

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2013-14

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

PETITION

Against the Bill – 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 THE CUBBINGTON ACTION GROUP AGAINST HS2

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 and 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 of 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 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 Petitioners are the Cubbington Action Group Against HS2. Your Petitioners are an association of the residents of Cubbington and its environs, established in 2010 at a public meeting to protect the interests of local residents and land owners in relation to the proposals to build and operate the HS2 high-speed train link between London and the West Midlands. Your Petitioners' activities are controlled by a management committee, whose members are elected to serve for a period of one year following their annual general meeting. The governance of your Petitioners is prescribed by a written constitution that was approved by a public meeting. Your Petitioners' representatives have actively engaged with HS2 Ltd through membership of the Offchurch and Cubbington Community Forum and by attendance at bilateral meetings held for the Community Forum Area.
8. Your Petitioners allege that their rights, interests and property and those of their members will be injuriously and prejudicially affected by the provisions of the Bill if passed into law in their present form, and your Petitioners accordingly object to the Bill for the reasons, amongst others, hereinafter appearing.
9. Your Petitioners have taken every opportunity that has been offered to engage with HS2 Ltd to discuss the impacts that the Bill's Authorised Works will have on the Parish of Cubbington, including community forum and bilateral meetings and responding to public consultations in 2011 and in 2013 on the draft and final versions of the Environmental Statement. Your Petitioners have contributed energetically and enthusiastically to these processes, and have submitted proposals that they consider would involve reduced environmental impacts.
10. Your Petitioners feel that this process of engagement has been unsatisfactory, in that environmental and community concerns have not received the full and sympathetic consideration that should be expected. Your Petitioners also feel that the design of the works fails to secure the level of protection for the local environment that would

be expected from a world-class project, and provides insufficient mitigation of its environmental impacts.

11. The Environmental Statement (Vol 2 Report for CFA 17 para 2.6.12) states that mitigation measures proposed by the local community would lead to fewer significant environmental effects, but because of the associated increased construction complexity and costs it concludes that the existing approach should be retained.
12. For all of the above reasons, your Petitioners seek mitigation against the significant detrimental environmental effects that the current design and proposals for HS2 would otherwise bring to their community.

Trackbed height

13. The Bill's Promoters recognise, as a principle of route design, the advantages of "keeping the proposed alignment as low in the ground as possible" (ES Vol 1 para 9.12.1). At the time of the public consultation in 2011, with the exception of the section crossing the valley of the River Leam, the proposal was for the HS2 tracks to run in cutting through the Parish of Cubbington, which was, for the most part, between 10 and 20 metres deep, with the small section that is north of Coventry Road reducing to around 4 metres.
14. The Promoters have, however, in a succession of design changes since the public consultation in 2011, progressively increased the trackbed height over its entire run through the Parish of Cubbington.
15. This increase in height has been applied to the whole of the proposed route through the Parish, and is substantial being up to nine metres in the worst case.
16. The impact of raising the trackbed across the Parish of Cubbington will very substantially increase both noise and visual impacts to the detriment of the environment and residents. It will also have an unfavourable knock-on effect on the design of ancillary features. For instance, by providing embankments, the height of existing roads that cross the trackway will be increased. The raised trackbed will also require mitigation earthworks to be larger and more visually intrusive than would otherwise be the case.
17. In the light of the proposals consulted on, your Petitioners are severely disappointed that the trackbed height has been increased and to such a degree.

18. Your Petitioners seek a commitment from the Promoters to reduce the trackbed height across the Parish of Cubbington so that it is no higher than that presented in the 2011 public consultation.

