation or use of the whole or part of an undertaking is discontinued or substantially impaired as a result of the exercise of any power under the Act.
33. Clause 50 (Power to apply Act to further high speed rail works) of the Bill would enable a Transport and Works Act order relating to a relevant Phase One matter to apply any provision of the Act, with or without modification, to anything authorised by the order so far as relating to that matter.
34. Clause 51 (Rights of entry for further high speed rail works) of the Bill would enable an authorised person in connection with a Bill or proposed Bill for a high speed railway line in Great Britain to enter any land within 500 metres of the proposed route of the line for surveying the land or facilitating compliance with EU environmental protection legislation.
35. Clause 52 (Exercise of rights of entry) of the Bill would enable provisions relating to exercising rights of entry.
36. Clauses 53 to 56 of the Bill, together with the associated Schedules contain provisions relating to Crown Land, Highways for which Secretary of State is highway authority and Royal Parks.
37. Clause 57 ("Deposited plans" and "deposited sections") of the Bill would enable a copy of deposited plans or deposited sections, or any extract from those plans or sections, certified as such by the Secretary of State to be admissible in any proceedings as evidence of its contents.
38. Clause 58 (Correction of deposited plans) of the Bill would enable the Secretary of State to apply to two justices for the correction of the plans or book of reference.
39. Clause 59 (Environmental Impact Assessment Regulations) of the Bill would enable the Environmental Impact Assessment Regulations to have effect as if the definition of "EIA development" in regulation 2(1) and regulation 8 are amended.
40. Clause 60 (Arbitration) of the Bill would enable differences to be referred to and settled by a single arbitrator to be agreed between the parties or appointed by the President of the Institution of Civil Engineers
41. Clause 61 (Notices and other documents) of the Bill would enable provisions relating to the delivering of documents and notices.

42. Clause 62 ("Phase One Purposes") of the Bill would enable the definition of "Phase One Purposes".
43. Clause 63 (Interpretation) of the Bill would enable the definitions set out in clause 63.
44. Clause 64 (Financial provision) of the Bill would enable the payment of expenditure incurred by the Secretary of State in consequence of the Act and any increase attributable to the Act in the sums payable out of money so provided under any other enactment.

Your Petitioners and its Property

45. Your Petitioners are Afsaneh Zoe Bower Knight and Rupert Cocks ("your Petitioners"), who are the joint freehold owners of, and live at, 12 Mornington Terrace, London NW1 7RR (the "Property"), which falls within plot 154 in the HS2 Plans, Volume 1, sheet 1-02.
46. The Property is within the limits of land to be acquired or used for the scheduled works pursuant to the Bill and is listed in Schedule 5 of the Bill. The Property is not, however within the land that is the subject of the Promoter's safeguarding directions for Phase 1 of HS2 that is proposed to be authorised by the Bill (the "Project"). Your Petitioners humbly submit, for the reasons set out below, that this is an anomaly that unjustly and injuriously affects your Petitioners' land and interests and most importantly seriously jeopardises your Petitioners' son's health.
47. The Promoter has informed your Petitioners that he proposes to exercise the powers in the Bill, when enacted, to acquire rights to install and maintain ground anchors in the subsoil of the Property at a depth of eight to ten metres. Whilst the Promoter has stated that he does not intend to acquire any other part of the Property or any other rights over it, the provisions of clause 4 and Schedule 5 (as well as clauses 5-18 of the Bill) do not limit the Promoter to the acquisition for this stated purpose. It is therefore open to the Promoter to acquire the entirety of the Property under the provisions of the Bill. For the reasons set out below your Petitioners humbly submit that the Property should be acquired in its entirety. Your Petitioners therefore seek to enter into an agreement with the Promoter to acquire this Property in its entirety as soon as possible.

Your Petitioners' concerns about their son's health

48. Your Petitioners are gravely apprehensive about the provisions of the Bill as they will enable the Promoter to carry out construction works adjacent to your Petitioners' home for a ten year period. The construction of the Project will gravely affect the health of their seven year old son ("Atticus") who has suffered from life-threatening allergies which include an allergy to dust and asthma since his birth. For this reason, and having regard to the more detailed particulars referred to below, your Petitioners object to the Bill and its provisions as set out in this Petition and they allege and are prepared to prove that they and their family life, home and property, rights and interests are injuriously and prejudicially affected by the Bill for the following reasons (amongst others).
49. Your Petitioners' Property directly looks over the railway lines, is less 20 metres from the railway lines serving Euston Station, and less than 20 metres from the Mornington Street Bridge, which is proposed to be demolished in 2017. Your Petitioners' Property

also directly faces the new utilities bridge, construction of which is proposed to begin in 2015.

