

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2013–14

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

Against – on Merits – 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 COUNTRY LAND AND BUSINESS ASSOCIATION LIMITED (“THE CLA”).

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 the Secretary of State for Transport Mr Patrick McLoughlin (hereinafter referred to as “the Promoter”).

Clauses of the Bill

- 3 Clauses 1 to 3 of the Bill, together with Schedules 1 to 4, make provision for the construction and maintenance of the proposed works including the ‘Scheduled Works’ set out in Schedule 1. Provision is included to confer powers for various works and operations, including railway, highway and other building and engineering works and operations. Powers are also included to enable entry onto and interference with land and buildings for investigatory, protective and other purposes, together with powers to enable occupiers to be required to undertake works to trees, powers to use watercourses, public sewers and drains for drainage purposes and powers temporarily to interfere with and use waterways.
- 4 Clauses 4 to 18 of the Bill, together with Schedules 5 to 15, make provision for the compulsory acquisition and the temporary use of land and for the extinction or exclusion of certain rights in land. Provision is also included for the application or variation of compensation provisions.
- 5 Clauses 19 to 36 of the Bill, together with Schedules 16 to 26, make provision for the grant of planning permission and other consents and for the disapplication or

modification of various controls, including those relating to heritage, water, building control, party walls, street works, lorries, noise and local legislation.

- 6 Clauses 37 to 42 of the Bill, together with Schedules 27 and 28, make provision for railway matters. Provision is included for the application (with modifications) and disapplication in parts of the existing railways regulatory regime, enabling agreements to be required to be entered into between the nominated undertaker and controllers of railway assets and other railway facilities and for the transfer of statutory powers in relation to railway assets.
- 7 Clauses 43 to 65 of the Bill, together with Schedules 29 to 31, contain general and miscellaneous provisions. These include provision for the designation of nominated undertakers, the making of transfer schemes, provision for statutory undertakers, provision for the compulsory acquisition of land for regeneration and for relocation purposes, and powers for the reinstatement of land. Provision is also included to apply powers of the Bill to further high speed works, to confer a power of entry for further high speed works, as to the application of the Environmental Impact Assessment Regulations and as respects the application of arbitration.

Your Petitioner

- 8 Your Petitioner is the CLA, a membership organisation for owners of land, property and businesses in rural England and Wales that seeks to ensure the positive development of the rural economy in the interest of its members. The CLA currently has approximately 33,000 members, many of whom own or occupy land on the line of the route of the proposed HS2 railway or close to it and will be, or already are, directly or indirectly affected by it. Of the 200 or so agricultural holdings affected by HS2, 60 belong to CLA members. These 60 members cumulatively own or manage a total of 14,000 hectares (ha) of which 846ha is to be taken permanently and a further 1225ha is expected to be taken temporarily, if not permanently.
- 9 Your Petitioner submits that the Bill does not provide for the fair treatment of landowners whose property is subject to powers of compulsory acquisition or use by virtue of the Bill or is otherwise affected by the proposals that are the subject of the Bill. Many property rights, interests and allied business interests of your Petitioner's members are injuriously affected by the Bill. Your Petitioner therefore objects to the Bill for the reasons, amongst others, hereinafter appearing.

Your Petitioner's concerns

- 10 The Bill, broadly speaking, provides for the application of the statutory compensation code in determining the level of compensation payable to landowners whose property is to be acquired or used compulsorily for HS2 purposes. This system, which has arisen piecemeal over more than a century and has never been subject to thoroughgoing reform despite a report and recommendation to that effect by the Law Commission in December 2003 and December 2004, fails to recognise adequately

the rights of private landowners and the losses they suffer when their land is needed for, or severed by, new infrastructure that is required in the public interest.