River Leam viaduct

19. In community forum and bilateral discussions with HS2 Ltd, your Petitioners have repeatedly stressed that much of the countryside through which HS2 will pass on its proposed route through the Parish of Cubbington is sensitive to man-made intrusions and particularly vulnerable to the impacts that such intrusions may bring. This is particularly true in the case of the Leam valley, which straddles the three parishes of Offchurch, Cubbington and Weston under Wetherley.
20. The proposed height of the viaduct that will carry HS2 across the River Leam is approximately eleven metres. Such a high structure will have a significant visual impact on the valley and requires substantial embankments to support the track either side of the viaduct together with large mitigation earthworks.
21. The noise impact upon the valley from the elevated tracks, as illustrated by the noise footprint (ES Vol 2 CFA 17 Map Book, Map SV-05-046), is substantial.
22. The Promoters confirmed following one of the meetings that the minimum height of the viaduct in order to satisfy flood requirements is nearly six metres. The viaduct is, accordingly, approximately five metres higher than is necessary to protect HS2 from flood risk.
23. Your Petitioners seek a commitment from the Promoters to reduce the trackbed height across the Leam valley to the minimum possible.

Proposed cutting through South Cubbington Wood

24. The Environmental Statement (Vol 2 CFA17 Report para 7.4.3) states that approximately 2 hectares of designated ancient woodland will be lost from South Cubbington Wood, a local wildlife site (LWS), due to the construction of HS2. This represents approximately 13% of the 15 hectare LWS. The south-west end of the woodland will also be severed from the main woodland. In addition, the proposals entail the loss of a veteran wild pear tree in a hedgerow to the south of South Cubbington Wood; this is a "champion" tree, listed on the National Tree Register and thought to be more than two hundred years old. The ES acknowledges that these impacts on the LWS and ancient woodland "will result in a permanent adverse effect on the integrity of the LWS". Your Petitioners consider these to be unacceptable effects, both environmentally and in reduced amenity value to the community.

Impacts of HS2 – ancient woodland

25. Your Petitioners submit that the area of woodland marked as land required for construction (ES Vol 2 CFA17 Map Book map CT-05-091), and therefore indicating ancient woodland at risk, is closer to 4 hectares in size rather than the 2 hectares estimated by the Promoters.
26. The ease of access to the area around South Cubbington Wood afforded by two public footpaths and the free access to the woodland tolerated by the landowner mean that this countryside is well used by the wider community and has considerable amenity value for nearby towns as well as the village. This amenity value will be significantly reduced by the noise, visual impacts and woodland losses that will result from the construction of HS2.
27. It is acknowledged in the Environmental Statement that the HS2 proposals will also result in the “remaining woodland on either side of the route of the Proposed Scheme [being] smaller in size and more vulnerable to degradation through edge effects” (ES Vol 2 CFA17 Report para 7.4.3). So, there will also be a knock-on effect for the woodland that remains.

Value of ancient woodland

28. The value of ancient woodland is widely recognised. For instance –
 - (a) It is a stated policy of the Defra/Forestry Commission statement on ancient woodland *Keepers of Time* that “existing areas of ancient woodland should be maintained”. This implies that there should be no further losses of this habitat.
 - (b) The National Planning Policy Framework (NPPF) states that loss of ancient woodland should not be permitted “unless the need for, and benefits of, the development in that location clearly outweigh the loss”. No consideration of whether the HS2 proposal satisfies this test has been given in the Environmental Statement, or elsewhere.
 - (c) The NPPF requires that veteran trees found outside ancient woodland are afforded the same conservation status as ancient woodland.
 - (d) It is admitted in various places in the Environmental Statement that ancient woodland is “an irreplaceable resource”.

A proposal to avoid the loss of ancient woodland

29. In early May 2012 your Petitioners took the opportunity afforded by the newly constituted Offchurch and Cubbington Community Forum to submit a proposal for a 1,200 metre bored tunnel under South Cubbington Wood, as an alternative to a section of the proposed cutting. This proposal avoids surface disturbance of the woodland and the pear tree, thus avoiding all damage to these environmental assets. In discussions the Promoters have accepted the technical feasibility of this proposal and accept in the Environmental Statement that its adoption would lead to “fewer

significant environmental effects”, but have declined to amend the design to include the tunnel “on the grounds of “the associated increased construction complexity and construction costs” (ES Volume 2 Report CFA17 Report para 2.6.12).

