

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

**(1) MICHAEL BRIAN WASHBURN AND
(2) LESLEY JAYNE WASHBURN**

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 Petitioners are Michael Brian Washburn and Lesley Jayne Washburn ('the Petitioners'), the owners of The Granary, Marston Lane, Marston, Stafford, Staffordshire, ST18 9SY ('the Property') which is located in the vicinity of the proposed route of Phase 2 of HS2.

Background

8. Your Petitioners have invested their life savings in the Property and live there with their son and daughter. Their home is a converted barn located in the small, peaceful hamlet of Marston. This is a quiet place with little traffic. The Property is surrounded by beautiful countryside and was purchased because of its tranquil, rural setting, with its abundance of wildlife and ecology. Other reasons for buying the Property include your Petitioners' wish to provide a family dwelling until their children left home, an investment for their family and, ultimately, a pension for themselves and inheritance for their children.
9. The HS2 scheme will have a terrible impact on the Property: for instance, during construction, the Property's environment and idyllic location will be destroyed for years. When works are finally finished, your Petitioners will have to endure trains running at 225mph, on 15 metre high stilts, 5 times each hour. This will take place just 600 metres from your Petitioners' front door.
10. Your Petitioners' rights interests and property are therefore injuriously affected by the Bill, to which your Petitioner objects for the reasons set out below.

Compensation

11. Your Petitioners purchased the Property in November 2012 for £1,800,000.00. Owing to the proposed HS2 scheme, the Property is blighted and, according to your Petitioner's estate agents, has been rendered unsellable by the HS2 proposals.
12. Your Petitioners submit that the compensation provisions in the Bill that apply in relation to property that is not compulsorily acquired would not be sufficient to compensate them adequately for the loss and damage they have suffered. Your Petitioners will continue to suffer loss and damage as a result of (i) the plans for the high speed railway and associated development (particularly Phase 2), (ii) the inclusion in the Bill of the powers of entry for survey purposes described above and (iii) the increased possibility of the plans for Phase 2 being realised if Phase 1 is approved.
13. Your Petitioners request that the Bill should be amended to ensure your Petitioners should be entitled to claim compensation for the full amount of loss incurred due to HS2.

Access to land for surveying

14. Your Petitioners are specially and directly affected by the Bill and will continue to be affected in the foreseeable future. Your Petitioners are directly affected as clauses 51 and 52 give rights of entry to your Petitioners' land 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.
15. Your Petitioners are concerned that rights of entry and provisions about authorisations to enter land for surveying purposes set out in clauses 51 and 52 of the Bill go beyond what is reasonably necessary. Your Petitioners note that these clauses are primarily designed for preparatory work to be undertaken on Phase 2 of HS2 and consider their inclusion in the Bill to be unfair because those who are likely to be affected by them might not be aware now that they are affected and so will not have the opportunity to petition against these provisions.
16. Your Petitioners submit that these powers are too broad and should be omitted from the Bill. If they are to be retained, however, their exercise generally should be subject to independent oversight (in addition to the requirement that a warrant is required in relation to residential land).

Limits of Deviation

17. Your Petitioners are concerned that paragraph 1(2) of Schedule 1 to the Bill provides that in constructing or maintaining any of the scheduled works, the Nominated 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.
18. Your Petitioners are concerned that these deviations will set an unwelcome precedent and could potentially make significant differences to the knock-on 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 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.
19. Your Petitioners request that the provisions in the Bill to allow upwards vertical deviation should be deleted.

Noise

20. Your Petitioners are concerned about the current proposals for Marston village which will suffer from the imposition of a 15 metre embankment or construction stilts. These will be located within 300 metres of the Property's boundary. Your Petitioners are concerned that HS2 Ltd have not set proper noise thresholds and have not taken account of national noise policy or the views of the World Health Organisation. Your Petitioners submit 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.

21. Your Petitioners are also concerned that the specific impacts of both airborne and groundborne noise have not been properly considered or explained to communities that will be affected and that the levels adopted for both airborne and groundborne noise do not reflect recent practice or experience. Your petitioners also consider that the methodology used for predicting the impact of airborne and groundborne noise is insufficiently robust and that no amelioration measures have been suggested to deal with this problem.
22. Your petitioners therefore request that –
- a) HS2 Ltd be required to issue revised noise thresholds covering noise exposure in rural and urban areas during the day and at night-time and which reflect World Health Organisation guidelines including World Health Organisation guidelines on peak noise (60db max pass-by outside dwellings and 45db inside dwellings).
 - b) HS2 Ltd be required to set noise limits for construction which are in line with World Health Organisation limits and that local authorities be provided with enforcement powers to order the cessation of construction activities in the event such anticipated exposures are breached.
 - c) 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.
 - d) A provision should be included in the Bill for noise monitoring, with obligations on the Secretary of State to introduce additional mitigation measures, including reduction in train speeds, in the event that forecast noise levels are exceeded.
 - e) HS2 Ltd be required to commit to the same threshold for ground borne noise as the Northern Line Extension, meaning airborne and groundborne noise levels no greater than 25dB LpAsmax for rural areas and 30dB LpAsmax for urban areas.
23. Your Petitioners are concerned that clause 35 of and Schedule 25 to the Bill 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 Petitioners are also concerned that Schedule 25 would provide a defence to statutory nuisance for the nominated undertaker.
24. Your Petitioner requests that clause 35 and Schedule 25 are deleted from the Bill.

