

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 Robert Birchill

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, supported by The Prime Minister, The Deputy Prime Minister, Mr Chancellor of the Exchequer, Secretary Theresa May, Secretary Vince Cable, Secretary Iain Duncan Smith, Secretary Eric Pickles, Secretary Owen Paterson, Secretary Edward Davey, and Mr Robert Goodwill.
3. Clauses 1 to 36 set out the Bill’s objectives in relation to the construction and operation of the railway mentioned in paragraph 1 above. They include provision for the construction of works, highways and road traffic matters, the compulsory acquisition of land and other provisions relating to the use of land, planning permission, heritage issues, trees and noise. They include clauses which would disapply and modify various enactments relating to special categories of land including burial grounds, consecrated land, commons and open spaces, and other matters, including overhead lines, water, building regulations and party walls, street works and the use of lorries.
4. Clauses 37 to 42 of the Bill deal with the regulatory regime for the railway.
5. Clauses 43 to 65 of the Bill set out a number of miscellaneous and general provisions, including provision for the appointment of a nominated undertaker (“the Nominated Undertaker”) to exercise the powers under the Bill, transfer schemes, provisions relating to statutory undertakers and the Crown, provision about the compulsory acquisition of land for regeneration, reinstatement works and provision about further high speed railway works. Provision is also made about the application of Environmental Impact Assessment Regulations.

6. The works proposed to be authorised by the Bill ("the Authorised Works") are specified in clauses 1 and 2 of and Schedule 1 to the Bill. They consist of scheduled works, which are described in Schedule 1 to the Bill and other works, which are described in clause 2 of the Bill.

7. Your Petitioner is Robert Birchill (hereinafter referred to as 'the Petitioner'), the owner/occupier of Tortola, Birch Tree Lane, Whitmore Heath, Newcastle, Staffs ST5 5HE ('the Property') which is located in the vicinity of the proposed route of Phase 2 of HS2. Your petitioner is directly affected as clauses 51 and 52 give right of entry to your Petitioner's property and the principles and decisions reached in respect of Phase 1 will set standards for the Hybrid Bill for Phase 2, where it will be substantially more difficult to challenge such arrangements. Your Petitioner's rights interests and property are therefore injuriously affected by the Bill, to which your Petitioner objects for the reasons set out below.

8. **Access to land for surveying**

8.1 Your Petitioner is concerned that rights of entry and authorisations to enter land for surveying purposes goes beyond the rights that are reasonably necessary. Your Petitioner notes that these clauses are primarily designed for preparatory work to be undertaken on Phase 2 of HS2. Your petitioner submits that the powers in the Hybrid Bill are too broad and should be subject to independent oversight.

8.2 Your Petitioner requests that Clauses 51 and 52 should be amended so that land can only be accessed with the landowner's and occupier's consent.

9. **Compensation**

9.1 Your Petitioner submits that the compensation provisions in relation to property that is not compulsory acquired and other matters would not be sufficient to compensate your Petitioner adequately for the loss and damage they incur as a result of the plan for Phase 2 of the high speed railway and associated development, as supported by the rights of entry for survey purposes and the increased possibility of these plans being realised if Phase 1 is approved.

9.2 Your Petitioner requests that the Bill should be amended to ensure your Petitioner and other persons who are injuriously affected and adversely affected by loss of value should be entitled to claim compensation for the full amount of loss incurred due to HS2.

10. **Limits of Deviation**

10.1 Your Petitioner is concerned that paragraph 1(2) of Schedule 1 of the Bill provides that in constructing or maintaining any of the scheduled works the undertaker can deviate vertically upwards not exceeding three metres, vertically downwards to any extent and laterally to any extent within the limits of deviation shown on the deposited plans.

10.2 Your Petitioner is concerned that these deviations could potentially make significant differences to the impacts of the construction and operation of Phase 2 of the high speed railway and associated development, for example by raising the track height to the detriment of the amenity of the landscape. These potential environmental

impacts are not adequately addressed in the environmental statement, which provides that the undertaker only has to use reasonable endeavours to adopt measures to reduce adverse environmental effects provided it does not add unreasonable cost or delay to the construction and operation.