30. Your Petitioners seek a commitment from the Promoters to incorporate a bored tunnel section under South Cubbington Wood, to avoid damage to ancient woodland and a veteran tree.

Proposed compensatory planting for loss of ancient woodland

31. The Natural England and Forestry Commission publication *Standing Advice for Ancient Woodland and Veteran Trees* advises, in paragraph 6.1, that where proposals “seek to address issues of loss or deterioration of ancient woodland veteran trees”, measures that rely on mitigation or compensation “should be issues for consideration only **after** it has been judged that the wider benefits of a proposed development clearly outweigh the loss or damage of ancient woodland”.
32. Since your Petitioners hold the view that no such determination has been made to support the mitigation and compensation measures proposed by the Promoter, your Petitioners’ preferred course is that the request for a bored tunnel under South Cubbington Wood is granted. However, should any measures for compensation for the loss of ancient woodland from South Cubbington Wood remain a feature of the Promoter’s proposals, your Petitioners reserve the right to seek changes to the way that any such compensation will be achieved”.
33. In compensating the loss of ancient woodland from South Cubbington Wood the Environmental Statement proposes two areas of new planting. The first of these is a 5.3 hectare site between North Cubbington Wood and Weston Wood, where soil excavated from South Cubbington Wood will also be translocated (ES Vol 2 CFA17 Report para 7.4.29). The second is a field currently used for arable farming to the east of South Cubbington Wood, where woodland compensation planting will be provided without any soil translocation (ES Vol 2 CFA17 Report para 7.4.31). In the case of the veteran wild pear tree the proposed compensation is “propagation of cuttings (grafting) along with seed collection from the tree to retain the genetic material” (ES Vol 2 CFA17 Report para 7.4.38). Your Petitioners regard these proposals as wholly inadequate.

Inadequacy of compensation proposals

34. In its publication *A Habitats Translocation Policy for Britain* the Joint Nature Conservation Committee (JNCC) describes habitat translocation proposals as “incomplete compensation” in that they can only “partly make amends for developments”. In the same document the JNCC states its policy that ancient habitat “should not be translocated” for habitat restoration purposes and advises that, “*The*

statutory conservation agencies will continue to make the strongest possible case against translocating habitats from ... ancient habitats ... elsewhere”.

35. The proposals for the treatment of the veteran wild pear tree would do little more than preserve the DNA of the plant, and the Environmental Statement cautions that “success cannot be guaranteed” (ES Vol 2 CFA17 Report para 7.4.38). The tree will, for all practical purposes, be lost.

Improving ancient woodland

36. It is a stated policy of the Defra/Forestry Commission statement on ancient woodland *Keepers of Time* that the “ecological condition of ancient and native woodland should be improved and maintained”. Another aim of this policy is that “ancient and native woodland and trees should make an increasing contribution to our quality of life”. These policies imply that the opportunity should be taken, where possible, to improve both the quality of surviving ancient woodland habitat and public access provisions to such woodland.
37. Whilst South Cubbington Wood is “ancient semi-natural woodland” (ES Vol 2 CFA17 Report para 7.3.4), the adjacent North Cubbington Wood is “ancient replanted woodland” (ES Vol 2 CFA17 Report para 7.3.5), also often described as plantations on ancient woodland sites (PAWS). In contrast to its southern neighbour, North Cubbington Wood has no public access.
38. PAWS woodland, despite changes that may have been made to introduce tree species not naturally found in ancient woodland, retains in its woodland soil the inherent characteristics of its natural origins that can generally survive such replanting. This means that the application of suitable restoration principles, such as those described in *The conservation and restoration of plantations on ancient woodland sites* published by the Woodland Trust, to PAWS woodland can significantly increase the quality of the habitat. The restoration of North Cubbington Wood appears to offer an alternative to the creation of new, relatively low value, woodland as compensation for the loss of woodland from South Cubbington Wood. A compensation strategy based on restoration would offer a more assured route to achieving replacement habitat for any ancient woodland that may be lost, and in a much shorter timescale. Including specific provisions for public access in such a strategy would also provide some compensation to the community for the loss of amenity.
39. Your Petitioners seek a commitment from the Promoters to improve the mitigation for any ancient woodland that may be lost from South Cubbington Wood, based upon a strategy of restoring ancient replanted woodland at North Cubbington Wood, whilst improving public access to North Cubbington Wood. Your Petitioners are also seeking an improved strategy to preserve the veteran wild pear tree south of South Cubbington Wood.