50. Your Petitioners chose to buy a house on Mornington Terrace for its specific benefits in relation to Atticus' health. The Property faces a wide-open, non-green space across the rail tracks, with little road traffic, which renders it low on dust, pollen and pollutants. This environment will be turned on its head by the construction of the Project.
51. From the moment the Project was announced your Petitioners have been faced with a family medical crisis. Specifically, as Atticus has suffered from life-threatening allergies which include an allergy to dust and asthma since birth, the impact of construction works has been and remains a constant source of concern, stress and anxiety to your Petitioners. Atticus currently takes four daily medications to help manage these allergies, in addition to carrying with him everywhere another four medications to be administered in case of emergency. Your Petitioners last had to use these emergency medications, and admit Atticus to hospital, in June 2013. Since that date your Petitioners have been particularly mindful of the impacts of the Project on Atticus' health.
52. A separate example of the vulnerability of Atticus' health is the effect that minor building works to a small portion of wall at the Property had in 2013. To protect Atticus, your Petitioners ensured the area was sealed off from the rest of the house, and that a dust extraction machine was used at all times. Despite this, Atticus' nosebleeds, coughing and asthma became so severe that your Petitioners had to move out of their home until the works were finished and the house rigorously cleared of all dust. Your Petitioners are of the view that works on one square metre of wall cannot compare to the ten-year construction period which will be on an industrial scale as a result of the Project, which will completely surround your Petitioners on a massive scale.
53. Your Petitioners humbly submit that the proposed mitigation measures to counter the significantly adverse construction impacts of the Project, which include the erection of hoardings, damping down and watering facilities, are inadequate given Atticus' particular circumstances. Volume 5 of the Planning and Environment Statement CFA1, Data appendix (AQ-001-001) states at page 8 that "the risk to your Petitioners who are less than 20 metres away from works is assessed as: Dust Emission Class: Large; Dust Risk Category; High; Sensitivity of Surrounding Area; Very High". Your Petitioners also note in Volume 3, Route-wide Effects, 4.1.1 (page 31): "Construction dust can be carried a few hundred metres from construction sites". As stated above your Petitioners are only 20 metres away from the construction works. The only viable means of safely mitigating the construction impacts on your Petitioners would be to either not carry out the construction works for the Project within three hundred metres of the Property or to seal the construction works in such a manner so that no construction dust or other pollution can escape into the wider environment. Your Petitioners are, however, mindful that these proposals are not practical or realistic solutions for the Promoter.
54. Accordingly, your Petitioners have been advised by Atticus' doctors, Professor Gideon Lack (Consultant Allergist and Immunologist) and Dr. Martin Scurr FRCP, in no uncertain terms, to move house before any of the works for the Project begin. Dr Martin Scurr has written in his Medical Report: "[Atticus's] reactive airways disease gives much cause for concern, and although the home environment can be reasonably controlled, the environment immediately outside of the home is now raised as a potential worry,

with HS2 being proposed close to the place of residence, a planned 10 year construction project on a large scale. For that reason I have urged the family to consider a move, all important in view of the precarious health of the young patient which I have detailed above. My greatest concern is the ongoing and continuing potential for lung damage on account of pollutants in the immediate atmosphere”.

55. Your Petitioners are therefore gravely troubled by the thought of what will happen to Atticus (who in a “good” week suffers from wheezing, coughing, and nosebleeds) when the construction for the Project commences. As a result your Petitioners sought to sell the Property, but have been unable to do so due to the blight caused by the Project. As a result, your Petitioners served a blight notice on the Promoter on 21 March 2014. However, this was rejected on 14 May 2014 by the serving of a counter notice which stated that the Property is not blighted as it is not in the safeguarded area and that the Secretary of State intends to install ground anchors in the subsoil of the Property.
56. Your Petitioners are also gravely concerned about the delay, costs and uncertainty that will arise if they refer the counter-notice to the Upper Tribunal (Lands Chamber). Your Petitioners are of the view that the blight notice was not accepted due to a technicality and it is not equitable or just that your Petitioners' Property is included within the powers of the Bill but not the safeguarding directions, thereby excluding them from appropriate compensation and the means to protect Atticus' health.
57. Your Petitioners are of the view that given the construction works for the Project are proposed to commence in 2015 and the fact that it will take some time to find and move into a new home (which may also require building and redecoration works that need to be carried out prior to Atticus' moving in to his new home), the Promoter should acquire the Property without delay so that your Petitioners can complete this process as soon as possible.
58. Your petitioners bought the Property as their family home and your Petitioners had hoped to be able to raise their children there. However, your Petitioners are very strongly of the view that Atticus' health is their main priority. Consequently, your Petitioners have had to conclude that the only available course of action is to move and to establish a home for their family elsewhere. With Atticus and his younger sister in the early stages of schooling, that must mean a permanent move. Your Petitioners cannot delay this process despite the fact that the Project is still in its early stages. It is for these reasons alone that your Petitioners served the blight notice.
59. For the reasons stated above, your Petitioners' need to sell is imposed by the Project. If it was not for the Project your Petitioners would not be considering it. In his Introduction to the consultation document, on compensation the Promoter stated that the Government wants to do more than the statutory package and “to introduce a discretionary package of compensation to address the most serious effects of HS2”. Your Petitioners are mindful that should the formal proposals include the offer of generosity where health concerns are raised, this might prompt an avalanche of spurious claims. However, on an individual basis, where there is a genuine case such as is the case with your Petitioners, the Promoter would surely not wish to be seen as failing to exercise discretion where in all fairness they should do so. Your Petitioners contend that it could be widely, and rightly, seen as immoral on the Promoter's part were this the case.