- 11 Your Petitioner submits that the Promoter should accept the need to provide more protection for the rights and interests of private landowners and introduce measures that improve upon the current statutory system, particularly for a scheme of such magnitude where local and private interests have to be sacrificed for the national interest – often with no incidental local benefit.
- 12 Your Petitioner notes and welcomes that the Promoter has accepted this need to a limited extent and has already introduced some voluntary measures to supplement the statutory position but submits that these measures do not go far enough. During the proceedings on the High Speed Rail (Preparation) Bill in your Honourable House on 6 July 2013, the then Minister for Transport, Simon Burns MP, stated that it was “crucial to have a scheme that is fair and generous”. Your Petitioner submits that the Promoter has failed to honour this pledge and ensure that it is properly and adequately reflected in the terms of the Bill, as introduced, coupled with the additional non-statutory measures that have been published. Your Petitioner submits that the Promoter should be put to proof on whether the proposed terms for compulsory purchase and compensation can properly be so described. Your Petitioner contends that further measures and changes are needed if the scheme is to be fair, let alone generous, and your Petitioner’s members are not to suffer unreasonable losses.

Duty of Care

- 13 Your Petitioner submits that a recurring problem with the current system of compulsory purchase and compensation is that it is unnecessarily adversarial. Your Petitioner seeks an undertaking from the Promoter that he will accept a general duty of care to those affected. This could be implemented by the adoption of a code of practice or charter through which the Promoter agrees to minimise land take, pay demonstrably fair compensation promptly and accept responsibility for the actions of the nominated undertaker to be appointed under the Bill and its contractors.
- 14 Your Petitioner submits that an ombudsman should be appointed to ensure that the duty of care is implemented and duly observed. The ombudsman would be able to hear and adjudicate on disputes between the Promoter and landowners. The ombudsman should have powers to enforce obligations on the Promoter and award costs against the Promoter. The ombudsman could also rule on the value of a compensation claim for the purposes of advance payments, pending any final agreement on compensation or determination by the Upper Tribunal (Lands Chamber).

Assured Compensation Scheme

- 15 The Bill contains no provision for a scheme to deliver payment of known compensation at the beginning of the scheme for all agricultural or other rural

businesses. By the time this Bill becomes an Act the quantity of land take, at least, will be known and could be compensated for. It is also likely that most of the other affects of the scheme will be known and should be compensated for. Currently the construction process is at the whim of the government or the contractor. This creates considerable ongoing uncertainty of those affected by the scheme and payment of compensation should be front-loaded to allow the businesses affected to make the re-investments needed at the outset not later on in the scheme.

- 16 Many residential property owners are already suffering from generalised (non-statutory) blight caused by HS2 for which there is no compensation. Alternatively, their property potentially falls within the statutory blight provisions (i.e. subject to proving that they meet the qualifying criteria). In either set of circumstances, many such residential owners are facing difficulties in selling their property on the open market without suffering loss. Alternatively, they may prefer to continue to own and occupy their property until it is necessary for them to vacate it or until it suits their circumstances to move but they feel so plagued by the uncertainty that HS2 is causing to the value of their property that they are feeling driven to taking action to mitigate their position before it deteriorates further.
- 17 This problem would be ameliorated by the introduction of a scheme which would mitigate the effects of blight by encouraging normal market conditions to operate in spite of HS2 and thereby avoid the market distortions and unfairness that HS2 is causing. Under such a scheme, owners would be able to apply to the Promoter or the nominated undertaker to underwrite the unblighted value of the affected property. Such a scheme would underpin the value of the property, thus giving confidence to both lenders and future purchasers that there will be a buyer for the property when they themselves come to sell the property later.
- 18 Although the Promoter has consulted on the introduction of a voluntary property bond scheme, he has decided that this will not now be brought forward. Your Petitioner submits that this is a missed opportunity and that he is letting down your Petitioner's members and the landowning community generally.
- 19 Your Petitioner submits that the Promoter should reconsider his decision and bring forward amendments to the Bill or introduce a voluntary scheme that would address the losses of all property owners whether their land is held for agricultural, commercial, residential or leisure purposes and regardless of whether they are freeholders, owner-occupiers or tenants.