Sensitive site in South Cubbington Wood

40. In the south-western corner of South Cubbington Wood there is a site where human ashes have been laid to rest. Although this site is removed from the immediate vicinity of the excavations that will be required to create the HS2 trackbed, it is shown within the pink-shaded area of "land potentially required for construction" (ES Vol 2 CFA17 Map Book map CT-05-091). Your Petitioners have written to the Promoters three times about this situation: in September 2012, September 2013 and April 2014. However, no mention of this site has been included in the Environmental Statement.
41. Your Petitioners seek an undertaking from the Promoters that appropriate measures will be taken to protect the sanctity of this site during the construction of HS2.

Public rights of way (PRoW)

42. The ES (Vol 2 CFA17 Report para 2.2.9) proposes that Footpath W130b be permanently diverted where it currently crosses the B4453 Rugby Road to run along the realigned B4453 and its overbridge, and then alongside the western edge of North Cubbington Wood. Your Petitioners are concerned about the possible risks to the safety of walkers using this diversion. The B4453 currently has no pedestrian footway along this section, and in some places there is no verge either. Where there is a verge it is uneven and difficult to walk on. There is a speed limit of 50mph on this section, so traffic is generally fast moving.
43. Your Petitioners seek an undertaking from the Promoters that a pedestrian footway will be provided along the whole length of the section of the B4453 where the diverted footpath will run, including on the new overbridge.
44. Your Petitioners also require that the design of the pedestrian footway includes physical separation between the pedestrians and the traffic in a suitable form, including a physical barrier on the overbridge.
45. The ES (Vol 2 CFA 17 Report para 5.4.17) advises that "no temporary closures are likely to be necessary" affecting footpath W130 during the planned construction of HS2, and that footpath W129d will be provided with "a temporary alternative route via a scaffold overbridge for eight months" (Vol 2 CFA Report para 2.3.26) but no assessment of the possible need for temporary closures of this footpath has been made. In addition, the Environmental Statement lacks information about the use of Footpath W130b during the construction phase of the scheme.
46. Your Petitioners seek an undertaking from the Promoters that all three footpaths will remain open to walkers throughout the construction period, via diversions if necessary.

Construction issues

47. Your Petitioners submit that insufficient consideration has been given to the impact of construction on residents and landowners in Cubbington. It is unacceptable that the Code of Construction Practice is not finalised, the BMRs and LEMPs are not written and many crucial issues are qualified in the Environmental Statement by phrases such as 'where reasonably practical'. Accordingly, the environmental impact caused by construction is incapable of being assessed.
48. The Environmental Statement identifies two locations for satellite construction sites within the Parish of Cubbington: first, the Cubbington retaining wall compound near to South Cubbington Wood and adjacent to the B4453 Rugby Road and secondly, the Coventry Road overbridge compound on Coventry Road near to Furzen Hill farm. The highways access routes specified for these compounds in the ES (Vol 2 CFA17 Report Table 1) converge at the junction of Rugby Road and Coventry Road and both utilise Rugby Road, between its Coventry Road and Kenilworth Road junctions, and Kenilworth Road for ultimate access to the A46 and M40. Your Petitioners regard this as an inappropriate choice of route because –
- (a) The route requires the negotiation of a compact mini-roundabout at the junction of Rugby Road and Kenilworth Road, with restricted sight lines, quite unsuitable for large haulage vehicles.
 - (b) The route passes the frontages of approximately two hundred dwellings in Rugby Road and Kenilworth Road, causing unacceptable levels of nuisance.
 - (c) Coventry Road offers a direct access to an alternative route via the A445 Leicester Lane, regaining the route proposed in the Environmental Statement at Westhill Road. This alternative route passes comparatively few dwellings.
49. Your Petitioners seek an amendment to the Bill to specify highways access routes that avoid Kenilworth Road and use Coventry Road instead.
50. The whole of Mill Lane Cubbington, the footpath W129d towards South Cubbington Wood, and the track to Lower Grange Farm are marked as "land potentially required during construction" and connect into the main construction site (ES Vol 2 CFA17 Map Book map CT-05-091). This provides the potential to access the main construction site from Cross Lane and New Street in the south of Cubbington village. Whilst this is not designated as a highways access route in the Environmental Statement, your Petitioners are concerned that it may, by virtue of the narrow residential roads that serve it, become an unofficial and totally unsuitable access route.
51. Your Petitioners seeks an undertaking from the Promoter that Mill Lane will not be used for site access during the construction phase of the scheme, together with proposals to ensure that the undertaking is enforced effectively.