60. Your Petitioners therefore humbly request that the Promoter acquires the Property with the full package of compensation that applies pursuant to a blight notice and that it is accepted as if the Property was included in the area that is the subject of the Promoter's safeguarding directions, so that your Petitioners can safeguard Atticus' health.

Compulsory purchase and related matters

61. Your Petitioners further humbly submit that such provisions with regard to compensation in respect of compulsory acquisition and other matters as are proposed in the Bill are inadequate to compensate your Petitioners for the loss, damage and inconvenience which they might suffer as a result of the construction and subsequent use of the proposed works. Further provisions should, your Petitioners submit, be included in the Bill, including provisions respecting the making and assessment of claims for compensation and amendments to the Compensation Code, as well as indemnifying your Petitioners for any loss they might suffer as the result of losses incurred in the shadow of the HS2 proposals, or for any loss (so attributable) which your Petitioners might suffer in the event of them not being able to sell their Property (in whole or in part) or in the event of them only being able to do so at a reduced price.
62. Your Petitioners also object to the compensation provisions of the Bill in that those provisions are totally inadequate to compensate your Petitioners in circumstances where no land (or interests in land) is acquired by the Promoter under the Bill, but where the value of such land and the Property erected thereon is reduced or where such land and the Property erected thereon is otherwise adversely or injuriously affected by the construction or use of the proposed works. Your Petitioners therefore submit that the Bill should be amended to provide adequate compensation in this regard.

Blight

63. Your Petitioners respectfully submit that the proposals contained in the Bill are causing a blight on the Property, and have done so for more than 3 years before the Bill's submission to Parliament. Your Petitioners fear that prospective purchasers will state that the proposals so blight the Property that they are not interested in acquiring it. Moreover, the Bill does not contain adequate provisions for compensating such blight and your Petitioners respectfully suggest that it should do so.
64. In this respect, your Petitioners humbly submit that the Bill should be amended so that the Promoter cannot serve a counter notice to a blight notice in relation to a property that is within the limits of land to be acquired or used for the scheduled works pursuant to the Bill on the basis that such land is not within the land that is subject to the Promoter's safeguarding directions.
65. Your Petitioners also submit that the Promoter should not be able to serve a counter notice to a blight notice on the basis that the Promoter intends to use part of a property as the property in its entirety remains blighted.
66. Your Petitioners further submit that the safeguarding directions should be amended to include all the land that is within the limits of the land to be acquired or used for the scheduled works pursuant to the Bill. Your Petitioners should then be able to serve a blight notice in such circumstances in the absence of the Property being acquired by the Promoter utilising his discretion to do so, given your Petitioners' particular circumstances, as set out above.

Costs

67. Your Petitioners submit that 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.

Conclusion

68. In light of the above, your Petitioners reserve the right to raise the above matters and any further matters of concern relating to the substance of the Bill and this Petition that may arise from continuing discussions, the preparation and publication of reports, any possible revisions that may be made to current work site proposals or any other matters relevant to your Petitioners' expressed concerns that may occur in due course and prior to their representation before the Select Committee.
69. For the foregoing and connected reasons your Petitioners respectfully submit that, unless the Property is purchased on appropriate terms as requested or the clauses of the Bill are removed or amended as requested, then the Bill should not be allowed to pass into law.
70. There are other clauses and provisions in the Bill which, if passed into law as they now stand will prejudicially affect your Petitioners and their rights, (including their human rights) interests and property and for which no adequate provision is made to protect your Petitioners and other clauses and provisions necessary for their protection and benefit are omitted therefrom.

YOUR PETITIONERS THEREFORE HUMBLY PRAY your Honourable House that the Bill may not 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 such of the clauses and provisions of the Bill as affect 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



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Acting as Agent for the Petitioners

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