

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 *Daniel Whitaker*

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 **Daniel Whitaker** (hereinafter referred to as ‘the Petitioner’), occupier of **5 Mornington Terrace, NW1 7RR** (‘the Property’).

8. **Limits of Deviation**

8.1 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.

8.2 Your Petitioner is concerned that these deviations could potentially make significant differences to the impacts of the construction and operation of the high speed railway and associated development, for example by raising the track height to the detriment of the amenity of the area. 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.

8.3 Your Petitioner requests that the provisions in the Hybrid Bill to allow deviation should be amended so that only downward deviations be permitted.

9. **Noise**

9.1 Your petitioner has concerns with regards to matters of noise and vibration caused by the construction and operation of the high speed railway. Your petitioner is concerned as there appears to be no mechanism in the Bill to deliver a properly noise mitigated railway.

9.2 Your petitioner is concerned that the fundamental calculations needed for forecasting noise impacts, known as the Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL) have not been correctly identified and were set too high in the Environmental Statement, leading to material underestimation of the adverse noise and significant adverse noise impacts likely to arise from the high speed railway.

9.3 Your petitioner is concerned that the thresholds adopted in the Environmental Statement for noise limits were set above what the World Health Organisation considers acceptable. Your petitioner considers this issue is likely to become more pressing given the moves by the World Health Organisation to set new lower targets on the basis of the latest medical research on the impact of noise on human health.

9.4 Your petitioner is concerned that the specific impacts of groundborne noise have not been properly considered or explained to impacted communities and the limit for groundborne noise does not reflect recent or practice or experience and the methodology used for predicting the impact of groundborne noise is insufficiently

robust and no amelioration measures have been suggested to deal with this problem.

9.5 Your petitioner therefore requests

9.5.1 HS2 Ltd be instructed to issue revised noise thresholds covering the LOAEL and SOAEL for 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).

9.5.2 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.

9.5.3 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.

9.5.4 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.

9.5.5 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.

9.6 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.

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

10. Waste

10.1 Your Petitioner is concerned that the impact on local communities of the amount of waste to be excavated and removed from the construction of the high speed railway has been underestimated and the environmental impacts of removal and disposal of such waste has been needlessly worsened because of the primacy (in UK and EU law) of the requirement to seek to avoid disposal of waste and comply with the principles of the waste hierarchy has been ignored by HS2 Ltd.

10.2 Your petitioner is concerned that the forecasts provided for each Community Forum Area for amounts of waste to be excavated and removed from that area appear to be contradictory and take insufficient account of local authority planning policies.

10.3 Your petitioner requests that:

10.3.1 The entire materials balance and movement from the high speed railway be represented in a consistent and more readily accessible form.

10.3.2 Your petitioner requests that the Bill be amended:

- (a) The Secretary of State and the nominated undertaker be required to comply with the requirements of the Waste Framework Directive and review its decisions on treatment of waste to ensure compliance with the waste hierarchy as detailed in that Directive. Such review should include publishing details of the "integrated design approach" to waste management and subject to consultation to enable effective public participation on this issue
- (b) The Secretary of State, the nominated undertaker and the relevant local authority be required to agree arrangements for monitoring and enforcement of mitigation measures designed to safeguard local communities near the construction sites for the high speed railway and associated development from adverse effects created by waste. Such plans to be overseen by an independent body picked by Parliament

11. Code of Construction Practice

- 11.1 Your Petitioner is concerned that the nominated undertaker's ongoing accountability to is unspecified. The proposed Code of Construction Practice has no statutory basis-it is not in the Bill. Assessment in the environmental statement is made on the assumption that the Code of Construction Practice and the strategies will be full effective, however the Code of Construction Practice has no legal status. 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.
- 11.2 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.
- 11.3 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" which should be on the face of the Bill. 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.

12. Transport of Hazardous Materials

- 12.1 Your petitioner is concerned by the significant amount of hazardous waste which is due to be excavated and transported by road in the area where your Petitioner resides. Your Petitioner believes that the plans for such a significant number of lorry movements have not been properly assessed. Your petitioner submits that a full Health Impact Assessment be undertaken for the area and a report provided to Parliament on the health impacts of these proposals. Your petitioner humbly submits that the Hybrid Bill should be amended to ensure that your petitioner and others living in this community have recourse to binding enforcement mechanisms in the event the disruption or health impacts arising from the transport of hazardous materials is more acute than forecast by HS2 Ltd.