10.3 Your Petitioner requests that the provisions in the Hybrid Bill to allow deviation should be deleted.

11. Noise

11.1 Your petitioner is concerned that HS2 Ltd have not set proper noise thresholds and ignored national policy in this area and the views of the World Health Organisation. Your petitioner submits that the noise limits set for Phase 1 will determine the design parameters for rolling stock and track design which will also be used in Phase 2.

11.2 Your petitioner is concerned that the specific impacts of ground borne noise have not been properly considered or explained to impacted communities and the limit for ground borne noise does not reflect recent or practice or experience and the methodology used for predicting the impact of ground borne noise is insufficiently robust and no amelioration measures have been suggested to deal with this problem.

11.3 Your petitioner therefore requests

11.3.1 HS2 Ltd be instructed to issue revised noise thresholds covering noise exposure, in rural and urban areas and during the day and at night-time which reflect World Health Organisation guidelines including World Health Organisation guidelines on peak noise (60db max pass-by outside, giving 45db inside).

11.3.2 HS2 Ltd be required to set noise limits for construction which are in line with World Health Organisation limits and local authorities be provided with enforcement powers to order the cessation of construction activities in the event such anticipated exposures are breached.

11.3.3 HS2 Ltd be obliged to commit to designing the high speed railway to operate in such manner that the revised noise exposures are not breached.

11.3.4 A binding requirement included in the Bill for noise monitoring with obligations on HS2 Ltd to introduce additional mitigation measures, including reduction in train speeds, in the event forecast noise levels are exceeded.

11.3.5 HS2 Ltd be required to commit to the same threshold for ground borne noise as the Northern Line Extension- meaning groundborne noise levels no greater than 25dB LpAsmax for rural areas and 30dB LpAsmax for urban areas.

11.4 Your Petitioner is concerned that Clause 35 of the Bill and Schedule 25 provide that appeals against notices or against failure to give consent or the giving of qualified consent under the Control of Pollution Act 1974, section 60 (control of noise) and section 61 (prior consent for work on construction sites) may be referred to the Secretary of State or arbitration. Your Petitioner is also concerned that Schedule 25 would provide a defence to statutory nuisance for the nominated undertaker.

11.5 Your Petitioner requests that Clause 35 and schedule 25 are deleted from the Bill.

12. **Code of Construction Practice**

- 12.1 Your Petitioner is concerned that the nominated undertaker's ongoing accountability to is unspecified and that this principle, if adopted, would be highly detrimental to communities located on Phase 2 of the proposed route of HS2. The Code of Construction Practice does not identify how any lead contractors will be made to comply and the redress and appropriate action that might be taken in the event that the contractors do not comply with the Code of Construction Practice. Assessment in the environmental statement is made on the assumption that the Code of Construction Practice and the strategies will be fully effective, however, the Code of Construction Practice has no legal status.
- 12.2 Your Petitioner submits that the Code of Construction Practice should be incorporated into the Bill. Parliament and not the nominated undertaker should be accountable for the project. Any monitoring required under the Code of Construction Practice should involve the relevant local authority as well as independent experts with effective oversight and redress arrangements in the event of non-compliance with the Code of Construction Practice.
- 12.3 The standards set out in the environmental statement and the Code of Construction Practice is of "reasonableness" and "reasonable endeavours". Your Petitioner submits that this should be replaced by a higher standard, i.e. "best practical means" and the measures should be agreed with the relevant local authority. Measures should be subject to independent assessment verifiable and challengeable. This applies to noise as well as other effects that are to be addressed in the Code of Construction Practice.

13. **Carbon**

- 13.1 Your Petitioner is concerned about the impact of the high speed railway on the UK's carbon reduction commitments.
- 13.2 Your Petitioner requests that in accordance with the House of Commons Environmental Audit Committee Report dated 2 April 2014 there should be an emissions monitoring system to bring transparency to the likely effect of the high speed railway on overall transport emissions and a reduced maximum speed until electricity generation has been sufficiently decarbonised to make it a marginal issue.