Blight - rateable values limit and timescales

- 20 Owner-occupiers whose property is within the limits of deviation of a scheme have a statutory right to serve a blight notice with a view to compelling the promoter to acquire the property at its full un-blighted value. This right is restricted to owner-occupiers of business premises whose rateable value does not exceed £34,800. This limit has been left unchanged for many years. Even after a blight notice has been accepted, there can be a long delay before the property is actually purchased and landowners have no means to enforce a timely transaction.

21 Your Petitioner submits that this limit is too low, arbitrary and unfair. Your Petitioner seeks the disapplication of the rateable value limit in relation to property affected by HS2 and measures to ensure prompt purchase after acceptance of a blight notice. The Bill should provide for a clear timetable to be set for the payment of financial compensation where a blight notice has been accepted by the Promoter or nominated undertaker and for the landowner to be able to enforce that timescale.

Permanent land take

22 Your Petitioner submits that the Promoter should look for ways to minimise the land take necessary for the implementation of the scheme and compulsory purchase should be a means of last resort, exercised only where absolutely unavoidable. The practice of taking more land than is necessary on the basis that the Promoter can always compromise on the extent of the land take if the landowner objects should not be allowed.

23 Whilst your Petitioner understands why the Promoter needs generally to ensure that he has included all the land that he genuinely needs, this can easily turn into taking more land than is necessary, particularly in cases where there has been no meaningful dialogue with the affected landowners. Therefore, where the Promoter is challenged as to the extent of land required, the onus should lie with him to prove the need for it.

24 Where the proposed land take is already shown to be unnecessary, it should be curtailed now by the Promoter agreeing to omit from the scope of the Bill the parcels of land that are not required. The Promoter should also publicly agree now to reducing the extent of land take where it is subsequently proved to be unnecessary, Not to do so would be to challenge and be inconsistent with all established policy and Convention rights that private property should not be acquired compulsorily unless there is a compelling case in the public interest to do so.

25 Your Petitioner is also concerned that the Bill provides for the acquisition of a large amount of land for the purposes of environmental mitigation. In many instances, the choice of land for this purpose has been ill-considered and has been chosen without adequate (or, in some cases, any) consultation with the owner or occupier of the land. Moreover, the Promoter has had insufficient regard to the current value of much of this land as productive farm land and the need to retain it for that purpose, both in the interests of its owners and more generally. Your Petitioner is concerned that many of its members are being unfairly required, by the compulsory purchase of their land, to pay for the environmental cost of the project in this way.

26 Even where land is required for the purpose of environmental mitigation, your Petitioner is not satisfied that it needs to be acquired compulsorily. In many instances, it will cause uncertainty as to how it is to be managed and create problems of third party access to the land, where the person best placed to manage the land is the incumbent landowner. Your Petitioner therefore submits that the Promoter should be required, before acquiring land compulsorily for this purpose, to demonstrate why the current landowner should not retain ownership of it, that the

mitigation in question is essential in scale and location, how it will be managed satisfactorily and that it has not been possible to obtain the use of land, for that purpose, by agreement.

Clause 47

- 27 Your Petitioner objects in particular to the provisions of clause 47 which makes provision for the compulsory acquisition of land anywhere outside the limits of deviation for the purposes of regeneration. This provision is wholly unprecedented. It is not essential for the implementation of the proposed scheme but has the potential to increase significantly the amount of land taken. It would also unjustly enrich the Promoter at the expense of the landowner. The power is also unnecessary because local authorities already enjoy equivalent powers, and these are subject to an appropriate degree of regulation. Your Petitioner contends that no adequate justification has been given for such a radical departure from current norms and submits that it should be omitted in its entirety. Besides, where land belonging to your Petitioner's members is suitable for regenerative development, your Petitioner's members should themselves be free to seek or participate in such opportunities.