Code of Construction Practice

25. Your Petitioners are concerned that the Nominated Undertaker's ongoing accountability to local residents is unspecified in the draft Code of Construction Practice. That, if adopted, would set another unwelcome precedent, and would be highly detrimental to your Petitioners and others located along the proposed route of Phase 2 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 ("the Code"). Assessment in the Environmental Statement is made on the

assumption that the Code and the strategies will be fully effective; however, the Code has no legal status.

26. Your Petitioners submit that appropriate mechanisms to enable your Petitioners to take action when the Code is breached should be incorporated into the Bill. Parliament, or some other independent body, such as an ombudsman, should hold the Nominated Undertaker to account for breaches of the Code. Any monitoring required under the Code 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.
27. The standards set out in the Environmental Statement and the Code of Construction Practice are referred to in terms of "reasonableness" and "reasonable endeavours". Your Petitioners submit that these terms 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 that is verifiable and challengeable. This applies to noise as well as other effects that are to be addressed in the Code of Construction Practice.

Carbon

28. Your Petitioners are concerned about the impact of the high speed railway on the UK's carbon reduction commitments, and therefore the effect on your Petitioners and their family's health. Your Petitioners' situation will change dramatically once the railway is operational; that is from a position where they enjoy the tranquility of the countryside to one where they will be disturbed every ten minutes or so by a passing train.
29. Your Petitioners request 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.

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

30. Your Petitioners are concerned that the powers sought in the Bill go beyond 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. It therefore sets a bad precedent for later phases. Your petitioners would be injuriously affected should such principles be replicated in Phase 2.
31. Your Petitioners are 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, and therefore could apply to the Property, given that it is so close to the route for Phase 2. Your Petitioners believe that this power should be removed.

Ecology

32. Your Petitioners are concerned about the adverse impacts of the construction and operation of the high speed railway and associated development on fauna and flora

which, as mentioned above, abound in the vicinity of the Property. Your Petitioners are 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 proposals for Phase 2. Your Petitioners are further concerned by the absence from the Bill of any requirement for HS2 Ltd to ensure their activities result in No Net Loss of Biodiversity.

33. Your Petitioners request that in accordance with the Commons Environmental Audit Committee Report, 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 and 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, reporting and overseeing environmental protection. A separate ring-fenced budget should be provided for these purposes.
34. Your Petitioners request that the other recommendations in the Commons Environmental Audit Committee Report are also followed including but not limited to –
 - a) revising the environmental statement to distinguish clearly between mitigation and compensation measures in respect of biodiversity;
 - b) carrying out outstanding environmental surveying as soon as possible;
 - c) weighting metrics for biodiversity offsetting towards production of biodiversity gains and taking explicit account of communities' wellbeing;
 - d) adjusting metrics to encompass the precautionary principle;
 - e) treating ancient woodlands separately from the overall biodiversity net loss calculation;
 - f) re-examining the scope for off-site biodiversity compensation; and
 - g) researching alternative discount factors for the off-setting metric.

Nominated undertaker

35. Your Petitioners have concerns in relation to the appointment of the Nominated Undertaker and the associated risk of that body failing to fulfil its obligations, and the potential fettering of the Secretary of State's discretion under agreements with the Nominated Undertaker. Again, these concerns are highlighted because it is likely to be the same Nominated Undertaker appointed to construct the Phase 2 works.
36. Your Petitioners request that there should be a provision inserted into clause 43 of the Bill enabling enforcement against the Secretary of State in the event of the Nominated Undertaker failing to fulfil its obligations.

Environmental Statement

37. Your Petitioners are 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 Petitioners submit, be contrary to the purposes of the EIA Directive and

the precedent set would be highly damaging to your Petitioners and others located on Phase 2 of the route.

38. Your Petitioners submit that the Environmental Statement accompanying the Bill is deficient, for the reasons set out HS2AA's Environmental Statement Consultation response and, again, your Petitioners are concerned that unless these deficiencies are addressed, they will be carried through to Phase 2.
39. For the foregoing and connected reasons your Petitioners respectfully submit that, unless clauses of the Bill are removed or amended, then the Bill should not be allowed to pass into law.
40. 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, 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

SHARPE PRITCHARD LLP

Agents for
Michael Brian Washburn and Lesley Jayne Washburn

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BY COUNSEL, &c.

Sharpe Pritchard LLP