13. Air Quality

- 13.1 Your Petitioner is concerned about the potential adverse impacts on air quality as a result of the construction and operation of the high speed railway line and associated development.
- 13.2 Your Petitioner requests that the Bill be amended so that before construction there should be an air quality baseline monitoring study benchmarked against the Air Quality Standards Regulations 2010 and a copy of this report should be made public. Your petitioner submits that the Bill should be amended so that thresholds for air quality and an air quality mitigation plan should be produced for each Community Forum Area, to apply both during construction and operation of HS2.
- 13.3 Your Petitioner requests that the local authority should be provided with powers to monitor air quality in accordance with binding mitigation plans and in the event air quality thresholds are breached, your Petitioner submits that the Bill should be amended to enable the local authority to require the cessation of construction activities until such point as air quality thresholds are complied with.

14. Compensation

- 14.1 Your Petitioner submits that the compensation provisions in relation to property that is not compulsory acquired and other matters are not sufficient to compensate your Petitioner adequately for the loss and damage they may incur as a result of construction and operation of the high speed railway and associated development.
- 14.2 Your Petitioner requests that the Bill should be amended to ensure your Petitioner and other persons outside the safeguarding area who are injuriously affected and adversely affected by loss of value should be entitled to claim compensation.
- 14.3 Your petitioner is concerned about the lack of provision in the Hybrid Bill for the replacement of social housing lost to construction of HS2 and your Petitioner submits that the Hybrid Bill should be amended to require an equivalent number of social housing units be constructed in the area by HS2 Ltd to replace any lost to construction.

15. Power to acquire land, rights in land, airspace and subsoil

- 15.1 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.
- 15.2 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.]
- 15.3 Your Petitioners believe it is unnecessary and inequitable to seek to acquire permanent rights in relation to the Property where limited and temporary rights are sufficient for construction of the works.
- 15.4 Your Petitioners request that the Bill be amended so that the nominated undertaker may only acquire limited and temporary rights in relation to the Property.

16. Highways

- 16.1 Your Petitioner is concerned that the construction of the high speed railway and associated development at Mornington Terrace and on the wider area will impact significantly upon the quiet enjoyment of the Property and the neighbourhood by way of noise, disturbance, visual intrusion and traffic increases.
- 16.2 Your Petitioner is concerned about the use of unsuitable highways by large vehicles delivering equipment and supplies, and removal of spoil during the construction works as well as use of highways by other vehicles. The use and routing of large vehicles within the vicinity of the Property is also a matter of concern to your Petitioner.
- 16.3 Your Petitioner requests that hours for the movement of construction traffic are limited to 08:00 to 17:00 Monday to Friday, and there are limits on the number of vehicle movements, limits on the size of vehicles, and other miscellaneous related matters.
- 16.4 Your Petitioner requests that large vehicles as well as other construction traffic must be strictly controlled, having regard to the particular sensitivities of the area. Your Petitioner therefore requests that the nominated undertaker should be subject to binding mitigation measures in relation to the control of all construction traffic, assessment of suitability of roads for construction traffic, routing of lorries and other vehicles in accordance with a list of routes to be agreed with the nominated undertaker and your Petitioner.
- 16.5 Your Petitioner requests that binding mitigation measures should include traffic management plans to be agreed between the nominated undertaker, the relevant local authority and the relevant highway authority to be monitored and enforced by environmental health officers
- 16.6 Your Petitioner is concerned about the risk to public safety posed by the large, heavy lorries and articulated vehicles, especially in light of the fact that the roads are narrow. Your Petitioner is also concerned about the access leaving and entering the construction site(s).
- 16.7 Your Petitioner requests submits that risk assessments should be completed by the nominated undertaker, relevant statutory undertakers and emergency services in relation to the access and transport issues raised by construction activity for each Community Forum Area. Your Petitioner requests that the results the risk assessment should be available to the public.
- 16.8 Your Petitioner is concerned about the wear and tear, and degradation to the highways as a result of construction traffic.
- 16.9 Your Petitioner requests that appropriate funding should be provided by the nominated undertaker to the highway authority for the maintenance, repair and re-instatement of highways required as a result of use by construction traffic.

17. Nominated undertaker

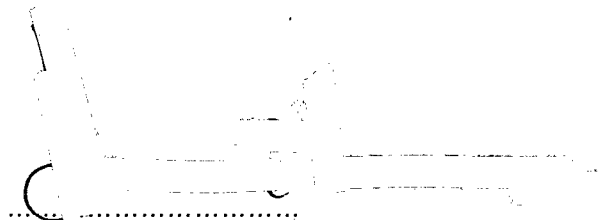
- 17.1 Your Petitioner has concerns in relation to the appointment of a nominated undertaker and the associated risk of them failing to fulfil their obligations failing, and

the fettering of the Secretary of State's discretion by agreement with the nominated undertaker.

- 17.2 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.
- 17.3 The Bill should also be amended so that undertakings given by the Secretary of State during the passage of the Bill are enforceable by the beneficiaries of the undertaking in the courts against the Secretary of State or the nominated undertaker.
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 out 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



SIGNED

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PETITION OF *Daniel Whitaker*

AGAINST, By counsel, &c

Daniel Whitaker

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