Temporary land take

- 28 In the case of land that is only required temporarily, for example for work sites and storage compounds, the Promoter seems to regard it as acceptable to take it outright in the first instance and then return to the owner so much as the Promoter deems surplus to his requirements in accordance with the Crichel Down rules. Not only is this heavy-handed and disproportionate, it leaves the landowner in a state of uncertainty for a long period. The landowner will also suffer adverse tax consequences.
- 29 Where land is being taken compulsorily which may not be needed permanently, only temporary possession should be taken in the first instance. If it is taken compulsorily, the landowner should at the very least, be offered a first option to re-acquire the property, with any enhanced value attributable to a change in conditions caused by HS2 being disregarded.
- 30 Where land temporary possession of land is taken, it should be on the terms of a lease or licence under which a rent or periodic licence fee is be payable at the market rate for the land. When powers of temporary possession for railway schemes were conceived under the Railway Clauses Consolidation Act 1845, the provisions included a half yearly payment of rent for the occupation as well as compensation for certain damage and losses suffered. Such payments were then taken into account in any residual compensation claim for the temporary occupation. Whilst there has been a departure from this practice in some more recent precedents, there are also two precedents that reaffirm the principle of paying rent or a licence fee. The first is the use of Compulsory Right Orders under the Open Cast Coal Act 1954 (as amended). The second are lease agreements used during the building of HS1 following an undertaking given during the passage of the Chanel Tunnel Rail Link

Bill. The principle of a periodic payment for the temporary occupation of land should, accordingly, be restored.

Period for taking possession

- 31 Where property is being compulsorily acquired, a landowner or tenant can be required under the provisions of the Bill to vacate the property upon the expiry (in most cases) of three months' written notice to do so. Where temporary possession is being taken, the landowner or tenant can be dispossessed on the expiry of only 28 days' notice to do so. For your Petitioner's members, both of these periods are wholly inadequate. Running a rural business entails advance planning, it is cyclical according to the seasons and other factors and often entails the keeping of livestock. Your Petitioner seeks for its members an obligation by the Promoter to consult with them on how the timing of taking possession of land will impact on their business, to minimise that impact and to give considerably longer notice than the minimum required under the current provisions. Your Petitioner also submits that the minimum statutory period of notice to enter land in respect of this project, whether pursuant to a notice to treat or to take temporary possession, should be significantly lengthened and should be no less for temporary possession than for permanent acquisition.

Loss payment ceilings

- 32 The Compensation Code provides that certain landowners are entitled to 'loss payments' of 10% of the value of their interest that is compulsorily acquired, but this is subject to a cap of £47,000 (home loss) or £100,000 (other types of land). These payments are designed to cover the costs of moving to new premises, which are often higher in the case of higher value property. The caps are, your Petitioner submits, unfair arbitrary limits that result in some landowners being unable to recover all their costs. Your Petitioner seeks a binding undertaking from the Promoter that he will make loss payments available to all otherwise eligible landowners regardless of the value of the property in question.

Payment of advance compensation before entry

- 33 Current rules require acquiring authorities to make an advance payment of 90% of the total compensation due, but only once the authority has taken possession, if the landowner requests such a payment. This payment is often made too late to be of sufficient use to landowners who will need to find alternative property prior to occupation by the acquiring authority. It is also often based on the acquirer's estimation of the value of the claim, and there is no means of enforcing timely payment.
- 34 Your Petitioner seeks a binding commitment from the Promoter that the sum payable for compensation by way of advance payment will be paid before possession is taken and that he will implement a scheme whereby an ombudsman or other independent party can rule on the appropriate estimate of the compensation, and adjudicate on any dispute over non-payment.