Noise and visual impacts

52. Your Petitioners wish is to minimise both the noise and visual impact of HS2 on their communities. This is important for the preservation of the tranquillity of the countryside, as well as protecting dwellings from high levels of noise and maintaining the character of designated conservation areas.
53. The Promoters propose to use the earth removed from local cuttings during construction to create false cuttings to reduce visual and noise effects. However no cross sections of these earthworks have been provided nor have noise fence barriers been proposed in many of these areas.
54. Your Petitioners take the view that the 'integrated earthworks design approach' is likely to lead to inadequate screening in some places and excessively large earthworks in others. The appropriateness of these measures has never been discussed with local community representatives, nor have your Petitioners been made aware of the policy being applied by the Promoters to design noise mitigation.
55. Your Petitioners seek details of the Promoters' noise mitigation policy and an explanation of how the application of this policy has led to the highly selective mitigation features that are proposed for your Petitioners' community in the Environmental Statement. Your Petitioners reserve their right to raise additional points once they have had an opportunity to consider the required information.
56. Your Petitioners are concerned that the noise predictions in the Environmental Statement indicate that many residents in Community Forum Area 17 will experience noise resulting from the operation of HS2 that is in excess of the levels identified by the World Health Organisation (WHO) as causing annoyance and sleep disturbance. Your Petitioners are also concerned that the daytime threshold specified by the promoter is in excess of the level of 40dB that the WHO recommends "should be considered as the maximum allowable sound pressure level for all new developments whenever feasible", particularly as the promoter does not observe thresholds as maximum levels but only as indicators of impacts.
57. Your Petitioners are also concerned that the Environmental Statement predicts that residents in Community Forum Area 17 will suffer adverse effects from ground-borne sound and vibration and airborne sound resulting from construction activities.
58. Your Petitioners require that the promoter operates an effective noise mitigation and monitoring system for construction activities and suggests that the details of this system are specified in the Code of Construction Practice and associated documents.
59. Your Petitioners seek an undertaking that the noise resulting from the operation of HS2 will be monitored throughout Community Forum Area 17 and that additional appropriate remedial measures will be taken in respect of any noise receptors that are

found to experience noise at levels higher than those predicted in the Environmental Statement.

General

60. There are other clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect the rights and interest of your Petitioner and other clauses and provisions necessary for its protection and benefit are omitted therefrom.

YOUR PETITIONERS THEREFORE HUMBLY PRAY

your Honourable House that the Bill may not pass into law as it now stands and that they be heard by themselves, 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 amendments as may be necessary and proper for their protection and benefit.

AND YOUR PETITIONERS will ever pray, &c.



Sharpe Pritchard LLP

Agents for the Cubbington Action Group Against HS2

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of

THE CUBBINGTON ACTION GROUP AGAINST HS2

AGAINST,

BY COUNSEL, &c.

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