14. **Power to acquire land, rights in land, airspace and subsoil**

- 14.1 Your Petitioner is concerned that the powers sought in the Bill go beyond the scale of powers of what is reasonably required to achieve the construction and operation of the high speed railway and its associated development particularly in relation to the acquisition of land and rights in land, air space and subsoil. Your petitioner would be injuriously affected should such principals be adopted in Phase 2.
- 14.2 Your Petitioner is also concerned by Clause 47 of the Bill (compulsory acquisition of land for regeneration and relocation) which is too broad in scope and is not limited by time or distance. Your Petitioner believes that this power should be removed.

15. Ecology

- 15.1 Your Petitioner is concerned about the adverse impacts of the construction and operation of the high speed railway and associated development on fauna and flora. Your Petitioner is particularly concerned by the failure of the Environmental Statement for Phase 1 of HS2 to include any assessment of the in combination effects arising from the plans for Phase 2. Your petitioner is further concerned by the absence in the Hybrid Bill of any requirement for HS2 Ltd to ensure their activities result in No Net Loss of Biodiversity. Your petitioner highlights the number of sensitive sites (including Sites of Special Scientific Interest, County Wildlife Sites and Local Wildlife Sites) which would be impacted should Phase 2 of HS2 proceed.
- 15.2 Your Petitioner requests that in accordance with the House of Commons Environmental Audit Committee Report dated 2 April 2014, a process should be established to monitor all aspects of environmental protection needed for 60 years following the start of construction and operation of the railway, including biodiversity mitigations, compensation off-set. This process must be managed by an independent body, which monitors and publicly reports progress against the "no net biodiversity loss" objective. A detailed costing should also be established for monitoring and reporting and for the environmental protection being overseen, and ring-fence these environmental protections and a separate budget for these purposes.
- 15.3 Your Petitioner requests that other recommendations in the House of Commons Environmental Audit Committee Report dated 2 April 2014 are also followed including but not limited to the revising the environmental statement to distinguish clearly between mitigation and compensation measures in respect of biodiversity, carry out outstanding environmental surveying as soon as possible, weighting metrics for biodiversity offsetting towards production of biodiversity gains and taking explicit account of communities' wellbeing, adjusting metrics to encompass the precautionary principle, treatment of ancient woodlands should be separately from the overall biodiversity net loss calculation, re-examining scope for off-site biodiversity compensation, research on alternative discount factors for the off-setting metric.

16. Nominated undertaker

- 16.1 Your Petitioner has concerns in relation to the appointment of a nominated undertaker and the associated risk of them failing to fulfil their obligations failing, and the fettering of the Secretary of State's discretion by agreement with the nominated undertaker.
- 16.2 Your Petitioner requests that there should be a provision inserted into Clause 43 enabling enforcement against the Secretary of State in the event of the nominated undertaker failing to fulfil their obligations.

17. Environmental Statement

- 17.1 Your Petitioner is concerned by the absence of any specific provision to compel the nominated undertaker to implement mitigation measures identified in the Environmental Statement accompanying the Bill. Failure to include such provision

would, your Petitioner submits, be contrary to the purposes of the EIA Directive and be highly damaging to communities located on Phase 2 of the route.

- 17.2 Your Petitioner submits that the Environmental Statement accompanying the Bill is deficient, for the reasons set out HS2AA's Environmental Statement Consultation response.
- 17.3 Your Petitioner requests that specific provision is included to compel the nominated undertaker to implement mitigation measures identified in the Environmental Statement accompanying the Bill.
- 17.4 Your Petitioner requests that the reasons set out in HS2AA's Environmental Statement Consultation response are acknowledged and taken note of in addressing the deficiency of the Environmental Statement accompanying the Bill.
18. In light of the above, the Petitioner reserves 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 our expressed concerns that may occur in due course and prior to our representation before the Select Committee.
19. For the foregoing and connected reasons your Petitioner respectfully submits that, unless clauses of the Bill are removed or amended, then the Bill should not be allowed to pass into law.
20. There are other clauses and provisions in the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and their rights, (including their human rights) interests and property and for which no adequate provision is made to protect your Petitioner and other clauses and provisions necessary for their protection and benefit are omitted therefrom.

YOUR PETITIONER 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 Petitioner 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 Petitioner in the premises as your Honourable House shall deem meet.

AND your Petitioners will ever pray, &c

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