Compensation for affected properties adjacent to the scheme where no land is taken

- 35 A landowner whose property is adjacent to works can suffer considerable detriment to their amenity, and thereby suffer from a loss in its market value but because no land is taken can only claim compensation under Part I of the Land Compensation Act 1973 for the depreciation in value due to certain physical factors caused by the development. The compensatable loss can fall far short of the loss in market value. This is in arbitrarily stark contrast to the compensation available to a landowner who has even a minimal amount of land taken but is effectively equivalently affected. Your Petitioner submits that landowners whose property is adjacent to or contiguous with the Act limits should receive proper compensation for the full loss in the market value of their property attributable to the scheme.

Special Provisions where borrowing levels exceed market value

- 36 Your Petitioner submits that landowners in negative equity are particularly harshly affected by compulsory purchase. In such cases, the notional loss, which may be temporary, is crystallised when the owner would prefer to maintain the borrowing until the equity again exceeds the amount of the debt. The owner may also have taken borrowing decisions on a longer term basis only to have his financial planning frustrated by the unexpected intervention of compulsory purchase. The result is that the outstanding debt has to be paid without the equity in the property with which to do so. This has additional adverse consequences for the landowner, such as the difficulty of purchasing an equivalent property elsewhere and of obtaining the borrowing to do so and thwarting his longer term plans. This is particularly unfair where generalised blight caused by the scheme has already caused, or exacerbated the level of, the negative equity.
- 37 Parliament has previously acknowledged the need for a promoter to address fairly the special problems caused by negative equity. Your Petitioner submits that the Promoter should be required to do so in this case.

Compensation for long term additional losses

- 38 Land drainage and subsidence problems caused by works and compulsory purchase often do not become apparent until after full and final settlement on compensation has been reached between a landowner and the acquiring authority.
- 39 Your Petitioner seeks a commitment from the Promoter that he will provide further compensation where drainage problems caused by HS2 become evident, even if 'full and final' settlement has already been reached, in cases where the landowner could not reasonably have known of the latent problem at the time of the settlement.

Compensation in respect of minerals

- 40 Your Petitioner submits that the normal compensation rules do not adequately address the potential value of mineral rights to landowners. Your Petitioner seeks a

commitment that where a landowner can demonstrate that, were it not for HS2, there would have been a reasonable prospect of being able to work minerals on his land or where, in any event, the Promoter or the nominated undertaker works the minerals, the Promoter will compensate the landowner for the value of the minerals when acquiring the property or subsequently.

Voluntary schemes applicable to all interests

- 41 The Promoter has agreed to implement various voluntary compensation schemes that provide compensation beyond the requirements of the law. Your Petitioner welcomes this initiative, but the proposed schemes are unfairly restrictive as they will, for example, apply only to owner-occupiers. Your Petitioner seeks a commitment from the Promoter that he will expand the scope of these voluntary schemes so that they apply to all property types, whether freehold, owner-occupied or tenanted.

Replacement of essential buildings

- 42 Where landowners have buildings needed for their business that are to be taken compulsorily, it may not be possible to use the compensation received to replace them in a location that is useful to the landowner, owing to planning constraints in the area. In these circumstances, monetary compensation alone is unlikely to be a satisfactory remedy. The landowner needs to replace the building that has been taken and may even own land that would be suitable for the replacement building but he may be prevented by planning controls from doing so. Your Petitioner seeks a commitment from the Promoter to improve the position for landowners in this situation, for example by seeking a relaxation of the rules for permitted development under the Town and Country Planning Act 1990 and regulations made under it, to fund the replacement building where replacement is possible or otherwise to compensate the landowner for all the consequential detriment to his business.

Severance

- 43 A particularly damaging feature of the scheme is the extent of land severance. This has not been adequately assessed; nor has the Promoter or HS2 Limited sought adequately to mitigate this impact – for example by ascertaining how particular farms, estates or businesses operate in practice or how severance impacts on both the land ownership and other interests on an estate, including farm tenancies.
- 44 In most cases landowners and rural businesses will not lose their entire landholding as a result of the Bill but only a proportion of it. In many cases, the severance will make future management of the retained land more difficult, more expensive or even unviable. In some cases, inadequate provision is being made for crossing the railway or accessing retained land. Your Petitioner submits that in many instances mitigation measures (including bridges, underpasses, culverts, service ducts, pipes and accommodation works) need to be enhanced if severed businesses are not to suffer avoidable loss and inconvenience.

- 45 Your Petitioner submits that the circumstances in which the owner of land that is being severed can require the Promoter to acquire the remainder of the land should be broadened to apply to any agricultural land which will no longer be viable for the landowner as agricultural land.

Advance payment in respect of fees for professional advice

- 46 Landowners affected by compulsory purchase may not only require professional advice on how to negotiate the process and ensure the protection of their business interests but also on reorganising their estate, business or other affairs as a consequence of the scheme. While the cost of some of this advice can be recovered, there is often a considerable delay in receiving the compensation, and elements of advice on restructuring that are not covered. Landowners need the funds to pay for this advice when they receive it and in advance of the scheme. Your Petitioner seeks a commitment from the Promoter to meet all such reasonably incurred costs – and when they are incurred.

Exemption in respect of business rates / council tax

- 47 Where tenanted premises fall vacant as a consequence of the scheme, the owner has to pay to the business rates or council tax and other outgoings that would otherwise be paid by the tenant. Your Petitioner submits that the Promoter should cover these costs for landowners as they arise.

Capital Gains Tax

- 48 Rollover relief from Capital Gains Tax is available where business property is compulsorily acquired and the sale proceeds are used to invest in another business asset within one year prior to the acquisition or three years after it.
- 49 The principle of relief is sound, but these timescales are too short in the context of rural businesses, which face particular challenges in finding appropriate replacement land assets. It can often take many years, if not a generation, for neighbouring land that would be suitable for the exercise of roll over relief to come onto the market. Your Petitioner seeks greater recognition of this issue by making the relief available immediately and after acquisition until a qualifying purchase is made, however long that might take. Alternatively, your Petitioner seeks from the Government a dispensation for its members from this unjust imposition of taxation as direct result of the scheme.

Increase in the statutory rate of interest

- 50 The compensation code currently requires that interest is due on compensation not paid from the date of entry by the acquiring authority. However, the statutory rate of interest is 0.5% below the base rate, which in the current climate of record low interest rates means that interest is payable at zero percent. This is inadequate. It is another example of how the current compensation terms are neither fair nor

generous. Your Petitioner submits that interest be payable on compensation at a rate equivalent to a commercial rate.

Securing commitments

- 51 It is also unclear what remedy, if any, will be available to your Petitioner's members in the event of any failure by the Promoter or the nominated undertaker to observe the terms of commitments given, including the terms of the proposed code of practice and other obligations. Where the Promoter has not agreed terms on such issues directly with your Petitioner or its members, they should have some clear form of recourse in the event that a commitment is not honoured for any reason.

Conclusion

- 52 For the foregoing and connected reasons your Petitioner respectfully submits that, unless the Bill is amended as proposed above, so far as affecting your Petitioner, the Bill should not be allowed to pass into law.
- 53 There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and your Petitioner's members' rights, interests and property and for which no adequate provision is made to protect your Petitioner or its members.

YOUR PETITIONER therefore humbly prays your Honourable House that the Bill may not be allowed to pass into law as it now stands and that it may be heard by its 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 Petitioner's members 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 Petitioner will ever pray, &c.



Bircham Dyson Bell LLP

Parliamentary Agents for the CLA

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2013-14

HIGH SPEED RAIL (LONDON –
WEST MIDLANDS) BILL

PETITION OF

The Country Land and Business
Association Limited (the CLA)

AGAINST, By Counsel, &c.

Bircham Dyson Bell LLP
50 Broadway
London
SW1H 0BL

Solicitors and Parliamentary
Agents

23 May 2014